
TP ATTACHMENT 2-6 – PERTINENT AGREEMENT REQUIREMENTS

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TP ATTACHMENT 2-6.1 – SR-91 CIP RECORD OF DECISION (ROD)

**CALTRANS
STATE ROUTE 91 CORRIDOR IMPROVEMENT PROJECT FINAL ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT, AND
RECORD OF DECISION (ROD)**

<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
All All		Refer to TP Attachment 6-1 (Project Environmental Commitment Requirement) for environmental requirements

TP ATTACHMENT 2-6.2 – HIGH PROFILE PROJECT OVERSIGHT AGREEMENT

**FHWA, CALTRANS, & RCTC
 FEDERAL HIGHWAY ADMINISTRATION HIGH PROFILE PROJECT OVERSIGHT AGREEMENT FOR STATE ROUTE 91 CORRIDOR IMPROVEMENT
 PROJECT, FED, PROJECT NO. _____ / EA 08-0F540, 09/01/11**

Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
Agency Roles and Responsibilities	The individual and joint agency roles and responsibilities for FHWA and Caltrans have been outlined in the Stewardship Agreement. The role of RCTC is as the local Metropolitan Planning Organization (MPO) and the lead project sponsor, responsible for working in partnership with FHWA and Caltrans to environmentally clear the Project; procure a design-build contractor; secure project financing; design and construct; and operate and maintain the tolled express lane facility.	RCTC will serve as the MPO on the Project.
Project Personnel	<p>1) FHWA Project Personnel and Resource for Oversight: An FHWA Project Oversight Manager (POM) has been assigned for the oversight of this project. The designated POM is Tay Dam. The POM will be responsible for all project actions and approvals required under this agreement, with the guidance of the FHWA Division Office management and the assistance of other FHWA personnel. Division Office specialists will be available for project reviews and technical assistance in order to provide expeditious reviews and approvals of project actions. Oversight will be conducted through project inspections, review of project data and various other means. The United States Department of Transportation (USDOT) Office of Inspector General may also perform audits of project costs and other financial data as required. The POM has delegated certain approval responsibilities, as follows: ITS ("Technology") Project Elements- Jesse Glazer, Sufficiency and Validation Review of Design Quality Process- Jeff Holm, DBE Related Matters- Lance Yakota.</p> <p>These designations may be revised as needed, with prompt notification to Caltrans POC. These designees have "final" approval authority within their areas of responsibility. To achieve efficient interactions between the parties, communications clearly related to one of the topics listed above may be addressed directly to the designated individual. Contacts about other matters shall be</p>	RCTC will work with POM as required under this agreement.

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	<p>addressed to the POM.</p> <p>2) Caltrans Project Personnel and Resources. In accordance with Deputy Directive DD-23-R1, Caltrans has designated Syed Raza as the Primary Point of Contact (POC) with FHWA, with overall responsibility for the Project under the Stewardship Agreement. The POC has delegated certain responsibilities, as follows: Project Management- Daniel Ciacchella FHWA-Caltrans Liaison- Anthony Ng</p> <p>3) Riverside County Transportation Commission (RCTC). Toll Program Director- Michael Blomquist</p> <p>Designations for Caltrans and RCTC may be revised as needed, with prompt notification to the FHWA POM.</p>	
Reporting Requirements	<p>The FHWA POM will be responsible for providing periodic updates of the costs and schedules of the project to FHWA Headquarters and the US DOT – Office of the Secretary. Briefings will also be provided to assist various agencies with tracking information. Caltrans/Local Agency will provide quarterly updates at a minimum (using all available information) with respect to project cost and scheduling to assist with this task. Along with the quarterly updates, the FHWA POM will attend regular meetings to discuss the project's progress including any unforeseen circumstances.</p>	RCTC will provide updated cost and schedule information to the POM
Project Specific Requirements	<p>If the Project is approved, Caltrans and Local Agency will implement the project using the design/build method of project delivery, in accordance with 23 CFR Part 636. Oversight activities specific to this proposed project are detailed below and in the Project Responsibilities List in Attachment A.</p> <p>FHWA and Caltrans/Local Agency will meet annually to conduct a Project Review and implement the principles of Risk Management, including assessing risk, prioritizing risk events and statements, and implementing response strategies to effectively manage risk. The approval actions to be taken by FHWA, as indicated in Attachment A, will be re-assessed during the Project Review and may be delegated to Caltrans at a later time at FHWA's discretion.</p>	RCTC will lead the procurement process using design/build methodology in accordance with 23 CFR Part 636.
Planning	<p>The Project is included in a conforming Transportation Improvement</p>	RCTC will be responsible to providing necessary information as needed.

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Cost Estimate Review	<p>Plan. A Cost Estimate Review (CER) will be performed by the Local Agency for Caltrans review and subsequently to FHWA for approval. The CER is recommended to be complete 30 days prior to proposed adoption of the NEPA decision document (ROD). The CER will be performed in accordance with the guidelines of the FHWA Office of Innovative Project Delivery.</p>	RCTC will participate in the CER.
Environment	<p>In accordance with the SAFETEA-LU Section 6005 Memorandum of Understanding between FHWA and Caltrans dated June 29, 2007, the environmental review, consultation, and any other actions required in accordance with applicable Federal laws for this project is being, or has been carried out by Caltrans under its assumption of responsibility pursuant to 23 U.S.C. 327. If the project is environmentally approved, the environmental documentation for this project is an Environmental Impact Study and Environmental Impact Report (EIS/EIR). NEPA project approval has been delegated to Caltrans as part of the NEPA Assignment Pilot Program.</p>	RCTC will be the point of contact.
Design	<p>Caltrans will perform design reviews consistent with its responsibility to ensure the local administered project complies with federal requirements. FHWA Approval of new or modified access and design exceptions related to FHWA's 13 controlling criteria will be required.</p>	RCTC will participate with Caltrans during design reviews.
Right of Way	<p>In the event that the Project is approved, right of way activities will be accomplished pursuant to federal statutes including, but not limited to, 1) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, "The Uniform Act"; 2) 23 CFR 710, Right-of-Way and Real Estate; and 3) 49 CFR 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.</p>	RCTC will secure Right of Way in accordance with federal statutes.
Construction	<p>If the Project is approved, the FHWA POM will be responsible for full FHWA construction oversight. This oversight would include routine inspections throughout the life of the project. FHWA approval for Major Contract change orders is required, and it will be implemented per Caltrans Construction Manual Procedure 5-308B (1) Federal Highway</p>	RCTC will participate in FHWA oversight.

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Project Management Plan	<p>Administration Involvement Requirements – Major Contract Change Orders.</p> <p>A draft Project Management Plan (PMP) will be submitted by the Local Agency to Caltrans for review, and subsequently to FHWA at least 60 days prior to the proposed adoption of the NEPA decision document (ROD). The final PMP will be due 90 days after completion of NEPA. The final PMP will be approved by the FHWA California Division, in concurrence with the FHWA Headquarters Major Projects Team. Updates to the PMP will be completed and submitted on a regular basis if significant changes occur to the project cost and/or schedule. The PMP will be developed in accordance with the guidelines of the FHWA Office of Innovative Project Delivery.</p>	<p>RCTC will provide Caltrans a PMP in accordance with time limitations as specified.</p>
Financial Plan	<p>The Initial Finance Plan will be submitted by the Local Agency to Caltrans for review and subsequently to FHWA, prior to award of the project. Updates to the initial Finance Plan will be provided by the Local Agency to Caltrans, the FHWA Division Office, and the FHWA Major Projects Team by the annual submission date established in the Initial Finance Plan for each subsequent year until all construction is completed. The CER will be developed in accordance with the guidelines of the FHWA Office of Innovative Project Delivery.</p>	<p>RCTC will provide an Initial Finance Plan to Caltrans for review prior to project award.</p>

TP ATTACHMENT 2-6.3 – CALTRANS/RCTC DESIGN-BUILD COOPERATIVE AGREEMENT

**CALTRANS & RCTC
 COOPERATIVE AGREEMENT FOR DESIGN-BUILD OF THE STATE ROUTE 91 TOLL FACILITY AND CORRIDOR IMPROVEMENT PROJECT, DATED AS OF
 _____, BY AND BETWEEN CALTRANS AND RCTC**

Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
44	To carry out the PROJECT with COMMISSION forces, consultants and contractors. If environmentally approved, PROJECT will be implemented in accordance with the approved Final Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) and all applicable federal, State, and local laws and regulations, as well as compliance with the applicable FHWA requirements.	RCTC is responsible for implementing the project in accordance with the approved EIS/EIR.
45	To be responsible for one hundred (100%) percent of all PROJECT construction capital (excluding the cost of BETTERMENTS), right-of-way and support costs incurred by the COMMISSION, and for the cost of REIMBURSED WORK, up to the maximum amount as set forth in the following sentence, and for SFM requested by COMMISSION. COMMISSION shall reimburse STATE the actual cost of REIMBURSED WORK up to the maximum amount of Thirty Three Million, One Hundred Thousand Dollars (\$33,100,000), as shown on Exhibit D ("COMMISSION Maximum REIMBURSED WORK Payment Obligation"). COMMISSION has no obligation to reimburse STATE over the stipulated Maximum REIMBURSED WORK Payment Obligation amount without written addendum to this Agreement signed by both PARTIES.	RCTC will be responsible for all project cost excluding any betterments.
46	To fund the amount of \$1,107,122,104 towards PROJECT. The total COMMISSION contribution towards the PROJECT cost estimate is shown on the FUNDING SUMMARY attached hereto and made a part of this Agreement.	RCTC will be the primary contact for Caltrans.
47	That all of the COMMISSION and STATE obligations set forth in this entire Agreement with respect to the construction and/or implementation of the PROJECT are expressly contingent upon the completion of all required environmental review under both California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) and the approval of the proposed PROJECT. In the event that the "no project" alternative is selected as a result of the environmental review process, except as otherwise specified in this Agreement, all COMMISSION and STATE obligations under this Agreement shall terminate. STATE shall be compensated for all performed for PROJECT as of the effective date of this Agreement. COMMISSION	RCTC will be the primary contact for Caltrans.

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48	<p>may perform DESIGN-BUILD procurement work, and STATE approved early right-of-way acquisition, at COMMISSION's sole risk and cost prior to selection of a preferred alternative under CEQA and NEPA and approval of the proposed PROJECT.</p> <p>Pursuant to the CTC approval for PROJECT and California Public Contract Code section 6802, as amended by Assembly Bill 2098 (Miller 2010), to utilize the DESIGN-BUILD method of procurement for implementation of PROJECT. To carry out PROJECT with COMMISSION forces, consultants, and contractors. PROJECT is to be defined and implemented in accordance with the Final EIS/EIR and supporting environmental documentation, and all applicable federal, State, and local laws, rules, and regulations. COMMISSION will implement PROJECT in accordance with applicable STATE STANDARDS, except as the same may be modified in the approved CONTRACT DOCUMENTS. COMMISSION will coordinate with STATE during development of the CONTRACT DOCUMENTS, and STATE shall be afforded the opportunity to review, comment and, approve the CONTRACT DOCUMENTS in accordance with the terms of this Agreement.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
49	<p>That, as of the date first specified above, STATE will participate in the selection of COMMISSION's consultants and contractors who will implement the PROJECT. STATE recognizes that COMMISSION has, prior to the effective date of this Agreement, selected and retained certain consultants to work on PROJECT. COMMISSION agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified based on credentials, professional expertise, or failure to perform in accordance with SCOPE OF WORK and/or other pertinent criteria.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
50	<p>COMMISSION shall have the right to review and approve any supervisor/managerial STATE employees or consultants who will perform REIMBURSED WORK on PROJECT on behalf of STATE. COMMISSION shall be provided with information regarding the credentials, professional expertise and availability of such STATE employees or consultants. STATE shall not substitute any COMMISSION approved STATE employees or consultants assigned to</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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51	<p>PROJECT without prior notice to COMMISSION and approval by COMMISSION of the substitute STATE employee or consultant personnel.</p> <p>As the ultimate owner of the facility, STATE will be named as the intended third party beneficiary in the CONTRACT DOCUMENTS. The CONTRACT DOCUMENTS will include a provision granting STATE, in addition to COMMISSION, the right to pursue all legal remedies against the contractor for any "latent deficiency" pursuant to California Code of Civil Procedure section 337.15 (b), and shall amend any contrary provision contained in the STATE STANDARDS.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
52	<p>To require the DESIGN-BUILD contractor to maintain professional liability insurance through completion of construction of PROJECT and the resolution of all construction contract claims and/or litigation, with a limit of liability of at least \$10,000,000 per occurrence. If Owner Control Insurance Program (OCIP) is proposed, to have an OCIP Feasibility Study, prepared to commercially accepted insurance standards, for approval by STATE. COMMISSION's DESIGN-BUILD contractor shall maintain in force, until completion and acceptance of all phase or elements of the DESIGN-BUILD contract for PROJECT, a policy of Contractual Liability Insurance, including coverage for Bodily Injury Liability and Property Damage Liability, with coverage that at a minimum meets the requirements set forth in the CONTRACT DOCUMENTS. Such policy shall contain an endorsement naming the State of California, its officers, agents, and employees as additional first-party insureds. Coverage shall be evidenced by a Certificate of Insurance, Policy of Insurance and a Declarations Page in a form satisfactory to STATE, all of which shall be delivered to STATE before the issuance of an encroachment permit to COMMISSION's DESIGN-BUILD contractor or any other consultant or agent of COMMISSION.</p>	<p>RCTC's RFP will require professional liability insurance in accordance with the D/B agreement for the project.</p>
53	<p>To obtain and maintain, or to require its DESIGN-BUILD contractor to obtain and maintain, business automobile liability coverage for all vehicles provided by or on behalf of COMMISSION for use by the STATE. Each policy must cover claims for accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles</p>	<p>RCTC's RFP will require vehicle liability insurance in accordance with the D/B agreement for the project.</p>

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54	connected with performance of the Work, including loading and unloading. Policies must include as an insured anyone liable for the conduct of an insured as defined in the policy, or add STATE as an additional insured. DESIGN-BUILD contractor's automobile liability policy must have a combined single limit per policy period of not less than \$10,000,000 per accident. No such policy may contain a self-insured retention exceeding \$50,000 per accident. The coverage required pursuant to this paragraph shall be maintained at all times during which vehicles are provided to the STATE as set forth herein. To be responsible for the preparation and implementation of the Mitigation and Monitoring Plan to be approved by STATE as part of the Final EIS/EIR and environmental permit, agreement, or approval process. COMMISSION, its consultant or DESIGN-BUILD contractor shall submit progress reports, per STATE and FHWA guidelines, to STATE for review and approval. As set forth in the Final EIS/EIR, and although STATE is the lead agency with respect to environmental documentation, COMMISSION agrees and warrants it shall comply, or cause its DESIGN-BUILD contractor to comply, with all PROJECT mitigation measures, including the terms and conditions of the environmental documentation and any required environmental permits, agreements and approvals as those terms and conditions apply to STATE's and COMMISSION's responsibilities as set forth in this Agreement and shall provide and certify a Mitigation Monitoring Report and Certificate of Environmental Compliance at the completion of the PROJECT.	RCTC will submit progress reports to Caltrans for review and approval.
55	To prepare and submit FHWA "Major Project Deliverables," including, but not limited to, the Project Management Plan (PMP), Project Financial Plan (FP) and Cost Estimate Review (CER). The Major Project Deliverables shall be prepared in accordance with FHWA guidelines.	RCTC will be the primary contact for Caltrans.
56	To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred by COMMISSION, including support data for cost proposals (to the extent received from contractors), and make such materials available at the respective offices of COMMISSION and its consultants and contractors at all reasonable times during the contract period and for three years from the date of	RCTC will be the primary contact for Caltrans.

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	COMPLETION OF WORK or Federal Final Voucher, whichever is later. STATE or FHWA shall have access to any books, records, and documents of COMMISSION that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Upon completion of all work under this Agreement, ownership and title to all planning and engineering reports, documents, plans, specifications and estimates, including but not limited to Resident Engineer memos and estimates backups, produced for delivery to STATE as part of PROJECT will automatically be vested in STATE and no further agreement will be necessary to transfer ownership to STATE.	
57	To furnish STATE, prior to commencing work on DESIGN-BUILD activities, a proposed time schedule to complete PROJECT.	RCTC's RFP requires that a detailed project schedule be provided for the project.
58	To have the release for construction design documents and drawings of structural, mechanical, electrical, civil, architectural, or other engineering features of PROJECT prepared by or under the direction of engineers or architects registered and licensed accordance with the most current version of the State of California, Professional Engineers Act at the time. Any reports, specifications, and each sheet of plans shall bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the professional engineer responsible for their preparation.	RCTC's RFP requires that all design and construction drawings drawings be prepared under the direct supervision of a licensed professional in the State of California.
59	To not specify any materials or equipment of single or sole source origin in the design of PROJECT unless COMMISSION complies with the requirements set forth in Public Contract Code section 3400(c).	RCTC will be the primary contact for Caltrans.
60	To ensure PROJECT deliverables are subject to approval in accordance with the PROJECT QUALITY PROGRAM. All PROJECT design submittals shall be provided to STATE for review, comment and approval, as appropriate. All release for construction design documents and drawings are subject to review and approval by STATE, provided that the scope of STATE's review shall be limited to compliance with the CONTRACT DOCUMENTS. STATE shall complete its review and provide any comments in accordance with the requirements specified in SECTION II, of this Agreement.	RCTC's RFP outlines the requirements for the quality management program.

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61	To notify STATE of any deviation(s) to the PROJECT's Area of Potential Effects (APE) and/or description of the PROJECT as set forth in the Final EIS/EIR or Project Report. Said notification shall occur within two business days of when the deviation(s) has been discovered by COMMISSION or determined to be necessary, whichever occurs first in time.	RCTC will be the primary contact for Caltrans.
62	To prepare or cause to be prepared any additional environmental documentation, including applications for new, or amendments to, environmental permits, agreements and approvals that are needed to maintain PROJECT environmental compliance and to submit said documentation to STATE for review, comment and, if appropriate, approval. Further, if changes to PROJECT warrant preparation of a Supplemental or Subsequent EIS/EIR, COMMISSION will prepare or cause to be prepared the Supplemental or Subsequent EIS/EIR and STATE as CEQA and NEPA lead agency will review and, if appropriate certify and/or approve the Supplemental or Subsequent EIS/EIR. All noticing and circulation and other procedural responsibilities will be carried out as set forth for the original EIS/EIR in Agreement 8-1375.	RCTC will be the primary contact for Caltrans.
63	To perform all right-of-way acquisition activities, including the exercise of COMMISSION's power of eminent domain granted under California Public Utilities Code (CPUC) section 130220.5, including, the right to hear Resolutions of Necessity without STATE's written approval on that portion of State Route 91 between Route 55 and the Interstate Route I-15, pursuant to its authority under CPUC section 130244, if necessary, as a cost to PROJECT. All such acquisition activities shall be in compliance with applicable state and federal laws and regulations, and applicable STATE STANDARDS, unless otherwise approved by STATE, subject to STATE OVERSIGHT under this Agreement, to ensure that the acquired properties are acceptable for incorporation into the SHS right-of-way. For that portion of the PROJECT not between Route 55 and the Interstate Route I-15, COMMISSION shall request STATE's written approval to hear Resolutions of Necessity.	RCTC will be the primary contact for Caltrans.
64	Unless otherwise approved by STATE to perform, with participation of STATE, first and, if necessary, second level Condemnation Panel	RCTC will be the primary contact for Caltrans.

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65	<p>Reviews similar to the existing STATE process for right-of-way acquisition, prior to seeking any Resolution of Necessity authorizing the initiation of the eminent domain process, COMMISSION will hear requests for issuance of Resolutions of Necessity and shall implement any and all procedures as required by California law and is consistent with STATE's policy and procedures relating to the conditions precedent to the adoption of any Resolution of Necessity.</p> <p>To transfer title to properties to be incorporated into STATE's highway right-of-way in a manner acceptable to STATE in fee simple absolute and free and clear of all liens, claims or encumbrances except as approved by STATE. Acceptance of said title by STATE is subject to a prior review and approval of a Policy of Title Insurance issued in the name of the State of California and in an amount commensurate with the estimated fair market value of the realty.</p>	RCTC will be the primary contact for Caltrans.
66	<p>To maintain and manage any excess land acquired as a result of PROJECT until said excess land is disposed of by COMMISSION, unless such land was purchased with federal funds, in which case applicable federal rules shall govern the vesting and/or disposition of such property. Any existing STATE owned right-of-way not needed for the PROJECT shall not be deemed "excess" by COMMISSION and shall remain vested in STATE, unless otherwise agreed by the STATE.</p>	RCTC will be the primary contact for Caltrans.
67	<p>To provide a land surveyor licensed in the State of California to be responsible for surveying and right-of-way engineering. All survey and right-of-way engineering documents shall bear the professional seal, certification number, registration classification, expiration date of certificate, and signature of the responsible surveyor consistent with the Professional Land Surveyors Act.</p>	RCTC will be the primary contact for Caltrans.
68	<p>To perform, within SHS right-of-way, all pre-construction monumentation perpetuation and perform all post-construction monumentation and the mapping/documentation thereof in conformance with applicable STATE STANDARDS, except where modified in the CONTRACT DOCUMENTS. This work includes, but is not limited to:</p> <ul style="list-style-type: none"> • the recovery, reestablishment, and survey of points which control existing SHS right-of-way lines, or other pertinent boundary lines and centerlines, and the monumentation thereof; 	RCTC will be the primary contact for Caltrans.

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	<ul style="list-style-type: none"> • the survey and establishment of existing SHS right-of-way lines and monumentation thereof; • the preservation of existing monumentation threatened by construction; • the survey, establishment and monumentation of new SHS right-of-way lines and re-monumentation of points destroyed by construction because of PROJECT. 	
69	To identify and locate all high and low risk underground facilities within the area of PROJECT and to protect or otherwise provide for such facilities, all in accordance with applicable law and the procedures set forth in STATE's policy on high and low risk underground facilities.	RCTC's RFP provides requirements surrounding utility relocation requirements.
70	If existing public and/or private utilities conflict with construction of PROJECT, COMMISSION shall make all necessary arrangements with the owners of such facilities for their protection, relocation, or removal and shall inspect the protection, relocation, or removal of such facilities at no cost to STATE. COMMISSION shall require any utility owner performing the protection or relocation work within SHS right-of-way to obtain an encroachment permit from STATE prior to the performance of said work. Any relocated or new utilities shall be shown and identified on the As-Built plans.	RCTC's RFP provides requirements surrounding utility relocation requirements.
71	To comply with the requirements of existing STATE Utility Master Agreements of record.	RCTC's RFP provides requirements surrounding utility relocation requirements.
72	To furnish evidence to STATE, in a form reasonably acceptable to STATE, that arrangements have been made for the protection, relocation, or removal of all conflicting facilities within SHS right-of-way and that such work will be either completed by the utility providers, or will be provided for in the CONTRACT DOCUMENTS.	RCTC's RFP provides requirements surrounding utility relocation requirements.
73	To be responsible for the investigation of potential hazardous material sites within and outside of the existing SHS right-of-way that would impact PROJECT as part of COMMISSION responsibility for the PROJECT Environmental Document. If COMMISSION encounters hazardous material contamination or unanticipated protected cultural materials within the existing and proposed SHS right-of-way during said investigation or in the course of construction, COMMISSION shall immediately notify STATE and responsible control agencies of such	RCTC will be the primary contact for Caltrans.

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74	discovery. To procure the DESIGN-BUILD contract for PROJECT in accordance with applicable laws, and in a manner consistent with the authorization for the PROJECT issued by the CTC, and the prevailing wage provisions of the California Labor Code. COMMISSION shall obtain applicable wage rates from the State Department of Industrial Relations and shall adhere to the applicable provisions of the State Labor Code. Violations shall be reported by COMMISSION to STATE and to the State Department of Industrial Relations.	RCTC will be the primary contact for Caltrans.
75	To utilize a qualified STATE-approved public agency or consultant in all right-of-way activities. Right-of-way consultant contracts will be administered by a qualified right-of-way professional.	RCTC will be the primary contact for Caltrans.
76	To apply for and obtain encroachment permits for required work within SHS right-of-way in accordance with STATE standard permit procedures. Contractors and/or agents will not perform work within SHS right-of-way without an encroachment permit issued in their name. To obtain all other permits and approvals, including local agency and regulatory agency permits and approval documentation for construction of PROJECT. In the event that railroads are involved, COMMISSION will coordinate with the railroad and the California Public Utilities Commission to obtain needed approvals. Copies of all permits obtained for PROJECT shall be submitted to STATE.	RCTC's RFP requires that encroachment permits be obtained within SHS right-of-way.
77	That in recognition that PROJECT construction work done on STATE property will not be directly funded and paid by STATE, for the purpose of protecting stop notice claimants and the interests of STATE relative to the successful completion of PROJECT, COMMISSION shall require the DESIGN-BUILD contractor to furnish both a payment and performance bond, issued by a California admitted surety naming COMMISSION as obligee with both bonds complying with the requirements of applicable laws and in the form provided in the CONTRACT DOCUMENTS, or other security approved in writing by STATE. COMMISSION shall defend, indemnify, and hold harmless STATE and all its officers and employees from all claims by stop notice claimants related to the construction of PROJECT under the payment bond or otherwise.	RCTC will be the primary contact for Caltrans.
78	That all survey work shall conform to the methods, procedures, and	RCTC's RFP provides requirements surrounding survey work to be

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	requirements of STATE Surveys Manual and STATE Staking Information Booklet, except as the same may be modified in the CONTRACT DOCUMENTS. COMMISSION agrees to use primary horizontal and vertical survey control information provided by STATE in developing the survey control for PROJECT.	performed on the project.
79	Material testing and quality control shall conform to those provisions of applicable STATE STANDARDS, except as the same may be modified in the CONTRACT DOCUMENTS, and shall be performed by a material-tester certified by STATE in accordance with its standard certification procedures.	RCTC's RFP provides requirements surrounding material testing to be performed on the project.
80	To submit for STATE approval, a draft Transportation Management Plan (TMP) for PROJECT, which shall comply with the STATE TMP guidelines. Final TMP will be prepared by the DESIGN-BUILD contractor during PROJECT design. COMMISSION shall provide the final TMP to STATE for review and approval in accordance with the CONTRACT DOCUMENTS and PROJECT timelines and schedules.	RCTC's RFP provides requirements surrounding a TMP for the project.
81	To furnish, at PROJECT expense and subject to the approval of STATE, a PROJECT Representative who is a licensed Civil Engineer in the State of California, to perform the functions of a Resident Engineer. The Resident Engineer shall not be an employee or agent of the DESIGN-BUILD contractor or any related entity.	RCTC will be the primary contact for Caltrans.
82	At PROJECT expense, to furnish qualified support staff to assist the Resident Engineer with contract administration, and other inspection and staff services necessary to assure that construction is being performed in conformance with this Agreement and with the CONTRACT DOCUMENTS. Said qualified support staff engaged in COMMISSION activities shall be independent of the DESIGN-BUILD contractor and shall not be an employee or agent of any related entity.	RCTC will be the primary contact for Caltrans.
83	To provide a Safety Engineer/Manager who will be responsible for auditing the DESIGN-BUILD contractor for compliance with any PROJECT safety plans, Occupational Safety and Health Administration (OSHA) requirements and STATE, COMMISSION, and local jurisdiction requirements set forth in the CONTRACT DOCUMENTS.	RCTC will be the primary contact for Caltrans.
84	Prior to Final Acceptance, as that term is defined in the CONTRACT DOCUMENTS, to furnish STATE with a complete set of pre-approved	RCTC's RFP provides requirements surrounding "As-Built" documents for the project.

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85	<p>design plans depicting the proposed construction of the PROJECT; a complete set of "As-Built" plans and all STATE requested contract records, including survey documents, Records of Surveys, and structure As-Built documents according to the CONTRACT DOCUMENTS. The format of these plans, records and documents shall be in both printed and readily readable electronic format.</p> <p>To be responsible for maintenance and repair of the TOLL FACILITY and the NON-TOLL PROJECT FACILITIES located within the designated PROJECT SHS right-of-way upon the issuance by STATE of an encroachment permit to the DESIGN-BUILD contractor. COMMISSION shall be responsible for such maintenance and repair of the NON-TOLL PROJECT FACILITIES until RELIEF OF MAINTENANCE is granted by STATE of the NON-TOLL PROJECT FACILITIES, or segments thereof. Maintenance and repair of PROJECT facilities includes, but is not limited to, compliance with all legally required storm water provisions, landscaping and irrigation, pavement, signs, lighting, barriers, guardrail, graffiti abatement, weed abatement, removing debris, and general housekeeping. Major damage to PROJECT structures and roadway facilities by hazardous spills and causes beyond COMMISSION control, including but not limited to, any incidence of fire, flood, earthquake, or other acts of God will be addressed in the CONTRACT DOCUMENTS.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
86	<p>To maintain any part of the PROJECT facilities located outside of the current SHS right-of-way until acceptance of any such part of the PROJECT facilities into the SHS by STATE.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
87	<p>That if COMMISSION terminates PROJECT prior to completion thereof, STATE may require COMMISSION, at COMMISSION expense, to return the affected SHS right-of-way to its original condition or a condition acceptable for permanent public operations. If COMMISSION fails to do so, STATE reserves the right to finish the NON-TOLL PROJECT FACILITIES or to place the NON-TOLL PROJECT FACILITIES in a condition satisfactory for permanent public operations. STATE will bill COMMISSION for all actual expenses incurred and COMMISSION agrees to pay said expenses within thirty (30) days of issuance of that invoice or STATE, acting through the State Controller or State Treasurer,</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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88	may withhold an equal amount from future apportionments due COMMISSION from STIP or any other sources. If unanticipated cultural, archaeological, paleontological, biological, or other protected resources are encountered during construction of PROJECT, COMMISSION shall stop work in that area until a qualified professional evaluates the nature and significance of the find and a plan is approved for the removal or protection of that resource, which plan must be in accordance with applicable law. COMMISSION shall notify STATE within 24 hours of any said discovery. The costs for any removal or protection shall be covered as a PROJECT cost.	RCTC's RFP provides requirements surrounding environmental resources discovered during construction on the project.
89	COMMISSION shall provide STATE personnel dedicated to the PROJECT, acceptable office space, furniture, utilities and any other items necessary to perform their work at no expense to STATE for the duration of PROJECT.	RCTC's RFP provides requirements surrounding office facilities for the project.
90	To notify STATE in writing of the projected date for achievement of Final Acceptance, as that term is defined in the CONTRACT DOCUMENTS.	RCTC will be the primary contact for Caltrans.
91	Final Acceptance of PROJECT will include all necessary documentation and approvals from affected local agencies for those segments which will have maintenance and operational control relinquished back to said local agencies.	RCTC's RFP provides requirements surrounding documentation required for Final Acceptance on the project.
92	To accept maintenance of the TOLL FACILITY upon PROJECT substantial completion, as that term shall be defined in the CONTRACT DOCUMENTS. COMMISSION will accept control of and operate and maintain, at COMMISSION's sole cost and expense, the TOLL FACILITY lying within the SHS right-of-way. The terms and conditions for the operation and maintenance of the TOLL FACILITY will be covered in a separate maintenance agreement.	RCTC will be the primary contact for Caltrans.
93	COMMISSION shall obtain all required permits for construction of PROJECT from third parties, including but not limited to railroads and resource agencies.	RCTC's RFP provides requirements surrounding third party permits for the project.
94	To submit a written request for any SFM identified in the PROJECT plans and specifications a minimum of one hundred eighty (180) days in advance of the need for such materials. COMMISSION may take delivery of the SFM after STATE's receipt of COMMISSION's payment at the location directed by STATE.	RCTC will be the primary contact for Caltrans.

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95	To pay STATE, within thirty (30) days of receipt of STATE's billing, the actual cost invoiced for the requested SFM. The estimated cost of SFM is listed on Exhibit F.	RCTC will be the primary contact for Caltrans.
96	COMMISSION will, as part of PROJECT, incorporate into the PROJECT scope and REQUEST FOR PROPOSALS, STATE requested BETTERMENTS which include replacement of existing bridge deck joints for certain existing structures within the PROJECT limits and installation of a seismic monitoring system in the Prado OH Bridge, all as further set forth in Exhibit E.	RCTC's RFP provides requirements surrounding seismic monitoring equipment for the project.
97	COMMISSION will submit invoices to STATE for STIP/RIP.	RCTC will be the primary contact for Caltrans.
98	COMMISSION will submit a lump sum invoice to STATE for BETTERMENTS in the amount of \$247,896 upon execution of this Agreement by the PARTIES.	RCTC will be the primary contact for Caltrans.
99	To pay STATE, within thirty (30) days of receipt of STATE's billing, the actual cost invoiced for the REIMBURSED WORK, up to the COMMISSION Maximum REIMBURSED WORK Payment Obligation, as defined in SECTION I, of this Agreement.	RCTC will be the primary contact for Caltrans.
100	That all of COMMISSION and STATE obligations set forth in this entire Agreement with respect to the construction and/or implementation of the PROJECT are expressly contingent upon the completion of all required environmental review under both CEQA and NEPA and the approval of the proposed PROJECT which results from said reviews. In the event that the "no project" alternative is selected and except as otherwise specified in this Agreement, all COMMISSION and STATE obligations under this Agreement shall terminate.	RCTC will be the primary contact for Caltrans.
101	To fund up to the amount of \$247,896 for BETTERMENTS. Total STATE contribution towards the PROJECT cost is shown on the FUNDING SUMMARY attached hereto and made a part of this Agreement.	RCTC will be the primary contact for Caltrans.
102	To be the agency responsible for the performance of the REIMBURSED WORK including, but not limited to, STATE ENHANCED OVERSIGHT, CONSTRUCTION INSPECTION SERVICES, and SOURCE INSPECTION, all as monetarily summarized in Exhibit D.	RCTC will be the primary contact for Caltrans.
103	To be responsible for timely performing, at its sole cost and expense, any and all STATE ENHANCED OVERSIGHT, CONSTRUCTION	RCTC will be the primary contact for Caltrans.

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	INSPECTION SERVICES, SOURCE INSPECTION, or other work identified on Exhibit D and required for the PROJECT, in excess of the COMMISSION Maximum REIMBURSED WORK Payment Obligation, as set forth in SECTION I.	
104	To provide additional REIMBURSED WORK not included herein as requested in writing by the COMMISSION and agreed to by STATE in writing.	RCTC will be the primary contact for Caltrans.
105	To provide STATE OVERSIGHT of the PROJECT work performed by COMMISSION, at STATE's sole cost and expense.	RCTC will be the primary contact for Caltrans.
106	To process, review and approve, as appropriate, complete submittals by COMMISSION. Incomplete submittals shall be promptly returned without review but with explanation as to what is required to render such submittals "complete." STATE shall cooperate with COMMISSION and its consultants and contractors (including, without limitation, the DESIGN-BUILD contractor) with development of PROJECT and shall provide comments, reviews and if appropriate, approvals within the time frames and in accordance with the standards of review specified in the CONTRACT DOCUMENTS and as agreed to in the quality assurance procedures contained in the PROJECT QUALITY PROGRAM. COMMISSION shall not be required to consider comments not timely submitted by STATE. Nothing in this paragraph precludes the reasonable exercise of the professional discretion by STATE with respect to review and approvals in accordance with the terms of the CONTRACT DOCUMENTS, including the potential to refuse requested approvals under the terms of the CONTRACT DOCUMENTS, provided that the scope of STATE's review shall be limited to compliance with the CONTRACT DOCUMENTS. STATE agrees to provide reviews of and any comments to each submittal at the time the submittal is provided to STATE in order to avoid compiling all comments to the final review of a submittal. In addition to the foregoing, if STATE does not provide its comments, complete its reviews or provide any required approvals in accordance with the requirements of the CONTRACT DOCUMENTS, including the foregoing specified PROJECT timelines and schedules, the following shall apply, as applicable: (a) If requested by COMMISSION, the issue resolution process, set forth	RCTC will be the primary contact for Caltrans.

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	in SECTION III of this Agreement, shall be commenced.	
107	(b) COMMISSION may request that STATE immediately make additional staff available to complete the applicable PROJECT work or services. To make available to COMMISSION all necessary regulations, policies, procedures, manuals, standard plans and specifications, and other standards required for the administration of PROJECT.	RCTC's RFP provides requirements surrounding document availability for the project.
108	To make a determination of need for a NEPA/CEQA revalidation/reevaluation within 30 calendar days of receiving the proper documentation from COMMISSION. The STATE determination of need shall include, but not be limited to, the following information: 1) If Work in the area of the PROJECT can continue, 2) the type of future documentation required, and 3) if re-evaluation is required, an estimate of time to process the re-evaluation based upon the documentation provided by COMMISSION.	RCTC will be the primary contact for Caltrans.
109	That STATE will participate in the selection and approval of COMMISSION's consultants and contractors who will perform PROJECT. STATE recognizes that COMMISSION has, prior to the effective date of this Agreement, selected and retained certain consultants to work on PROJECT.	RCTC will be the primary contact for Caltrans.
110	That STATE shall, prior to permitting any supervisor/managerial employee or consultant of STATE for whom reimbursement will be sought from COMMISSION, provide to COMMISSION, for COMMISSION's review and approval, information regarding the credentials, professional expertise and availability of such employee or consultant. STATE agrees that it shall not substitute any COMMISSION approved STATE employee or consultant assigned to PROJECT without prior notice to COMMISSION and approval by COMMISSION of the substitute STATE employee or consultant personnel. STATE agrees to consider any request by COMMISSION to discontinue the services of any personnel considered by COMMISSION to be unqualified based on credentials, professional expertise, or failure to perform in accordance with SCOPE OF WORK and/or other pertinent criteria.	RCTC will be the primary contact for Caltrans.
111	STATE shall, upon COMMISSION written request, engage additional staff for the PROJECT who shall be available, as needed, to perform any	RCTC will be the primary contact for Caltrans.

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112	PROJECT work or services not timely performed by STATE, as further specified in this Agreement. That STATE will participate in the development of and will approve, if appropriate, the technical requirements, including environmental requirements, of the final RFP before the release of those requirements to the proposers.	RCTC will be the primary contact for Caltrans.
113	To issue, at no cost to COMMISSION, upon acceptable completed applications by COMMISSION and its consultants or DESIGN-BUILD contractor, those necessary encroachment permits to authorize entry onto SHS right-of-way to perform activities required for PROJECT, within thirty (30) days following receipt of an acceptable application. If COMMISSION uses consultants rather than its own staff to perform required work, those consultants will also be required to obtain an encroachment permit which will be issued at no cost upon proper application by the consultants. In reviewing and issuing any necessary encroachment permits, STATE shall approve encroachment permits that are consistent with the CONTRACT DOCUMENTS which will have been approved by STATE. The generally-applicable requirement of evidence of insurance coverage by encroachment permittees, including the procurement of a certificate of insurance naming the State of California and its employees, officers and agents as a first party, additional named insured, is not a "cost" within the meaning of this paragraph and is expressly not waived as a condition of issuance of any encroachment permit.	RCTC's RFP provides requirements surrounding encroachment permits for the project.
114	To issue, at no cost to COMMISSION, or its DESIGN-BUILD contractor within thirty (30) days after receipt by STATE of acceptable completed applications, any necessary Overload Permits that conform to then current applicable STATE STANDARDS as respects oversize and/or overnight permits under Vehicle Code Section 15 for the handling of materials necessary for construction of PROJECT.	RCTC's RFP provides requirements surrounding permits for the project.
115	That, except to the extent that STATE reasonably determines that work is required for public safety or to prevent significant property damage, STATE will, to the extent possible, avoid performing major maintenance, rehabilitation or construction within the existing SHS right-of-way that would increase costs, delay PROJECT completion or otherwise	None.

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	adversely and materially impact PROJECT. Prior to issuance, any STATE encroachment permit for work within the PROJECT limits shall be forwarded to COMMISSION Resident Engineer for review and comment.	
116	To work with COMMISSION with the goal that all applicable State and Federal rules and regulations are followed and approvals obtained. Exceptions to applicable STATE STANDARDS needed for DESIGN-BUILD procurement are to be approved in the sole discretion of STATE, and such approval shall be in writing. Incorporation of such exceptions into the CONTRACT DOCUMENTS shall satisfy the foregoing requirement.	RCTC will be the primary contact for Caltrans.
117	To participate in first, and if necessary, second level Condemnation Panel Reviews scheduled and facilitated by the COMMISSION.	RCTC will be the primary contact for Caltrans.
118	Upon presentation by COMMISSION, to accept from COMMISSION, good and sufficient fee simple absolute title to that real property acquired in fee by COMMISSION for STATE pursuant to this Agreement subject to a prior review and approval by STATE of the form of title, free of liens or exceptions, except as otherwise approved by STATE, and supported by a policy of title insurance issued in the name of STATE.	RCTC will be the primary contact for Caltrans.
119	To timely provide, at COMMISSION's cost and upon COMMISSION's request, any SFM as determined by STATE to be appropriate and available during construction of PROJECT. Upon receipt of COMMISSION's request for any such SFM, STATE will order the SFM and STATE's PROJECT Coordinator will have an invoice submitted to COMMISSION for the cost of the SFM. Upon receipt of the SFM and COMMISSION's payment, STATE will make the SFM available to COMMISSION at a STATE designated site.	RCTC will be the primary contact for Caltrans.
120	Upon completion of PROJECT to furnish COMMISSION with a detailed final accounting of the SFM and REIMBURSED WORK. Based on the final accounting, STATE will refund or invoice as necessary in order to satisfy the financial obligations of this Agreement.	RCTC will be the primary contact for Caltrans.
121	To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred by STATE and make such materials available at the respective offices of STATE and its consultants and contractors at all reasonable times during the contract period and for	RCTC will be the primary contact for Caltrans.

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	three years from the date of COMPLETION OF WORK or Federal Final Voucher, whichever is later. Upon request, STATE agrees to provide copies of any books, records, and documents that are pertinent to this Agreement.	
122	STATE agrees to provide primary horizontal and vertical survey control information for use in developing the survey control for PROJECT.	None.
123	STATE agrees to grant RELIEF OF MAINTENANCE of NON-TOLL PROJECT FACILITIES upon acceptance of such facilities, or segments thereof, as further set forth herein. Upon such grant of relief, STATE will accept control of and operate and maintain, at STATE's sole cost and expense, those segments of the NON-TOLL PROJECT FACILITIES lying within the SHS right-of-way, except local roads delegated to local agencies for maintenance.	None.
124	To perform SOURCE INSPECTION as outlined in STATE's Construction Manual. COMMISSION shall reimburse STATE, as part of the REIMBURSED WORK, up to the COMMISSION Maximum REIMBURSED WORK Payment Obligation, for all direct and indirect costs incurred for any SOURCE INSPECTION performed by STATE, as further set forth in Exhibit D.	RCTC will be the primary contact for Caltrans.
125	Independent assurance testing, specialty testing, and approval of the type of asphalt and concrete plants shall be performed by STATE, at STATE's expense and shall not be considered REIMBURSED WORK.	RCTC will be the primary contact for Caltrans.
126	To invoice COMMISSION for SFM within thirty (30) days of STATE's receipt of COMMISSION's request for the SFM.	RCTC will be the primary contact for Caltrans.
127	STATE will contribute the maximum amount of \$247,896 of STATE funds to COMMISSION, as payment for BETTERMENTS.	RCTC will be the primary contact for Caltrans.
128	STATE will pay COMMISSION within 30 calendar days of receipt of invoice as payment for BETTERMENTS.	RCTC will be the primary contact for Caltrans.
129	STATE will invoice COMMISSION for a \$400,000 initial deposit upon award of the DESIGN-BUILD Contract. This deposit represents two (2) months' estimated support costs for REIMBURSED WORK.	
130	Thereafter, STATE will submit to COMMISSION monthly invoices based on the prior month's actual expenditures.	RCTC will be the primary contact for Caltrans.
131	After PARTIES agree that all REIMBURSED WORK is complete for Construction, Right-of-Way, Design and SOURCE INSPECTION, billing	RCTC will be the primary contact for Caltrans.

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132	<p>PARTIES will submit a final accounting for all costs. Based on the final accounting, PARTIES will refund or invoice as necessary in order to satisfy the financial commitments of this Agreement.</p> <p>STATE and COMMISSION desire to implement a collaborative approach for the development of PROJECT, using the resources of both agencies to expedite the process and agree to implement all the provisions of California Public Contract Code section 6802 as amended by Assembly Bill 2098 (Miller, 2010). The organizational chart depicting the relationships of the PARTIES under Assembly Bill 2098 is outlined in Exhibit C. STATE is defined in the PROJECT ORGANIZATIONAL CHART as Caltrans, and COMMISSION is defined as RCTC.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
133	<p>The cost of any engineering support performed by STATE includes all direct and applicable indirect costs. STATE calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds are subject to the current Program Functional Rate. Local funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and the Administration Rate are adjusted periodically.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
134	<p>STATE and COMMISSION recognize that applicable STATE STANDARDS and other standards may be in conflict with a DESIGN-BUILD procurement and project delivery method. COMMISSION shall coordinate with STATE during development of the CONTRACT DOCUMENTS, and STATE shall be afforded the opportunity to review, comment and approve the CONTRACT DOCUMENTS during the development of the RFP in accordance with the terms of this Agreement. Once approved by STATE, the CONTRACT DOCUMENTS shall control the design and construction of the PROJECT and any deviations to the applicable STATE STANDARDS and other standards that are set forth in the CONTRACT DOCUMENTS shall be deemed approved by STATE.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
135	<p>That COMMISSION has the right and authority, in a accordance with 23 CFR 636 and as allowed in the amended (August 14, 2007) FHWA regulations for design-build contracting, Section 1503 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU), to issue the Request for Qualifications (RFQ) and RFP prior to completion of the NEPA process. The release of the</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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136	<p>RFP prior to NEPA approval shall be subject to the following limitations as outlined in the FHWA regulations: Issue an RFP prior to the conclusion of the NEPA process as long as the RFP informs proposers of the general status of the NEPA process and that no commitment will be made as to any alternative under evaluation in the NEPA process, including the no-build alternative; Preclude a contractor from proceeding with final design or construction before NEPA is complete.</p> <p>That all obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature and allocation of funds by the CTC to STATE for the purposes of fulfilling STATE obligations herein. Should the Legislature fail to allocate funds to STATE for purposes of fulfilling STATE obligations hereunder, the PARTIES agree to meet and confer in an attempt to close the funding shortfall.</p>	RCTC will be the primary contact for Caltrans.
137	<p>PARTIES acknowledge that, pursuant to California Public Contract Code section 6802(c)(4), added by Assembly Bill 2098 (Miller 2010), STATE resources necessary for the performance of those services identified hereunder as STATE ENHANCED OVERSIGHT, CONSTRUCTION INSPECTION SERVICES and SOURCE INSPECTION, including personnel requirements, are legally mandated to be included in STATE's capital outlay support program for workload purposes in the annual Budget Act.</p>	RCTC will be the primary contact for Caltrans.
138	<p>In the event this Agreement is terminated in accordance with SECTION I, of this Agreement, payments to STATE shall be made through and including the entire month in which the termination occurred.</p>	RCTC will be the primary contact for Caltrans.
139	<p>That timely and accurate invoicing by the STATE and subsequent payment by COMMISSION is of high importance to both PARTIES. Accordingly, the following shall be implemented: (a) STATE Corridor Manager, or his designee, shall review and approve all monthly STATE invoices prior submission to COMMISSION. (b) STATE shall submit to COMMISSION an approved monthly invoice no more than 30 calendar days following the close of the previous month's billing cycle. REIMBURSED WORK invoiced by the STATE to the COMMISSION more than 180 days after the work was performed</p>	RCTC will be the primary contact for Caltrans.

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140	<p>shall be considered delinquent and not reimbursable by the COMMISSION. STATE invoices for support costs shall include all direct and applicable indirect costs. Costs for REIMBURSED WORK not invoiced to COMMISSION within 180 days shall be the responsibility of the STATE.</p> <p>(c) COMMISSION shall remit payment to STATE for REIMBURSED WORK, up to the COMMISSION Maximum REIMBURSED WORK Payment Obligation, as defined in SECTION I, of this Agreement, within 30 days of COMMISSION approval of STATE's invoice.</p> <p>(d) Prior to any REIMBURSED WORK being performed on PROJECT, STATE and COMMISSION Project Managers shall mutually agree on the individuals allowed to charge to REIMBURSED WORK. Those individuals shall be limited to those required to fill the positions shown on Exhibit D. The STATE Project Manager shall update this approved list monthly and obtain COMMISSION concurrence to reflect any personnel changes. REIMBURSED WORK shall not begin until issuance of Limited Notice to Proceed #1 to the Design-Builder by COMMISSION.</p> <p>(e) STATE will be responsible for the development of the REIMBURSED WORK invoice format, including cost, schedule and status reports, to be jointly agreed upon prior to implementation and payment.</p> <p>To incorporate into the PROJECT scope and REQUEST FOR PROPOSALS, STATE requested BETTERMENTS as shown on Exhibit E. The cost of the BETTERMENTS shall be borne in their entirety by the STATE and paid in accordance with the provisions of this section. STATE acknowledges the potentially negative impact of changes occurring during construction and shall endeavor to minimize any Betterment requests after issuance of the final REQUEST FOR PROPOSALS.</p> <p>(a) The cost of the BETTERMENTS set forth in Exhibit E shall be the agreed upon lump sum amount of Two Hundred Forty-Seven Thousand Eight Hundred Ninety-Six Dollars (\$247,896). The foregoing lump sum amount shall constitute full payment for all design, construction, testing, and inspections performed by COMMISSION, its consultants, and/or contractor. The lump sum amount of the BETTERMENTS shall only be changed if a material change in the BETTERMENTS is requested by</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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	<p>STATE, or if the DESIGN-BUILD contractor is entitled a change order under the "Changes of Work" clause of the CONTRACT DOCUMENTS. Change order costs directly attributed to the BETTERMENTS are not included in the lump sum amount for the BETTERMENTS, and shall be the financial responsibility of STATE. STATE shall be afforded the opportunity to inspect, review and participate in any change order discussions directly impacting the BETTERMENTS.</p> <p>(b) COMMISSION shall have no obligation to undertake any Betterment requested beyond those identified in Exhibit E or after release of the final REQUEST FOR PROPOSALS. If such BETTERMENTS are acceptable to COMMISSION in its sole discretion, COMMISSION shall include them in the SCOPE OF WORK for the PROJECT. No Betterment that is inconsistent with the PROJECT's environmental scope shall be considered.</p> <p>(c) In the event STATE requests BETTERMENTS for incorporation into the PROJECT after release of the REQUEST FOR PROPOSALS and COMMISSION agrees to incorporate such BETTERMENTS into the PROJECT, STATE shall be solely responsible for all costs and expenses related thereto, including</p> <p>(i) the costs incurred to incorporate the BETTERMENTS into the SCOPE OF WORK of the PROJECT, (ii) additional design, construction and oversight costs arising from or associated with the BETTERMENTS, including change orders related thereto; (iii) additional operations and maintenance costs arising from or associated with the BETTERMENTS, including change orders related thereto; and (iv) costs associated with any impact on the design and construction schedule associated with the BETTERMENTS, including any associated PROJECT delay cost and damages.</p>	
141	That STATE shall designate a STATE representative to represent STATE, and COMMISSION shall designate a PROJECT Representative through whom all communications between the two agencies shall be channeled. The STATE representative or other official designated by STATE shall review the work of COMMISSION through completion of PROJECT.	RCTC will be the primary contact for Caltrans.
142	That COMMISSION shall establish a PROJECT document control	RCTC will be the primary contact for Caltrans.

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	system acceptable to STATE. Document control, storage, and retrieval methods will include the use of both hard copies and electronic records. When PROJECT is complete, it is intended that the appropriate documents be transferred to the appropriate PARTIES in a format that is compatible with existing filing systems.	
143	To develop warranty terms and requirements to be included in the RFP.	RCTC's RFP provides requirements surrounding warranty terms for the project.
144	COMMISSION shall prepare and STATE shall execute Freeway and Maintenance Agreements with the local agencies for PROJECT. Freeway Agreements shall be executed prior to issuance of a full Notice To Proceed (NTP-2) to the Design/Build Contractor. Maintenance Agreements shall be executed prior to the STATE's acceptance of Relief From Maintenance for the specific area of PROJECT.	RCTC will be the primary contact for Caltrans.
145	That STATE shall issue encroachment permits for utility improvements which lie within the SHS right-of-way by individual utility owner, not by individual relocation. PROJECT specific utility agreements will be negotiated between the COMMISSION and the individual utility owners, with works orders addressing individual relocations coordinated between the DESIGN-BUILD contractor and the utility owners.	RCTC will be the primary contact for Caltrans.
146	That COMMISSION shall not start PROJECT construction until and unless environmental review under CEQA and NEPA are first completed, PROJECT approval – if any – is granted, right-of-way has been secured in such area, all pre-construction environmental surveys and mitigation completed for the area(s) proposed for construction have been completed and legal and physical control of rights of way have been acquired in accordance with the CONTRACT DOCUMENTS.	RCTC will be the primary contact for Caltrans.
147	That PROJECT will be segmented to allow construction to be completed in phases based upon right-of-way availability, in compliance with applicable State and federal acquisition and relocation policies. To meet the right-of-way availability requirements for construction, right-of-way segment certification will be performed by segment, section, or parcel groupings. The CONTRACT DOCUMENTS will include language that provides that construction will not commence until all property is acquired and relocation of the occupants have been completed in each defined phase or segment.	RCTC's RFP provides requirements surrounding segmentation for the project.

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148	That during the construction of PROJECT, representatives of COMMISSION and STATE will cooperate and consult with each other, and all work pursuant to PROJECT shall be accomplished according to the CONTRACT DOCUMENTS. Satisfaction of these requirements shall be verified by STATE's representative who is authorized to enter COMMISSION property during construction for the purpose of monitoring and coordinating construction and post-construction activities.	RCTC will be the primary contact for Caltrans.
149	That any and all material changes to the CONTRACT DOCUMENTS shall be approved by STATE in advance of performing the work. If STATE does not provide its comments, complete its reviews or provide its approval in accordance with the requirements of the CONTRACT DOCUMENTS, including the PROJECT timelines and schedules, the provisions of SECTION II, shall apply.	RCTC will be the primary contact for Caltrans.
150	Unless otherwise directed by STATE representative, changes authorized as provided herein will not require an encroachment permit rider. The foregoing does not preclude deviations from the CONTRACT DOCUMENTS necessitated by emergency situations or to address an immediate safety issue. STATE shall be notified, as soon as reasonably possible, of any such deviations. All changes shall be shown on the As-Built plans referred to in this Agreement.	RCTC will be the primary contact for Caltrans.
151	That COMMISSION shall provide a contract claims process reasonably acceptable to STATE and shall process any and all claims through COMMISSION's claim process. STATE's representative will be made available to COMMISSION to provide advice and technical input in any claim process. Said representative shall not be deemed to be an agent of COMMISSION.	RCTC will be the primary contact for Caltrans.
152	The party that discovers hazardous material (HM) will immediately notify the other party(ies) to this Agreement. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not. HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.	RCTC's RFP provides requirements surrounding discovery of hazardous materials on the project.
153	STATE, independent of PROJECT, is responsible for any HM-1 found	RCTC's RFP provides requirements surrounding discovery of hazardous

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	<p>within existing SHS right of way. STATE will undertake HM-1 management activities in accordance with the laws and any regulatory directives with minimum impact to PROJECT schedule and subject to any issues and/or governmental and third parties interest should the HM-1 extend outside the existing SHS right of way and requires a coordinated response and action. STATE will pay all costs associated with HM-1 management activities found within the existing SHS right of way. STATE shall investigate any HM-1 found within existing SHS right of way within 24 hours of notification of STATE by COMMISSION of such discovery, and shall immediately commence work with regulatory agencies to identify and implement the correct action plan to remediate the site. STATE shall involve COMMISSION in all meetings and work with governmental/regulatory agencies and third parties related to any HM-1 found within existing SHS right of way.</p> <p>STATE may elect to utilize COMMISSION forces to complete HM-1 management activities by notifying COMMISSION, and, provided that COMMISSION agrees to conduct the HM-1 management activities, the PARTIES shall timely agree upon the scope, schedule and cost for such HM-1 management activities. In such case, the PARTIES agree to negotiate a separate agreement to cover the scope and schedule for the HM-1 management activities and the reimbursement to COMMISSION for its costs related to such HM-1 management activities. Such agreement shall reimburse the COMMISSION for the actual costs incurred by the COMMISSION under the CONTRACT DOCUMENTS for the HM-1 management activities. STATE shall be entitled to oversee HM-1 management activities conducted by COMMISSION forces in order to verify the work completed and costs of such work.</p> <p>In the case that COMMISSION forces are to conduct the HM-1 management activities, STATE agrees to sign any hazardous waste manifest required for HM-1 remediation as described herein within ten (10) days of submission thereof to STATE, and shall not unreasonably delay signing said document. Notwithstanding any delegation of remediation responsibility for HM-1 to COMMISSION, STATE agrees that COMMISSION is not responsible for the actual hazardous material discovered within the STATE right-of-way, other than for the proper</p>	materials on the project.

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	remediation and disposal thereof. The COMMISSION agrees to indemnify and hold STATE harmless for any causes of action and for any civil or regulatory actions resulting from any negligence or willful misconduct of COMMISSION in conducting any remediation and/or disposal actions under this paragraph.	
154	STATE has no responsibility for management activities or costs associated with HM-1 found outside the existing SHS right-of-way. COMMISSION, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits outside existing SHS right-of-way. COMMISSION will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PROJECT schedule, and COMMISSION will pay, or cause to be paid, all costs associated with HM-1 management activities.	RCTC's RFP provides requirements surrounding discovery of hazardous materials on the project.
155	If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities. Any management activity cost associated with HM-2 is a PROJECT cost.	RCTC's RFP provides requirements surrounding discovery of hazardous materials on the project.
156	Management activities associated with HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.	RCTC's RFP provides requirements surrounding discovery of hazardous materials on the project.
157	The PARTIES agree that COMMISSION is designated as the Legally Responsible Person and the Approved Signatory Authority pursuant to the Construction General Permit, State Water Resources Control Board (SWRCB) Order Number 2009-0009-DWQ, as defined in Appendix 5, Glossary, and assumes all roles and responsibilities assigned to the Legally Responsible Person and the Approved Signatory Authority as mandated by the Construction General Permit.	RCTC's RFP provides requirements surrounding permits on the project.
158	STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with the applicable STATE STANDARDS.	RCTC's RFP provides requirements surrounding discovery of hazardous materials on the project.
159	That pursuant to the authority contained in Section 591 of the Vehicle Code for areas within the limits of PROJECT that are open to public traffic, COMMISSION shall comply with all of the requirements set forth	RCTC's RFP provides safety requirements on the project.

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160	<p>in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. COMMISSION shall take all necessary precautions for safe operation of COMMISSION vehicles, the construction contractor's equipment and vehicles and/or vehicles of personnel retained by COMMISSION, and for the protection of the traveling public from injury and damage from such vehicles or equipment.</p> <p>STATE will accept control and operate and maintain, at its own cost and expense, those segments of the NON-TOLL PROJECT FACILITIES lying within the SHS right-of-way upon granting of RELIEF OF MAINTENANCE by segment, except local roads delegated to local agencies for maintenance. Upon granting of RELIEF OF MAINTENANCE by STATE of the NON-TOLL PROJECT FACILITIES, or any segment thereof, STATE shall also be deemed to exercise ownership and control of those facilities for which RELIEF OF MAINTENANCE has been granted.</p>	RCTC will be the primary contact for Caltrans.
161	Use, operation and maintenance of the TOLL FACILITY shall be the subject of a separate TOLL FACILITY Agreement between COMMISSION and STATE.	RCTC will be the primary contact for Caltrans.
162	Upon issuance of an encroachment permit to COMMISSION's DESIGN-BUILD contractor, COMMISSION shall control and maintain, at its own cost and expense, those portions of PROJECT lying within the SHS right-of-way. COMMISSION will also maintain, at COMMISSION expense, local roads within the SHS right-of-way delegated to local agencies for maintenance and remaining portions of any local road overcrossing structures, including the deck surface and above, as well as all traffic service facilities that may be required for the exclusive benefit or control of local road traffic. This responsibility will remain for each area outside of SHS right-of-way until each area has been relinquished back to local agency.	RCTC will be the primary contact for Caltrans.
163	That upon completion of all work under this Agreement, ownership and title to materials, equipment and appurtenances installed within SHS right-of-way, 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, will automatically be vested in	RCTC will be the primary contact for Caltrans.

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	STATE, subject to the TOLL FACILITY Agreement. No further agreement will be necessary to transfer ownership as herein above stated. COMMISSION shall arrange for the transfer of ownership and title to materials, equipment and appurtenances installed outside of STATE right-of-way, excluding those materials, equipment and appurtenances owned by COMMISSION as described in the foregoing sentence, to be retained by appropriate local agencies, unless otherwise agreed to by STATE and COMMISSION in the TOLL FACILITY Agreement.	
164	That nothing in the provisions of this Agreement is intended to create duties or obligations to or rights of third parties in this Agreement or affect the legal liability of either party to the Agreement to third parties by imposing any standard of care with respect to the development, design, construction, operation and maintenance of SHS and public facilities different from the standard of care imposed by law or applicable STATE STANDARDS.	RCTC will be the primary contact for Caltrans.
165	Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by COMMISSION and/or its agents under or in connection with any work, authority or jurisdiction conferred upon COMMISSION under this Agreement. It is understood and agreed that COMMISSION will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by COMMISSION and/or its agents under this Agreement.	RCTC will be the primary contact for Caltrans.
166	Neither COMMISSION nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE and/or its agents under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that, STATE will fully defend, indemnify and save harmless COMMISSION and all its officers and employees from all claims, suits or actions of every name, kind and description including but not limited to, tortious, contractual, inverse	RCTC will be the primary contact for Caltrans.

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167	<p>condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE and/or its agents under this Agreement.</p> <p>Notwithstanding any other term of this Agreement, existing corridor utility service expenses, including water and electrical, shall remain the responsibility of STATE, whereas COMMISSION will be responsible for utility service expenses when modifying existing utilities. COMMISSION will not utilize existing STATE sources for any temporary connection, unless otherwise approved by STATE.</p>	<p>RCTC's RFP provides requirements surrounding corridor utilities on the project.</p>
168	<p>That no alteration, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the PARTIES hereto and no oral understanding or agreement which is not incorporated herein shall be binding on any of the PARTIES hereto.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
169	<p>A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.</p>	<p>RCTC's RFP provides requirements surrounding party's obligations for the project.</p>
170	<p>If the PARTIES are unable to reach agreement on a particular issue, including concerns over timeliness of submittal reviews or performance of REIMBURSED WORK, the PARTIES agree to promptly follow a mutually agreed upon issue resolution process. The issue resolution process may take the form similar to the Issue Escalation Ladder shown in Exhibit H. The final form and content of the issue resolution process will be mutually developed prior to commencement of construction. The primary objective of the issue resolution process is timely decision making.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
171	<p>To form an Executive Oversight Committee (EOC) as part of the issue resolution process. The EOC will be available to provide direction to the PROJECT team when issues are elevated to the EOC. The EOC will be the final step in the PROJECT level dispute resolution process. The primary objective of the EOC will be to ensure that PROJECT stays on</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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	<p>schedule and issues are resolved in a timely manner. The EOC will meet on an as-needed basis to resolve issues that otherwise threaten to delay the overall PROJECT schedule or adversely impact PROJECT costs. An EOC Charter has been signed by COMMISSION, STATE and FHWA and is attached as Exhibit I. STATE is defined in the Charter as Department.</p>	
172	<p>That no waiver of any claim, defense or obligation shall be imputed to either party as a result of that party's failure or delay in assertion of said claim, defense or obligation.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
173	<p>This Agreement will terminate upon selection of the "no project" alternative as a result of the environmental review process, COMPLETION OF WORK or upon 30 calendar days' written notification to terminate and acceptance between STATE and COMMISSION, whichever occurs first. However, all obligations to pay amounts accrued or due and payable as of the date of termination, indemnification, document retention, audit, claims, environmental commitment, legal challenge, ownership articles and other provisions that, by their express terms survive termination or expiration of this Agreement, will remain in effect until terminated or modified in writing by mutual agreement.</p>	<p>RCTC will be the primary contact for Caltrans.</p>

TP ATTACHMENT 2-6.4 – RCTC/OCTA COOPERATIVE AGREEMENT

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2.1	Amendment of Franchise Agreement/Partial Assignment.	
2.1.1	OCTA and the California Department of Transportation ("Caltrans") are parties to that certain "Amended and Restated Development Franchise Agreement for State Route 91 Median Improvements in Orange and Riverside Counties, California", as amended ("Franchise Agreement").	RCTC is responsible for the terms of Franchise Agreement.
2.1.2	The Franchise Agreement includes, as part of the transportation project authorized under said agreement, toll improvements in the median of the State Route 91 into Riverside County, up to the interchange of the State Route 91 and the Interstate 15 freeway.	RCTC is the responsible party for collection of tolls associated with the project.
2.1.3	OCTA hereby agrees, pursuant to Public Utilities Code Section 130240(k), to eliminate its rights, interests and obligations relative to State Route 91 in Riverside County by amendment to the Franchise Agreement, or by partial assignment. OCTA shall timely take all reasonably required actions to effectuate such elimination of its rights, interests and obligations.	RCTC will be the primary contact for OCTA.
2.2	Joint Operator. The Parties acknowledge and agree that various terms of this Cooperative Agreement are based on the assumption of a joint Operator. If the Project is approved, the Parties agree and intend to negotiate and enter into an Operations Agreement at least six (6) months prior to the Opening Date. If such negotiations are unsuccessful or if, at any time during the term of this Cooperative Agreement, the Parties cease jointly contracting with a joint Operator, the Parties agree and acknowledge that the terms of this Cooperative Agreement shall be modified as necessary to reflect multiple operators of the 91 Express Lanes.	RCTC will be the primary contact for OCTA.
2.3	OCTA Procurement of New Operator. In the event of termination of the Existing Operator Agreement for default or for any reason prior to the Opening Date, should OCTA commence activities to solicit a new operator for the OCTA 91 Express Lanes, OCTA and RCTC agree to cooperate as equal parties in the procurement of such new operator and such new procurement shall take into account a scope of work that applies to both the OCTA 91 Express Lanes and the RCTC 91 Express	RCTC will be the primary contact for OCTA.

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2.4	<p>Lanes. OCTA and RCTC staff shall each have the joint right to participate in the development of, review and approve the new operator procurement documents, scope of work, technical provisions and form of operator contract, participate in and approve the recommendation for selection of the new operator to the OCTA governing board and negotiate the terms and conditions of such new operations contract. Each Party shall bear its own costs in connection with such new procurement. OCTA shall be the contacting Party for any new operator contract entered into pursuant to this Section prior to the Opening Date. Approval of Agreement of the Parties. Except as otherwise expressly provided, or where the context indicates otherwise, where the approval or agreement of one or both of the Parties is required by a provision of this Cooperative Agreement, such approval or agreement may be given or made by each Party's Designated Executive Representative. Notwithstanding the foregoing, this Section 2.4 is not intended to authorize the Parties' Designated Executive Representatives to make decisions or to enter into agreements for which approval of a Party's governing board or other person or body is otherwise required by law or pursuant to an adopted policy of a Party. Moreover, the Parties expressly agree that this Cooperative Agreement does not in fact operate to approve the Project or its construction and that RCTC retains the ability to select the "no build" alternative from those alternatives being analyzed through the CEQA and NEPA environmental review process.</p>	RCTC will be the primary contact for OCTA.
2.5	<p>Reevaluation of Percentage Cost Split and/or Percentage Revenue Split. The Parties agree to re-evaluate, in good faith, the Percentage Cost Split and the Percentage Revenue Split on or before ten (10) years from the Opening Date, and every ten (10) years thereafter. As of said reevaluation date(s), the Percentage Cost Split and/or the Percentage Revenue Split may be subject to change upon mutual agreement, with each Party acting in good faith. Any change to the Percentage Cost Split and/or the Percentage Revenue Split shall be made pursuant to a mutually agreed written amendment to this Cooperative Agreement.</p>	RCTC will be the primary contact for OCTA.
2.6	<p>Communication and Cooperation.</p>	

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2.6.1	The Parties agree that communication and cooperation between OCTA and RCTC is critical to the successful and seamless operation of the 91 Express Lanes in both Riverside and Orange Counties.	RCTC will be the primary contact for OCTA.
2.6.2	Communication and cooperation, even at this early stage, is necessary to fully account for any environmental impacts resulting from the Project and to comply with CEQA's goal of encouraging coordination and consultation between agencies during the environmental review process. (E.g., 14 Cal. Code Regs., § 15002(j).)	RCTC will be the primary contact for OCTA.
2.6.3	Communication and cooperation is necessary both in the development and planning stage of the RCTC 91 Express Lanes, during construction of the RCTC 91 Express Lanes and during operation of the 91 Express Lanes following completion of construction of the RCTC 91 Express Lanes.	RCTC will be the primary contact for OCTA.
2.6.4	It is the intent of the Parties that communication and cooperation be accomplished through various forums, including as follows: (a) Meetings of the SR-91 Advisory Committee. (b) Meetings of or communications between the Designated Executive Representatives. (c) Individual or small group meetings, which shall be called as necessary to address specific issues related to the 91 Express Lanes. Other affected public agencies or parties shall be invited to attend such meetings as the Parties determine necessary or beneficial. (d) Communications between operational staff of RCTC and OCTA on an ongoing and as-needed basis.	RCTC will be the primary contact for OCTA.
2.7	Toll Related Facilities.	
2.7.1	General Provisions Regarding Toll Related Facilities. (a) The Parties acknowledge and agree that any operation of the RCTC 91 Express Lanes will require use by RCTC of existing Toll Related Facilities, as well as expansion of the Toll Related Facilities. (b) The Parties acknowledge that OCTA is the lease holder for the Toll Related Facilities, and that expansion of the Toll Related Facilities will require amendment of the existing lease agreement(s) to provide additional square footage to accommodate expansion of the Toll Related Facilities, and approval of the lessor of any tenant improvements to the existing facilities. OCTA shall use reasonable efforts to obtain such	RCTC will be the primary contact for OCTA.

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	<p>consent and shall cooperate with RCTC in connection therewith.</p> <p>(c) It is the intent of the Parties that both Parties will jointly utilize and operate the existing and new Toll Related Facilities, and that the Parties will share in the operating and maintenance costs for the new and existing Toll Related Facilities as more particularly provided in this Cooperative Agreement.</p> <p>(d) It is intent of the Parties that OCTA shall remain the sole lease holder of the then existing Toll Related Facilities during the lease term in effect as of the date that is twenty-four (24) months prior to the reasonably anticipated Opening Date (the "Lease Trigger Date") and that, upon commencement of the joint use of the existing Toll Related Facilities, RCTC shall have an irrevocable license and right to use thereof through the term of this Cooperative Agreement, and for any additional period as further set forth herein. It is not intended that RCTC become a lessee, co-lessee or sublessee of the Toll-Related Facilities in their location as of the Lease Trigger Date under the lease in effect as of the Lease Trigger Date. Notwithstanding the foregoing, however, it is the intent of the Parties that, upon commencement of the joint use of the existing Toll Related Facilities, RCTC shall have equal rights of access and use of the Toll Related Facilities as does OCTA.</p> <p>(e) From and after the Lease Trigger Date, OCTA shall not terminate its lease for the Toll Related Facilities (unless in conjunction with a purchase of the Toll Related Facilities by OCTA), nor change any material provisions thereof, without RCTC's prior written approval, in its reasonable discretion. Purchase of the Toll Related Facilities by OCTA shall not impact, in any manner, RCTC's right to use of said facilities as set forth in paragraph (d) above.</p> <p>(f) If, after the Lease Trigger Date, the lease is effect as of the Lease Trigger Date expires or is terminated or the location of the Toll Related Facilities is changed as a result of the expiration or termination of OCTA's lease therefor or otherwise, the Parties shall mutually agree on the terms of any new lease and shall modify the provisions of this Cooperative Agreement to address, as applicable, the new or extended lease, the new location and relevant circumstances of the Toll Related Facilities.</p>	

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2.7.2	<p>(g) OCTA shall confer with RCTC no less than twelve (12) months prior to expiration of OCTA's lease for the Toll Related Facilities in effect as of the Lease Trigger Date regarding the terms and conditions for renegotiation of said lease and/or regarding any potential change in the ownership or location of the Toll Related Facilities. Notwithstanding the foregoing sentence, if the Toll Related Facilities will require relocation at the expiration of OCTA's lease for the Toll Related Facilities in effect as of the Lease Trigger Date, OCTA shall confer with RCTC as soon as OCTA determines the same, but in no event less than twelve (12) months prior to the expiration of said lease.</p> <p>(h) As may be necessary, prior to commencing use of the existing Toll Related Facilities and prior to any expansion of the Toll Related Facilities, as described below, or any additional future expansions, the Parties shall negotiate, in good faith, more specific details of their mutual use of and access to the Toll Related Facilities.</p> <p>Use of Existing Toll Related Facilities.</p> <p>(a) Upon written notice from RCTC to OCTA of RCTC's need to commence utilization of the existing Toll Related Facilities, OCTA and RCTC shall each have equal use of and access to the existing Toll Related Facilities.</p> <p>(b) Prior to Opening Date, any requirements of RCTC related to use of the existing Toll Related Facilities shall be identified and the costs thereof shall be agreed upon in advance by the Parties, prior to commencement by RCTC of expansion of the existing Toll Related Facilities. Such costs shall be reimbursed by RCTC to OCTA.</p> <p>(c) As of Opening Date, cost sharing for operating and maintenance costs for the existing Toll Related Facilities, including building lease costs; utility expenses; property insurance costs; office equipment costs; back office system maintenance costs; telephone maintenance costs; and computer hardware, equipment repairs, equipment/servers maintenance and software licenses for equipment and programs utilized at the existing Toll Facilities, shall be based on the Percentage Cost Split.</p> <p>(d) The Parties acknowledge that certain hardware and software, software source code and other intellectual property utilized for operation</p>	<p>RCTC will be the primary contact for OCTA.</p>

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2.7.3	<p>of the OCTA 91 Express Lanes ("Intellectual Property") are located at or are used in connection with the Toll Related Facilities and that access to and use of such Intellectual Property is necessary for RCTC's use of the existing Toll Related Facilities and operation of the RCTC 91 Express Lanes. To the extent that OCTA has the legal ability to grant rights in any such Intellectual Property to RCTC, OCTA shall grant such rights to RCTC for purposes of operating the RCTC 91 Express Lanes, upon mutually agreeable terms. With respect to all other Intellectual Property, RCTC hereby acknowledges and agrees that it shall be responsible, at its own cost and expense, for obtaining all licenses or approvals necessary to access and/or use the Intellectual Property located at or used in connection with the Toll Related Facilities from third parties owning or controlling such Intellectual Property (including certain Intellectual Property owned and/or developed by the Operator and Federal Signal Technologies, previously known as Sirit Corporation), and OCTA hereby agrees to reasonably cooperate with and assist RCTC in obtaining such licenses or approvals. To the extent practicable, the Parties shall equitably share in the cost to obtain, operate and maintain other Intellectual Property necessary for the operation of the 91 Express Lanes, with such cost sharing to be based on the Percentage Cost Split.</p> <p>Expansion of Toll Related Facilities Necessitated By RCTC 91 Express Lanes.</p> <p>(a) RCTC shall be responsible for the design and any construction of the expansion of the existing Toll Related Facilities, if such expansion is necessitated by the RCTC 91 Express Lanes, as follows:</p> <p>(i) RCTC shall be responsible for the actual costs of expansion to the existing Toll Related Facilities, excluding the cost of any Betterments, necessitated by the RCTC 91 Express Lanes.</p> <p>(ii) RCTC shall be the lead agency for the design of any expansion of the Toll Related Facilities necessitated by the RCTC 91 Express Lanes. Any such work shall be procured and completed by RCTC pursuant to RCTC (and, as applicable, California Department of Transportation) rules, policies and procedures.</p> <p>(iii) RCTC shall provide design plans for any expansion of the Toll</p>	<p>RCTC will be the primary contact for OCTA.</p>

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	<p>Related Facilities to OCTA for OCTA's prior review and approval, in its reasonable discretion.</p> <p>(b) To the extent required by OCTA's lease, OCTA shall request, and use reasonable efforts to obtain, any required consent allowing RCTC to act as OCTA's agent for construction of any expansion of the Toll Related Facilities.</p>	
2.7.4	<p>OCTA may request that RCTC complete design plans and/or construct Betterments to the Toll Related Facilities not necessitated by the Project, provided that such Betterments (i) are consistent with RCTC's expansion of the Toll Related Facilities, (ii) are acceptable to RCTC, in its reasonable discretion and (iii) shall be designed and completed at OCTA's cost and expense.</p>	<p>RCTC will be the primary contact for OCTA with respect to betterments associated with Toll Related Facilities.</p>
2.7.5	<p>Use of New Toll Related Facilities.</p> <p>(a) Upon completion of the new Toll Related Facilities, OCTA and RCTC shall each have equal use of and access to the new Toll Related Facilities, and the Parties shall share in the operating and maintenance costs for the new Toll Related Facilities, including building lease costs; utility expenses; property insurance costs; office equipment costs; back office system maintenance costs; telephone maintenance costs; and computer hardware, equipment repairs, equipment/servers maintenance and software licenses for equipment and programs utilized at the existing Toll Facilities.</p> <p>(b) Prior to the Opening Date, RCTC shall be responsible for any incremental cost increase to OCTA related to RCTC's use of the new Toll Related Facilities, as reasonably determined by the Parties.</p> <p>(c) As of the Opening Date, cost sharing of the operating and maintenance costs for the new Toll Facilities shall be based on the Percentage Cost Split.</p>	<p>RCTC will be the primary contact for OCTA.</p>
2.8	<p>Objectives Regarding Operation of 91 Express Lanes.</p>	
2.8.1	<p>Upon completion of construction of the RCTC 91 Express Lanes, RCTC shall be responsible for operating and maintaining the RCTC 91 Express Lanes in Riverside County. RCTC shall also be solely responsible for its debt service obligations, ongoing routine and capital maintenance and for future capital improvement projects related to the RCTC 91 Express Lanes.</p>	<p>RCTC will be responsible for operation after construction completion.</p>

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2.8.2	OCTA is and shall continue to be responsible for operating and maintaining the OCTA 91 Express Lanes in Orange County. OCTA shall also continue to be solely responsible for its debt service obligations, ongoing routine and capital maintenance and for future capital improvement projects related to the OCTA 91 Express Lanes.	RCTC will be the primary contact for OCTA.
2.8.3	It is the intent and objective of the Parties to operate the 91 Express Lanes in both Orange County and Riverside County so that Customers will experience a seamless transition between the two facilities, and will view the 91 Express Lanes as a single facility. The Parties agree to cooperate in order to facilitate this goal.	RCTC will be the primary contact for OCTA.
2.8.4	The Parties intend that each Party will pay its own share of the cost to operate the 91 Express Lanes and the Toll Related Facilities, as more particularly described in this Cooperative Agreement.	RCTC will be the primary contact for OCTA.
2.8.5	<p>Joint and Non-Joint Expenditures.</p> <p>(a) In order to achieve economies of scale, the Parties agree to jointly share certain costs related to operation of the 91 Express Lanes based on the Percentage Cost Split. These joint expenditures are further set forth in Sections 2.7.2, 2.7.5, 2.11.2, 2.12.3, 4.2 and 7.1.4 of this Cooperative Agreement.</p> <p>(b) Each Party shall be solely responsible for Non-Joint Expenditures related solely to operation or maintenance of its respective portion of the 91 Express Lanes (e.g., where the other Party's portion of the 91 Express Lanes are not benefited by such operations or maintenance). "Non-Joint Expenditures" may include, but are not limited to: auditing services, general counsel services, bond counsel services, trustee services, rating fees, financial advisory services, management consultant services, traffic and revenue consultant services, Caltrans maintenance expenses, California Highway Patrol enforcement contracts, engineering paving analysis services, 91 implementation plan costs, electronic traffic and toll management maintenance agreement costs, camera maintenance agreement costs, collection services, court costs, variable message sign maintenance, lane closures, service vehicle costs and tow trucks.</p>	RCTC will be the primary contact for OCTA.
2.8.6	<p>Mutual Aid in Case of 91 Express Lanes Related Emergency.</p> <p>(a) The Parties agree to share resources in case of emergencies, and to</p>	RCTC will be the primary contact for OCTA.

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	<p>provide mutual aid as needed. In the case of an emergency, the Operator, if the Parties have selected a joint operator, will utilize the resources of both Parties that are under its control to respond to a 91 Express Lanes related emergency.</p> <p>(b) Except as may be otherwise set forth in the Operator Agreement, the Operator, if the Parties have selected a joint Operator, shall have the power and authority to utilize the tow trucks and other resources of both Parties to respond to an emergency on any portion of the 91 Express Lanes, however, if a second emergency or multiple emergencies occur, the Operator shall remove trucks as needed from the site of the first emergency to address the needs related to the subsequent emergencies.</p>	
2.8.7	Maintenance of 91 Express Lanes. The Parties agree that maintenance of the 91 Express Lanes in good condition and repair is of primary importance to both Parties, and to the successful and seamless operation of the 91 Express Lanes. Each Party shall take reasonable steps to ensure that its respective segment of the 91 Express Lanes will be in good condition and repair in accordance with its obligations under its respective separate agreement with Caltrans.	RCTC will be the primary contact for OCTA.
2.9.1	The Parties agree that, as of the Effective Date, it is in the best interest of both Parties and of Customers to create and maintain Customer Accounts through a single entity.	RCTC will be the primary contact for OCTA for maintaining Customer Accounts.
2.9.2	Except as otherwise mutually agreed by the Parties, in their reasonable discretion, or as otherwise provided herein, OCTA shall be considered the "account holding agency" for purposes of creating and maintaining Customer Accounts. In connection with the opening of toll facilities on Interstate 15 which connect to the RCTC 91 Express Lanes, RCTC may elect to also become an "account holding agency" for purposes of creating and maintaining Customer Accounts. No Party shall be required to transfer then-existing Customers and Customer Accounts to the other Party without mutual consent; however, in the event that the Parties do agree to the transfer of Customers and Customer Accounts, the Parties shall cooperate in order to provide a smooth transition for Customers.	RCTC will be the primary contact for OCTA.
2.9.3	The Operator shall continue managing transactions for new and existing Customer Accounts and Customers for both the OCTA 91 Express	RCTC will be the primary contact for OCTA.

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2.9.4	<p>Lanes and the RCTC 91 Express Lanes, including transactions with Other Toll Entities for toll charges incurred by Customers on any portion of the 91 Express Lanes and for toll charges incurred by Customers on toll facilities of Other Toll Entities.</p> <p>OCTA shall be solely responsible for handling any claims or lawsuits regarding toll violations and/or collection prosecutions arising prior to the Opening Date, and nothing contained in this Cooperative Agreement shall create any liability on the part of RCTC for any such claims or lawsuits. OCTA shall solely bear all costs in connection with its efforts to handle such claims or lawsuits.</p>	RCTC will be the primary contact for OCTA.
2.9.5	<p>RCTC shall be solely responsible for handling any claims or lawsuits regarding toll violations and/or collection prosecutions arising from RCTC's toll facilities on Interstate 15 which are not part of the 91 Express Lanes, and nothing contained in this Cooperative Agreement shall create any liability on the part of OCTA for any such claims or lawsuits. RCTC shall solely bear all costs in connection with its efforts to handle such claims or lawsuits.</p>	RCTC will be the primary contact for OCTA.
2.9.6	<p>Subject to RCTC's compliance with OCTA's existing agreements with Customers and applicable laws related to Customer privacy and recordkeeping, OCTA agrees to provide RCTC equal and timely access through the Operator to the full database and all other information regarding existing and new Customer Accounts. OCTA shall amend its existing Customer Agreement (a) to advise Customers that RCTC owns and operates a portion of the 91 Express Lanes and is an express third party beneficiary of, and may enforce, Customer obligations under the Customer Agreement directly related to Customers' use of the RCTC 91 Express Lanes; (b) to reflect that RCTC will have access to California Highway Patrol reports of incidents on the 91 Express Lanes; (c) to reflect that RCTC will have access to Customer Account information for purposes related to RCTC's ownership and operation of the RCTC 91 Express Lanes, including, but not limited to, collecting and enforcing tolls, fines and/or other charges; and (d) to add RCTC as an express beneficiary to the release, indemnification, and disclaimer of representations/warranties provisions of the Customer Agreement. OCTA shall make such amendments, and require the Operator to</p>	RCTC will be the primary contact for OCTA.

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	provide notice to all existing Customers that such amendments will be made, at least twelve (12) months prior to the reasonably anticipated Opening Date. An updated Customer Account agreement, including the changes specified in the foregoing sentence, shall be utilized for all new Customers entering into a Customer Agreement within twelve (12) months of the reasonably anticipated Opening Date.	
2.10.1	The Parties agree that, where practicable, it is in the best interest of Customers to maintain and implement consistent Customer Account Business Rules/Operating Rules.	RCTC will be the primary contact for OCTA.
2.10.2	RCTC agrees to utilize and adopt the Customer Account Business Rules/Operating Rules, as such rules exist as of four (4) months prior to the scheduled close of financing for the initial phase of the Project, as such date may change from time to time.	RCTC will be the primary contact for OCTA.
2.10.3	Any changes to the Customer Account Business Rules/Operating Rules following four (4) months prior to the scheduled close of financing for the initial phase of the Project, as such date may change from time to time, must be reviewed and approved by the Parties' Designated Executive Representatives.	RCTC will be the primary contact for OCTA.
2.10.4	If the Parties' Designated Executive Representatives are unable to reach consensus on proposed changes to the Customer Account Business Rules/Operating Rules, the matter shall be referred to the CEO and the Executive Director, respectively.	RCTC will be the primary contact for OCTA.
2.10.5	If the CEO and Executive Director are unable to reach consensus on changes to the Customer Account Business Rules/Operating Rules, the matter may be referred to additional dispute resolution procedures as may be agreed upon by the Parties.	RCTC will be the primary contact for OCTA.
2.10.6	The Parties shall each be responsible for adopting and implementing their own Toll Pricing Policies, including pricing for reduced toll paying vehicles. Notwithstanding the foregoing, the Parties intend to maintain reasonably consistent Toll Pricing Policies.	RCTC will be the primary contact for OCTA.
2.11.1	General Principles. (a) The Parties agree that it is in the best interest of each Party to create and implement consistent branding and marketing for the 91 Express Lanes. (b) The Parties agree that the OCTA 91 Express Lanes and any RCTC	RCTC will be the primary contact for OCTA.

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2.11.2	<p>91 Express Lanes shall be referred to jointly, for branding and marketing purposes, as the "91 Express Lanes" unless the Parties agree otherwise in writing, in their reasonable discretion.</p> <p>(c) The "branding" and marketing for the entirety of the 91 Express Lanes shall recognize the ownership of both OCTA and RCTC. Each Party shall cooperate on marketing and outreach efforts for the 91 Express Lanes.</p> <p>(d) The Parties agree to cooperate in developing marketing and branding materials and plans. If the Parties are unable to agree on a joint marketing plan, each Party shall be entitled to undertake its own marketing, subject to the provisions of this Section 2.11.</p> <p>Marketing Materials and Website.</p> <p>(a) The Parties agree that, following the Marketing Commencement Date, all advertisements, regardless of format, web-based and printed materials and joint facilities and equipment utilizing the 91 Express Lanes logo shall also include the logos for both OCTA and RCTC.</p> <p>(b) Prior to Opening Date, the Parties may agree to share the costs of marketing materials or programs for the 91 Express Lanes that are of mutual benefit to both Parties. Following Opening Date, the Parties shall share the cost of marketing materials or programs for the 91 Express Lanes that are of mutual benefit to both Parties, including 91 Express Lanes surveys, welcome postcards and brochures, based on the Percentage Cost Split.</p> <p>(c) Following the Marketing Commencement Date, the website for the 91 Express Lanes shall include the RCTC 91 Express Lanes and each Party shall have joint access, and ability to post materials, to the website.</p> <p>(d) Following the Marketing Commencement Date, OCTA and RCTC shall jointly produce the 91 Express Lanes quarterly newsletter, with cost sharing for such production to be based on the Percentage Cost Split.</p>	<p>RCTC will be the primary contact for OCTA with respect to marketing and website information.</p>
2.11.3	<p>Review Marketing Materials.</p> <p>(a) The Parties intend that neither Party will market the 91 Express Lanes, or any portion thereof, in a manner that will negatively impact the other Party or the portion of the Express Lanes operated by the other Party.</p>	<p>RCTC will be the primary contact for OCTA.</p>

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2.11.4	<p>(b) Each Party shall submit all marketing materials and programs for the 91 Express Lanes for review and concurrence of the other Party, in its reasonable discretion, prior to publicly disseminating such materials.</p> <p>(c) Should a dispute arise regarding marketing materials for the 91 Express Lanes, such dispute shall be submitted to the dispute resolution process set forth in Section 9.5 of this Cooperative Agreement.</p> <p>In furtherance of the provisions of this Section 2.11.4, for so long as this Cooperative Agreement is in effect, each Party hereby authorizes and grants the other Party the right to use, free of charge, all registered trademarks and/or service marks held by either Party related to the 91 Express Lanes to the extent necessary for joint 91 Express Lanes branding and marketing purposes. Following termination of this Cooperative Agreement for any reason, each Party shall have the right to continue to use any registered trademarks and/or service marks held by the other Party, which are being utilized for joint branding and marketing purposes at the time of such termination, for 91 Express Lane branding and marketing, provided that such Party pays the Party holding the trademarks and/or service marks reasonable compensation in an amount mutually agreed upon by the Parties in their reasonable discretion.</p>	RCTC will be the primary contact for OCTA.
2.11.5	RCTC shall enter its own licensing agreement with Fastrak prior to utilizing the Fastrak logo or other Fastrak materials.	RCTC responsibility.
2.12.1	The Parties acknowledge that either Party may require changes in tolling technology and that cooperation between the Parties will be required to ensure continued interoperability of tolling technology and Transponders used on the 91 Express Lanes.	RCTC will be the primary contact for OCTA.
2.12.2	The Party implementing technology changes shall be responsible for covering reasonable costs associated with such changes, and shall ensure interoperability of the new technology with existing tolling technology and Toll Related Facilities. Notwithstanding the foregoing, if both Parties will benefit from adoption of a new technology, the Parties shall consider, in good faith, an equitable manner of sharing the costs for implementation of the new technology. Determinations regarding equitable cost sharing shall be part of the procedure for requests for technology changes set forth in Section 2.12.4 below.	RCTC will be the primary contact for OCTA.

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2.12.3	<p>Switchable Transponders.</p> <p>(a) The Parties specifically acknowledge that, if RCTC does not construct and utilize a third lane on portions of the 91 Express Lanes for the verification of occupancy and/or exempt vehicles as part of the Project, RCTC may require use of Switchable Transponders. In such case, the Parties hereby agree that any Customer Accounts or Customers that desire to have an option to use the RCTC 91 Express Lanes other than as a full toll paying vehicle, such as a reduced toll paying vehicle or an exempt vehicle, shall be entitled to request a Switchable Transponder. From and after the Opening Date, the Parties shall equally share in the cost of purchasing new Transponders based on the Percentage Cost Split. If RCTC unilaterally requires use of Switchable Transponders for purposes of the RCTC 91 Express Lanes, RCTC shall be responsible for the incremental added cost of all new Switchable Transponders, as may be applicable, until such time as the procurement of Transponders in the ordinary course of business, following notification from RCTC in accordance with Section 2.12.3(f), at which time the procurement of Switchable Transponders shall be considered a joint expenditure.</p> <p>(b) Switchable Transponders shall be compatible with then current California standards for transponders (which are currently set forth in California Code of Regulations Title 21, Chapter 16, Articles 1 through 4 (hereinafter, "Title 21")). The Parties anticipate that Switchable Transponders will be interoperable with OCTA's tolling technology and equipment in use as of the Effective Date. Notwithstanding the foregoing, however, provided that OCTA does not independently require or need upgrades to its existing tolling technology and Toll Related Facilities to accommodate Switchable Transponders utilized by Other Toll Entities prior to the date on which Switchable Transponders are put into operation for the RCTC 91 Express Lanes, RCTC will be responsible for the costs, if any, of initial upgrades to OCTA's tolling technology and to the Toll Related Facilities necessitated by the use of Switchable Transponders on the RCTC 91 Express Lanes and for OCTA's related implementation costs. If OCTA independently requires or needs such upgrades, as set forth in the foregoing sentence, OCTA will</p>	<p>RCTC will be the primary contact for OCTA.</p>

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2.12.4	<p>be solely responsible for the costs thereof.</p> <p>(c) RCTC shall work with OCTA on matters related to adoption and use of Switchable Transponders, however, RCTC shall have final approval of such matters and the discretion to implement the same.</p> <p>(d) Commencing twenty-four (24) months prior to the Opening Date, if OCTA intends to purchase any new Transponders, OCTA shall first confer with RCTC regarding such purchase and shall consider any proposals by RCTC regarding Switchable Transponders.</p> <p>(e) It is the intent of the Parties that, to facilitate ease of use of the 91 Express Lanes by Customers, if requested by RCTC, commencing as of the Pre-Operations Period, all new Customers will have the option to obtain a Switchable Transponder.</p> <p>(f) It is the goal of the Parties to utilize a consistent Transponder technology. In furtherance of this goal, if RCTC notifies OCTA that it intends to use Switchable Transponders on the RCTC 91 Express Lanes, the Parties intend that, as soon as determined practicable by both Parties, all new Transponder orders shall be for Switchable Transponders.</p> <p>Procedure for Technology Changes.</p> <p>(a) From and after the Opening Date and in order to ensure that any changes in tolling technology desired by either Party are fully interoperable with the then-existing tolling and operational systems and/or will not cause the other Party to incur unapproved additional costs that will not be reimbursed by the requesting Party, prior to making any changes in Transponders, tolling hardware, tolling software or other tolling technology, the Party desiring the changes shall obtain a determination by the other Party's Designated Executive Representative that the proposed change(s) are both interoperable and will not cause any additional costs to the other Party. Any changes that are not fully interoperable with then-currently implemented and existing tolling and operational systems used for operation of the 91 Express Lanes and/or any changes that my cause the other Party to incur unapproved additional costs that will not be reimbursed by the requesting Party shall require approval of the other Party's Designated Executive Representative. Requests to the appropriate Designated Executive</p>	<p>RCTC will be the primary contact for OCTA.</p>

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2.13.1	<p>Representative for a determination regarding proposed changes in tolling technology or for approval of proposed changes in tolling technology shall include the following, as applicable (i) information detailing interoperability of the changed elements; (ii) information detailing any changes to the existing Toll Related Facilities, tolling systems and operational systems that may be required to incorporate the proposed changes with then-currently implemented and existing tolling systems and operational systems used for operation of the 91 Express Lanes; and (iii) information detailing compliance of the changes with Title 21 (or any subsequent equivalent standard).</p> <p>(b) If the Parties' Designated Executive Representatives are unable to reach consensus on adoption of any changes in Transponders, tolling hardware, tolling software or other tolling technology, on whether the proposed changes will cause additional costs to the other Party or on the interoperability of proposed changes, the matter shall be referred to the CEO and the Executive Director, respectively.</p> <p>(c) If the CEO and the Executive Director are unable to reach consensus on changes in Transponders, tolling hardware, tolling software or other tolling technology, on whether the proposed changes will cause additional costs to the other Party or on the interoperability of proposed changes, the matter may be referred to additional dispute resolution procedures as may be agreed upon by the Parties.</p> <p>(d) The Parties agree that this Section 2.12.4 shall not apply to adoption of Switchable Transponders, and that RCTC shall have the right, pursuant to Section 2.12.3 to make available Switchable Transponders to Customers without following the process set forth above.</p> <p>(e) The Parties agree that any approval of technology changes as set forth herein may require further action by the governing bodies of both or either Party, and no action hereunder shall bind the governing bodies of either Party as to such action, nor shall any action be considered final until all required approvals have been obtained.</p> <p>Unless otherwise agreed upon by the Parties, OCTA, as the "account holding agency" shall represent the interests of both Parties under OCTA's existing cooperative user fee processing agreements with Other Toll Entities as relates to the 91 Express Lanes.</p>	<p>RCTC will be the primary contact for OCTA.</p>

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2.13.2	RCTC shall accept the terms of OCTA's cooperative user fee processing agreement with Other Toll Entities in effect as of four (4) months prior to the scheduled close of financing for the initial phase of the Project, as such date may change from time to time. Any changes to said agreements following four (4) months prior to the scheduled close of financing for the initial phase of the Project, excluding any changes required solely to encompass the updated boundaries of the 91 Express Lanes, must be reviewed and approved by both Parties, acting reasonably. The Parties shall establish a mutually acceptable process to allocate payments and/or credits from Other Toll Entities between the Parties.	RCTC will be the primary contact for OCTA.
2.13.3	For so long as OCTA remains the sole "account holding agency", OCTA shall remain the signatory for charges to and from the Other Toll Entities incurred pursuant to the cooperative user fee processing agreements. If RCTC becomes an "account holding agency," RCTC shall enter into new and separate cooperative user fee processing agreements with Other Toll Entities and OCTA as relates to the RCTC 91 Express Lanes.	RCTC responsibility.
3.1	Objectives Related to Use of Toll Road Operator.	RCTC will be the primary contact for OCTA.
3.1.1	Prior to the Opening Date, if any, RCTC and OCTA intend to negotiate and jointly enter into an Operations Agreement with the Operator under contract with OCTA as of the Effective Date.	RCTC responsibility.
3.1.2	It is the intent of the Parties that the Operator shall operate the 91 Express Lanes as a single toll facility in order to create a seamless experience for Customers.	RCTC responsibility.
3.1.3	By jointly contracting with the Operator, the Parties desire to minimize extra work and personnel and duplication of services by the Operator, and to minimize the increase in operating costs of the 91 Express Lanes, in order to lower operating costs for both OCTA and RCTC.	RCTC will be the primary contact for OCTA.
3.1.4	By jointly contracting with the Operator, the Parties further desire to minimize conflicting directions that may be provided to the Operator by the Parties, and to maximize the opportunity for sharing of resources and costs, as may be beneficial to both Parties.	RCTC will be the primary contact for OCTA.
3.1.5	The intent of this Article 3 of this Cooperative Agreement is to set forth the general terms and conditions that the Parties intend to negotiate with the Operator for inclusion in the Operations Agreement. The Parties	RCTC will be the primary contact for OCTA.

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	acknowledge and agree that the terms contained in this Article 3 have not, as of the Effective Date, been agreed to by the Operator, and that any terms that relate to the rights and/or obligations of the Operator shall only be effective upon acceptance thereof by the Operator, and the inclusion of said terms in the Operations Agreement and the execution thereof by the Operator, OCTA and RCTC.	
3.1.6	Prior to the effective date of the Operations Agreement amongst RCTC, OCTA and the Operator, OCTA agrees to consult with RCTC prior to amending any material provisions of the Existing Operator Agreement.	RCTC responsibility.
3.2	Operator Services During Pre-Operations Period. RCTC intends to enter into a separate agreement with the Operator for certain Operator services required by RCTC prior to and during the Pre-Operations Period. The Parties also intend to amend the Operations Agreement to provide for the addition of new operations and maintenance staff for training during the Pre-Operations Period. RCTC shall be responsible for any incremental cost increase under the Operations Agreement related to the addition and training of staff required by RCTC during the Pre-Operations Period.	RCTC responsibility.
3.3	Operator Scope of Work; Costs Following Opening Date.	RCTC responsibility.
3.3.1	The Parties intend to negotiate a scope of work detailing the services to be provided by the Operator to both Parties ("Joint Scope of Work") under the Operations Agreement. The Joint Scope of Work shall include those services generally required for the normal day-to-day operation and maintenance of the 91 Express Lanes as a single toll facility. Special or additional services include those services above and beyond the normal day-to-day operations and maintenance requirements of the 91 Express Lanes that either Party may require in connection with their respective portions of the 91 Express Lanes ("Additional Operator Services").	RCTC will be the primary contact for OCTA.
3.3.2	The Parties intend to negotiate with the Operator a monthly lump sum price for the Operator's services under the Joint Scope of Work ("Monthly Lump Sum Price") and anticipate that the Operator will bill each Party separately for its respective share of the Monthly Lump Sum Price, as shall be subsequently agreed to in writing by the Parties and the Operator.	RCTC will be the primary contact for OCTA.

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3.3.3	The Operations Agreement shall provide that the Joint Scope of Work may not be modified and the Monthly Lump Sum Price shall not be increased, except as adjusted pursuant to the terms of the Operations Agreement or by written amendment, signed by all parties to the Operations Agreement.	RCTC will be the primary contact for OCTA.
3.4	Extra Work/Change Orders for Additional Operator Services.	RCTC responsibility.
3.4.1	Joint Requests for Additional Operator Services. The Parties intend that the Operations Agreement shall provide that any Additional Operator Services required by both Parties shall be jointly issued to the Operator and approved in writing by both Parties.	RCTC will be the primary contact for OCTA.
3.4.2	Unilateral Requests for Additional Operator Services. The Parties intend that the Operations Agreement shall provide that a Party may unilaterally request Additional Operator Services that affect only that Party's portion of the 91 Express Lanes, provided that the extra work order, change order, or other document relating to such Additional Operator Services shall not be effective unless and until the requesting Party has provided written notice and a copy of the extra work order, change order, or other relevant document to the other Party. The requesting Party shall bear full responsibility for the entire cost of such Additional Operator Services, with no right to reimbursement from the other Party. This paragraph is intended only to address the unilateral rights of each Party to authorize Additional Operator Services and is not intended to allow a unilateral amendment to the Operations Agreement, and the Parties agree that any amendment to the Operations Agreement will require written consent of both Parties and the Operator.	RCTC will be the primary contact for OCTA.
3.4.3	Disputes Regarding Additional Operator Services. Any dispute between the Parties regarding Additional Operator Services shall be resolved through the dispute resolution procedures set forth in Section 9.5 of this Cooperative Agreement.	RCTC will be the primary contact for OCTA.
3.4.4	Operator Not a Third Party Beneficiary. Nothing contained in this Cooperative Agreement is intended to provide or vest any third party beneficiary rights in the Operator or any other party.	RCTC will be the primary contact for OCTA.
3.5	Cooperation under Operations Agreement.	RCTC responsibility.
3.5.1	The Executive Director and the CEO shall each appoint a designated	RCTC will be the primary contact for OCTA.

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3.5.2	representative to act on behalf of RCTC and OCTA, respectively, under the Operations Agreement ("Operations Agreement Representatives"). The Parties intend that the Operator shall appoint a designated representative of the Operator who will be authorized to represent and act on behalf of the Operator under the Operations Agreement ("Operator Representative").	RCTC will be the primary contact for OCTA.
3.5.3	To facilitate effective performance of the Operations Agreement by the Operator, the Parties intend that the Operations Agreement Representatives and the Operator Representative shall meet periodically to address the needs and concerns of RCTC and OCTA related to operation of the 91 Express Lanes. The Parties shall endeavor to provide any necessary direction to the Operator regarding the Operator's services during such periodic meetings.	RCTC will be the primary contact for OCTA.
3.5.4	The Operations Agreement Representatives shall endeavor to keep one another informed of any communications with or directions provided to the Operator. Written and/or electronic correspondence between the Operator and either Operations Agreement Representative shall be promptly copied to the other Operations Agreement Representative.	RCTC will be the primary contact for OCTA.
3.5.5	Operator's Rights and Obligations Regarding Directions from the Parties. It is the intent of the Parties that the Operations Agreement shall contain provisions addressing the following: (a) The Operator shall have the right to take direction from OCTA on matters solely related to operation of the OCTA 91 Express Lanes. The Operator shall have the right to take direction from RCTC on matters solely related to operation of the RCTC 91 Express Lanes, including any matters related to design and construction of the RCTC 91 Express Lanes. (b) Notwithstanding paragraph (a) above, if it is reasonably foreseeable by the Operator or a Party, exercising its respective good faith judgment, that direction received from one Party may materially impact the other Party's portion of the 91 Express Lanes, then, except in the case of Emergencies, the Operator and/or such Party shall inform the other Party and obtain its written approval of such direction prior to taking any action. (c) If, in the case of an Emergency, the Operator accepts direction from	RCTC will be the primary contact for OCTA.

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	<p>the Operations Agreement Representative of one Party regarding a matter which the Operator, exercising its good faith judgment, believes could affect both portions of the 91 Express Lanes, the Operator shall take only such action as is necessary to imminently address the Emergency and shall notify, as soon as reasonably possible, the other Operations Agreement Representative of such direction and any actions taken pursuant thereto.</p> <p>(d) Neither Party shall have the right to unilaterally affect a change to any terms of the Operations Agreement, or, except in the case of an Emergency, to unilaterally direct any services that would result in an increase in the Monthly Lump Sum Price or a change in the Joint Scope of Work.</p> <p>(e) If the Operator receives conflicting directions from the Operations Agreement Representatives, the Operator shall be obligated to inform the Operations Agreement Representatives of such conflict and shall not, except in the case of an Emergency, take any action until the conflict is resolved.</p>	
3.5.6	If the Operations Agreement Representatives are unable to agree upon an action that may affect both portions of the 91 Express Lanes or to resolve a conflict in directions provided to the Operator, the matter shall be referred to the dispute resolution process set forth in Section 9.5 of this Cooperative Agreement.	RCTC will be the primary contact for OCTA.
3.5.7	During the pendency of a dispute, as described in Section 3.5.6 and except in the case of an Emergency, the Operator shall take no action regarding the disputed matter until the dispute has been resolved. If an Emergency exists, the Operator shall take the minimum action(s) necessary to address such Emergency prior to resolution of the dispute.	RCTC will be the primary contact for OCTA.
3.6	Operator Services. The Parties intend that the Operations Agreement shall provide that:	RCTC will be the primary contact for OCTA.
3.6.1	The Operator shall, to the extent reasonably possible, operate the 91 Express Lanes as a single toll facility.	RCTC will be the primary contact for OCTA.
3.6.2	In operating the 91 Express Lanes customer service center, the Operator shall not differentiate between RCTC and OCTA in providing services to Customers.	RCTC will be the primary contact for OCTA.
3.6.3	In responding to Emergencies, the Operator shall utilize all of its	RCTC will be the primary contact for OCTA.

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3.6.4	resources under the Operations Agreement in the most efficient manner to protect the public and the 91 Express Lanes and to reduce any liability that either Party may incur. In complying with reporting requirements under the Operations Agreement, it is the intent of the Parties that the Operator shall use the same performance measures and reporting format for both Parties, as the same may be modified for compliance with each Party's financing requirements. Special reporting needs shall be accommodated by the Operator upon request of either Party.	RCTC will be the primary contact for OCTA.
3.7	Indemnification/Default.	Joint RCTC and OCTA responsibility.
3.7.1	Indemnification; Allocation of Damages. (a) The Operations Agreement shall include an indemnification provision acceptable to the Parties requiring the Operator to indemnify, defend and hold harmless RCTC and OCTA and their respective officers, officials, employees, agents and consultants from any negligent act, omission, fraud, breach or violation of law, breach of contract or willful misconduct of the Operator. (b) The Operations Agreement shall provide that RCTC shall not be responsible for the acts or omission of OCTA under the Operations Agreement, and that OCTA shall not be responsible for the acts or omissions of RCTC under the Operations Agreement.	Joint RCTC and OCTA responsibility.
3.7.2	Default of Either Party. The Parties intend that, subject to negotiation with the Operator, the Operations Agreement shall provide as follows: (a) Neither RCTC nor OCTA, respectively, shall be held liable for any default of the other Party, including any default in payment. (b) Regardless of any default of one Party, including any default in payment, the Operator shall continue to provide services to the non-defaulting Party.	Joint RCTC and OCTA responsibility.
3.8	Term and Termination of Operations Agreement.	RCTC will be the primary contact for OCTA.
3.8.1	Term. (a) The Parties intend to negotiate an initial term and extension term(s) consistent with Article 4 of the Existing Operator Agreement, or as otherwise mutually agreed between OCTA, RCTC, and the Operator. For so long as the Existing Operator Agreement is in effect, and unless	RCTC will be the primary contact for OCTA.

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3.8.2	<p>and to the extent modified in the Operations Agreement, OCTA shall retain sole authority and discretion to determine whether the Operator has performed its obligations and is not in default in accordance with Subparagraph B(2) of Article 4 of the Existing Operator Agreement.</p> <p>(b) At least one (1) year prior to expiration of the term of the Operations Agreement, as extended, the Parties shall meet and confer to determine whether or not to exercise an applicable extension option, if any, to negotiate an amendment to the Existing Operator Agreement extending the term thereof, to negotiate a new Operations Agreement with the Operator, or to procure a new operator jointly or individually for the 91 Express Lanes.</p> <p>Termination.</p> <p>(a) The Parties intend that, subject to negotiation with the Operator, the Operations Agreement shall provide that both Parties may terminate the Operations Agreement for cause, or potentially for other reasons, in whole, and/or either Party may terminate the Operations Agreement for cause as to that Party's rights and obligations thereunder, in each case, after allowing any period for cure, as shall be further set forth in the Operations Agreement.</p> <p>(b) The Parties intend that, subject to negotiation with the Operator, a unilateral termination affected by either RCTC or OCTA shall apply only as to the rights and obligations of the terminating Party.</p> <p>(c) If one Party believes that the Operator is in default under the Operations Agreement, the Designated Executive Representatives shall meet and confer regarding the alleged Operator default. Following such meeting, and in addition to any other procedures required pursuant to the Operations Agreement, the Parties shall jointly meet with the Operator regarding the default to determine if cure is possible and to facilitate, as the Parties deem desirable, such cure.</p>	<p>RCTC will be the primary contact for OCTA.</p>
3.8.3	<p>Procedures and Party's Rights in Event of Disagreement Regarding Continued Use of the Operator.</p> <p>(a) If the Operations Agreement Representatives are in disagreement regarding an alleged uncured or incurable default of the Operator per the terms of the Operations Agreement and whether to terminate all or a portion of the Operations Agreement pursuant to the Parties' termination</p>	<p>RCTC will be the primary contact for OCTA.</p>

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		<p>rights thereunder, <u>or</u> if the Operations Agreement Representatives are unable to reach consensus regarding the continued use of the same Operator prior to termination of the initial term or any extension terms of the Operations Agreement, prior to a recommendation being made to either Party's full governing board:</p> <p>(i) The matter shall be referred for further discussion and negotiation to the Designated Executive Representatives; and</p> <p>(ii) The matter shall be submitted to the dispute resolution process described in Section 9.5 of this Cooperative Agreement.</p> <p>(b) If, following completion of the dispute resolution process contained in Section 9.5 of this Cooperative Agreement, the Parties are unable to reach agreement regarding continued joint use of the Operator's services then:</p> <p>(i) In the case of the Operator's alleged uncured or incurable default and provided that the Parties are able to negotiate such right under the Operations Agreement, either Party shall have the right to unilaterally terminate the Operations Agreement as per said Party's rights and obligations, as the Parties intend shall be further set forth in the Operations Agreement.</p> <p>(ii) In the case of the failure of the Parties to agree upon the continued use of the Operator's services following the initial term or any extension term, either Party shall have the right to continue contracting with the Operator or procure its own operating services with another operator.</p> <p>(c) If the Parties are unable to reach agreement on the continued joint use of the Operator and either Party determines to exercise its rights pursuant to subparagraph (b) above, then, for a period of up to two (2) years following any termination of the Operations Agreement for cause, or two (2) years following the expiration of the Operations Agreement as to either Party upon that Party's determination not to continue contracting with the Operator, RCTC shall be entitled to continued use of the Toll Related Facilities. In such case, the Parties shall determine an equitable manner, consistent with the terms of this Cooperative Agreement, of accommodating the continued joint use of the Toll Related Facilities by both Parties.</p> <p>(d) Following the two (2) year period of continued shared use of the Toll</p>

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	<p>Related Facilities as set forth in subparagraph (c) above, RCTC shall relocate its portion of the Toll Related Facilities to another location and the Parties shall determine an equitable means of distributing any jointly procured equipment, software, Transponders and other property.</p> <p>(e) If the Parties are unable to determine an equitable manner for accommodating the continued shared use of the Toll Related Facilities as required above in subparagraph (c), or if the Parties are unable to determine an equitable means of distributing any jointly procured equipment as required above in subparagraph (d), either matter shall be referred to the dispute resolution process described in Section 9.5 of this Cooperative Agreement.</p>	
3.9	<p>Joint Procurement of New Operator. If the Operations Agreement is mutually terminated by the Parties or expires without extension thereof, the Parties shall jointly solicit a new operator for the 91 Express Lanes. OCTA and RCTC agree to cooperate as equal parties in the procurement of such new operator. OCTA and RCTC shall each have the joint right to participate in the development of, review and approve the new operator procurement documents, scope of work, technical provisions and form of operator contract, participate in and approve the selection of the new operator and negotiate the terms and conditions of such new operations contract. Each Party shall bear its own costs in connection with such new procurement. RCTC and OCTA shall each be parties to any new operator contract as described in this section.</p>	Joint RCTC and OCTA responsibility.
4.1	<p>Operator Costs Related to Construction of RCTC 91 Express Lanes. If improvements proposed to be completed by the Operator related to construction and operation of the RCTC 91 Express Lanes will benefit both RCTC and OCTA, the Parties shall mutually determine an equitable manner of sharing the costs of such improvements. The cost split for such improvements shall be determined in good faith, based on a review of the proposed improvements and the benefit of the improvements to each Party. A determination regarding the agreed upon cost split shall be made in writing before commencement of the relevant work by the Operator.</p>	Joint RCTC and OCTA responsibility.
4.2	<p>Operator Costs As of Opening Date.</p>	

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4.2.1	Commencing as of the Opening Date, if any, RCTC and OCTA intend to jointly and equitably share the cost of the Operator's services under the Joint Scope of Work, which services shall be provided at the Monthly Lump Sum Price, as that term is defined in Section 3.3.2 of this Cooperative Agreement. Such cost sharing shall be based on the Percentage Cost Split.	RCTC will be the primary contact for OCTA.
4.2.2	If Additional Operator Services, as that term is defined in 3.3.1 of this Cooperative Agreement, are required by both Parties following the Opening Date, as set forth in Section 3.3, the Parties shall mutually agree on the cost sharing for such Additional Operator Services at the time of negotiation of the Operations Agreement amendment, extra work order or change order relating to such Additional Operator Services.	RCTC will be the primary contact for OCTA.
5.1	Project-Related Toll Improvements in Orange County.	Joint RCTC and OCTA responsibility.
5.1.1	The Parties agree and acknowledge that the Project, if approved and constructed, will include certain improvements to the OCTA 91 Express Lanes and/or the Toll Related Facilities in Orange County ("Toll Improvements in Orange County") that are necessary for construction of the RCTC 91 Express Lanes, and that will not preclude the potential future construction of a connector to State Route 241 ("241 Connector"). The Parties agree that the potential construction of a 241 Connector will be addressed pursuant to a separate agreement between the Parties, as may be appropriate.	RCTC will be the primary contact for OCTA.
5.1.2	The Toll Improvements in Orange County will be described in more detail in the Contract.	RCTC will be the primary contact for OCTA.
5.1.3	The Preliminary Design Plans for the Toll Improvements in Orange County and interim or temporary improvements directly related to the Toll Improvements in Orange County included within the Procurement Documents, and any material modifications to such Preliminary Design Plans made prior to approval of the Contract, shall be subject to OCTA's review and approval, which shall not be unreasonably withheld and shall be provided in a timely manner as described in Section 5.5 of this Cooperative Agreement. OCTA shall provide any comments on such Preliminary Design Plans for the Toll Improvements in Orange County to RCTC in a manner that is consistent with the timelines established by RCTC herein. The standard of OCTA's review and approval shall be	RCTC will be the primary contact for OCTA.

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	limited to issues which involve safety and/or potential foreseeable adverse impacts to the operations and revenues of the OCTA 91 Express Lanes, however, OCTA will respect RCTC's design preferences. Should OCTA fail to provide comments or requested revisions to, and/or approval of such Preliminary Design Plans for the Toll Improvements in Orange County in accordance with the timelines described in Section 5.5 or in a manner consistent with the standard of review set forth above, such Preliminary Design Plans shall be deemed approved by OCTA.	
5.1.4	Following award of the Contract, any changes with respect to the design and construction of the Toll Improvements in Orange County which (i) is not materially consistent with the Preliminary Design Plans previously approved by OCTA; (ii) materially change the geometric configuration, width or length of the express lanes, shoulders, or buffers of the Toll Improvements; (iii) relate to safety; or (iv) will have a potential foreseeable material adverse impact on the revenues and operations of the OCTA 91 Express Lanes shall be subject to OCTA's review and approval, which shall not be unreasonably withheld and shall be provided in a timely manner as described in Section 5.5 of this Cooperative Agreement. The standard of OCTA's review and approval shall be limited to issues which involve safety and/or potential material adverse impact to the operations and revenues of the OCTA 91 Express Lanes, however, OCTA will respect RCTC's and the Contractor's design preferences. Should OCTA fail to provide comments on such change in accordance with the timelines described in Section 5.5 or in a manner consistent with the standards of review set forth above, such change shall be deemed approved by OCTA. The Parties acknowledge that any such change may also require supplemental environmental review depending on the circumstances.	RCTC will be the primary contact for OCTA.
5.1.5	In the event of any contrary direction or comment by Caltrans and OCTA with respect to matters primarily concerning safety, Caltrans direction and comment shall be controlling.	RCTC will be the primary contact for OCTA.
5.2	Betterments Requested by OCTA.	Joint RCTC and OCTA responsibility.
5.2.1	If OCTA desires any Betterments to be completed during the course of Project construction, OCTA may timely request the desired Betterments	RCTC will be the primary contact for OCTA.

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	for inclusion in the Procurement Documents and provide RCTC with a detailed description of the Betterments including sufficient information and detail as would be required for inclusion in the Procurement Documents. OCTA's request must be delivered no less than one hundred twenty (120) days prior to the anticipated issuance by RCTC of the Procurement Documents.	
5.2.2	RCTC shall have no obligation to undertake the Betterments. If the Betterments are acceptable to RCTC, in its sole discretion, RCTC shall include them in the scope of work for the Project. No Betterment that is inconsistent with the Project's record of decision shall be considered.	RCTC will be the primary contact for OCTA.
5.2.3	Betterments shall be at OCTA's sole cost and expense, including (i) the costs incurred to incorporate acceptable Betterments into the scope of work of the Project, (ii) additional design, construction and oversight costs arising from or associated with the Betterments, including changes thereto; (iii) additional operations and maintenance costs arising from or associated with the Betterments, including changes thereto; and (iv) costs associated with any impact on the design and construction schedule associated with the Betterments.	RCTC will be the primary contact for OCTA.
5.2.4	The rights of OCTA related to review of Preliminary Design Plans of any Betterments and post-Contract-award changes thereto, and the timing and standards of OCTA's review, shall be consistent with the standards set forth in Section 5.1.4, above, for review of Preliminary Design Plans for the Toll Improvements in Orange County and any post-Contract award changes thereto.	RCTC will be the primary contact for OCTA.
5.3	Project-Related Non-Toll Improvements in Orange County.	Joint RCTC and OCTA responsibility.
5.3.1	The Parties agree and acknowledge that the Project, if approved, may include certain non-toll improvements on Orange County. The Parties further agree that OCTA may pay the cost of such improvements, if any, up to a fixed amount, as shall be agreed upon, in advance, by the Parties pursuant to a separate written agreement.	RCTC will be the primary contact for OCTA.
5.3.2	The non-toll improvements in Orange County that may be constructed as part of the Project, if any, shall be further described in the Contract ("Non-Toll Improvements in Orange County").	RCTC will be the primary contact for OCTA.
5.3.3	If OCTA pays for the cost of the Non-Toll Improvements in Orange County, then OCTA's rights related to review of Preliminary Design	RCTC will be the primary contact for OCTA.

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	Plans for the Non-Toll Improvements in Orange County, and the timing and standards of OCTA's review shall be consistent with the standards set forth in Section 5.1.4 above for review of Preliminary Design Plans for the Toll Improvements in Orange County.	
5.3.4	To the extent that OCTA pays for only a portion of the costs of the Non-Toll Improvements in Orange County, OCTA's review rights shall extend only to that portion of the Non-Toll Improvements funded by OCTA.	Joint RCTC and OCTA responsibility.
5.3.5	If OCTA does not pay for the Non-Toll Improvements in Orange County, then OCTA shall have no review or approval rights related to any Non-Toll Improvements in Orange County. The Parties recognize and agree that, in such case, Caltrans shall be the agency providing review and approval of the Non-Toll Improvements in Orange County.	RCTC will be the primary contact for OCTA.
5.4	Mitigation of Environmental Impacts of Project in Orange County.	Joint RCTC and OCTA responsibility.
5.4.1	The Parties agree that the Non-Toll Improvements in Orange County may require environmental mitigation within the boundaries of Orange County.	RCTC will be the primary contact for OCTA.
5.4.2	During the environmental review process for the Project, OCTA may participate in Project working groups related to the development of mitigation measures for any environmental impacts of the Project within Orange County. Any "on-site" environmental mitigation measures to be implemented in the SR-91 right of way in Orange County, excluding land acquisitions, shall be subject to OCTA's review and approval, which shall not be unreasonably withheld. The timing and standards of OCTA's review shall be consistent with the standards set forth in Section 5.1.4 above for review of Preliminary Design Plans for the Toll Improvements in Orange County. OCTA shall endeavor to provide any comments on such mitigation measures to RCTC in a manner that is consistent with the timelines established by RCTC herein. Should OCTA fail to provide comments to and/or approval of the mitigation measures proposed to be implemented in the SR-91 right of way in Orange County in accordance with the timelines described in Section 5.5 or in a manner consistent with the standard of review set forth above, said mitigation measures shall be deemed approved by OCTA. In no event shall OCTA have the right to disapprove of mitigation measures required under the issued record of decision or any other final environmental document that has been	RCTC will be the primary contact for OCTA.

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5.4.3	considered by OCTA as a responsible agency. Unless otherwise agreed upon by the Parties, RCTC shall be responsible for implementing required environmental mitigation measures in Orange County for the Project, pursuant to the final environmental documents for the Project, as approved by all relevant regulatory agencies.	RCTC will be the primary contact for OCTA.
5.4.4	The Parties shall mutually determine reasonable cost sharing for such environmental mitigation, provided that OCTA, acting reasonably and consistently with the environmental assessment documents and approvals, approves and agrees with the environmental mitigation measures to be implemented in Orange County.	RCTC will be the primary contact for OCTA.
5.5	Schedule Requirements for OCTA's Review and Approval of Preliminary Design Plan, Plans and Specifications, and Environmental Mitigation Measures Prior to Award of Contract.	RCTC will be the primary contact for OCTA.
5.5.1	OCTA acknowledges that timely completion of the environmental review process for the Project, issuance, if any, by RCTC of the Procurement Documents in accordance with the schedules adopted therefor and implementation, design and construction of the Project in accordance with the terms of the Contract is critical to the overall feasibility and financeability of the Project and requires timely review and approval by OCTA of (i) any Preliminary Design Plans submitted to OCTA, (ii) any performance specifications included within the Procurement Documents, (iii) any changes requiring OCTA approval, (iv) any post Contract-award changes requiring OCTA approval and (v) any environmental mitigation measures to be implemented in the SR-91 right of way in Orange County requiring OCTA approval (collectively referred to in this section as "Documents Submitted for OCTA Approval").	RCTC will be the primary contact for OCTA.
5.5.2	OCTA's review and/or approval of any Documents Submitted for OCTA Approval shall conform to the following schedule: (a) Initial comments on, requested revisions to, and/or approval of any Documents Submitted for OCTA Approval, excluding changes or any other post Contract-award changes expressly included herein, shall be provided to RCTC within thirty (30) calendar days after delivery by RCTC to OCTA of such documents. (b) OCTA shall provide comments and/or approval of any such	RCTC will be the primary contact for OCTA.

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	resubmitted Documents Submitted for OCTA Approval, excluding changes or any other post Contract-award changes expressly included herein, within fourteen (14) calendar days after delivery by RCTC to OCTA of such documents. (c) Initial comments on, requested revisions to, and/or approval of any changes or any other post Contract-award changes expressly included herein submitted to OCTA for approval shall be provided to RCTC within seven (7) calendar days after delivery by RCTC to OCTA of such document. (d) OCTA shall provide comments and/or approval of any such resubmitted Documents Submitted for OCTA Approval related to changes or any other post Contract-award changes expressly included herein within five (5) calendar days after delivery by RCTC to OCTA of such document.	
5.5.3	Should OCTA fail to provide timely comments on requested revisions to, and/or approval of any Documents Submitted for OCTA Approval in accordance with Section 5.5.2, above, such documents shall be deemed approved by OCTA.	RCTC will be the primary contact for OCTA.
5.5.4	All OCTA comments and/or requested revisions shall be provided in writing with reasonable detail, and OCTA shall indicate the nature and basis of the issue or concern underlying each of the comments or requested revisions.	RCTC will be the primary contact for OCTA.
5.6	Additional Provisions Regarding Improvements in Orange County.	Joint RCTC and OCTA responsibility.
5.6.1	OCTA shall not have any right to approve the Contractor or the award of the Contract. OCTA shall provide any comments to RCTC staff and consultants and not directly to the Contractor. OCTA shall not have the right or power to direct the work of RCTC's consultants or the Contractor.	RCTC will be the primary contact for OCTA.
5.6.2	Nothing in this Cooperative Agreement is intended to commit RCTC to complete the Project, or any phase thereof. The Parties acknowledge that completion of any phase of the Project is dependent on RCTC obtaining financing sufficient to cover the costs of such Project phase.	RCTC will be the primary contact for OCTA.
5.6.3	In no event shall RCTC be responsible or liable for the quality, suitability, operability or condition of any design or construction by the Contractor and RCTC expressly disclaims any and all express or implied	RCTC will be the primary contact for OCTA.

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	representations or warranties with respect thereto, including any warranties of suitability or fitness for use. OCTA shall have no recourse against RCTC as a result of the actions, omissions, negligence, breach of permit, breach of contract or applicable law by, or fault of the Contractor; <u>provided, however</u> , that RCTC shall require and ensure that the Contractor's indemnity, defense, hold harmless, and insurance obligations under the Contract benefit OCTA to the same extent as RCTC (except to the extent that such insurance and indemnity, defense and obligations would not apply to an entity that is not the contracting agency or the owner of the facility).	
5.6.4	Upon completion of the Toll Related Improvements in Orange County and/or any Betterments, as determined in a process to be jointly agreed to by OCTA and RCTC pursuant to the terms of the Contract, OCTA shall accept sole control of such improvements and, as between OCTA and RCTC, OCTA shall be solely responsible and liable for the operation, maintenance and use of, including all subsequent public use of, such improvements, at no cost or expense to RCTC.	RCTC will be the primary contact for OCTA.
5.6.5	Notwithstanding any other provision of Article 5, when and if a decision to construct additional mixed flow lane capacity on SR-91, between SR-241 and SR-71, is made, the work shall be subject to a separate agreement between the Parties, or an amendment to this Agreement, as mutually agreed by OCTA and RCTC. In such future agreement or amendment, OCTA and RCTC will mutually determine cost participation, if any, from RCTC for some portion of capital construction cost related to any required reestablishment of lane width standards for which RCTC obtained design exceptions within Orange County in conjunction with the Project and any required shifting of SR-91 lanes northerly towards the Santa Ana River to accommodate such widening within Orange County. The amount of RCTC's cost participation, if any, pursuant to such future agreement or amendment will take into account Project costs incurred by RCTC related to environmental clearance for the future mixed flow lane widening within Orange County.	RCTC will be the primary contact for OCTA.
6.1	Coordination of Project Design and Construction.	Joint RCTC and OCTA responsibility.
6.1.1	In the event the Project is approved, the Parties agree to work together to coordinate planning, design and construction of the Project with the	RCTC will be the primary contact for OCTA.

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6.1.2	<p>current operation of the OCTA 91 Express Lanes. To the extent reasonably practicable, RCTC will not design or approve design of, the Project, in a manner that will result in a foreseeable permanent adverse impact on toll revenues for the OCTA 91 Express Lanes. The Parties recognize, however, that construction may have some temporary impact on the current operations of the OCTA 91 Express Lanes.</p> <p>The required coordination shall be achieved through implementation of the following measures:</p> <p>(a) RCTC shall establish an integrated Project office and various working groups for Project matters and activities such as review of engineering and design plans, review of construction schedules and review of construction staging plans.</p> <p>(b) OCTA shall provide, at OCTA's cost, qualified staff to participate in the review and comment on matters related to engineering, design, construction, scheduling and coordination of all portions of the Project that may impact the OCTA 91 Express Lanes. Such participation shall include attendance at Project related working group meetings. OCTA shall provide any comments to RCTC staff and consultants and not directly to the Contractor. OCTA shall not have the right or power to direct the work of RCTC's consultants or the Contractor.</p> <p>(c) All plans for construction of the Project in Orange County prepared after award of the Contract shall be provided to OCTA for OCTA's timely review and comment. Any comments provided by OCTA must be delivered in a manner that is consistent with the timelines and standards set forth in the Contract, including affording RCTC reasonable time to review and assess OCTA's comments before it must provide any comments to the Contractor. RCTC shall consider any comments timely received from OCTA and shall reasonably endeavor to accommodate any such comments.</p> <p>(d) This section 6.1.2 is supplemental to, and is not intended to, affect or supersede any approval rights OCTA may otherwise have for those improvements to be constructed in Orange County pursuant to Article 5.</p>	<p>RCTC will be the primary contact for OCTA.</p>
6.2	Mitigation of Revenue Impacts of Project on OCTA 91 Express Lanes.	<p>Joint RCTC and OCTA responsibility.</p>
6.2.1	The Parties agree that it is in their best interest to cooperate in order to mitigate any potential impacts of Project construction on the OCTA 91	<p>RCTC will be the primary contact for OCTA.</p>

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6.2.2	Express Lanes and to ensure OCTA is compensated for loss of toll revenues attributable to Closures. If the Project is approved, RCTC shall develop, and shall provide to OCTA for timely review and comment, technical provisions regarding lane closures, detours, operations, and other such matters for inclusion in the Procurement Documents to attempt to mitigate any impacts to the OCTA 91 Express Lanes related to the Project. While the Parties recognize that the staging and construction of the Project will likely require some Closures and result in other impacts, it is RCTC's intent to construct the Project in a manner that will reasonably minimize impacts to the ongoing operations of the 91 Express Lanes and pursuant to a defined Closure regime designed to limit Closures and to avoid any significant and unpermitted Closures. RCTC shall include language to this effect in the Procurement Documents and resulting Contract.	RCTC will be the primary contact for OCTA.										
6.2.3	Closures of OCTA 91 Express Lanes. (a) OCTA has developed, for inclusion in the Procurement Documents, acceptable criteria for impacts to the OCTA 91 Express Lanes, including windows during which Closures may be permitted (the "Closure Criteria"). RCTC shall include the Closure Criteria provided by OCTA in the Procurement Documents and Contract. Consistent with the Closure Criteria, unless otherwise approved by OCTA, no Closures shall be permitted to occur at any time other than between the following hours:	RCTC will be the primary contact for OCTA.										
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 35%;">Direction / Period</th> <th style="width: 65%;">Hours During Which Closures Permitted</th> </tr> </thead> <tbody> <tr> <td>Eastbound Weekday (Sunday from 11:00 p.m. to Friday at 5:00 p.m.)</td> <td>11:00 p.m. to 5:00 a.m.</td> </tr> <tr> <td>Eastbound Weekend (Friday 11:00 p.m. to Sunday at 5:00 a.m.)</td> <td>11:00 p.m. to 5:00 a.m.</td> </tr> <tr> <td>Westbound Weekday (Sunday from 9:00 p.m. to Friday at 4:00 a.m.)</td> <td>9:00 p.m. to 4:00 a.m.</td> </tr> <tr> <td>Westbound Weekend (Friday at 11:00 p.m. to Sunday at 5:00</td> <td>10:00 p.m. to 5:00 a.m.</td> </tr> </tbody> </table>	Direction / Period	Hours During Which Closures Permitted	Eastbound Weekday (Sunday from 11:00 p.m. to Friday at 5:00 p.m.)	11:00 p.m. to 5:00 a.m.	Eastbound Weekend (Friday 11:00 p.m. to Sunday at 5:00 a.m.)	11:00 p.m. to 5:00 a.m.	Westbound Weekday (Sunday from 9:00 p.m. to Friday at 4:00 a.m.)	9:00 p.m. to 4:00 a.m.	Westbound Weekend (Friday at 11:00 p.m. to Sunday at 5:00	10:00 p.m. to 5:00 a.m.	
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	a.m.)	<p>(b) Upon advance written notice to OCTA as further provided below, Closures occurring pursuant to the Closure Criteria and during the hours set forth above ("Permitted Closures") shall be permitted during the course of staging and construction of the Project. Except in cases of emergency, Closures that are not in accordance with the Closure Criteria or during the hours set forth above shall be prohibited unless approved in advance by OCTA, acting in its reasonable discretion.</p> <p>(c) Except for Closures required solely for a Betterment, OCTA shall be compensated for the loss of toll revenues and other impacts to the OCTA 91 Express Lanes attributable to Closures, regardless of whether such Closures occur in accordance with the Closure Criteria incorporated into the Procurement Documents and Contract, are otherwise approved by OCTA, or are necessitated by an emergency. The Parties understand and agree that the precise amount of lost toll revenues and other impacts to the 91 Express Lanes attributable to permitted and unpermitted Closures is impracticable, if not impossible, to calculate with certainty or to reasonably ascertain as of the Effective Date. Nonetheless, in order to facilitate the Project, the Parties agree that it is in their mutual interest to establish the amount of compensation to be paid to OCTA in the event of Closures. Accordingly, the Parties hereby agree that the amount of compensation to be paid to OCTA for each Closure shall be calculated in accordance with the Closure Criteria. The Parties hereby agree that the assessment amounts set forth in the Closure Criteria represent a reasonable estimate of appropriate compensation to be paid to OCTA for anticipated lost toll revenues and other impacts (including the significant additional impacts that will result from unpermitted Closures) to the OCTA 91 Express Lanes attributable to Closures that occur at various dates and times during the anticipated period of Project construction.</p> <p>(d) The Parties agree that OCTA has established the Closure Criteria with the intent of limiting Closures to hours during which the OCTA 91 Express Lanes are not heavily utilized by Customers. If a Closure occurs outside of the approved timeframes set forth in the Closure Criteria, OCTA will be unable to provide advance notice to Customers of the</p>

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		<p>Closure. Closures during peak use hours may have a negative effect on OCTA's revenues. The Parties further agree that the assessments to be imposed for Closures occurring outside of the approved timeframes set forth in the Closure Criteria are intended to compensate OCTA for such damage and potential loss.</p> <p>(e) RCTC shall be responsible to OCTA for payment of compensation for Closures. Notwithstanding the foregoing, RCTC may require the Contractor to make payment for Closures directly to OCTA in conjunction with the provision by the Contractor of notice of a Closure to OCTA, and OCTA agrees to accept such payment from the Contractor. OCTA agrees that the compensation to be paid pursuant to the Closure Compensation Schedule, attached hereto as Exhibit "D," shall be OCTA's sole remedy for any revenue impacts to OCTA related to or arising out of Closures. Payment for each anticipated Closure shall be made to OCTA no less than forty-eight (48) hours prior to the commencement of the Closure. Payment for each unanticipated or unpermitted Closure shall be made to OCTA no less than forty-eight (48) hours following such Closure.</p> <p>(f) Except in case of emergency, RCTC shall provide, or cause its Contractor to provide, OCTA with no less than seventy-two (72) hours advance written notice, and shall endeavor to provide at least seven (7) days advance written notice of any anticipated Closures ("Notice of Closures"). Notice of Closures and payment thereof shall be delivered by messenger or by a nationally recognized same-day or overnight courier service to: 91 Express Lanes General Manager, Orange County Transportation Authority, 550 South Main Street – 5th Floor, P.O. Box 14184, Orange, California, 92863-1584. Unless otherwise directed by OCTA, Notice of Closures shall also be sent by electronic mail and facsimile to: 91 Express Lanes Sr. Vice President, Operations and 91 Express Lanes Operations Manager, 180 N. Riverview Drive, Suite 200, Anaheim, California 92808; facsimile: (714) 637-9266; email: jmittermeier@91expresslanes.com and btidwell@91expresslanes.com. Once notice is provided as required in the foregoing sentence, OCTA shall take all required actions to ensure that the Closure(s) can be made at the times and on the dates as specified in the Notice of Closures, and</p>

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6.2.4	<p>RCTC and the Contractor shall have the right to make the Closure(s) as specified in said notice. If a Notice of Closure has been provided for a particular Closure, OCTA shall be entitled to compensation in accordance with the Closure Compensation Schedule for the entire period set forth in the Notice of Closure, regardless of whether a Closure actually occurs for the entire length of such period, unless RCTC or its Contractor provides OCTA at least seventy-two (72) hours advance written notice (in the same manner required for a Notice of Closure) of withdrawal or amendment of the Notice of Closure.</p> <p>Disputes Related to Payment for Closures. The PCM shall maintain inspection diaries validating the duration of any Closures and shall, upon request of OCTA provide copies of such inspection diaries to OCTA for review. In the case of any dispute between OCTA and RCTC regarding the duration of a Closure, or the payment due to OCTA for any Closure, RCTC may pay OCTA the disputed amount under protest, and the Parties agree to submit the dispute to the Dispute Resolution Process set forth in Section 9.5 of this Cooperative Agreement. During the pendency of any dispute, provided that RCTC has made such payment, OCTA shall continue to allow Closures pursuant to the terms of this Cooperative Agreement.</p>	RCTC responsibility.
6.2.5	<p>Other Project Construction Impacts to OCTA 91 Express Lanes. Except in cases of emergency, RCTC shall provide, or cause its Contractor to provide, OCTA with no less than seventy-two (72) hours advance written notice, and shall endeavor to provide at least seven (7) days advance written notice, of any lane closures, detours, operations, or other construction activities related to the Project in either Orange County or Riverside County, other than a Closure, that may otherwise foreseeably impact the operations or revenues of the OCTA 91 Express Lanes.</p>	RCTC responsible to provide OCTA with necessary information.
6.3	<p>OCTA Cooperation During Project Construction.</p>	Joint RCTC and OCTA responsibility.
6.3.1	<p>OCTA agrees to provide reasonable cooperation to RCTC during any Project construction.</p>	RCTC will be the primary contact for OCTA.
6.3.2	<p>Cooperation to be provided by OCTA shall include reasonable assistance with any required permitting, licensing and other approvals required for construction of the Project.</p>	RCTC will be the primary contact for OCTA.

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6.3.3	OCTA shall also designate qualified staff for participation in Project working groups and task groups, as further detailed above in Section 6.1 and shall have such staff participate in schedule meetings and calls concerning the Project.	RCTC will be the primary contact for OCTA.
6.4	Relocation of OCTA Equipment During Project Construction.	Joint RCTC and OCTA responsibility.
6.4.1	The Parties acknowledge and agree that certain OCTA equipment and facilities, such as OCTA's toll-related variable message signs, may require temporary or permanent relocation during Project construction.	RCTC will be the primary contact for OCTA.
6.4.2	RCTC shall provide advance notice to OCTA and shall obtain OCTA's prior approval, which shall not be unreasonably withheld, of any plans for relocation of OCTA equipment and/or facilities, including the installation and maintenance of temporary signage when deemed necessary by OCTA. Notwithstanding the foregoing, RCTC shall not be required to provide notice to OCTA for any relocation of OCTA equipment and/or facilities that OCTA approved in advance for inclusion in the technical provisions of the Procurement Documents, unless required by the Procurement Documents.	RCTC will be the primary contact for OCTA.
6.4.3	RCTC shall be responsible for the actual and reasonable costs associated with any relocation of OCTA facilities and/or equipment during Project construction.	RCTC responsibility.
6.5	Project-Related Costs Incurred by OCTA.	Joint RCTC and OCTA responsibility.
6.5.1	The Parties agree and acknowledge that OCTA may require an amendment to its existing agreement with its Operator to add the following Project related services relating to the construction of the Project to the Operator's existing scope of work: (a) Engineering and construction plan reviews and technical input for portions of the Project in Orange County or that directly affect OCTA's existing facilities and/or toll operations. (b) Meetings with RCTC and the PCM, before RCTC has awarded and executed an agreement for the design and construction of the Project, to represent OCTA's interests during Project planning and initial design. (c) Meetings with RCTC, the PCM and the Contractor, to represent OCTA's interests, during Project design and construction. (d) Provision of technical input for electric toll collection and traffic	RCTC will be the primary contact for OCTA.

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	management systems interface with OCTA's existing equipment and software.	
6.5.2	(e) Other similar Project related services. RCTC agrees to reimburse OCTA for the actual and reasonable costs incurred by OCTA for the Operator's services as described in Section 6.5.1 provided that OCTA shall first provide a copy of the proposed amendment to OCTA's agreement with its Operator, including the maximum authorized compensation for such amendment, for RCTC's prior review and written approval.	RCTC will be the primary contact for OCTA.
6.5.3	During the Project development and construction phases of the Project, the Parties agree that OCTA shall bear its own staff related costs and, unless otherwise agreed upon in advance by the Parties or otherwise specified in this Cooperative Agreement, any other Project related costs that may be incurred by OCTA.	RCTC will be the primary contact for OCTA.
7.1	Additional Vendor Contracts. As of the Effective Date, the Parties have identified certain existing OCTA contracts for services that RCTC will require in order to effectively and efficiently operate the RCTC 91 Express Lanes (in addition to the Existing Operator Agreement). These contracts are identified in Exhibit "B" of this Cooperative Agreement and are referred to herein, collectively, as the "Additional Vendor Contracts". Notwithstanding the foregoing, the Parties understand and agree that Exhibit "B" may not be inclusive of all Additional Vendor Contracts and/or that the vendors listed in Exhibit "B" may change over time. As may be necessary or desirable, the Parties shall update Exhibit "B" upon mutual consent. OCTA and RCTC intend and anticipate that, by either jointly contracting with the consultants/vendors under certain of the Additional Vendor Contracts, or by adding RCTC's scope of work to such existing Additional Vendor Contracts with OCTA remaining the sole contracting entity (as between RCTC and OCTA), the Parties will minimize extra work and duplication of services by the identified consultants/vendors, and will thereby reduce the operating costs of the OCTA 91 Express Lanes and the RCTC 91 Express Lanes. Notwithstanding the foregoing, the Parties understand and agree that it may be necessary or desirable for the Parties to separately contract for some of the services covered by the Additional Vendor Contracts.	RCTC will be the primary contact for OCTA.

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7.1.1	For any Additional Vendor Contract that is amended to include RCTC as a contracting party, the Parties agree to negotiate changes to the Additional Vendor Contract to include RCTC's required scope of work and any additional joint scope of work, and to incorporate terms and conditions mutually acceptable to the Parties (the intent being that such terms and conditions shall be consistent to those terms and conditions set forth in Section 3.3 through 3.8 of this Cooperative Agreement, as applicable to the relevant Additional Vendor Contract) and the relevant vendor/consultant.	RCTC will be the primary contact for OCTA.
7.1.2	For any Additional Vendor Contract under which OCTA remains the sole contracting party, but adds RCTC's required scope and any additional joint scope of work, OCTA agrees as follows: (a) The Additional Vendor Contract shall be amended to include indemnification and additional insured requirements to benefit RCTC, RCTC shall be a designated third party beneficiary, and, as applicable, an RCTC designated representative shall be added under the contract. (b) OCTA shall not terminate its rights under the relevant Additional Vendor Contract, exercise any extension option or change any material provisions thereof, without RCTC's prior written approval in its reasonable discretion. (c) OCTA shall confer with RCTC no less than six (6) months prior to expiration of the term of the relevant Additional Vendor Contract regarding the terms and conditions for extension or renegotiation of said contract. (d) RCTC's designated representative under the relevant Additional Vendor Contract shall have the same rights as OCTA's designated representative thereunder to direct the services of the relevant consultant/vendor. (e) Neither Party shall unilaterally provide any direction to the consultant/vendor under the relevant Additional Vendor Contract that would materially impact the other Party's portion of the 91 Express Lanes, or that would result in harm, increased costs or loss of Revenue to the other Party. (f) Following the expiration or termination of any Additional Vendor Contract, the Parties shall confer on how to contract for such services	RCTC will be the primary contact for OCTA.

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7.1.3	from and after such expiration or termination, it being the intent of the Parties that such future contracting shall be on a joint basis. The Parties recognize that during the Pre-Operations Period, RCTC's requirements related to the Additional Vendor Contracts shall be different than OCTA's requirements. For those Additional Vendor Contracts which have been amended to include RCTC as a party or to include RCTC's scope of work, during the Pre-Operations Period, RCTC shall be responsible for any incremental cost increase to OCTA related to RCTC's use of the relevant vendor's services, as reasonably determined by the Parties.	RCTC will be the primary contact for OCTA.
7.1.4	As of the Opening Date, cost sharing under those Additional Vendor Contracts that have been amended to include RCTC as a party or to include RCTC's scope of work shall be based on the Percentage Cost Split.	RCTC will be the primary contact for OCTA.
7.2	Reimbursement for Staff Time. If, following the Opening Date, either Party requests the use of the other Party's staff for the benefit of the requesting Party's operation of its segment of the 91 Express Lanes, the requesting Party shall compensate the other Party for the actual cost of such staff time.	RCTC will be the primary contact for OCTA.
8.1	Establishment of Accounts; Handling and Allocation of Deposits.	RCTC will be the primary contact for OCTA.
8.1.1	No less than four (4) months prior to the date on which RCTC expects to close its bond financing for the Project, as shall be set forth in the Project timeline to be provided by RCTC to OCTA, the Parties shall agree upon the form of the custodial account agreement to be entered into by OCTA, RCTC and a custodial financial institution acceptable to both Parties ("Custodian") which will govern the custody and processing of all toll and Transponder Revenues generated on the 91 Express Lanes (the "Custodial Account Agreement").	RCTC will be the primary contact for OCTA.
8.1.2	Prior to Opening Date, the Parties shall execute the Custodial Account Agreement. Once executed, the Parties agree to keep in place the Custodial Account Agreement or a replacement custodial agreement in full force and effect throughout the term of this Cooperative Agreement, <u>provided, however</u> , if RCTC becomes an account holding agency as permitted under this Cooperative Agreement then RCTC shall have the right to terminate the provisions of this Section related to maintenance of	RCTC will be the primary contact for OCTA.

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8.1.3	RCTC toll Revenues with the Custodian, and its rights and obligations under the Custodial Agreement, and to enter into its own separate agreement with a financial institution for such purpose. The Custodial Account Agreement shall provide for: (a) The establishment of a Customer Account, and Other Toll Entities Account, as defined in Exhibit "C", under the Custodial Agreement (the "Master Custodial Accounts"). (b) Handling and allocation of deposits to and from the Master Custodial Accounts shall be as further set forth in Exhibit "C".	RCTC will be the primary contact for OCTA.
8.2	Customer Accounts.	Joint RCTC and OCTA responsibility.
8.2.1	Unless and until RCTC becomes an "account holding agency", as further set forth in Section 2.9.2, OCTA shall continue to maintain Customer Accounts for the benefit of both Parties, and to hold funds for such accounts in the 91 Express Lanes Customer Account and the 91 Express Lanes Customer Funds Account, as those terms are defined in Exhibit "C", as applicable, in accordance with the Custodial Account Agreement and, to the extent not inconsistent with such Custodial Account Agreement, OCTA policies and practices in effect as of four (4) months prior to the scheduled close of financing for the initial phase of the Project.	RCTC will be the primary contact for OCTA.
8.2.2	Debits and credits to the 91 Express Lanes Customer Account and the 91 Express Lanes Customer Funds Account shall be managed in accordance with the Custodial Account Agreement and, to the extent not inconsistent with such Custodial Account Agreement, OCTA policies and practices in effect as of four (4) months prior to the scheduled close of financing for the initial phase of the Project.	RCTC will be the primary contact for OCTA.
8.2.3	Following four (4) months prior to the scheduled close of financing for the initial phase of the Project, any changes to OCTA policies and practices related to Customer Accounts, including changes in the processing and payment of tolls and other charges, and/or handling of funds and deposits thereunder, must be reviewed and approved by the Parties' Designated Executive Representatives.	RCTC will be the primary contact for OCTA.
8.2.4	The Parties agree that any cash, credit card or other deposits maintained by Customers to fund their Customer Accounts shall not constitute Revenues generated from tolls or Transponders and earned	RCTC will be the primary contact for OCTA.

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8.2.5	<p>by either of the Parties or be due to either Party until debited from the respective Customer Account and allocated to one of the Parties as provided herein for the Customer's use of the 91 Express Lanes in accordance with the Custodial Account Agreement.</p> <p>The Parties agree that, as of the Opening Date, all interest earned on Customer deposits from Customer Accounts shall be split between the Parties based on the Percentage Revenue Split. Interest on Customer deposits to which RCTC is entitled shall be transferred to an RCTC account as directed by RCTC, on a monthly basis. Interest on Customer deposits to which OCTA is entitled shall be transferred to an OCTA account, as directed by OCTA, on a monthly basis.</p>	<p>RCTC will be the primary contact for OCTA.</p>
8.3	Toll Revenues and Other Funds.	<p>Joint RCTC and OCTA responsibility.</p>
8.3.1	<p>The Parties agree, and any agreement with the Custodian shall expressly state, that RCTC toll, account and other Revenues allocated to RCTC as provided herein shall at no time be pledged or transferred to any OCTA account and shall only be pledged or transferred to an account designated by RCTC pursuant to the terms of the Custodial Account Agreement. OCTA shall have no interest in such Revenues; and shall not be entitled to access such funds for its own use and OCTA bondholders and lenders shall have no claim, right or interest in and to such funds. To the extent that OCTA receives or otherwise obtains such Revenues, OCTA shall hold such Revenues as an agent and bailee and shall promptly remit such Revenues to the Custodian for deposit into the appropriate Custodial Account Agreement.</p>	<p>RCTC will be the primary contact for OCTA.</p>
8.3.2	<p>The Parties agree, and any agreement with the Custodian shall expressly state, that OCTA toll, account and other Revenues allocated to OCTA as provided herein shall at no time be pledged or transferred to RCTC or to any RCTC account and shall only be pledged or transferred to an account designated by OCTA pursuant to the terms of the Custodial Account Agreement. RCTC shall have no interest in such Revenues; and shall not be entitled to access such funds and RCTC bondholders and lenders shall have no claim, right or interest in and to such funds. To the extent that RCTC received or otherwise obtains such Revenues, RCTC shall hold such Revenues as an agent and bailee and shall promptly remit such Revenues to the Custodian for deposit into the</p>	<p>RCTC will be the primary contact for OCTA.</p>

RCTC & OCTA
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8.3.3	appropriate Custodial Account under the Custodian Account Agreement. The Parties agree, and any agreement with the Custodian shall expressly state, that should either Party default on any of its debts, bondholders or other secured interests of the defaulting Party shall have no right to access any funds allocated to the other Party or to which the other Party is entitled.	RCTC will be the primary contact for OCTA.
8.3.4	RCTC shall direct that any and all Revenues transferred or allocated to RCTC from the Custodian shall be deposited with the trustee for the bonds or other depository that shall be directed to use such Revenues first to pay OCTA for any outstanding operating expenses, the Operator or any other vender providing joint services, as applicable, for any amounts owed by RCTC to OCTA hereunder for operating expenses or to the Operator or such vendor, as applicable, prior to the use of such Revenues for payment of debt service, funding reserves or any other purpose.	RCTC will be the primary contact for OCTA.
8.3.5	OCTA represents and warrants to RCTC that commencing as of six (6) months prior to the Opening Date its existing agreements and financing documents shall provide that the Custodian must deposit with the trustee for the bonds or other depository such Revenues and the trustee or other depository is required first to pay RCTC for any outstanding operating expenses, the Operator or any other vendor providing joint services, as applicable, for any amounts owed by OCTA to RCTC hereunder for operating expenses or to the Operator or such vendor, as applicable, prior to the use of such Revenues for payment of debt service, funding reserves or any other purpose. OCTA shall, in no event, modify or alter the foregoing obligations and flow of funds without the prior written approval of RCTC, in its sole discretion.	RCTC will be the primary contact for OCTA.
8.3.6	The Parties agree that neither Party shall have ownership of any Revenues while Revenues are held by the Custodian but shall have the rights granted under the Custodial Account Agreement to have Revenues allocated to either Party as provided in the Custodial Account Agreement.	RCTC will be the primary contact for OCTA.
8.4	Administrative Fees.	Joint RCTC and OCTA responsibility.
8.4.1	The Parties acknowledge that certain administrative fees are currently imposed on Customer Accounts including minimum monthly Customer	RCTC will be the primary contact for OCTA.

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	Account maintenance fees, "Express Club" fees, convenience account fees, account deactivation fees, lost/stolen Transponder fees, standard account fees and other miscellaneous fees ("Administrative Fees"). After the effective date of the Custodial Account Agreement, all of such fees shall be deposited and paid to a Custodial Account pursuant to the terms of the Custodial Account Agreement. As used herein, the term "Administrative Fees" shall not include any administrative fees imposed for toll violations or in connection with toll enforcement or collections of unpaid tolls.	
8.4.2	RCTC accepts OCTA's schedule of Administrative Fees, as such schedule of fees exists as of four (4) months prior to the scheduled close of financing for the initial phase of the Project.	RCTC will be the primary contact for OCTA.
8.4.3	The Parties agree that any changes to the schedule of Administrative Fees, including changes in the amounts or nature of Administrative Fees, the elimination or suspension of such Administrative Fees or the addition of new administrative fees, following four (4) months prior to the scheduled close of financing for the initial phase of the Project must be reviewed and approved by the Parties' Designated Executive Representatives.	RCTC will be the primary contact for OCTA.
8.4.4	As of the Opening Date, all Revenues generated from Administrative Fees and any other miscellaneous income generated from Customer Accounts, except as otherwise expressly provided herein, shall be equitably split by the Parties based on the Percentage Revenue Split.	RCTC will be the primary contact for OCTA.
8.5	Transponder Issuance Deposit. The Parties agree that all Revenues generated from interest on Transponder deposits shall be split between the Parties based on the Percentage Revenue Split. After the effective date of the Custodial Account Agreement, all of such Transponder issuance deposits shall be deposited and paid to a Master Account pursuant to the terms of the Custodial Account Agreement.	
8.6	Handling of Toll Violations.	Joint RCTC and OCTA responsibility.
8.6.1	The Parties agree that Customers and other users of the 91 Express Lanes shall incur separate fines and administrative fees for toll violations on the OCTA 91 Express Lanes and the RCTC 91 Express Lanes, respectively, and shall be separately notified and billed for such violations.	RCTC will be the primary contact for OCTA.

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8.6.2	Each Party shall be solely responsible for handling toll violations, consistent with the Customer Account business Rules, occurring on that Party's portion of the 91 Express Lanes including enforcement and collection of outstanding tolls, and imposition of penalties and fines. Each Party shall solely bear its own costs in connection with such efforts to handle such toll violations. Such discretion includes the right to outsource toll violation collections to a collections agency.	RCTC will be the primary contact for OCTA.
8.6.3	Each Party shall have the sole right to reduce fines/penalties, settle toll violations and/or prosecute toll violators for violations occurring on that Party's portion of the 91 Express Lanes.	RCTC will be the primary contact for OCTA.
8.6.4	Each Party shall have the sole right to any Revenues generated from toll violations, fines and penalties; collection of disputed tolls; plate read fee income; and violation processing fees related to toll violations occurring on that Party's portion of the 91 Express Lanes.	RCTC will be the primary contact for OCTA.
8.7	Insufficient Funds in Customer Account.	Joint RCTC and OCTA responsibility.
8.7.1	If a Customer has insufficient funds in his/her Customer Account, and the Customer incurs a toll charge on both the RCTC 91 Express Lanes and the OCTA 91 Express Lanes, the Parties agree that funds shall be allocated based on the timing of the toll transaction, with the first transaction to be paid first and the second transaction to be paid with remaining funds, if any.	RCTC will be the primary contact for OCTA.
8.7.2	Monies recovered from Customers from penalties and toll violations shall be allocated on a pro-rata basis based on the amounts owed to each Party at the time of receipt of payment.	RCTC will be the primary contact for OCTA.
8.8	Reporting Requirements/Audit Rights. The Parties shall have the right to require the Operator and/or the Custodian, as applicable, to provide quarterly reporting relating to the number of new Transponders issued, the number of new Customer Accounts, the number of cancelled or suspended Customer Accounts, the total number of Transponders in service, the total number of Customer Accounts, the total Customer deposits and interest earned on such deposits, the toll, account and other Revenue generated on the 91 Express Lanes, and each portion thereof, administrative fees charged, and other fees charged and/or costs incurred related to the operation of the 91 Express Lanes. Either Party may request more frequent reporting, provided that the costs	RCTC will be the primary contact for OCTA.

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8.9	thereof shall be paid by the requesting Party. Recourse for Lost Funds. As between the Parties, if either Party, at any time, holds funds that should have been allocated to the other Party, the Party holding such funds shall be fully responsible to the other Party for any loss thereof. In no event shall such Party holding such funds have any rights, claim, interest or title in and to such funds and the provisions of Section 8.3 shall expressly apply to such funds.	RCTC will be the primary contact for OCTA.
8.10	Accounting Treatment. Each Party shall be solely responsible for its own accounting related to operation of that Party's portion of the 91 Express Lanes, and for writing off lost toll, account and other Revenues in such manner as that Party determines legal and appropriate. In no event shall either Party be deemed to make any representations or warranties as to the other Party's accounting treatment.	RCTC will be the primary contact for OCTA.
8.11	Coordinating Changes in Toll Rates. The Parties shall make a good faith effort to coordinate the timing of any changes in toll rates.	RCTC will be the primary contact for OCTA.
9.1	Indemnification.	Joint RCTC and OCTA responsibility.
9.1.1	RCTC shall indemnify, defend and hold OCTA, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of RCTC, its official, officers, employees, agents, consultants or contractors (other than the joint Operator or other contractors with which the Parties have a separate joint agreement) arising out of or in connection with performance under this Cooperative Agreement, including the payment of all reasonable attorneys fees.	RCTC will be the primary contact for OCTA.
9.1.2	OCTA shall indemnify, defend and hold RCTC, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of OCTA, its officials, officers,	OCTA will be the primary contact for RCTC.

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	employees, agents, consultants or contractors (other than the joint Operator or the contractors with which the Parties have a separate joint agreement) arising out of or in connection with performance under this Cooperative Agreement, including the payment of all reasonable attorneys fees.	
9.1.3	Neither Party shall be liable to the other Party for any consequential, special, incidental or indirect damages.	RCTC will be the primary contact for OCTA.
9.2	Recovery of Damages Under Joint Agreements. In the case of recovery of damages from the Operator under the Operations Agreement, or from any other consultant or contractor under any joint agreement of the Parties related to the 91 Express Lanes, such recovery shall be proportionately allocated between the Parties based on the percentage of damage or loss incurred by each Party, taking into account any contributory negligence of either Party.	RCTC will be the primary contact for OCTA.
9.3	Insurance. Each Party agrees to maintain appropriate insurance in such amounts and with such coverage as determined necessary, in its sole discretion. Each Party shall name the other Party as an additional insured under all of its insurance policies related to the use and operation of the 91 Express Lanes, unless provision for additional insureds is not generally available for a policy covered under this Cooperative Agreement. Alternatively, the Parties may determine to jointly procure insurance required for the use and operation of the 91 Express Lanes.	RCTC will be the primary contact for OCTA.
9.4	Termination. The Parties may terminate this Cooperative Agreement in whole or in part as follows:	RCTC will be the primary contact for OCTA.
9.4.1	Termination for Convenience. Unless the "no build" alternative is chosen as a result of the completion of environmental review, in which case this Cooperative Agreement shall immediately terminate, neither Party shall have the right to terminate this Cooperative Agreement for convenience for the first ten (10) years following the Opening Date. Following such period, either Party shall have the right to terminate this Cooperative Agreement, in whole or in part, for convenience of the terminating Party, after providing two (2) years' prior written notice of termination to the other Party, provided that the effective date of such termination must coincide with a termination to the Operation Agreement, either in whole	RCTC will be the primary contact for OCTA.

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9.4.2	<p>or as to the terminating Party's rights and obligations thereunder, as set forth in Section 3.8.2. The notice shall specify the grounds for termination and the effective date thereof.</p> <p>Termination for Cause.</p> <p>(a) Default: Subject to the extensions of time set forth in Section 9.7 of this Cooperative Agreement and/or any extensions agreed upon by the Parties, the following shall constitute a default under this Cooperative Agreement:</p> <p>(1) Commencement of a voluntary or involuntary action by or against a Party under federal or state bankruptcy law;</p> <p>(2) breach of a material bond covenant or failure to make a timely bond payment by either Party under a bond indenture for a toll revenue bond financing of the 91 Express Lanes to which such Party is a party, which breach or failure has not been cured within any applicable notice and cure period set forth in the bond indenture; or</p> <p>(3) failure or delay by either Party to perform any material term or provision of this Cooperative Agreement.</p> <p>(b) Notice of Default. The non-defaulting Party shall give written notice of default to the Party in default, specifying the default complained of by the non-defaulting Party. Except as otherwise expressly provided in this Cooperative Agreement, any failures or delays by either Party in asserting any of its rights or remedies as to any 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.</p> <p>(c) Failure to Cure. In the event that the defaulting Party fails to commence to cure, correct or remedy a default within thirty (30) calendar days following receipt of written notice, or thereafter fails to diligently complete such cure, correction or remedy, a default of this Cooperative 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 default. In the event of a default, the non-defaulting Party may exercise all rights and remedies available at law or in equity, including</p>	Joint RCTC and OCTA responsibility.

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9.4.3	<p>the right to seek damages, seek specific performance or other injunctive or equitable relief and/or terminate this Cooperative Agreement through a written notice of termination, the effective date of which shall be no less than ninety (90) days from the date of the notice. Disputes regarding the existence of a default that may give rise to termination under this section shall be subject to the dispute resolution provisions provided below, but the right to exercise rights and remedies for such reason shall not be subject to review. The exercise of a Party's rights and remedies shall be cumulative with the exercise of other rights and remedies. Notwithstanding anything contained in this paragraph, neither Party shall have the right to terminate this Cooperative Agreement while the subject of such termination is in the process of review pursuant to the dispute resolution procedures contained in this Cooperative Agreement.</p> <p>RCTC's Right to Continued Use of Toll Related Facilities. Notwithstanding any termination of this Cooperative Agreement for cause, except if such termination is pursuant to a final trial court determination of default by RCTC for nonpayment, RCTC shall have the right to continued use of the Toll Related Facilities for up to two (2) years from the date of the notice of termination. In such case, the Parties shall determine an equitable manner, consistent with the terms of this Cooperative Agreement, of accommodating the continued joint use of the Toll Related Facilities by both Parties. Following the two (2) year period of continued shared use of the Toll Related Facilities as set forth in this section, RCTC shall relocate its portion of the Toll Related Facilities to another location and the Parties shall determine an equitable means of distributing any jointly procured equipment software, Transponders and other property.</p>	RCTC will be the primary contact for OCTA.
9.4.4	<p>Cooperation Prior to Termination. Prior to the effective date of either a termination for cause or for convenience, the Parties shall cooperate in good faith to facilitate the transfer of services, agreements, materials, software, equipment and information, as necessary for the continued successful operation by each Party of its portion of the 91 Express Lanes.</p>	RCTC will be the primary contact for OCTA.
9.4.5	<p>Survival Following Termination. Notwithstanding any termination of this Cooperative Agreement, and for the best interest of Customers of the 91</p>	RCTC will be the primary contact for OCTA.

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	Express Lanes, the Parties shall continue to cooperate and coordinate operation of the 91 Express Lanes. (a) The following provisions shall survive any termination of this Cooperative Agreement and shall continue in full force and effect so long as both Parties operate their portion of the 91 Express Lanes as a toll facility: Section 2.7.2(d), Section 2.12.4, Section 5.6.3, Section 5.6.4 and Section 9.1. (b) The provisions of Section 2.7 shall remain in full force and effect during the term of any continued use of the Toll Related Facilities by RCTC, and until such continued use has ceased.	
9.5	Dispute Resolution. Unless otherwise specified herein, the Parties shall comply with the following procedures in the case of a dispute, claim or controversy arising under or in relation to this Cooperative Agreement. If one of the procedures below has already been completed pursuant to another section of this Cooperative Agreement, the matter shall immediately be submitted to the subsequent procedure.	RCTC will be the primary contact for OCTA.
9.5.1	Submission to Executive Director and CEO. The dispute shall be referred for negotiation to the Executive Director and the CEO. The Executive Director and the CEO agree to undertake good faith attempts to resolve said dispute, claim or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions.	RCTC will be the primary contact for OCTA.
9.5.2	Submission to Ad Hoc Committee. If said matter is not resolved by the Executive Director and the CEO within thirty (30) calendar days after conducting the first negotiating session, either Party may then request that the matter be submitted to an ad hoc committee comprised of two (2) members of the SR-91 Advisory Committee, with one (1) member from the governing board of RCTC and one (1) member from the governing board of OCTA.	RCTC will be the primary contact for OCTA.
9.5.3	Further Dispute Resolution. If a matter is not timely resolved after submission to a dispute resolution ad hoc committee as described above, the Parties may refer the matter to further dispute resolution procedures, as may be agreed upon by the Parties.	RCTC will be the primary contact for OCTA.
9.5.4	Legal Action. If a matter is not resolved within thirty (30) calendar days	RCTC will be the primary contact for OCTA.

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9.6	after the first negotiating session of the dispute resolution as hoc committee, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity. Term. This Cooperative Agreement shall remain in full force and effect, unless otherwise terminated as provided herein, so long as both Parties operate their portion of the 91 Express Lanes as a toll facility.	RCTC will be the primary contact for OCTA.
9.7	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 the 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 Cooperative Agreement may also be extended in writing by mutual agreement between the Parties.	RCTC will be the primary contact for OCTA.
9.8	Amendments. This Cooperative Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing; however, no amendments or other modifications of this Cooperative Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors or assigns.	RCTC will be the primary contact for OCTA.
9.9	Assignment of Agreement. Neither Party may assign or transfer its respective rights or obligations under this Cooperative Agreement without the express written consent of the other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.	RCTC will be the primary contact for OCTA.
9.10	Waiver. No delay or omission in the exercise of any right or remedy of a	RCTC will be the primary contact for OCTA.

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	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 Cooperative Agreement.	
9.11.1	As used in this Cooperative Agreement, unless otherwise specified, the term "including" shall mean including, but not limited to, or without limitation.	RCTC will be the primary contact for OCTA.
9.11.2	As used in this Cooperative Agreement, unless otherwise specified, the terms "shall" and "will" shall have the same meaning.	RCTC will be the primary contact for OCTA.
9.12	Entire Agreement. This Cooperative Agreement, including the attached exhibits, constitutes the entire agreement between the Parties with respect to the subject matter contained herein, and supersedes any prior term sheet and/or agreement, whether written or verbal, with respect to the subject matter herein including that certain "Term Sheet on Splitting of Non-Toll Revenues and Joint Expenditures Between Orange County Transportation Authority and Riverside County Transportation Commission For the 91 Express Lanes Extension into Riverside County", dated as of February 10, 2011.	RCTC will be the primary contact for OCTA.
9.13	Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative 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 Cooperative Agreement, which shall be interpreted to carry out the intent of the Parties hereunder.	RCTC will be the primary contact for OCTA.

TP ATTACHMENT 2-6.5 – RCTC/CORONA COOPERATIVE AGREEMENT

**RCTC & CITY OF CORONA
 COOPERATIVE AGREEMENT FOR STATE ROUTE 91 EXPRESS LANES AND CORRIDOR IMPROVEMENTS BETWEEN RIVERSIDE COUNTY
 TRANSPORTATION COMMISSION AND THE CITY OF CORONA, DATED AS OF NOVEMBER 9, 2011**

Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
4	General Agreement to Cooperate. The Parties agree to mutually cooperate in order to help ensure that the Project is successfully completed with minimum impact to both Parties, the Contractor and the public.	Joint RCTC and City of Corona responsibility.
5.1	RCTC shall incorporate a requirement into the Design-Build Contract that the Main Street bridge overcrossing and Main Street be constructed in a manner to accommodate one (1) additional lane in each direction at no cost to the City ("Main Street Widening"). The limits of the Main Street Widening are shown on the roadway alignment sheets attached as reference documents to the Requests for Proposals.	RCTC will abide with the Main Street construction constraints.
5.2	RCTC shall incorporate the City Standards for work within the City's Jurisdiction into the Request for Proposals, and shall require that improvements within the City's Jurisdiction be completed pursuant to the City Standards, unless otherwise approved in writing by the City.	RCTC will utilize City of Corona Standards when construction occurs within City's jurisdiction.
5.3	RCTC shall provide the City an opportunity to review and comment on those sections of the Request for Proposals that pertain to work to be completed within the City's Jurisdiction.	RCTC will provide the City of Corona with sections of the RFP for review and comment prior to final release.
5.4	RCTC shall require its Contractor to obtain an encroachment permit for any Project work within the City's Jurisdiction.	RCTC's RFP requires a City of Corona encroachment permits to be obtained on any work within the City's jurisdiction.
5.5	RCTC shall include, in the Design-Build Contract, a requirement that the Contractor place a financial deposit with the City for any work by the City or measures that the City is reasonably required to take in order to mitigate congestion on local streets resulting from the Contractor's implementation of its traffic management plan ("City TMP Deposit"). Contractor payment, through deductions to the City TMP Deposit, shall be limited to those expenses over and above services customarily provided by the City. A list of City personnel and current billable hourly rates that could be charged against the City TMP deposit is included as Exhibit B to the Cooperative Agreement. RCTC shall have no liability or responsibility for the Contractor's failure to make any such required payments to the City, provided that RCTC complies with the requirements contained in this section.	RCTC's RFP requires that a financial deposit be established to cover City expenses associated with the traffic management plan for the project.

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Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
5.6	RCTC shall include, in the Design-Build Contract, a requirement that the Contractor comply with City Standards relating to restrictions and limits for the timing and duration of traffic closures as relates to any closure(s) of City streets or facilities, unless otherwise approved in writing by the City. Additional City required restrictions or provisions shall be timely provided to RCTC for inclusion in the Request for Proposals.	RCTC's RFP requires that the project utilize City of Corona Standards when constructing within the City jurisdiction.
5.7	RCTC shall include, in the Design-Build Contract, a requirement that the Contractor include the City as an additional insured and as an indemnified party under said contract. RCTC shall require that the Contractor furnish the City with an additional insured endorsement and a certificate of insurance under which the City is included as an additional insured. RCTC shall require that the Contractor's insurance include substantially the following provisions, provided that RCTC shall not be responsible for enforcing such provisions: (a) That the cost of any defense under the policy shall not erode or take away from the limits of liability provided to the City by the insurance. (b) That the Contractor's insurance, as it pertains to the City, is primary and that any other insurance held by the City is non-contributory. (c) That the policy shall provide on-going and completed operations coverage, through the date of City Acceptance.	RCTC's RFP includes additional indemnification for the City of Corona.
5.8	As between the RCTC and the City, RCTC and its consultants shall be responsible for performing design reviews and construction inspection of the Project work within the City's Jurisdiction to ensure conformance with the City Standards and with the Design-Build Contract including, but not limited to, the technical provisions of said contract. RCTC shall provide City staff an opportunity to review the Contractor's design plans for improvements within the City's Jurisdiction, and shall allow City staff access to the Project site, at all times, to perform observation of any Project improvements within the City's Jurisdiction.	RCTC will be the primary contact for the City of Corona.
5.9	RCTC, either directly or through its Contractor, shall provide public outreach services in an effort to keep the residents of the City and the general public apprised of the Project work, and any street closures, utility interruptions, and other impacts to the use of the City right of way and facilities that may result from the Project.	RCTC will be the primary contact for the City of Corona.
6.1	The City shall review the sections of the Request for Proposals that	RCTC will be the primary contact for the City of Corona.

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<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
6.2	<p>pertain to work to be completed within the City's Jurisdiction, and shall provide timely comments to RCTC.</p> <p>The City shall timely process a single encroachment permit, to be updated annually, and any subsequently required amendments, for the Contractor to cover the Contractor's work on the Project within the City's Jurisdiction. The encroachment permit shall be processed in no more than three (3) working days after a completed permit application is properly submitted in accordance with standard City requirements. The City shall not knowingly issue any construction and/or encroachment permits to any other contractors if the proposed work thereunder has the potential to delay or impact the Project, without first coordinating the same with the Contractor and RCTC.</p>	<p>RCTC's RFP requires a City of Corona encroachment permits to be obtained on any work within the City's jurisdiction.</p>
6.3	<p>The City shall waive any and all charges and fees related to plan review and inspections for the Project. The only charges to the Contractor and/or RCTC shall be those deducted from the Annual Deposit, as detailed in Section 5.4 of this Cooperative Agreement. The City shall provide a monthly statement to RCTC and the Contractor for all charges deducted against the Annual Deposit.</p>	<p>RCTC's RFP waives any plan review and inspections fee for the project except for the financial deposit established to cover City expenses associated with the traffic management plan for the project</p>
6.4	<p>The City shall have appropriate representatives regularly attend meetings of the Contractor's task forces including, but not limited to, those formed for public information, traffic management and detours; local street construction; and related construction work impacting the City and City facilities, and shall provide input at such meetings related to Project work in the City.</p>	<p>None.</p>
6.5	<p>The City shall waive any street trenching restrictions/moratoriums currently in place within the City's Jurisdiction and within the Project limits.</p>	<p>RCTC's RFP waives any street trenching restrictions for the project</p>
6.6	<p>Following completion of the Project work within the City's Jurisdiction and prior to City Acceptance, the City shall timely, so as not to in any manner delay the Project, review and approve the work. The City shall assume responsibility of the Project facilities completed within the City's Jurisdiction upon City Acceptance of the work and RCTC notification of Project Completion to the Contractor.</p>	<p>None.</p>
6.7	<p>The City shall assist in the RCTC provided public outreach efforts to inform and educate the public on Project related impacts.</p>	<p>RCTC will be the primary contact for the City of Corona.</p>

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6.8	The City shall timely, so as not to in any manner delay the Project, execute any necessary agreements or amendments to agreements with Caltrans, including, but not limited to, freeway and maintenance agreements, related to the Project work, or any Project facilities within the City's Jurisdiction.	None.
6.9	The City shall not allow any encroachment within the City's Jurisdiction if such encroachment may interfere with the Project or the Project construction, without first coordinating the same with the Contractor and RCTC.	RCTC will coordinate with the City of Corona.
6.10	The City shall install, maintain, operate, and repair its facilities in a manner which avoids or minimizes, to the extent possible and reasonable, any impact to the Project.	None.
7.1	The City shall make its best efforts to perform all obligations of the City related to the Project in such a manner as to allow the Project to progress as scheduled. Other than reviews related to final inspection and City Acceptance of the Project facilities within the City's Jurisdiction, the Parties agree that RCTC shall be the party responsible for conducting reviews of the Contractor's designs and plans, and for performance of any required field inspections to document that the work performed conforms to City Standards. RCTC shall provide the City copies of all designs plans for improvements within City's Jurisdiction, for review and comment during development by the Contractor of the final design for the Project. Approval of the Contractor's designs and plans shall remain within the sole discretion of RCTC.	RCTC will be the primary contact for the City of Corona.
8.1	RCTC agrees to incorporate into the Project scope and Request for Proposals, City requested Betterments as shown on Exhibit A. The cost of the Betterments shall be borne in their entirety by the City and paid in accordance with the provisions of this section. The City acknowledges the potentially negative impact of changes occurring during construction and shall endeavor to minimize any Betterment requests after issuance of the Request for Proposals.	RCTC's RFP addresses City of Corona betterments.
8.2	The cost of the Betterments set forth in Exhibit A shall be the agreed upon lump sum amount of One Million, Eight Hundred Thirty Thousand Dollars (\$1,830,000). The foregoing lump sum amount shall constitute	RCTC will be the primary contact for the City of Corona.

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	<p>full payment for all design, construction, testing, and inspections performed by RCTC, its consultants, and/or Contractor for the Betterments shown on Exhibit A. The lump sum amount of the Betterments as set forth in this Section 8.2 shall only be changed if a material change in the Betterments is requested by the City, or if the "Changed Conditions" clause set forth in the Design-Build Contract has been met. Changed Conditions costs directly attributed to the Betterments are not included in the lump sum amount for the Betterments, and shall be the financial responsibility of the City. The City shall be afforded the opportunity to inspect, review and participate in any "Changed Conditions" discussions directly impacting the Betterments set forth in Exhibit A.</p>	
8.3	<p>RCTC shall have no obligation to undertake any Betterment requested after release of the Request for Proposals. If such Betterments are acceptable to RCTC, in its sole discretion, RCTC shall include them in the scope of work for the Project. No Betterment that is inconsistent with the Project's environmental scope shall be considered.</p>	<p>RCTC's RFP addresses City of Corona betterments.</p>
8.4	<p>In the event the City requests Betterments for incorporation into the Project after release of the Proposals and RCTC agrees to incorporate such Betterments into the Project, the City shall be solely responsible for all costs and expenses related thereto, including (i) the costs incurred to incorporate the Betterments into the scope of work of the Project, (ii) additional design, construction and oversight costs arising from or associated with the Betterments, including change orders related thereto; (iii) additional operations and maintenance costs arising from or associated with the Betterments, including change orders related thereto; and (iv) costs associated with any impact on the design and construction schedule associated with the Betterments, including any associated project delay cost and damages.</p>	<p>RCTC's RFP provides opportunity for future City of Corona betterments as additional cost to the City of Corona.</p>
8.4	<p>RCTC shall invoice the City for the costs of the Betterments upon acceptance of the relevant Betterments by the City. Betterments shall be formally turned over to the City for operation and maintenance by written confirmation from RCTC that the relevant Betterments have been constructed according to City Standards and that the work is complete. The City shall process payment of a properly submitted invoice for</p>	<p>RCTC will be the primary contact for the City of Corona.</p>

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9.1	<p>Betterments within 30 calendar days of receipt thereof.</p> <p>The Parties acknowledge and agree to mutually cooperate to reduce right-of-way acquisitions and associated community impacts to the greatest extent reasonably possible. The City shall consider all reasonable requests by RCTC to obtain City variances to local codes and ordinances that result in reduced right-of-way cost, acquisition, or impact.</p>	RCTC will be the primary contact for the City of Corona.
9.2	<p>The Parties acknowledge and agree that certain City-owned rights-of-way along the corridor of the Project within the City's jurisdiction shall require relinquishment to RCTC in order to allow construction of the Project.</p>	RCTC will be the primary contact for the City of Corona.
9.3	<p>The City shall timely, so as not to in any manner delay the Project, release and relinquish such City-owned rights-of-way to RCTC, at no cost to RCTC, and shall take all necessary steps to effectuate such relinquishment.</p>	RCTC will be the primary contact for the City of Corona.
9.4	<p>RCTC shall acquire, at its sole cost, replacement rights-of-way for the City in exchange for the rights-of-way to be relinquished by the City, and shall deed such replacement rights-of-way to the City. The City shall timely accept such replacement rights-of-way from RCTC.</p>	RCTC will be the primary contact for the City of Corona.
10	<p>Excess Land Disposal. The Parties acknowledge that the Project may result in various Remnant Parcels. The determination as to whether a parcel is considered a "remnant" shall be made in RCTC's sole discretion.</p>	RCTC will be the primary contact for the City of Corona.
11	<p>RCTC hereby acknowledges its obligation under California Government Code Sections 54220-54232 to provide the City with notice of the sale of surplus land acquired by RCTC for the Project within the City.</p>	RCTC will be the primary contact for the City of Corona.
12.1	<p>RCTC and the City mutually agree to implement corridor aesthetics for the Project in accordance with the 215/91 <i>Corridor Master Plan</i>, dated September 5, 2006, on file at the offices of RCTC and the City and incorporated herein by reference.</p>	Joint RCTC and City of Corona responsibility.
12.2	<p>In acknowledgement of the revised design-build process, RCTC and the City shall mutually develop and agree upon a process for developing, approving and implementing the Project aesthetics, including landscape. The process shall be detailed in the Request for Proposals.</p>	Joint RCTC and City of Corona responsibility.
12.3	<p>RCTC shall provide the City a sixty (60) calendar day review period to review and comment upon the various aesthetics concepts proposed by</p>	RCTC scope of work requires a 60-day City of Corona review period of the various aesthetic concepts.

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	the Contractor. Upon completion of this review period, RCTC shall select a single concept for development into a Project specific aesthetics and landscape master plan.	
12.4	RCTC shall provide the City a sixty (60) calendar day period to review and comment on the Contractor developed Project specific aesthetics and landscape master plan. The Project specific aesthetics and landscape master plan will become the basis for the Contractor's final design development.	RCTC scope of work requires a 60-day City of Corona review period.
13	Dispute Resolution. Unless otherwise specified herein, the Parties shall comply with the following procedures in the case of a dispute, claim, or controversy arising under or in relation to this Cooperative Agreement. If one of the procedures below has already been completed pursuant to another section of this Cooperative Agreement, the matter shall immediately be submitted to the subsequent procedure.	Joint RCTC and City of Corona responsibility.
13.1	<i>Issue Escalation Ladder.</i> In the event the Parties do not agree on an issue, either Party may initiate or escalate the issue through a process to be referred to as the "Issue Escalation Ladder". This process is not intended to define fault, but is rather intended to create a partnering style approach to gain timely Project decisions by forwarding the issue to the next management level. The Issue Escalation Ladder process shall be mutually developed by the Parties prior to commencement of Project construction.	Joint RCTC and City of Corona responsibility.
13.2	<i>Submission to Executive Director and City Manager.</i> The dispute shall be referred for negotiation to the Executive Director and the City Manager. The Executive Director and the City Manager agree to undertake good faith attempts to resolve said dispute, claim, or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate <i>with the other Party in scheduling negotiation</i> sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either Party may then request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.	Joint RCTC and City of Corona responsibility.
13.3	<i>Legal Action.</i> If a matter is not resolved within thirty (30) calendar days	Joint RCTC and City of Corona responsibility.

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14.1	<p>after the first negotiating session between the Executive Director and the City Manager, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity.</p> <p>RCTC shall indemnify, defend and hold the City, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of RCTC, its officials, officers, employees, agents, consultants or contractors in the performance of RCTC's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys fees.</p>	RCTC will be the primary contact for the City of Corona.
14.2	<p>The City shall indemnify, defend and hold RCTC, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of the City, its officials, officers, employees, agents, consultants or contractors in the performance of the City's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys fees.</p>	RCTC will be the primary contact for the City of Corona.
14.3	<p>The indemnification provisions set forth in this Section 13 shall survive any expiration or termination of this Cooperative Agreement.</p>	Joint RCTC and City of Corona responsibility.
15	<p>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</p>	RCTC will be the primary contact for the City of Corona.

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	(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 Cooperative Agreement may also be extended in writing by mutual agreement between the Parties.	
16	Amendments. This Cooperative Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing; however, no amendments or other modifications of this Cooperative Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors or assigns.	Joint RCTC and City of Corona responsibility.
17	Assignment of Cooperative Agreement. Neither Party may assign or transfer its respective rights or obligations under this Cooperative Agreement without the express written consent of the other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.	Joint RCTC and City of Corona responsibility.
18	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 Cooperative Agreement.	Joint RCTC and City of Corona responsibility.
19	Severability. In the event that anyone or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative 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 Cooperative Agreement, which shall be interpreted to carry out the intent of the parties hereunder.	Joint RCTC and City of Corona responsibility.
20	Third Party Beneficiaries. The Contractor is an intended third-party	Joint RCTC and City of Corona responsibility.

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		beneficiary of this Cooperative Agreement. Except for the Contractor, there are no third-party beneficiaries to this Cooperative Agreement.

TP ATTACHMENT 2-6.6 – RCTC/RIVERSIDE COOPERATIVE AGREEMENT

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Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
4	General Agreement to Cooperate. The Parties agree to mutually cooperate in order to help ensure that the Project is successfully completed with minimum impact to both Parties, the Contractor and the public.	RCTC will be the primary contact for the County of Riverside.
5.1	RCTC shall incorporate the County Standards for work within the County's Jurisdiction into the Request for Proposals, and shall require that improvements within the County's Jurisdiction be completed pursuant to such standards.	RCTC's RFP requires that the project utilize County of Riverside Standards when constructing within the County jurisdiction.
5.2	No less than sixty (60) calendar days prior to release of the final Request for Proposals, RCTC shall provide the County an opportunity to review and comment on those sections of the Request for Proposals that pertain to work to be completed within the County's Jurisdiction.	RCTC will provide the County of Riverside with sections of the RFP for review and comment prior to final release.
5.3	RCTC shall require its Contractor to obtain encroachment permits from County for construction of any Project work within the County's Jurisdiction.	RCTC's RFP requires a County of Riverside encroachment permits to be obtained on any work within the County's jurisdiction.
5.4	RCTC shall include, in its contract with the Contractor, a requirement that the Contractor include the County as an additional insured and as an indemnified party under said agreement.	RCTC's RFP requires the County of Riverside to be and additional insured and an indemnified party under the D/B agreement.
5.5	As between the RCTC and the County, RCTC shall be responsible for design, reviews, approvals, and inspection of the Project work within the County's Jurisdiction to ensure conformance with the County Standards during completion of the Project design following selection of the Contractor, and during Project construction and maintenance periods.	RCTC will be the primary contact for the County of Riverside.
5.6	Except in the case of an unforeseen circumstance, RCTC shall require its Contractor to provide at least a fifteen (15) day notification to County prior to any full or partial closure of any streets within County's Jurisdiction exceeding one (1) day in duration. Short term closures less than one (1) day in duration shall require forty eight (48) hours prior notice.	RCTC's RFP requires a notification to the County of Riverside on full or partial roadway closures.
5.7	RCTC will institute a public outreach campaign to keep the residents of the County and the general public apprised of the Project work, and any street closures and other impacts to use of the County right of way that may result from the Project.	RCTC will be the primary contact for the County of Riverside.

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Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
5.7	RCTC shall provide as-built plans for Project work within County's Jurisdiction within 120 days of Notice of Completion.	RCTC will be the primary contact for the County of Riverside.
6.1	The County shall review the sections of the Request for Proposals that pertain to work to be completed within the County's Jurisdiction, and shall provide comments to RCTC, if any, within thirty (30) calendar days of the County's receipt from RCTC of the Request for Proposals.	RCTC will be the primary contact for the County of Riverside.
6.2	The County shall timely process the required encroachment permits to cover the Contractor's work on the Project within the County right of way. Encroachment permits shall be processed in no more than five (5) working days after receipt of a complete encroachment permit application from Contractor. The County shall not issue any encroachment permits to any other contractors if the proposed work thereunder has the potential to delay or impact the Project, without first coordinating the same with the Contractor and RCTC. All required encroachment permits to be issued by County shall be issued in the name of RCTC.	RCTC's RFP requires a County of Riverside encroachment permits to be obtained on any work within the County's jurisdiction.
6.3	The County shall have appropriate representatives regularly attend meetings of the Contractor's task forces formed for public information, traffic management and detours, local street construction, and related construction work impacting the County, and shall provide input at such meetings related to Project work that may impact County residents.	None.
6.4	The County shall waive any and all charges and fees related to plan review and inspections for the Project.	None.
6.5	The County shall waive any street trenching restrictions/moratoriums currently in place within the County limits as respect to the Project work.	None.
6.6	Following completion of the Project work within the County Jurisdiction and prior to final acceptance thereof, the County shall timely review and approve the work. The County shall assume responsibility of the Project facilities completed within the County's Jurisdiction upon acceptance of the work. Such acceptance shall be evidenced by the recordation of the deed for the new Frontage Road.	None.
6.7	The County shall timely, so as not to delay the Project, review, approve, and execute any necessary agreements or amendments to agreements with RCTC, Caltrans and/or the Contractor related to the Project work, or any Project facilities within the County's Jurisdiction.	RCTC will be the primary contact for the County of Riverside.

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<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
6.8	The County shall not allow any encroachment within the County's right of way if such encroachment may interfere with the Project or the Project construction, without first coordinating the same with the Contractor and RCTC.	None.
6.9	The County shall install, maintain, operate, and repair its facilities in a manner which avoids or minimizes, to the extent possible and reasonable, any impact to the Project.	None.
6.10	The County will make its best efforts to perform all obligations of the County related to the Project in such a manner as to allow the Project to progress as scheduled.	None.
7.1	Other than reviews related to final inspection and County acceptance of the Project facilities within the County's Jurisdiction, the Parties agree that RCTC shall be the party responsible for conducting reviews of the Contractor's designs and plans, and for performance of any required field inspections to document that the work performed conforms to County Standards. RCTC shall provide the County copies of all designs plans for improvements within County's Jurisdiction, for review and comment during development by the Contractor of the final design for the Project. Approval of the Contractor's in-process designs and plans shall remain within the sole discretion of RCTC. The above does not preclude the County from performing inspections or reviews of any County facility.	RCTC will be the primary contact for the County of Riverside.
8.1	The Parties acknowledge and agree that Frontage Road along the corridor of the Project within the County's jurisdiction, as shown on Exhibit A, may require relinquishment consisting of vacating and quitclaiming right of way by County to RCTC in order to allow for construction of the Project.	RCTC will be the primary contact for the County of Riverside.
8.2	RCTC shall acquire, at its sole cost, new, replacement right of way for the County in exchange for the Frontage Road right of way to be vacated by the County, and shall deed such replacement Frontage Road right of way to the County in fee concurrently with the vacation and quitclaim of the Frontage Road vacated by County. The County shall timely accept such new right of way from RCTC.	RCTC will be the primary contact for the County of Riverside.
8.3	RCTC and the County agree that RCTC acquired replacement right of way for any relocated Frontage Road will be just compensation for the	RCTC will be the primary contact for the County of Riverside.

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Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
8.4	vacated Frontage Road right of way required for the Project. The County shall, in a timely manner, following notification of completion of the new Frontage Road by RCTC and acceptance by the County thereof, vacate and quitclaim the existing Frontage Road property. Exhibit A shows the existing Frontage Road alignment along with a proposed realignment alternative. The final alignment of Frontage Road will be subject to County approval, which approval shall not be unreasonably withheld or delayed.	RCTC will be the primary contact for the County of Riverside.
9	Dispute Resolution. Unless otherwise specified herein, the Parties shall comply with the following procedures in the case of a dispute, claim or controversy arising under or in relation to this Cooperative Agreement. If one of the procedures below has already been completed pursuant to another section of the Cooperative Agreement, the matter shall immediately be submitted to the subsequent procedure.	RCTC will be the primary contact for the County of Riverside.
9.1	Submission to RCTC Executive Director and Transportation Director. The dispute shall be referred for negotiation to the RCTC Executive Director and the Director of the County Transportation Department ("Transportation Director"). The RCTC Executive Director and the Transportation Director agree to undertake good faith attempts to resolve said dispute, claim or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either Party may then request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.	RCTC will be the primary contact for the County of Riverside.
9.2	Legal Action. If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the RCTC Executive Director and the Transportation Director, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity.	RCTC will be the primary contact for the County of Riverside.
10.1	RCTC shall indemnify, defend and hold the County, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs,	RCTC will be the primary contact for the County of Riverside.

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TRANSPORTATION COMMISSION AND THE COUNTY OF RIVERSIDE, DATED AS OF _____

Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
10.2	<p>expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of RCTC, its officials, officers, employees, agents, consultants or contractors in the performance of RCTC's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys fees.</p> <p>The County shall indemnify, defend and hold RCTC, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of the County, its officials, officers, employees, agents, consultants or contractors in the performance of the County's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys fees.</p>	<p>RCTC will be the primary contact for the County of Riverside.</p>
10.3	<p>The indemnification provisions set forth in this Section 10 shall survive any expiration or termination of this Cooperative Agreement.</p>	<p>Joint RCTC and County of Riverside responsibility.</p>
11	<p>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; 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) calendar days of the commencement of the cause.</p>	<p>Joint RCTC and County of Riverside responsibility.</p>

**RCTC & COUNTY OF RIVERSIDE
 COOPERATIVE AGREEMENT FOR STATE ROUTE 91 EXPRESS LANES AND CORRIDOR IMPROVEMENTS BETWEEN RIVERSIDE COUNTY
 TRANSPORTATION COMMISSION AND THE COUNTY OF RIVERSIDE, DATED AS OF _____**

<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
12	Times of performance under this Cooperative Agreement may also be extended in writing by mutual agreement between the Parties. Amendments. This Cooperative Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing; however, no amendments or other modifications of this Cooperative Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors or assigns.	Joint RCTC and County of Riverside responsibility.
13	Assignment of Cooperative Agreement. Neither Party may assign or transfer its respective rights or obligations under this Cooperative Agreement without the express written consent of the other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.	Joint RCTC and County of Riverside responsibility.
14	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 provisions of this Cooperative Agreement.	Joint RCTC and County of Riverside responsibility.
15	Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative 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 Cooperative Agreement, which shall be interpreted to carry out the intent of the parties hereunder.	Joint RCTC and County of Riverside responsibility.
16	Third Party Beneficiaries. The Contractor is an intended third-party beneficiary of this Cooperative Agreement. Except for the Contractor, there are no third-party beneficiaries to this Cooperative Agreement.	Joint RCTC and County of Riverside responsibility.

TP ATTACHMENT 2-6.7 – CALTRANS/RCTC TOLL FACILITY AGREEMENT

**CALTRANS & RCTC
 CALTRANS/RCTC TOLL FACILITY AGREEMENT (INCLUDING REAL PROPERTY LEASE) STATE ROUTE 91 EXPRESS LANES IN RIVERSIDE COUNTY
 AGREEMENT NO. 08-1518**

Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
4.1	<p>Grant of Lease.</p> <p>(a) Concurrent with the effective date of the term of this Agreement, as set forth in Section 4.2(a) below, Caltrans hereby grants to RCTC a lease and such other rights, real property interest or authority for RCTC to utilize Caltrans' right of way for the Initial 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").</p> <p>Prior to commencing toll operations on any segment or Phase of the Initial or Ultimate Toll Facility, RCTC shall prepare a draft legal description of that segment or Phase of the Initial or Ultimate 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 RCTC. The Parties shall record an amendment(s) to the Memorandum of Agreement to reflect the amended and superseded legal description, once approved.</p> <p>The Lease shall include any improvements now or hereafter located on the Leased Property. Such rights shall be provided at a cost of \$10.00 per month. From and after the 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 Ultimate Toll Facility so as to inhibit its ability to lease said property to RCTC as set forth herein.</p> <p>(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 RCTC 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</p>	<p>RCTC will be the primary contact for Caltrans.</p>

**CALTRANS & RCTC
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Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
4.2	<p>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. 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 RCTC is first provided notice of any new encroachment permits proposed or amendments to existing encroachment permits, is afforded an opportunity to review and consent to the issuance/amendment of such permits and provided that such permits do not materially impact RCTC'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 RCTC is first provided notice and an opportunity to review and consent to such relocation, and provided that such relocation does not impact RCTC's use and operation of the Toll Facility.</p> <p>(c) <i>Care and Protection of State Highways.</i> 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.</p> <p>(d) The Lease shall initially apply to the Initial Toll Facility. After construction and acceptance of the Initial Toll Facility and initial phase of the CIP General Purpose Lanes, RCTC shall have the option, consistent with the terms of this Agreement, to extend the area subject to the Lease and to apply those other rights, real property interests or authority to the real property within the footprint of, and which is necessary for, the construction and operation of the Ultimate Toll Facility. Upon the exercise by RCTC of such option from time to time, the Parties shall amend this Agreement and the Memorandum of Agreement attached hereto in order to extend RCTC's rights related to the Ultimate Toll Facility, to the extent consistent with this Agreement.</p> <p>Term of Use Rights.</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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CALTRANS/RCTC TOLL FACILITY AGREEMENT (INCLUDING REAL PROPERTY LEASE) STATE ROUTE 91 EXPRESS LANES IN RIVERSIDE COUNTY
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<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
	(a) The term of this Agreement and the rights described above in Section 4.1(a) shall be fifty (50) years commencing as of the first day on which the Initial Toll Facility opens for public use and toll operations, assuming said facility is built. At the end of the foregoing specified period, RCTC shall have no further authority to impose or collect a toll, and the term of this Agreement shall not be extended, unless authorized by the Legislature.	
4.3	(b) Notwithstanding any other provision of this Agreement, if the "no build" alternative is chosen as a result of the completion of environmental review for the Ultimate Project, this Agreement shall immediately terminate without liability to either Party. Contingent Upon OCTA Action. This Agreement shall be expressly contingent upon action by OCTA pursuant to Public Utilities Code section 130240, subdivision (k), section 130244, subdivision (g).	RCTC will be the primary contact for Caltrans.
5.1	Operation of Toll Facility. RCTC 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.	RCTC will be the primary contact for Caltrans.
5.2	Traffic Operations Plan. (a) RCTC shall, at least sixty (60) business days prior to the first day on which any portion of the Toll Facility opens for public use, submit to Caltrans for its review and, if appropriate, approval, a Traffic Operations Plan. (b) The Traffic Operations Plan will include an operational traffic analysis of the Initial Toll Facility and its interface with the connecting and adjacent public facilities, including any other tolled facilities. The following information and relevant underlying assumptions shall be provided for the peak a.m. and peak p.m. periods and other timeframes in which the operation of the Initial Toll Facility changes from that in effect during the peak period operation and for operating scenarios other than the initial operating scenario: i. Existing and projected volumes;	RCTC will be the primary contact for Caltrans.

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 CALTRANS/RCTC TOLL FACILITY AGREEMENT (INCLUDING REAL PROPERTY LEASE) STATE ROUTE 91 EXPRESS LANES IN RIVERSIDE COUNTY
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Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
5.3	<p>ii. Types of vehicles allowed or excluded from the Initial Toll Facility;</p> <p>iii. Weaving lengths at each end of the Initial Toll Facility;</p> <p>iv. Enforcement areas and procedures; and</p> <p>v. Delays and queues.</p> <p>(c) RCTC shall be consistent with Caltrans' then-current policies and practices when distributing video feeds to media outlets and internet providers. RCTC shall observe Caltrans' then-current policies and practices when displaying Changeable Message Sign (CMS) with the exception of displaying toll pricing and toll lane advertising.</p> <p>(d) The Traffic Operations Plan is intended solely to assure that the Toll Facility is operated in a safe and efficient manner consistent with applicable traffic engineering principles and the adjacent General Purpose Lanes, and is not intended to in any way infringe upon RCTC's rights as set forth in Sections 5.3 through 5.5 of this Agreement, or any other rights or obligations of RCTC hereunder or otherwise relating to the Toll Facility.</p> <p>(e) Caltrans shall provide any comments to, or its approval of, the Traffic Operations Plan within twenty (20) business days of RCTC's submission of the plan. Caltrans' approval of the Traffic Operations Plan shall not be unreasonably withheld.</p> <p>(f) The Traffic Operations Plan shall be updated and amended for any subsequent Phase of the Ultimate Toll Facility.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
	<p>Tolls:</p> <p>(a) RCTC 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.</p> <p>(b) RCTC shall have authority to establish and adjust toll pricing without approval from Caltrans and to collect tolls using AVI tolling technology or other technology chosen by RCTC, provided that any such actions shall</p>	

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<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
	<p>be in compliance with applicable State and federal laws and standards and shall be coordinated with OCTA policies and rules pursuant to the RCTC-OCTA Cooperative Agreement.</p> <p>(c) All toll equipment utilized for the Toll Facility shall be compatible with Title 21 or future equivalent standard.</p> <p>(d) Any wireless communication equipment installed by RCTC shall not interfere or adversely affect the operation of any Caltrans' roadside electronic equipment existing at the time RCTC installs its wireless communication equipment.</p>	
5.4	<p>RCTC shall have the sole right to establish policies and rules governing use of the Toll Facility, including toll systems, 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 and shall be coordinated with OCTA policies and rules pursuant to the RCTC-OCTA Cooperative Agreement.</p>	RCTC will be the primary contact for Caltrans.
5.5	<p>Safety Investigations and Safety Related Improvements.</p> <p>(a) Caltrans may, at its sole cost, perform safety investigations and analysis relating to the Toll Facility. Caltrans and RCTC 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 safety enhancement. RCTC shall fund and implement the jointly identified corrective action or enhancement to the Toll Facility.</p> <p>(b) After consultation with RCTC, 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").</p>	RCTC will be the primary contact for Caltrans.

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<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
	<p>(c) Caltrans and RCTC shall work collaboratively on the scope, design and schedule for implementation of Safety Improvement Orders. Caltrans, acting in good faith, 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 RCTC as the Party responsible for the Toll Facility during the term of this Agreement. RCTC, acting in good faith, 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.</p> <p>(d) Cost for the modifications agreed upon in an SIO shall be negotiated between Caltrans and RCTC in good faith, and allocated between each Party based on the SIO to be implemented.</p> <p>(e) The modifications agreed upon shall be implemented by RCTC in accordance with (i) Caltrans' normal time frames for safety enhancements of similar scope; or (ii) the Safety Improvement Order. If RCTC is unable or unwilling to implement an SIO agreed upon by the Parties, 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 18.6, RCTC shall reimburse Caltrans for a portion of its actual and reasonable costs associated with the implementation of such SIO, as determined pursuant to paragraph (d) above. Caltrans shall assume all 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 provisions of the foregoing sentence shall apply.</p>	
5.6	<p>Operation of General Purpose Lanes.</p> <p>(a) 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 or the selected law enforcement agency in performing its duties, consistent with the policies and practices of Caltrans and the</p>	RCTC will be the primary contact for Caltrans.

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5.7	<p>relevant law enforcement agency, and Caltrans shall be responsible for its own costs related thereto.</p> <p>(b) Caltrans shall be responsible for operation and maintenance of the General Purpose Lanes.</p> <p>(c) Caltrans shall provide RCTC prior written notification of any proposed major maintenance, improvement or other modifications to the General Purpose Lanes and shall coordinate the same with RCTC in order to minimize any disruptions to operation of the Toll Facility and to minimize potential impacts of such activities on the Toll Facility.</p> <p>Traffic Management- RCTC Rights and Responsibilities.</p> <p>(a) RCTC shall be responsible for traffic management within the Toll Facility and towing in response to incidents located within the Toll Facility. Motorists shall be notified of any closures of the Toll Facility through RCTC owned CMS or similar means. The Caltrans Traffic Management Centers located in San Bernardino (District 8) and Orange (District 12) counties shall be notified of any closure of the Toll Facility so that Caltrans can broadcast such closure through its Traveler Information System and ITS field elements.</p> <p>(b) The Parties agree that RCTC is authorized to establish and implement additional safety policies, as RCTC 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 overlength restrictions set by RCTC for the Toll Facility shall be coordinated with OCTA's policies pursuant to the RCTC-OCTA Cooperative Agreement, and shall be included in the Traffic Operations Plan. Oversize, overweight and/or overlength permits shall not be issued by RCTC for vehicles using the State Highway System.</p> <p>(c) Operations of the Toll Facility may be interrupted as RCTC may deem necessary or advisable for reasons of, among other things, construction, repair, maintenance, improvement, modification, security, emergency and public safety. RCTC shall notify Caltrans five (5) days in advance of any</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
5.8	<p>planned closure of the Toll Facility. Notification of planned closures shall be made to the Caltrans Traffic Management Centers located in San Bernardino (District 8) and Orange (District 12) counties.</p> <p>(d) In the case of any major incidents on or blockages of the Toll Facility caused by accidents or debris, RCTC shall, consistent with available resources and constraints, promptly take reasonable action to assist CHP or the selected law enforcement agency in performing its duties, consistent with the policies and practices of RCTC and the relevant law enforcement agency, and RCTC shall be responsible for its own costs related thereto.</p> <p>(e) As part of its traffic management activities, RCTC shall provide for the real time sharing of operational data including, but not limited to, traffic volumes, video surveillance feeds, loop detector data and changeable message board data through Caltrans' existing data collection systems. RCTC shall provide Caltrans with traffic volume, occupancy and other data related to the Toll Facility for use in state-wide reports and engineering studies.</p> <p>Changes in Standards.</p> <p>(a) Caltrans, after coordination and consultation with RCTC, may issue an order for RCTC 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 and funded transportation facilities of substantially equivalent size, location and character.</p> <p>(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 RCTC's' reasonable comment and approval. The modifications agreed upon shall be paid for by RCTC and implemented in consideration of (i) the time in which Caltrans' applies such improvements to existing facilities it owns and operates of a substantially equivalent size, location and character; (ii) the</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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Agreement Reference Number	Agreement Term	Description of RCTC's Requirement
	<p>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.</p> <p>(c) Caltrans, acting in good faith, shall consider any request by RCTC for alteration or deferral of a particular modification under a Standards Modification Order, taking into consideration the anticipated availability of RCTC funds, the remaining term of this Agreement in light of RCTC'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.</p> <p>(d) In the case of a Standards Modification Order to address a Critical Safety Standard, after the aforementioned coordination and consultation has occurred, if RCTC 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 RCTC for the actual and reasonable cost of implementation. Caltrans shall assume all liability for such Standards Modification Order unilaterally implemented by Caltrans.</p>	
6.1	Design-Build Cooperative Agreement. The Parties intend that the Initial Toll Facility, the General Purpose Lanes and other non-toll improvements will be completed pursuant to the terms of the separate Design-Build Cooperative Agreement, provided that nothing in this Agreement is intended to obligate RCTC to complete the Initial Toll Facility.	RCTC will be the primary contact for Caltrans.
6.2	Ultimate Project. RCTC shall be permitted to construct the Ultimate Project, including Phases of the Ultimate Toll Facility, provided that nothing in this Agreement is intended to obligate RCTC to complete the	RCTC will be the primary contact for Caltrans.

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<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
6.3	<p>Ultimate Project, the Ultimate Toll Facility or any additional Phase(s) thereof. If, however, construction of such improvements by RCTC has been initiated and has not been completed, RCTC is obligated to bring any pre-existing facility back to a condition which is substantially the same as the condition as it was on the date of commencement of construction activities.</p> <p>Additional Phases of Toll Facility. The Parties shall timely negotiate and enter into such design and construction cooperative agreements required for implementation of additional phases of the Ultimate Project, including additional Phases of the Toll Facility. The Parties agree that such design and construction agreements shall be substantially in accordance with the terms of the Design-Build Cooperative Agreement. Subsequent phases of the Ultimate Toll Facility may require a Project Report and a reevaluation, update, or recirculation of an environmental analysis. RCTC shall comply with all design and construction standards applicable at the time of approval of the project plans (as modified by the applicable design and construction cooperative agreement), as well as the terms of the applicable design and construction cooperative agreement.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
6.4	<p>Application of Agreement to Future Phases. As applicable, the terms of this Agreement, including, but not limited to, the Lease, shall apply to all Phases once completed, accepted by RCTC and Caltrans pursuant to the terms of the applicable design and construction cooperative agreement for the relevant Phase, and placed into operation.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
7.1	<p>Major Modification of Toll Facility.</p> <p>(a) RCTC 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 not unreasonably withhold or delay approval of an encroachment permit for a Major Modification, and shall grant such encroachment permit 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</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
		<p>resolution process contained in this Agreement.</p> <p>(b) If RCTC requires any modification that is not within the Toll Facility, a Caltrans encroachment permit shall be required per Caltrans' standard requirements for RCTC, 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.</p> <p>(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.</p> <p>(d) RCTC shall coordinate construction of Major Modifications with Caltrans to minimize any impacts to the General Purpose Lanes. Unless otherwise agreed upon by the Parties, Caltrans shall provide oversight of construction activities related to the Major Modifications at no cost to RCTC, consistent with its policies in effect at the time of procurement of a contractor by RCTC to complete the Major Modifications.</p> <p>(e) Upon completion of the Major Modifications, RCTC 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 RCTC fail to provide the "as-built" plans within the timeframe specified herein, Caltrans shall provide notice of such failure to RCTC. The notice shall state that if RCTC does not submit the "as-built" plans within thirty (30) days of receipt of the notice, Caltrans shall be entitled to prepare the plans and bill RCTC for the actual costs thereof.</p>

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7.2	<p>(f) RCTC 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 Caltrans, its employees and agents as an additional insured with coverage provided to Caltrans to the same degree as provided to RCTC. 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.</p> <p>Minor Modification of Toll Facility.</p> <p>(a) RCTC shall have the right to erect and maintain signs, gantries, and other tolling equipment and to install and utilize traffic control devices and video surveillance and enforcement equipment, and other similar equipment necessary for the safe and efficient operation of the Toll Facility. All signs utilized by RCTC 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 following procurement of a contractor or vendor therefor. 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.</p> <p>(b) Any installation of new, and not replacement of existing, 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 which were not included or accepted as part of the Initial Toll Facility shall be considered "Minor Modifications" if they are installed within the Toll Facility. RCTC 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</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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	State Right of Way, RCTC agrees to submit to Caltrans a completed encroachment permit including RCTC-approved engineering plans, prior to performing any Minor Modifications.	
7.3	Caltrans Implementation of Modifications. If RCTC requests that Caltrans implement, on behalf of RCTC, modifications to the Toll Facility, RCTC 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.	RCTC will be the primary contact for Caltrans.
8.1	RCTC Responsibility for Toll Facility Maintenance. RCTC shall be responsible for maintenance of the Toll Facility, unless RCTC contracts such obligations to Caltrans.	RCTC will be the primary contact for Caltrans.
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 RCTC for its share of actual maintenance costs based on the foregoing formula.	RCTC will be the primary contact for Caltrans.
8.3	Additional Integrated Maintenance Issues. The Parties shall, in good faith, address any additional integrated maintenance, permit and maintenance liability issues that may arise following commencement of operations of the Toll Facility, and shall, in good faith, and subject to a separate written agreement or an amendment hereto, determine a cost split and shared responsibility for such integrated maintenance issues, if any.	RCTC will be the primary contact for Caltrans.
8.4	Maintenance Plan to be Prepared and Implemented by RCTC. (a) Prior to commencement of operations of the Toll Facility, RCTC shall submit to Caltrans for its approval a maintenance plan for the Toll Facility (which, to the extent that RCTC engages Caltrans to perform maintenance services, shall be the work plan adopted pursuant to the Maintenance Agreement). (b) RCTC shall be responsible for the maintenance of the Toll Facility in	RCTC will be the primary contact for Caltrans.

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	accordance with the Maintenance Standards.	
	(c) Caltrans shall furnish the Maintenance Standards to RCTC on a timely basis. Receipt of the Maintenance Standards by RCTC shall constitute notice as to the contents therein. RCTC shall not be held responsible for implementing any changes to any such Caltrans Maintenance Standards expressed in such sources unless and until a manual is received or actual notice thereof is given to RCTC.	
8.5	(d) RCTC shall, in good faith, coordinate its schedule to consider potential impacts of RCTC's maintenance activities on the Toll Facility on the operation of the General Purpose Lanes. Caltrans Annual Maintenance Review. Caltrans shall annually review the maintenance of the Toll Facility per the certification requirements set forth in the Section 129 Agreement and, if such maintenance has been undertaken in accordance with the Maintenance Standards, Caltrans shall timely certify the adequacy of such maintenance to FHWA as contemplated by the Section 129 Agreement. If, after inspection, it is Caltrans' opinion that appropriate maintenance of the Toll Facility has not been performed as required under this Agreement and Caltrans is not performing such maintenance under a Maintenance Agreement, Caltrans shall provide RCTC with a written notification of the specific items requiring maintenance. RCTC shall provide Caltrans with a plan to promptly initiate steps to cure the identified deficiencies. If Caltrans is performing such maintenance under a Maintenance Agreement, Caltrans shall promptly initiate steps to cure the identified deficiencies. Notwithstanding any other provision of this Agreement, Caltrans makes no warranty that if a party other than Caltrans is providing maintenance and Caltrans' inspection has determined that the appropriate maintenance as required under this Agreement has not occurred, that said negative finding will not be transmitted to FHWA or otherwise remain confidential.	RCTC will be the primary contact for Caltrans.
8.6	Option to Enter Maintenance Agreement with Caltrans. The Parties may enter into a Maintenance Agreement pursuant to which maintenance services may be provided by Caltrans, unless RCTC determines	RCTC will be the primary contact for Caltrans.

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8.7	<p>otherwise. Such contract, if entered into by the Parties, shall provide for reimbursement of Caltrans for maintenance services as set forth therein. Responsibilities If a Party Other than Caltrans is Providing Maintenance of the Toll Facility.</p> <p>(a) The scope of Caltrans oversight responsibilities if a party other than Caltrans is providing maintenance of the Toll Facility shall be as follows:</p> <p>(i) At least annually, Caltrans shall review the maintenance of the Toll Facility per the certification requirements set forth in the Section 129 Agreement.</p> <p>(ii) If such maintenance has been undertaken in accordance with the maintenance required under this Agreement, Caltrans shall timely certify the adequacy of such maintenance to FHWA as contemplated by the Section 129 Agreement.</p> <p>(iii) If, after inspection, it is Caltrans' opinion that appropriate maintenance of the Toll Facility has not been performed in accordance with the maintenance required under this Agreement, Caltrans shall provide RCTC with a written notification of the specific items requiring maintenance.</p> <p>(b) If clause (iii) above is applicable, RCTC shall provide Caltrans with a plan to promptly initiate steps to cure maintenance deficiencies identified by Caltrans.</p> <p>(c) Notwithstanding any other provision of this Agreement, Caltrans makes no warranty that if a party other than Caltrans is providing maintenance and Caltrans' inspection has determined that the appropriate maintenance as required under this Agreement has not occurred, that said negative finding will not be transmitted to FHWA or otherwise remain confidential.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
8.8	<p>Right of Entry onto General Purpose Lanes. Caltrans hereby grants to RCTC, and its contractors, a right of entry onto the General Purpose</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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	Lanes, as required for RCTC to conduct maintenance activities with its own or its contractors' forces, or by contract. RCTC 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 RCTC contractor, as determined by RCTC, under which Caltrans shall be added as an additional insured. RCTC may enter into the General Purpose Lanes without an encroachment permit to remove debris or to perform other activities related to the clean-up of an accident which is not confined to the Toll Facility.	
8.9	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.	RCTC will be the primary contact for Caltrans.
8.10	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.	RCTC will be the primary contact for Caltrans.
9.	Reserve Funds. RCTC shall establish and maintain adequate reserve funds for maintenance and capital improvements, as required by RCTC's bond financing for the Project. Such reserve funds shall be sufficient to adequately maintain the Toll Facility in accordance with Maintenance Standards and to provide for transfer of the Toll Facility back to Caltrans at the end of the term of this Agreement in accordance with the requirements contained herein.	
10.1	Costs for Maintenance, Operation and Rehabilitation of Toll Facility. Except as otherwise set forth herein, RCTC shall bear all costs of maintenance, operation and rehabilitation of the Toll Facility for the duration of the Agreement and any extension hereof.	RCTC will be the primary contact for Caltrans.
10.2	Costs for Caltrans Services Requested by RCTC. Other than expressly set forth herein or except as otherwise agreed upon by the Parties, RCTC shall be responsible for the costs of any services of Caltrans requested by	RCTC will be the primary contact for Caltrans.

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11.1	RCTC including, but not limited to, the cost of Pavement Management System testing if RCTC requests Caltrans perform such tests for the Toll Facility. California Highway Patrol (CHP) police services. (a) RCTC shall have the option to engage police services from CHP for the Toll Facility.	RCTC will be the primary contact for Caltrans.
11.2	(b) At RCTC' s request, Caltrans shall assist RCTC in negotiation of the police services contract with CHP. RCTC Right to Utilize Alternate California Law Enforcement Agency. RCTC shall have the right to use a California law enforcement agency other than CHP to provide police services on the Toll Facility, provided that such agency is a governmental entity that utilizes or can support the Statewide Integrated Traffic Records System (SWITRS) database, or such other highway safety program then in use by CHP or Caltrans for accident monitoring, or other comparable database or monitoring program subject to CHP approval.	RCTC will be the primary contact for Caltrans.
11.3	Level of Police Services. The Parties agree that police services for the Toll Facility shall be equivalent to that provided on comparable Caltrans-operated transportation routes.	RCTC will be the primary contact for Caltrans.
11.4	Toll violation enforcement. RCTC 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	RCTC will be the primary contact for Caltrans.
11.5	(e) Take other legally permissible actions to collect, enforce and protect toll revenues. No Right to Toll Facility Customer Information. This Agreement shall not provide Caltrans with any independent right to any Toll Facility customer	RCTC will be the primary contact for Caltrans.

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11.6	information. Compliance with Laws. RCTC shall follow all applicable traffic enforcement laws and regulations and both Parties shall comply with all applicable privacy laws with respect to customer information.	RCTC will be the primary contact for Caltrans.
12.1	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. 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 RCTC in advance of any intended closure of the Toll Facility due to an emergency (and if not feasible, Caltrans shall notify RCTC 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 California Highway Patrol or other authorized law enforcement agency.	RCTC will be the primary contact for Caltrans.
12.2	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 RCTC 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 12.2 unless and until RCTC 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.	RCTC will be the primary contact for Caltrans.
13.1	Responsibility for Project Financing. RCTC shall be responsible for project financing, unless otherwise agreed upon by the Parties.	RCTC will be the primary contact for Caltrans.

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13.2	<p>Caltrans Assistance with Information Requirements. Caltrans shall provide reasonable assistance with any reporting, documentation and other reasonably necessary informational requirements of RCTC's lenders/bond holders.</p> <p>(a) Except for periodic estoppel certificates to bondholders or lenders regarding RCTC's compliance under this Agreement (and any other agreement between the Parties relating to the 91 Express Lanes, including any Maintenance Agreement between Caltrans and RCTC), obligations under the Section 129 Agreement and any opinions required to come from Caltrans, any assistance shall be for informational purposes only and final reporting, documentation, projections, etc. shall be solely the responsibility of RCTC or the entity seeking bond revenues or other financing. 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 or interest or otherwise offered as backing for the statement or offering.</p>	RCTC will be the primary contact for Caltrans.
14.1	<p>(b) Caltrans shall not certify that the financing meets Securities and Exchange Commission criteria, and shall not give any warranties related thereto.</p> <p>Representations and Warranties of Caltrans. In addition to the other representations and warranties of Caltrans contained herein, Caltrans hereby represents and warrants as follows:</p> <p>(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.</p> <p>(b) The execution and delivery by Caltrans of this Agreement and the consummation of the transactions contemplated hereby, is not in conflict</p>	RCTC will be the primary contact for Caltrans.

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14.2	<p>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.</p> <p>(c) Caltrans has determined that RCTC 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.</p> <p>(d) No litigation is pending or, to the best knowledge of Caltrans, threatened challenging the authority of Caltrans to enter into this Agreement, and Caltrans is in compliance with all applicable laws and regulations.</p> <p>(e) Caltrans owns and controls the State Highway System, subject to those existing rights granted to third parties.</p> <p>(f) The representations and warranties of Caltrans contained herein are, as of the date of execution hereof and thereof, accurate and complete. Representations and Warranties of RCTC. In addition to the other representations and warranties of RCTC contained herein, RCTC hereby represents and warranties as follows:</p> <p>(a) RCTC has the authority to execute, deliver and perform this Agreement, and the terms and conditions hereof are valid and binding obligations of RCTC.</p> <p>(b) The execution and delivery by RCTC 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 RCTC, and to the best of RCTC's knowledge after due inquiry, there is no restriction or prohibition which would impair or render unenforceable or</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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	illegal, as to RCTC, any provision of this Agreement, or any other related agreement to which it is a party.	
	(c) To RCTC's best knowledge, there is no litigation in effect challenging RCTC's authority to enter into this Agreement and RCTC is in compliance with all applicable laws and regulations.	
	(d) RCTC makes no warranties or representations that the activities undertaken by it pursuant to this Agreement will result in actual construction of the Toll Facility, or any portion thereof, or that, if constructed, any of the same will be commercially or technologically viable or of any specified quality or fit for any intended use or function (all of which such warranties and representations are hereby expressly disclaimed).	
15.1	(e) The representations and warranties of RCTC contained herein are, as of the date of execution hereof and thereof accurate and complete. RCTC Obligations Related to Toll Facility. As between Caltrans and RCTC, RCTC shall be responsible for operating, maintaining, policing, administering and collecting tolls for the use of the Toll Facility, subject to and in accordance with the terms of this Agreement, except to the extent RCTC engages Caltrans to perform maintenance as provided in Section 8, or any other services, and CHP to perform police services as provided in Section 11.	RCTC will be the primary contact for Caltrans.
15.2	RCTC Indemnification of Caltrans Parties. RCTC shall indemnify, hold harmless and defend Caltrans Parties from any Third-Party Claim to the extent such Third-Party Claim results from any negligent act or omission of RCTC 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.	RCTC will be the primary contact for Caltrans.
15.3	Caltrans Indemnification of RCTC Parties. Caltrans shall indemnify, hold harmless and defend RCTC Parties from any Third-Party Claims attributable to or arising out of any negligent act or omission or willful misconduct of Caltrans.	RCTC will be the primary contact for Caltrans.
15.4	Waiver of Other Indemnity Rights. Except as provided in Sections 15.2	RCTC will be the primary contact for Caltrans.

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15.5	<p>and 15.3, RCTC and Caltrans each waive any and all rights to indemnity of any kind (whether equitable, comparative, express or implied) from the Caltrans Parties and RCTC Parties, respectively, with respect to Third-Party Claims.</p> <p>Resolution of Claims When Caltrans and RCTC are Named Joint Defendants. If Caltrans and RCTC 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 RCTC, as joined defendants, shall be resolved first without consideration as to the allocation or apportionment of liability or damages between Caltrans and RCTC, 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 RCTC 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.</p>	RCTC will be the primary contact for Caltrans.
15.6	<p>Resolution of Inverse Condemnation Claims. If either Caltrans or RCTC 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 legal issues between the plaintiff(s) bringing forth the Inverse Claim and either Caltrans or RCTC, as applicable, shall be resolved first without consideration as to the allocation or apportionment of liability or damages between Caltrans and RCTC, 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 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 RCTC may refer to the dispute resolution process set forth in Section 18.6 of this Agreement the apportionment of liability or damages for the Inverse Claim between Caltrans and RCTC. Liability or damages will be apportioned based on the extent to which the Claim is found to have arisen out of RCTC's construction or operation of the Toll Facility. As respects the Initial Toll Facility, the provisions set forth in this Section 15.6 shall have no further force or effect five (5) years from the date the Initial Toll Facility is placed into operation. As respects any subsequent Phase of the Ultimate Toll Facility, this Section 15.6 shall have no further force or effect</p>	RCTC will be the primary contact for Caltrans.

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16.	<p>five (5) years after such Phase is placed into operation. 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 or OCTA 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.</p>	RCTC will be the primary contact for Caltrans.
17.1	<p>Commercial General Liability Insurance. (a) RCTC shall procure and maintain throughout the term of this Agreement comprehensive general liability insurance protecting RCTC from risks arising from RCTC's activities covered under this Agreement. Such liability insurance policy shall include coverage for bodily injury and property damage. If RCTC uses existing coverage to comply with the requirements contained in this Section 17 and that coverage does not meet these requirements, RCTC agrees to amend, supplement, or endorse the existing coverage to meet the requirements herein. (b) Caltrans shall be included as an insured under the insurance policy(ies) described in this Section 17. 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.</p>	RCTC will be the primary contact for Caltrans.
17.2	<p>(c) The insurance coverage required shall be in amount not less than \$25 million general aggregate per year. Evidence of Coverage. (a) Evidence of insurance in compliance with the requirements of this Section 17 shall be furnished to Caltrans by providing complete copies of the underlying policy(ies) of insurance in RCTC's possession, including all</p>	RCTC will be the primary contact for Caltrans.

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	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 nonpayment of premiums), to Caltrans.	
17.3	(b) Such insurance shall be issued by a company or companies authorized to transact business in the State. Denial of Coverage. If the insurance carriers for the policies of insurance described in this Section 17 deny coverage to RCTC or Caltrans with respect to any Claims reported to such carriers, Caltrans and RCTC shall cooperate in good faith to establish whether, to what extent, and how to fund the cost of contesting the denial of coverage.	RCTC will be the primary contact for Caltrans.
18.1	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 breach under this Agreement. The Party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence.	RCTC will be the primary contact for Caltrans.
18.2	Notice of Default. The non-breaching Party shall give written notice of breach to the Party in breach, specifying the alleged breach. Except as otherwise expressly provided in this Agreement, any failures or delays by either Party in asserting any of its rights or remedies as to any breach shall not operate as a waiver of any breach 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.	RCTC will be the primary contact for Caltrans.
18.3	Failure to Cure. In the event that the breaching Party fails to commence to cure, correct or remedy a breach within thirty (30) calendar days following receipt of written notice, or thereafter fails to diligently complete such cure, correction or remedy, a default 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 default.	RCTC will be the primary contact for Caltrans.

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18.4	Rights and Remedies. In the event of a default, 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. The Parties agree that, during the period in which RCTC is operating the Toll Facility, termination for default shall not be an available remedy of Caltrans. Caltrans also acknowledges that it shall not have the right to collect or retain toll revenues on account of damages or otherwise.	RCTC will be the primary contact for Caltrans.
18.5	<p>Lenders rights and remedies.</p> <p>(a) <i>Leasehold Mortgages.</i> 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 Initial Toll Facility, the Toll Facility and/or the Ultimate 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:</p> <p>(i) The provisions set forth in Section 20.2(c) of this Agreement.</p> <p>(ii) RCTC 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.</p> <p>(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</p>	RCTC will be the primary contact for Caltrans.

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		<p>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 RCTC agree that while any Leasehold Mortgage is in existence, there shall be no agreement between Caltrans and RCTC 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.</p> <p>(iv) Notwithstanding any foreclosure of any such Leasehold Mortgage, RCTC 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 RCTC.</p> <p>(b) <i>Rights and Obligations of Leasehold Mortgagees.</i> 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:</p> <p>(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 RCTC shall have failed to commence cure of the default within the specified cure period, Caltrans shall provide notice to the Leasehold Mortgagee of RCTC'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 RCTC. The Leasehold Mortgagee shall have thirty (30) days following receipt from Caltrans of the Failure to Cure Notice to commence cure of the</p>

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		<p>default, provided that prior to commencing any cure of an RCTC default, the Leasehold Mortgagee shall first provide notice to Caltrans of its intent to commence cure as permitted hereunder.</p> <p>(ii) RCTC hereby constitutes and appoints the Leasehold Mortgagee as its authorized RCTC representative and attorney-in-fact with full power, in RCTC's name, place and stead, and at RCTC'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 RCTC is in default hereunder, and fails to timely commence cure of such default, as evidenced by Caltrans' issuance of the Failure to Cure Notice.</p> <p>(iii) In the event that the default of RCTC is such that the Leasehold Mortgagee, in order to cure the default, shall be required to assume all of RCTC's rights and obligations hereunder, the Leasehold Mortgagee shall execute all documents reasonably requested by Caltrans effecting such assumption.</p> <p>(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.</p> <p>(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 RCTC do hereby consent that the Leasehold Mortgagee may be made such a party or an intervener.</p> <p>(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</p>

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	<p>the provisions of this Agreement unless and until such time as the Leasehold Mortgagee or such owner elects to assume any rights of RCTC 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 RCTC and agree to perform and observe all provisions of this Agreement as applicable to RCTC.</p> <p>(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 RCTC, Caltrans shall accept such notice and cure from the holder whose Leasehold Mortgage was the earliest to be recorded.</p> <p>(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).</p> <p>(c) Cooperation. Caltrans and RCTC 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 RCTC each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any</p>	

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18.6	<p>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 RCTC under this Agreement.</p> <p>Dispute resolution. (a) RCTC and Caltrans shall make a good faith attempt to resolve all disputes. In the case of a dispute, the following procedure shall govern:</p> <p>(1) Representatives of Caltrans and RCTC shall attempt to resolve the dispute within fifteen (15) Days, or such longer period as agreed on by the Parties.</p> <p>(2) If the representatives of Caltrans and RCTC are unable to resolve the dispute, the matter shall be referred to a senior officer of Caltrans (with authority to resolve the dispute) and to the RCTC Executive Director. The foregoing senior officers of the Parties shall attempt to resolve the dispute within fifteen (15) Days, or such longer period as agreed on by the Parties.</p> <p>(3) If the senior officer of Caltrans and the RCTC Executive Director 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 Initial Toll Facility is placed into toll operations, in an amount equal to the percentage increase in the Index as of the effective date hereof.</p> <p>(4) 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.</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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	(b) Not by way of limitation, the following provisions of this Agreement shall be specifically subject to the dispute resolution provisions set forth in this section: Section 5.5, Section 5.9 and Section 8.5.	
	(c) 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.	
19.1	Transfer of Property to Caltrans at End of Term. At the end of the term of this Agreement, including any extension terms, or upon any earlier termination of this Agreement pursuant to the terms set forth in Public Utilities Code section 130244(c)(6), all personal property of RCTC owned by RCTC and related to the Toll Facility, 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. Such property shall be transferred to Caltrans in its "as is" condition subject to all faults, liens and encumbrances.	RCTC will be the primary contact for Caltrans.
19.2	Condition of Toll Facility at End of Term. Per Public Utilities Code section 130240(g) and 130244(c)(6), the Toll Facility shall be returned to Caltrans in a condition that meets the performance and maintenance standards established by Caltrans for existing State-operated transportation facilities of substantially equivalent size, location and character. The Parties agree that, if RCTC complies with the Maintenance Standards, the Toll Facility shall be deemed to meet the performance and maintenance standards of Caltrans.	RCTC will be the primary contact for Caltrans.
19.3	Transfer of Obligations for Toll Facility to Caltrans. At the end of the term of this Agreement, including any extension terms, all maintenance and	RCTC will be the primary contact for Caltrans.

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	other obligations of RCTC shall become the responsibility of Caltrans, other than, unless otherwise agreed upon by the Parties, any then-existing financing obligations of RCTC to third parties that relate to the Toll Facility.	
19.4	Punch List. The Parties agree that a punch list, to include all outstanding maintenance and repair obligations of RCTC related to the Toll Facility, shall be developed by the Parties one (1) year prior to transfer of the Toll Facility to Caltrans. RCTC shall complete all agreed upon items on the punch list prior to the end of the term of this Agreement.	RCTC will be the primary contact for Caltrans.
19.5	Transfer of Records at End of Term. At the end of the term of this Agreement, RCTC 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 RCTC.	RCTC will be the primary contact for Caltrans.
20.1	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 RCTC'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) RCTC Approvals. Whenever RCTC'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, RCTC's consent or approval shall be deemed given if RCTC 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.	RCTC will be the primary contact for Caltrans.
20.2	Assignment of Agreement. (a) Except as provided in clause (c) below, any proposed assignment of	RCTC will be the primary contact for Caltrans.

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	<p>this Agreement to a private entity shall require Caltrans' approval, in its sole discretion. Any proposed assignment shall require three (3) months prior written notice to Caltrans. 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. RCTC 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.</p> <p>(b) Any proposed assignment of this Agreement to a public entity shall require three (3) months prior written notice to Caltrans. 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 RCTC, 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.</p> <p>(c) RCTC 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 RCTC 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.</p> <p>(d) Following any permitted assignment of this Agreement, RCTC shall be</p>	

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21.	<p>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 RCTC and agree to perform and observe all provisions of this Agreement.</p> <p>Subcontracting. RCTC 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 RCTC include the right of RCTC to subcontract for operation and/or maintenance of Toll Facility and, except as expressly set forth herein, for performance of any other obligations of RCTC under this Agreement.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
22.	<p>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.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
23.	<p>Designation of Representatives. Caltrans shall designate a Caltrans representative to represent Caltrans and RCTC shall designate an RCTC representative to represent RCTC. All communications between the two agencies shall be channeled through the designated representatives.</p>	<p>RCTC will be the primary contact for Caltrans.</p>
24.	<p>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:</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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	<p>RCTC: Riverside County Transportation Commission PO Box 12008 Riverside, CA, 92502-2208 Attn.: Michael Blomquist, Toll Program Director Fax: (951) 787-7920</p> <p>CALTRANS: California Department of Transportation 464 West Fourth Street San Bernardino, California 92401 Attn.: Deputy District Director, Traffic Operations Fax: 909-383-4138</p> <p>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.</p>	
25.	<p>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)</p>	<p>RCTC will be the primary contact for Caltrans.</p>

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	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.	
26.	Bankruptcy; Estate of the Debtor. Upon the filing, petition or application for relief of the Bankruptcy Court, RCTC agrees and stipulates that the Initial Toll Facility and/or any element of the Ultimate 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. RCTC further acknowledges that its interest in the Initial Toll Facility and/or any element of the Ultimate 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. RCTC 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.	RCTC will be the primary contact for Caltrans.
27.	Access for Maintenance or Operations Purposes. Access to any portion of the Toll Facility by Caltrans and to the General Purpose Lanes by RCTC for maintenance and/or operations purposes of either Party shall be through notice and coordination with the other Party.	RCTC will be the primary contact for Caltrans.
28.	Airspace Reserved. Airspace over any portion of the Ultimate Toll Facility is hereby expressly reserved to the Caltrans, with the exception of toll collection equipment, gantries and toll enforcement equipment.	RCTC will be the primary contact for Caltrans.
29.	Liens. RCTC agrees that under no circumstance shall RCTC allow any lien to attach to any portion of the General Purpose Lanes or to any portion of the Ultimate Toll Facility arising out of or related to the actions of RCTC 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, RCTC agrees to promptly act to remove or satisfy said lien. Satisfaction or removal may be by payment, procurement of bond or otherwise.	RCTC will be the primary contact for Caltrans.

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30.	Amendment, Repeal or Supersession. References to statutes, manuals or policies shall be deemed to incorporate any future amendment or supersession of said statutes, manuals or policies. If said statute, manual or policy 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, manual or policy, then Parties agree to meet and confer and amend the Agreement as warranted.	RCTC will be the primary contact for Caltrans.
31.	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.	RCTC will be the primary contact for Caltrans.
32.	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.	RCTC will be the primary contact for Caltrans.
33.	Amendments. This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing; 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.	RCTC will be the primary contact for Caltrans.
34.	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.	RCTC will be the primary contact for Caltrans.
35.	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.	RCTC will be the primary contact for Caltrans.
36.	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	RCTC will be the primary contact for Caltrans.

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	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.	
37.	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.	RCTC will be the primary contact for Caltrans.
38.	Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in the California Superior Court for San Bernardino County.	RCTC will be the primary contact for Caltrans.
39.	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.	RCTC will be the primary contact for Caltrans.
40.	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.	RCTC will be the primary contact for Caltrans.
41.	Memorandum of Agreement Further Assurances. RCTC 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.	RCTC will be the primary contact for Caltrans.
42.	Time of the Essence. Time is of the essence in the performance of this Agreement.	RCTC will be the primary contact for Caltrans.

TP ATTACHMENT 2-6.8 – CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF

BNSF CONSTRUCTION AND MAINTENANCE AGREEMENTS REFERENCED IN CONTRACT SECTION 6.1.7.1

<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
All		Refer to <u>TP Section 8 (Railroad Coordination)</u> and <u>Contract Section 6.1.7.1</u>

TP ATTACHMENT 2-6.9 – CPUC AUTHORIZATION

CUPC
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA APPROVAL TO [_____], AS MORE FULLY DESCRIBED IN THE APPLICATION,
ALL IN RIVERSIDE COUNTY

<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
All		Refer to <u>TP Section 8 (Railroad Coordination)</u> and the <u>Contract</u>

TP ATTACHMENT 2-6.10 – BIOLOGICAL OPINION (FEDERAL ENDANGERED SPECIES ACT, SECTION 7)

**UNITED STATES DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE
BIOLOGICAL OPINION (FEDERAL ENDANGERED SPECIES ACT, SECTION 7)**

<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
All		Refer to <u>TP Attachment 6-1 (Project Environmental Commitment Requirements)</u> and the <u>Contract</u>

TP ATTACHMENT 2-6.11 – MULTIPLE SPECIES HABITAT CONSERVATION PLAN CONSISTENCY DETERMINATION (FEDERAL ENDANGERED SPECIES ACT, SECTION 10)

**WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY
MULTIPLE SPECIES HABITAT CONSERVATION PLAN CONSISTENCY DETERMINATION (FEDERAL ENDANGERED SPECIES ACT, SECTION 10)**

<i>Agreement Reference Number</i>	<i>Agreement Term</i>	<i>Description of RCTC's Requirement</i>
All		Refer to TP Attachment 6-1 (<u>Project Environmental Commitment Requirements</u>) and the <u>Contract</u>