




COMMITTEE TRANSMITTAL

April 27, 2015

To: Members of the Board of Directors

From:  Laurena Weinert, Clerk of the Board

Subject: Project Terms and Conditions, Design-Build Cooperative Agreement, and Next Steps for the Interstate 405 Improvement Project

Regional Planning and Highways Committee Meeting of April 20, 2015

Present: Directors Bartlett, Donchak, Lalloway, Nelson, Spitzer, and Ury
Absent: Director Miller

Committee Vote

This item was passed by the Members present.

Committee Recommendations

- A. Approve terms and conditions negotiated with the California Department of Transportation that establish roles and responsibilities related to project delivery, funding and financing, operations, and the use of any net excess revenues generated by the Interstate 405 Improvement Project.
- B. Direct staff to take the following actions to implement the Interstate 405 Improvement Project.
 - 1. Develop a draft Interstate 405 Express Lanes toll policy to recommend for approval by the Board of Directors.
 - 2. Develop a financing plan to recommend for approval by the Board of Directors. As part of the financing plan, pursue financing opportunities through the Transportation Infrastructure Finance and Innovation Act, as well as other state and federal discretionary grant opportunities for the Express Lanes portion of the project.



Committee Recommendations

3. Develop an operating toll agreement with the California Department of Transportation for the Interstate 405 Express Lanes to recommend for approval by the Board of Directors.
- C. Authorize the use of \$82 million in fiscal year 2015-16 from the California Department of Transportation as a contribution to implement the Interstate 405 project preferred alternative. Authorize the use of future toll or other revenues to fund the balance, subject to the results of the investment grade traffic and revenue study and the financing plan.
- D. Direct staff to pursue approval of the Interstate 405 Improvement Project by the California Transportation Commission pursuant to applicable state statute.
- E. Direct staff to modify and issue addenda, as necessary, to the design-build request for qualifications to implement the Interstate 405 Improvement Project.
- F. Authorize the Chief Executive Officer to negotiate and execute design-build Cooperative Agreement No. C-4-1847 between the Orange County Transportation Authority and the California Department of Transportation, in the amount of \$55,400,000, for the design-build phase and to provide reimbursed construction inspection services and enhanced oversight to implement the Interstate 405 Improvement Project.
- G. Authorize the use of \$35 million in federal Regional Surface Transportation Program funds in place of Measure M2 funds for design and construction support for the Interstate 405 Improvement Project.
- H. Authorize staff to amend the Federal Transportation Improvement Program and execute all necessary agreements to facilitate the above recommendations.



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project Terms and Conditions, Design-Build Cooperative
Agreement, and Next Steps for the Interstate 405
Improvement Project**

Staff Report



April 20, 2015

To: Regional Planning and Highways Committee

From: Darrell Johnson, Chief Executive Officer

Subject: Project Terms and Conditions, Design-Build Cooperative Agreement, and Next Steps for the Interstate 405 Improvement Project

Overview

The Orange County Transportation Authority has negotiated terms and conditions with the California Department of Transportation to establish roles and responsibilities related to project delivery, funding and financing, operations, and usage of potential net excess revenues for the Interstate 405 Improvement Project. Additionally, the Orange County Transportation Authority proposes to enter into a design-build cooperative agreement with the California Department of Transportation to establish roles, responsibilities, and funding obligations for the Interstate 405 Improvement Project.

Recommendations

- A. Approve terms and conditions negotiated with the California Department of Transportation that establish roles and responsibilities related to project delivery, funding and financing, operations, and the use of any net excess revenues generated by the Interstate 405 Improvement Project.
- B. Direct staff to take the following actions to implement the Interstate 405 Improvement Project.
 1. Develop a draft Interstate 405 Express Lanes toll policy to recommend for approval by the Board of Directors.
 2. Develop a financing plan to recommend for approval by the Board of Directors. As part of the financing plan, pursue financing opportunities through the Transportation Infrastructure Finance and Innovation Act, as well as other state and federal discretionary grant opportunities for the Express Lanes portion of the project.

3. Develop an operating toll agreement with the California Department of Transportation for the Interstate 405 Express Lanes to recommend for approval by the Board of Directors.
- C. Authorize the use of \$82 million in fiscal year 2015-16 from the California Department of Transportation as a contribution to implement the Interstate 405 project preferred alternative. Authorize the use of future toll or other revenues to fund the balance, subject to the results of the investment grade traffic and revenue study and the financing plan.
- D. Direct staff to pursue approval of the Interstate 405 Improvement Project by the California Transportation Commission pursuant to applicable state statute.
- E. Direct staff to modify and issue addenda, as necessary, to the design-build request for qualifications to implement the Interstate 405 Improvement Project.
- F. Authorize the Chief Executive Officer to negotiate and execute design-build Cooperative Agreement No. C-4-1847 between the Orange County Transportation Authority and the California Department of Transportation, in the amount of \$55,400,000, for the design-build phase and to provide reimbursed construction inspection services and enhanced oversight to implement the Interstate 405 Improvement Project.
- G. Authorize the use of \$35 million in federal Regional Surface Transportation Program funds in place of Measure M2 funds for design and construction support for the Interstate 405 Improvement Project.
- H. Authorize staff to amend the Federal Transportation Improvement Program and execute all necessary agreements to facilitate the above recommendations.

Discussion

Environmental studies for Interstate 405 (I-405) improvements between State Route 73 (SR-73) and Interstate 605 (I-605) (Project) were initiated in early 2009. As part of the Project's environmental clearance process, three build alternatives, in addition to a no-build alternative, were evaluated and included in the draft environmental impact report/environmental impact statement (DEIR/EIS) circulated for comment in mid-2012 and the supplemental DEIR/EIS circulated for comment in mid-2013.

On July 25, 2014, the California Department of Transportation (Caltrans) informed the Orange County Transportation Authority (OCTA) that Alternative 3 would be the recommended Project preferred alternative. The OCTA Board of Directors (Board) directed staff to negotiate terms for a cooperative agreement with Caltrans to implement the Project preferred alternative in a two-phased approach. If a phased approach to Project implementation was utilized, OCTA would construct Phase 1, which entails adding one general purpose (GP) lane in each direction from Euclid Street to I-605, consistent with Measure M2 (M2) Project K. Caltrans would construct Phase 2, which entails adding an additional lane in each direction that would combine with the existing high-occupancy vehicle (HOV) lane to provide dual tolled express lanes in each direction on I-405 from SR-73 to I-605.

At the December 8, 2014 OCTA Board meeting, OCTA staff was directed to continue negotiating the design-build (DB) cooperative agreement with Caltrans, particularly in regards to specific right-of-way (ROW) acquisition and capital cost-sharing language. On January 8, 2015, OCTA received a letter from Caltrans informing OCTA that it did not support modifications to the ROW language in the DB cooperative agreement. Furthermore, Caltrans informed OCTA in the letter that it identified needed funding to pay for necessary acquisitions and construction of betterments required for Caltrans implementation of Phase 2 within the Phase 1 limits of the Project from Euclid Street to I-605. With this new funding commitment, Caltrans requested that OCTA's Phase 1 of the Project be implemented in a manner that would place the GP lanes infrastructure, excluding tolled express lane facilities, at the ultimate location between Euclid Street and I-605. This includes acquiring the necessary property and constructing the pavement, walls, overhead signs, drainage systems, relocated utilities, communications systems, and other facilities at the ultimate location from Euclid Street to I-605.

At the February 9, 2015 Board meeting, OCTA staff was directed to again re-engage in discussions with Caltrans on the DB cooperative agreement and return to the Board with an alternative option for OCTA to proceed as the lead agency for the full implementation of the Caltrans Project preferred alternative, including policies required for operations, management, and excess revenue use. In addition, the OCTA Chairman appointed an I-405 ad-hoc committee (Committee) of the Board to provide guidance to the Chief Executive Officer for negotiations with Caltrans. It was noted that having OCTA implement the full Project preferred alternative would fulfill the M2 promise, ensure local control, and construct the Project under a single contract, which would reduce impacts to the communities and the traveling public.

Since February 2015, the Committee has met six times and provided guidance to the Chief Executive Officer on terms and conditions during negotiations with Caltrans. The Committee has explored numerous options related to operating toll agreement terms, project delivery roles and responsibilities, funding and financing, use of excess net toll revenue, and operations and maintenance. Committee members have reviewed the hierarchy of how toll revenues would be used and potentially provide net excess revenue, have been provided information related to 91 Express Lanes policies, and discovered parameters and constraints associated with municipal debt. The Committee has also been apprised of project risks, including the risk of delay. Based on Committee feedback, a series of recommendations has been developed by staff.

Terms and Conditions

Since February 9, 2015, OCTA and Caltrans have been negotiating the Project terms and conditions to establish roles and responsibilities related to project delivery, funding and financing, operations, and the use of any net excess revenues generated by the Project. The result of those negotiations is the draft terms and conditions sheet included as Attachment A.

Draft Express Lanes Toll Policy, Financing Plan, and Operating Toll Agreement

In order to implement the Project, OCTA will need to develop a draft toll policy required to perform an investment grade traffic and revenue (T&R) study. The draft toll policy will include, among other things, assumptions on carpool and other vehicle-type exemptions, expected speed and vehicle counts, peak and off-peak period toll rates, and timing of toll rate adjustments. The T&R study will utilize the draft toll policy to forecast traffic and revenues for the express lane project. The T&R study will take approximately nine months to complete. Once the T&R is complete, OCTA will seek Board approval of the final toll policy.

Concurrently, OCTA will also be developing a financing plan for the Project that will analyze the forecasted revenues and expenditures for the term of the operating toll agreement. The data generated from the T&R study will be used to determine the optimal debt financing amount for the Project. Once completed, the financing plan will be submitted to the Board for approval. OCTA will also be exploring the possibility of obtaining a federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan. TIFIA is a federal credit

program for eligible surface transportation projects of regional or national significance under which the United States Department of Transportation may provide credit assistance. A TIFIA loan could substantially reduce the costs associated with obtaining financing for the Project.

An operating toll agreement will be required with Caltrans for the express lanes operations, collection of tolls, and for the planning and use of net excess revenue. OCTA staff will begin to negotiate that agreement based on the terms and conditions in Attachment A.

Project Approval from California Transportation Commission

Toll facility projects on the State Highway System are subject to review and approval by the California Transportation Commission (CTC). If directed by the Board, OCTA staff will prepare the documentation necessary to submit the Project to the CTC for approval.

DB Procurement

On October 27, 2014, Request for Qualifications (RFQ) 4-1595, for the design and construction of the Project through a DB contract, was released. The project description in the RFQ was generally based on Phase 1 of the Project. On December 18, 2014, four teams submitted Statements of Qualifications (SOQ). Although the procurement is still open, the qualifications ratings were not conducted and the process was put on hold in January 2015, pending Board approval of the DB cooperative agreement.

If directed by the Board, OCTA staff will update the project description, scope, and other elements of the RFQ and issue an addendum to the RFQ that allows the four teams that previously submitted an SOQ to update the SOQ via a supplement to address the full Project preferred alternative. The addendum to the RFQ will also allow new teams to submit an SOQ and propose on the Project.

DB Cooperative Agreement

OCTA proposes to enter into a DB cooperative agreement with Caltrans to define the roles and responsibilities of both agencies. The overall cost of the Project is estimated to be \$1,700,000,000, inclusive of capital costs and support costs. OCTA would be the implementing agency for all aspects of the Project, and Caltrans will provide oversight and independent quality assurance of the design and construction. Caltrans' oversight and independent quality

assurance of the Project will be at no cost to OCTA. The draft DB cooperative agreement is provided in Attachment B.

On January 1, 2014, AB 401 (Chapter 586, Statutes of 2013) became effective, enabling OCTA to construct the Project via a DB contract. One of the requirements outlined in AB 401 is for Caltrans to perform certain construction inspection oversight services. Caltrans will perform those construction inspection oversight services, and OCTA will reimburse those services as a direct project cost, up to an amount of \$43,550,000. This is referred to as “Reimbursed Direct Work” in the DB cooperative agreement.

OCTA has requested Caltrans identify specific key staff that will be committed to the Project to provide priority oversight services, assist in meeting the fast-track Project schedule, and provide cooperation, expertise, and input towards the successful delivery of the Project. These services are referred to as “enhanced oversight” services. Caltrans will perform the “enhanced oversight” services, and OCTA will reimburse those services, up to an amount of \$11,850,000. This is referred to as “Caltrans Enhanced Oversight” in the DB cooperative agreement.

The use of federal Regional Surface Transportation Program (RSTP) funds on the Project is recommended because it allows Caltrans to use a lower multiplier for the required overhead recovery rate and is consistent with OCTA’s Capital Programming Policies (CPP), which directs that the first priority for all state and federal funds is to fulfill commitments to M2020 projects. Further, the CPP directs that RSTP funds are to be used for M2020 freeway projects, grade separations, and local streets and roads projects. The RSTP funds were made available through bid savings on the Interstate 5 HOV lane extension between Avenida Pico and Avenida Vista Hermosa, and include funds previously planned to be used for the Project. As a follow up action, OCTA staff will amend the Project funding plan in the 2015 Federal Transportation Improvement Program in order to position the Project to receive the federal funds and consistent with Exhibit B - Funding Summary in the DB cooperative agreement. The Capital Funding Program, which provides a summary of programmed funds for OCTA freeway projects and is provided in Attachment C, has been updated to include \$35,000,000 in RSTP funds in place of M2 funds, \$82,000,000 in state funds, and future toll or other revenues to fund the balance, subject to the results of the investment grade traffic and revenue study and the financing plan.

Project Terms and Conditions, Design-Build Cooperative Agreement, and Next Steps for the Interstate 405 Improvement Project

Next Steps

There are several short-term and long-term steps that will be taken by OCTA staff, many of which require Board action. These next steps have been summarized in the table below and additional information can be found in the draft revised Project schedule provided in Attachment D.

Task	Date	Board Action
Record of Decision	May 2015	
Authorization to acquire ROW	May 2015	X
Award construction management contract	May 2015	X
Amend consultant agreements	Mid 2015	X
Obtain CTC approval of Project	Late 2015	
Shortlist DB teams and release DB draft request for proposals (RFP)	Late 2015	X
Develop toll policy options	2015	X
Develop investment grade T&R study	2015-2016	
Develop financing plan, including pursuing TIFIA loan	2015-2016	X
Develop operating toll agreement with state	2015-2016	X
Release DB RFP	Early 2016	X
DB award	Late 2016	X
Secure financing	2016-2017	X
DB notice to proceed	Early 2017	
Design and build Project	2017-2022	

Fiscal Impact

Funding for the Caltrans services noted in DB Cooperative Agreement No. C-4-1847 is included in OCTA's Fiscal Year 2014-15 Budget, Capital Programs Division, Account 0017-7519-FK101-0KM, and is funded with Interstate Maintenance Discretionary, M2, and RSTP funds.

Summary

Staff requests Board approval of the terms and conditions that OCTA staff has negotiated with Caltrans to establish roles and responsibilities related to project delivery, funding and financing, and operations for the Project. Staff also requests Board approval for certain activities to implement the Project preferred alternative. Additionally, staff requests Board approval for the Chief Executive Officer to negotiate and execute DB Cooperative Agreement No. C-4-1847 with Caltrans, in the amount of \$55,400,000, to provide reimbursed construction inspection services and enhanced oversight for the DB contract for the Project. The use of \$35 million in federal RSTP funds for design and construction support is recommended, consistent with Board policy, to reduce the overhead rate that is required for support of the Project.

Attachments

- A. I-405 Project Implementation (Alternative 3) Preliminary OCTA/Caltrans Agreement on Terms As of April 16, 2015
- B. Design-Build Cooperative Agreement
- C. Capital Funding Program
- D. Interstate 405 Improvement Project Draft Revised Project Schedule April 2015

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ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project Terms and Conditions, Design-Build Cooperative
Agreement, and Next Steps for the Interstate 405
Improvement Project**

Attachment A

**I-405 Project Implementation (Alternative 3)
Preliminary OCTA/Caltrans Agreement on Terms
As of
April 16, 2015**

1. Project Delivery

- a. OCTA is lead agency for procuring the design-build "db" contractor and/or toll systems integrator, as well as the provider of toll collection services for the project.
- b. Project delivery will be based on pending legislation & AB 401.
- c. Current implementation Co-Op for the db phase of the project can proceed followed by an agreement consistent with tolling authorization "Operating Toll Agreement".

2. Project Funding & Financing

- a. OCTA is responsible for developing the overall funding/financing plan for the project, including use of Measure M2 funds for the GP lanes. OCTA shall be the issuer of any indebtedness and shall be the borrower under any TIFIA loan. While OCTA is responsible for development of the overall funding/financing plan, OCTA will share information concerning the plan with Caltrans during the development process.
- b. Parties agree to seek additional State and Federal discretionary grant opportunities for the tolled portion of the project.
- c. Caltrans will provide \$82 million to be programmed in FY 2015/16 to be used towards constructing the project (Caltrans Preferred Alternative).
- d. OCTA will pursue TIFIA funding with due consideration for related requirements and project schedule considerations.
- e. Operating Toll Agreement (including tolling authority) with the state will extend a minimum of five years beyond the initial bonding period/term required for financing. If toll revenues are found to be insufficient to cover all costs for operations, maintenance, and financing requirements, and refinancing of the debt is required, the Operating Toll Agreement can be extended additional years (beyond the existing 5 years) to provide an extended financing term.

3. Operations

- a. OCTA operates or shall retain a private operator to operate the toll collection facilities.
- b. The facility to open with a HOV2+ free policy for no less than 3 years.¹
- c. Caltrans & OCTA recognize performance/operational and financial triggers will be established to switch to HOV3+ or if state implements a 3+ policy on state highways through changes to State law or through the administrative process.
- d. Parties agree there will be an exemption for ILEV's (such as customers with "green sticker".) However, customers will be required to pre-register their vehicles as is the policy on the SR 91 Express Lanes. There will be an agreed upon cap on number of such vehicles.
- e. The parties agree that 55 - 60 mph¹ is an appropriate target speed.

¹ Subject to results of the I-405 Traffic and Revenue study to be completed at a later date and further additional funding considerations.

- f. The parties agree that continuous access may be detrimental to financial and operational requirements of managed lanes based upon current technology, enforcement and safety considerations, however, consideration of continuous access should not be precluded in the future.
- g. Tolls shall be collected electronically and use congestion pricing to manage demand.
- h. OCTA decides on toll policies and agrees to toll lanes performance measures as will be outlined in the Operating Toll Agreement. The Parties agree that a goal of the Project should be to increase the Average Vehicle Occupancy of the Corridor.

4. Net Excess Revenues (after payment of O&M on the managed lanes including toll collection costs, debt service for obligations payable from tolls, funding of debt and project reserves, and required repayment of TIFIA loan)

The parties agree that development of an Expenditure Plan will be developed in partnership between each agency and consistent with the following terms below:

- a. The Parties shall develop a multiyear expenditure plan for use of Net Excess Revenues within the Corridor. This expenditure plan shall cover a period of either ten years or the full term of all financing used to construct or repair any portion of the toll facility project, whichever is longer. The Expenditure Plan shall be updated annually.
 - i. OCTA's Board of Directors shall review and adopt the expenditure plan and each update.
- b. Net Excess Revenues shall be used for projects that maintain or improve the safety, operation, or travel reliability of any transportation mode in the corridor, or provide or improve travel options in the corridor.
- c. General Purpose lanes capital and preventive maintenance and operational improvements are eligible expense and will be included in the annual Expenditure Plan in compliance with Federal law.
- d. The use of net excess revenue to pay for projects in the Expenditure Plan will not result in reducing SHOPP funds targets available to the County.
- e. Similar to the SR 91 Express Lanes, the Parties agree that OCTA will be responsible for implementing all projects required for the operation and maintenance of the Project tolled express lanes and associated toll collection facilities. Caltrans will be responsible for implementing non-toll related projects on the State Highway System that are funded from Net Excess Toll revenue.



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project Terms and Conditions, Design-Build Cooperative
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Improvement Project**

Attachment B

12-ORA-405 PM 12.1/23.9
12-ORA-22 PM R0.7/R1.0 / 12-ORA-22 PM R0.6/R0.7
EA: 0H100, ID 12 0000 0180
District Agreement No. 12-697
OCTA Agreement No. C-4-1847

DESIGN-BUILD COOPERATIVE AGREEMENT

This Agreement (AGREEMENT), entered into and effective on _____, 2015 (“Effective Date”), is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “CALTRANS”, and;

ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity, referred to herein as “OCTA.”

RECITALS

1. CALTRANS and OCTA (collectively referred to as “PARTIES” and each singularly referred to as “PARTY”) are authorized to enter into a cooperative agreement for improvements to the State Highway System (SHS) pursuant to California Streets and Highway Code Sections 114 and 130 and Public Contract Code section 6821, subdivision (b).
2. CALTRANS is a public agency authorized under sections 90, 91.2, 100.1, 116 and 143 of the Streets and Highways Code; section 14030 of the Government Code as well as section 6820 *et seq.* of the Public Contract Code to take steps to relieve congestion on California transportation systems, including the Interstate 405 (I-405) corridor in the County of Orange, through DESIGN-BUILD delivery.
3. OCTA is a public agency which is authorized under Public Utilities Code sections 130000, *et seq.*, Streets and Highways Code section 143 and Public Contract Code section 6820 *et seq.*, to take steps to relieve congestion on California transportation systems, including the I-405 corridor in the County of Orange, through DESIGN-BUILD delivery.
4. Subject to environmental clearance under both California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA), project improvements are to widen both northbound and southbound directions of I-405 in Orange County. The project limits extend on the I-405 from 0.2-mile south of Bristol Street (12-ORA-405 Post Mile [PM] 9.3) to the Orange County/Los Angeles county line (12-ORA-405 PM 24.2) and in Los Angeles County from the county line (07-LA-405 PM 0.00) to 1.4 miles north of I-605 (07-LA-405 PM 1.2). Improvements are proposed on SR-22 West in Orange County from 0.2-mile west of I-605 (12-ORA-22 PM R0.5) to I-405 (12-ORA-22 PM R0.7) and on SR-22 East in Orange County from I-405 (12-ORA-22 PM R0.7) to 0.2-mile east of the Beach Boulevard Undercrossing (12-ORA-22 PM R3.8). Improvements on SR-73 will be from the Bear Street Overcrossing (12-ORA-73 PM R27.2) to I-405 (12-ORA-73 PM R27.8). Improvements on I-605 in Orange County will be from I-405 (12-ORA-605 PM 3.5) to the county line (12-ORA-605 PM R1.6) and in Los Angeles County from the county line (07-LA-605 PM R0.0) to 0.9-mile north of the Spring Street Overcrossing (07-LA-605 PM R1.2). The project improvements will be from hereinafter referred to as the PROJECT, and are depicted in Exhibit A.
5. Pursuant to Public Contract Code section 6821 (b), the PARTIES desire to enter into this AGREEMENT which sets forth the roles and responsibilities of the PARTIES as they relate to the design and construction of the PROJECT.

6. The PROJECT is included in the class of the design-build projects identified in Public Contract Code section 6821(b).
7. The following PROJECT COMPONENTS of this PROJECT have been completed or are in progress:
 - a. OCTA developed the **PA&ED (Project Approval and Environmental Document)** (Cooperative agreement No. 12-0594).
 - b. OCTA developed the **PS&E (Plans, Specifications, and Estimate) and early Right of Way activities** (Cooperative agreement No. 12-670).
8. All responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENTS referred to hereinafter as OBLIGATIONS include the procurement, design, and construction of the PROJECT using the DESIGN-BUILD delivery method.
9. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT, under which they will accomplish OBLIGATIONS.
10. This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTIES regarding the PROJECT. If there is a direct conflict between this AGREEMENT and any prior agreement, the terms of this AGREEMENT shall prevail.
11. The award of the DESIGN-BUILD contract is contingent on a mutually agreeable financial plan for the PROJECT.
12. In this AGREEMENT capitalized words represent either defined terms or acronyms.
13. The DESIGN-BUILD procurement method is anticipated to be a key component of making the PROJECT viable from a financial perspective by providing for schedule acceleration, innovation, risk transfer, cost certainty, and other anticipated benefits. With the execution of this AGREEMENT, CALTRANS and OCTA agree that DESIGN-BUILD is the method of procurement to be used for implementation of the PROJECT.
14. CALTRANS and OCTA will define the terms and conditions under which the PROJECT is to be developed, designed, and constructed consistent with CALTRANS' technical and legal standards, policies and procedures for implementation of DESIGN-BUILD projects on the SHS and such standards are reflected in the CONTRACT DOCUMENTS.
15. Except for the EXPRESS LANES FACILITY and except as otherwise agreed to by both PARTIES, CALTRANS and OCTA agree and understand that, upon acceptance of the PROJECT FACILITIES by CALTRANS, such facilities shall become part of the SHS and the PROJECT FACILITIES shall be operated and maintained by CALTRANS, except for those facilities that would be operated and maintained by other agencies, such as the Orange County Flood Control District.
16. OCTA is the only SPONSOR for the PROJECT and agrees to fund the PROJECT costs, as summarized in the attached Exhibit B, FUNDING SUMMARY, and as further set forth herein.
17. OCTA is the IMPLEMENTING AGENCY for the PROJECT and requests CALTRANS to perform REIMBURSED DIRECT WORK that includes CONSTRUCTION INSPECTION SERVICES. CALTRANS will also provide CALTRANS ENHANCED OVERSIGHT. REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT are set forth in Exhibit D, ESTIMATED MAXIMUM PAYMENT OBLIGATION.
18. OCTA is the FUNDING PARTY, for the PROJECT and the PROJECT costs are summarized in the attached Exhibit B, "FUNDING SUMMARY," and as further set forth herein.

19. CALTRANS is the FUNDING PARTY for construction capital and right of way costs for BETTERMENTS and in addition, is contributing \$82 million for PROJECT construction capital and right of way costs ("CALTRANS CONTRIBUTION").
20. CALTRANS is the NEPA and CEQA lead agency for PROJECT.
21. OCTA is a CEQA Responsible Agency for PROJECT.
22. CALTRANS will provide CALTRANS OVERSIGHT at no cost to OCTA, for the portions of the PROJECT work within existing and proposed SHS right-of-way.

DEFINITIONS

For the purposes of this AGREEMENT, the following terms shall have the meanings hereinafter provided:

23. **BETTERMENTS** – As used herein, the term “BETTERMENTS” shall refer to any improvements which are not part of the PROJECT scope and which are requested by CALTRANS for inclusion as part of PROJECT, and which are to be paid for solely by CALTRANS. A CHANGE IN LAW as defined herein or changes in safety standards that apply to PROJECT shall not constitute a BETTERMENT, unless the cost of such a change is attributable to a BETTERMENT. If mutually agreed to by both PARTIES, OCTA agrees that BETTERMENTS will be included in the PROJECT scope as requested by CALTRANS.
24. **CALTRANS ENHANCED OVERSIGHT** - As used herein, the term “CALTRANS ENHANCED OVERSIGHT” shall mean and refer to CALTRANS OVERSIGHT provided by CALTRANS personnel or consultants who are solely dedicated to the PROJECT. It is understood and agreed that CALTRANS ENHANCED OVERSIGHT activities are for the benefit of the PROJECT to assure timely response and action for required CALTRANS approvals. CALTRANS ENHANCED OVERSIGHT will be paid by the OCTA as shown in Exhibit D.
25. **CALTRANS OVERSIGHT** - As used herein, the term "CALTRANS OVERSIGHT" shall mean and refer to activities performed by CALTRANS, in its sole discretion, to assure and verify, as needed, the PROJECT implementation by OCTA is compliant with applicable standards, laws, regulations and policies, and which shall be performed at CALTRANS's sole cost and expense. It is understood and agreed that CALTRANS OVERSIGHT activities are for the benefit of CALTRANS, as the owner and operator of the SHS only, and shall not constitute acceptance, approval or ratification of any work or process. CALTRANS OVERSIGHT does not include any REIMBURSED DIRECT WORK or CALTRANS ENHANCED OVERSIGHT.
26. **CALTRANS STANDARDS** - As used herein, the term "CALTRANS STANDARDS" shall mean and refer to those CALTRANS documents including the FHWA STANDARDS, Caltrans Standard Specifications; Caltrans Standard Plans; the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>; Caltrans manuals (including but not limited to the Right of Way Manual, Construction Manual, Highway Design Manual, Local Assistance Manual, California Manual on Uniform Transportation Control Devices, etc.); technical memoranda; standards; practices; guidelines and modifications to such standards that are set forth in or expressly incorporated into the CONTRACT DOCUMENTS and in effect as of the date of issuance of the final addendum to the RFP.
27. **CHANGE IN LAW** – As used herein, the term “CHANGE IN LAW” shall mean (a) the adoption of any Law of the State at any point after the date that corresponds to the date 30 days prior to the proposal submission date, (b) any change in any Law of the State or in the interpretation or

application thereof by any governmental entity of the State after 30 days prior to the proposal submission date, or (c) any change in the Adjustment Standards applicable to a Utility Adjustment after 30 days prior to the proposal submission date, in each case that is materially inconsistent with Laws or Adjustment Standards, respectively, in effect 30 days prior to the proposal submission date; excluding, however, (i) any change in or new Law of the State passed or adopted but not yet effective as of 30 days prior to the proposal submission date, (ii) any change in the standards that qualifies as a Betterment, (iii) any change in State labor Laws, and (iv) any change in State tax Laws of general application.

28. **COMPLETION OF WORK** - As used herein, the term "COMPLETION OF WORK," shall mean that the PARTIES have met all scope, cost, and schedule commitments included in this AGREEMENT and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.
29. **CONTRACT DOCUMENTS** - As used herein, the term "CONTRACT DOCUMENTS" shall mean and refer to the set of contractually binding documents between OCTA and its DESIGN-BUILDER, as approved by CALTRANS and the Federal Highway Administration (FHWA).
30. **CONTRACT INDEPENDENT ASSURANCE TESTING** - As used herein, the term "CONTRACT INDEPENDENT ASSURANCE TESTING" shall mean and refer to the activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the PROJECT to accept the DESIGN-BUILDER's work. Test procedures used in CALTRANS' laboratory are not included.
31. **CONSTRUCTION INSPECTION SERVICES** - As used herein, the term "CONSTRUCTION INSPECTION SERVICES" as specified in Streets and Highways code section 91.2(a) includes but is not limited to material source testing, certification testing, surveying, monitoring of environmental compliance, independent quality control testing and inspection, and quality assurance audits, inspections of the component materials at the time of placement or installations, as well as the workmanship and quality of the finished products. CONSTRUCTION INSPECTION SERVICES does not include surveying work performed as part of the DESIGN-BUILD contract.
32. **COOPERATIVE AGREEMENT CLOSURE STATEMENT** - As used herein, the term "COOPERATIVE AGREEMENT CLOSURE STATEMENT" shall mean and refer to the document that verifies the completion of all scope, cost, and schedule commitments included in this AGREEMENT. A sample document is attached hereto as Exhibit F.
33. **DESIGN-BUILD** - As used herein, the term "DESIGN-BUILD" shall mean and refer to a project delivery process in which both the final design and construction of a project are procured from a single entity.
34. **DESIGN-BUILDER** - The proposer (or single purpose entity, if any,) who is selected by OCTA as offering the Best Value Proposal and who thereafter executes the contract with OCTA to deliver the final design and construction for the PROJECT.
35. **ESTIMATED MAXIMUM PAYMENT OBLIGATION** - As used herein, the term "ESTIMATED MAXIMUM PAYMENT OBLIGATION" refers to the total cost of REIMBURSED DIRECT WORK, and CALTRANS ENHANCED OVERSIGHT up to the estimated maximum amount as set forth in Exhibit D. It is agreed that CALTRANS has no obligation to provide REIMBURSED DIRECT WORK and/or CALTRANS ENHANCED OVERSIGHT beyond the ESTIMATED MAXIMUM PAYMENT OBLIGATION reflected in Exhibit D, unless otherwise agreed to in writing by the PARTIES.
36. **EXPRESS LANES FACILITY** – The four high-occupancy toll lanes, two in each direction, and related equipment and facilities that will constructed as part of the PROJECT.
37. **FHWA STANDARDS** - As used herein, the term "FHWA STANDARDS" shall mean and refer to FHWA manuals, technical memoranda, standards, guidelines, and modifications to such standards

that are in effect as of the date of issuance of the final addendum to the RFP.

38. **FUNDING PARTY(IES)** – A PARTY, designated in the FUNDING SUMMARY, that commits a defined dollar amount to fulfill OBLIGATIONS. If a PROJECT has more than one funding PARTY, then funding adjustments will be made by percentage.
39. **FUNDING SUMMARY** – As used herein, the term “FUNDING SUMMARY” refers to the table that lists a FUNDING PARTY(IES) and the source of funds being used by each PARTY towards PROJECT COMPONENT(S) in which funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTY, unless an amendment to this AGREEMENT is executed.
40. **HM-1** - As used herein, the term "HM-1" shall mean and refer to 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 the PROJECT or not.
41. **HM-2** - As used herein, the term "HM-2" shall mean and refer to 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 the PROJECT.
42. **HM MANAGEMENT ACTIVITIES** – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.
43. **IMPLEMENTING AGENCY** – The PARTY(IES) responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.
44. **ITS** - As used herein, the term "ITS" shall mean and refer to Intelligent Transportation Systems incorporated in the PROJECT.
45. **OBLIGATIONS** – All responsibilities included in this AGREEMENT.
46. **PROJECT** - Defined in Recitals
47. **PROJECT COMPONENT** – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b). Project Components have been identified below:
 - a. **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT. **(D.30)**
 - b. **PA&ED (Project Approval and Environmental Document)** –The activities required to deliver the project approval and environmental documentation for PROJECT.
 - c. **PS&E (Plans, Specifications, and Estimate)** –The activities required to deliver the plans, specifications, and estimate for the PROJECT.
 - d. **R/W (Right of Way) SUPPORT** –The activities required to obtain all property interests for the PROJECT.
 - e. **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for the PROJECT.
 - f. **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for the PROJECT.
 - g. **CONSTRUCTION CAPITAL** – The funds for the DESIGN BUILD contract.
48. **PROJECT FACILITIES** - As used herein, the term “PROJECT FACILITIES” shall mean and refer to the PROJECT improvements as depicted in Exhibit A.
49. **PROJECT MANAGEMENT PLAN** – The Project Management Plan shall be prepared by OCTA and shall include but not be limited to, procedures for establishing and maintaining lines of authority, coordination and communication, schedule and cost control, reporting, document

control and record keeping, tracking milestone deliverables, safety, and public communications.

50. **QUALITY MANAGEMENT PLAN** - As used herein, the “QUALITY MANAGEMENT PLAN” shall mean and refer to the plan prepared by the Design-Builder, which is submitted to the OCTA for approval, and to CALTRANS for concurrence. The QUALITY MANAGEMENT PLAN shall establish the Design-Builder’s procedures for quality control, and quality validation.”
51. **QUALITY MANAGEMENT PROGRAM** - As used herein, the term " QUALITY MANAGEMENT PROGRAM" shall mean and refer to the quality plans developed by OCTA and the DESIGN-BUILDER to provide quality assurance, which includes quality control, quality validation, and quality verification of conformance with the CONTRACT DOCUMENTS.
52. **REIMBURSED DIRECT WORK** - As used herein, the term "REIMBURSED DIRECT WORK" shall mean and refer to work to be performed by CALTRANS and reimbursed by OCTA, up to the ESTIMATED MAXIMUM PAYMENT OBLIGATION as set forth in SECTION I, of this AGREEMENT, including, CONSTRUCTION INSPECTION SERVICES, and mutually agreed CALTRANS personnel or consultants solely dedicated to the PROJECT all as further set forth in Exhibit D, or as agreed upon in writing by OCTA and CALTRANS.
53. **RELIEF OF MAINTENANCE** - As used herein, the term "RELIEF OF MAINTENANCE," shall mean and refer to the point at which CALTRANS will grant the PROJECT "Maintenance and Protection Relief," as allowed in the applicable Caltrans Construction Manual, and as may further be set forth in the CONTRACT DOCUMENTS and as otherwise agreed to by the PARTIES.
54. **REQUEST FOR PROPOSALS or RFP** - As used herein, the term "REQUEST FOR PROPOSALS" or "RFP" shall mean and refer to the Request for Proposals, and all associated documents, issued by OCTA for the procurement of the DESIGN-BUILDER for the PROJECT.
55. **REQUEST FOR QUALIFICATIONS or RFQ** – As used herein, the term “REQUEST FOR QUALIFICATIONS” or “RFQ” shall mean and refer to the Request for Qualifications, and all associated documents, issued by OCTA for the short-listing of the proposers for the PROJECT.
56. **SCOPE OF WORK** -The term "SCOPE OF WORK" shall mean and refer to the document included in the relevant contractor or consultant contract that details the services and work to be performed under such contract.
57. **SHS (State Highway System)** – All highways, right-of-way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.
58. **SPONSOR** –Any PARTY that accepts the responsibility to establish scope of the PROJECT and the obligation to secure financial resources to fund the PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope.
59. **STATE FURNISHED MATERIALS or SFMs** - As used herein, the term "SFM" shall mean and refer to material for the PROJECT to be provided by CALTRANS, at OCTA's request, for which OCTA will reimburse CALTRANS.

SECTION I

OCTA ROLES AND RESPONSIBILITIES

OCTA shall have the following roles and responsibilities:

60. OCTA will procure, advertise, award, and administer the DESIGN-BUILD contract provided that CONTRACT DOCUMENTS will be developed by OCTA in compliance with CALTRANS’ regulatory and statutory procurement and contracting authority for design-build procurements on

the SHS. Furthermore, the PARTIES agree CALTRANS shall not be considered to have privity with the DESIGN-BUILDER and the CONTRACT DOCUMENTS shall reflect the fact that no contractual relationship is to be created between the DESIGN-BUILDER and CALTRANS.

61. It is understood by the PARTIES that prior to the Effective Date of this AGREEMENT, OCTA has selected and retained certain consultants to work on the PROJECT.
62. To carry out the PROJECT with OCTA forces, consultants and contractors, except as otherwise required by Streets and Highways Code section 91.2. If approved, the PROJECT will be implemented in accordance with all CALTRANS STANDARDS; the approved Final Environmental Impact Statement (EIS)/Environmental Impact Report (EIR); the Record of Decision; the Environmental Commitments Record; the approved Final Project Report; all permit conditions; all applicable Federal and State laws and regulations; as well as compliance with the applicable FHWA STANDARDS.
63. Except for BETTERMENTS and the CALTRANS CONTRIBUTION, to be responsible for one hundred percent (100%) of all PROJECT construction capital, right-of-way capital, and support costs, and for the REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT up to the estimated maximum amount as set forth in Exhibit D (ESTIMATED MAXIMUM PAYMENT OBLIGATION), and for SFM, Exhibit E (STATE FURNISHED MATERIAL) requested by OCTA, and in accordance with this AGREEMENT.
64. The total OCTA contribution towards the PROJECT cost estimate is shown on the FUNDING SUMMARY attached hereto and made a part of this AGREEMENT.
65. The PARTIES agree that all of the 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 and clearances under both CEQA and NEPA and the approval of the proposed PROJECT.
66. To be responsible for one hundred percent (100%) of REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT performed for the PROJECT as of the date of the issuance of the Notice to Proceed (NTP) to the DESIGN-BUILDER by OCTA, except for CALTRANS ENHANCED OVERSIGHT for CALTRANS right-of-way oversight. CALTRANS ENHANCED OVERSIGHT for right-of-way services will begin when it is mutually agreed to by PARTIES that CALTRANS participation is required for concurrence or approval of right-of-way activities.
67. OCTA may perform DESIGN-BUILD procurement work at OCTA's sole risk and cost prior to completion of the CEQA and NEPA process and project approval.
68. OCTA will implement the PROJECT in accordance with applicable CALTRANS STANDARDS, except as the same may be modified, subject to CALTRANS' written approval, in the approved CONTRACT DOCUMENTS. OCTA will coordinate with CALTRANS during development of the CONTRACT DOCUMENTS, and CALTRANS shall be afforded the opportunity to review, comment and, if appropriate, approve the CONTRACT DOCUMENTS in accordance with the terms of this AGREEMENT.
69. That, as of the Effective Date of this AGREEMENT, CALTRANS has participated in the selection of OCTA's consultants and contractors who will implement the PROJECT. CALTRANS recognizes that OCTA has, prior to the Effective Date of this AGREEMENT, selected and retained certain consultants to work on the PROJECT. OCTA agrees, at the request of CALTRANS, to consider discontinuing the services of any personnel considered by CALTRANS to be unqualified based on credentials, professional expertise, conflict or failure to perform in accordance with the SCOPE OF WORK and/or other pertinent criteria.

70. As the ultimate owner of the facility, the State of California will be named as the intended third party beneficiary in the CONTRACT DOCUMENTS. The CONTRACT DOCUMENTS will include a provision granting CALTRANS, in addition to OCTA, the right to pursue all legal remedies against the contractor for any "latent deficiency" or injury to property arising out of such latent deficiency pursuant to California Code of Civil Procedure section 337.15 (b), and shall amend any contrary provision contained in the CALTRANS STANDARDS.
71. To require the DESIGN-BUILDER to maintain applicable insurance coverage in accordance with CALTRANS' insurance requirements for DESIGN-BUILD projects on the SHS. Such insurance requirements shall include but not be limited to maintaining professional liability insurance through completion and acceptance of construction of the PROJECT and the resolution of all construction contract claims and/or litigation. If an Owner Control Insurance Program (OCIP) is proposed, to have an OCIP Feasibility Study prepared to commercially accepted insurance standards, which are subject to approval by CALTRANS. OCTA's DESIGN-BUILDER shall maintain in full force, until completion and acceptance of all phase or elements of the DESIGN-BUILD contract for the PROJECT, a policy of Contractual Liability Insurance, including coverage for Bodily Injury Liability and Property Damage Liability, including inverse condemnation 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 CALTRANS, all of which shall be delivered to CALTRANS before the issuance of an encroachment permit to OCTA's DESIGN-BUILDER or any other consultant or agent of OCTA.
72. To be responsible for the implementation of the Environmental Commitments Record to be prepared by CALTRANS associated with the Final EIS/EIR; the Record of Decision; and the terms of any required permit, agreement, or approval process for the PROJECT. OCTA, its consultant or DESIGN-BUILDER shall submit progress reports, per CALTRANS and FHWA guidelines, to CALTRANS for review and approval. As set forth in the Final EIS/EIR, and although CALTRANS is the lead agency with respect to environmental documentation, OCTA agrees and warrants it shall comply, or cause its DESIGN-BUILDER to comply, with all mitigation measures associated with the PROJECT, including the terms and conditions of the environmental documentation and any required permits, agreements and approvals as those terms and conditions apply to CALTRANS' and OCTA's responsibilities as set forth in this AGREEMENT and shall provide and certify a final Environmental Commitments Record and Certificate of Environmental Compliance at the completion of the PROJECT.
73. To prepare and submit to CALTRANS and FHWA "Major Project Deliverables," including, but not limited to, the PROJECT MANAGEMENT PLAN, financial plan and cost estimate review. The Major Project Deliverables shall be prepared in accordance with FHWA guidelines.
74. To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred by OCTA, including support data for cost proposals (to the extent received from contractors), and make such materials available at the respective offices of OCTA and its consultants and contractors at all reasonable times during the contract period and for three years from the date of COMPLETION OF WORK or Federal Final Voucher, whichever is later. CALTRANS, FHWA, or their respective representatives shall have access to any books, records, and documents of OCTA 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, all right-of-way documents, documents, plans, specifications and estimates, including but not limited to Resident Engineer memos and estimates backups, produced for delivery to CALTRANS as part of the PROJECT will automatically be vested in CALTRANS and no further agreement will be necessary to transfer ownership to CALTRANS.

75. To furnish CALTRANS, prior to commencing work on DESIGN-BUILD activities, a proposed time schedule to complete the PROJECT.
76. To have the release for construction design documents and drawings of structural, mechanical, electrical, civil, architectural, or other engineering features of the PROJECT prepared by or under the direction of engineers or architects registered and licensed in 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.
77. To not specify any materials or equipment of single or sole source origin in the RFP or the PROJECT requirements unless OCTA complies with the requirements set forth in Public Contract Code Section 3400(c).
78. To ensure the PROJECT deliverables are subject to approval in accordance with the QUALITY MANAGEMENT PROGRAM prior to submittal to CALTRANS for review. All project submittals, once deemed complete as defined in the CONTRACT DOCUMENTS, shall be provided to CALTRANS for review, comment and approval, or concurrence as appropriate.
79. To notify CALTRANS 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, Record of Decision or Project Report. Said notification shall occur within two business days of when the deviation(s) has been discovered by OCTA or determined to be necessary, whichever occurs first in time.
80. To obtain approval of contract change orders (CCOs) from CALTRANS and FHWA when the CCO exceeds \$200,000, and for all major changes as defined in the CALTRANS STANDARDS, prior to implementing the change order, except as the same may be modified in the CONTRACT DOCUMENTS, subject to CALTRANS and FHWA prior written approval.
81. 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 the PROJECT environmental compliance and to submit said documentation to CALTRANS for review, comment and, if appropriate, approval. CALTRANS shall retain the final authority to determine the level of any subsequent environmental document.
82. Further, if changes to the PROJECT warrant preparation of a Supplemental or Subsequent EIS/EIR, OCTA will prepare or cause to be prepared the Supplemental or Subsequent environmental document and, CALTRANS as CEQA and NEPA lead agency, will review and, if appropriate, certify and/or approve the Supplemental or Subsequent environmental document. All noticing and circulation and other procedural responsibilities will be carried out as set forth for the original EIS/EIR in Cooperative Agreement No. 12-594 and all subsequent Amendments to that agreement.
83. To perform all right-of-way activities, including the exercise of OCTA's authority under Chapter 4 of Division 12 of the California Public Utilities Code applicable to the PROJECT. All such activities shall be in compliance with applicable state and federal laws and regulations, and applicable FHWA STANDARDS and STATE STANDARDS, unless otherwise approved by CALTRANS, subject to CALTRANS OVERSIGHT under this AGREEMENT to ensure that the acquired interests in real property are acceptable for incorporation into the SHS right-of-way. CALTRANS shall approve the terms of any acquisition which commits CALTRANS to long term maintenance obligations.
84. Right-of-way will not be acquired using eminent domain power until Final EIR/EIS is approved and a Record of Decision is issued. Should any environmental permits, licenses, agreements, or certifications be needed for the right-of-way acquisition, those will be obtained prior to acquisition. Any early right-of-way will be acquired in accordance with 23 CFR 710.503 and

CALTRANS Alternatives for Right-of-way Acquisition memo dated July 18, 2007.

85. To transfer title to the properties incorporated into the SHS right-of-way in a manner acceptable to CALTRANS in fee simple absolute and free and clear of all liens, claims or encumbrances except as approved in writing by CALTRANS. Acceptance of said title by CALTRANS 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.
86. OCTA shall provide right-of-way segment certification prior to the PROJECT construction for CALTRANS and FHWA review, concurrence and/or approval.
87. OCTA shall maintain and manage any excess land created or acquired as a result of the PROJECT construction in a manner acceptable to CALTRANS. OCTA will dispose of all excess land prior to OBLIGATION COMPLETION. Funds (net proceeds after accounting for OCTA's expenses as well as closing cost paid through escrow) received by OCTA resulting from the sale of excess land owned by CALTRANS or paid for using State funds will be returned to State. In the event excess land is paid for with a combination of local and State funds, the amount returned to the State shall be in proportion to the relative share of State funds used for the purchase of excess land.
88. 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.
89. To be responsible for performing, 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 CALTRANS STANDARDS, except where modified in the CONTRACT DOCUMENTS. This work includes, but is not limited to:
 - a. 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;
 - b. the survey and establishment of existing SHS right-of-way lines and monumentation thereof;
 - c. the preservation of existing monumentation threatened by construction;
 - d. the survey, establishment and monumentation of new SHS right-of-way lines and re-monumentation of points destroyed by construction because of the PROJECT.
90. To identify and locate all high and low risk underground facilities within the area of the PROJECT and to protect or otherwise provide for such facilities, all in accordance with applicable law, CALTRANS Right of Way Manual Chapter 13, and the procedures set forth in CALTRANS' policy on high and low risk underground facilities.
91. If existing public and/or private utilities conflict with construction of the PROJECT, OCTA 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. OCTA shall require any utility owner performing the protection or relocation work within SHS right-of-way to obtain an encroachment permit from CALTRANS prior to the performance of said work. Any relocated or new utilities shall be shown and identified on the As-Built plans.
92. In causing any utility, as defined in the Utility Relocation Law, to relocate or rearrange its utility facilities, OCTA will comply with the requirements of Division 1, Chapter 3, Article 2.5 of the Streets and Highways Code, sections 700 et seq. ("Utility Relocation Law") or as applicable, any existing CALTRANS Utility Master Agreements of record.

93. To furnish evidence to CALTRANS, in a form reasonably acceptable to CALTRANS, 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.
94. To be responsible for the investigation of potential hazardous material sites within and outside of the existing SHS right-of-way that would impact the PROJECT as part of OCTA responsibility for the PROJECT Environmental Document. If OCTA 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, OCTA shall immediately notify CALTRANS and responsible control agencies of such discovery.
95. To procure the DESIGN-BUILD contract for the PROJECT in accordance with all applicable laws, and in a manner consistent with the authorization for the PROJECT as provided for in Public Contract Code sections 6820 et seq.
96. If the work performed on the PROJECT is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771, OCTA must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. OCTA agrees to include prevailing wage requirements in its contracts for public work. Work performed by OCTA'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

OCTA shall require its contractors to include prevailing wage requirements in accordance with the CONTRACT DOCUMENTS in all subcontracts funded by this AGREEMENT when the work to be performed by the subcontractor is a "public work" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

Subcontracts shall include all applicable prevailing wage requirements. OCTA shall obtain applicable wage rates from the California Department of Industrial Relations.

97. To utilize CALTRANS, a qualified CALTRANS-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.
98. To apply for and obtain encroachment permits for required work within SHS right-of-way in accordance with CALTRANS 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 the PROJECT. No mitigation commitments within SHS right-of-way for regulatory agency permits should be made without CALTRANS concurrence. In the event that railroads are involved, OCTA will coordinate with the railroad and the California Public Utilities Commission to obtain needed approvals. Any railroad or California Public Utilities Commission approvals which involve long term maintenance, structures maintenance, access rights to the SHS or other terms must be approved by CALTRANS. Copies of all permits obtained for the PROJECT shall be submitted to CALTRANS. The Quality Management Plan to be prepared by the DESIGN-BUILDER, or if applicable, OCTA or its consultants Quality Management Plan, is to be submitted to CALTRANS for review and concurrence prior to issuance of encroachment permits for construction, in accordance with the CONTRACT DOCUMENTS.
99. That in recognition that the PROJECT construction work done on the SHS right-of-way will not be directly funded and paid for by CALTRANS, for the purpose of protecting stop notice claimants and the interests of CALTRANS relative to the successful completion of the PROJECT, OCTA shall require the DESIGN-BUILDER to furnish both a payment and performance bond, issued by a

California admitted surety naming OCTA 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 CALTRANS. OCTA shall defend, indemnify, and hold harmless the State of California and all its officers and employees from all claims by stop notice claimants related to the construction of the PROJECT under the payment bond or otherwise.

100. That all surveying and mapping work affecting the existing or proposed SHS right-of-way in the PROJECT area shall be in accordance with the instructions and procedures contained in the Caltrans, District 12 R/W Engineering Requirements for the Preparation of Documents and Maps, herein after referred to as 'REQUIREMENTS', published by Caltrans, District 12, R/W Engineering (D12 RWE), which by this reference is incorporated into this document and made a part hereof. A copy of the REQUIREMENTS can be obtained from the Chief of D12RWE. Work shall not be considered complete until the Chief of D12RWE has approved the work for inclusion into D12RWE files, except as the same may be modified in the CONTRACT DOCUMENTS. If readily available, OCTA agrees to use primary horizontal and vertical survey control information provided by CALTRANS in developing the survey control for the PROJECT. The instructions and procedures may be changed if agreed to by PARTIES and written authorization is provided by CALTRANS.
101. To submit for CALTRANS approval, a draft Transportation Management Plan (TMP) for the PROJECT, which shall comply with the CALTRANS TMP guidelines and any commitments in the environmental documents for the PROJECT. The final TMP will be prepared by the DESIGN-BUILDER during the PROJECT design. OCTA shall provide the final TMP to CALTRANS for review and approval in accordance with the CONTRACT DOCUMENTS and the PROJECT timelines and schedules.
102. To furnish, as a PROJECT expense and subject to the approval of CALTRANS, 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-BUILDER or any related entity.
103. As a PROJECT expense, to furnish qualified support staff to assist the Resident Engineer with contract administration, and other 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 OCTA activities shall be independent of the DESIGN-BUILDER and shall not be an employee or agent of any related entity.
104. As a PROJECT expense, to provide a Safety Engineer/Manager whose responsibility includes but is not limited to , auditing the DESIGN-BUILDER for compliance with any PROJECT safety plans, Occupational Safety and Health Administration (OSHA) requirements and CALTRANS, OCTA, and local jurisdiction requirements set forth in the CONTRACT DOCUMENTS.
105. Prior to Final Acceptance, as that term is defined in the CONTRACT DOCUMENTS, to furnish CALTRANS with a complete set of pre-approved design plans depicting the proposed construction of the PROJECT; a complete set of "As-Built" plans and all CALTRANS 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, consistent with the format used by CALTRANS as of the date of issuance of the final addendum RFP.
106. To be responsible for maintenance and repair of the PROJECT FACILITIES located within the designated PROJECT SHS right-of- way upon the issuance by CALTRANS of an encroachment permit to the DESIGN-BUILDER. OCTA shall be responsible for such maintenance and repair of the PROJECT FACILITIES until RELIEF OF MAINTENANCE is granted by CALTRANS for the PROJECT. Maintenance and repair of PROJECT FACILITIES includes, but is not limited to, compliance with all legally required storm water provisions, such as NPDES permit requirements,

landscaping and irrigation, pavement, signs, fences, lighting, barriers, guardrail, graffiti abatement, weed abatement, removing debris, and general housekeeping. Major damage to PROJECT FACILITIES by hazardous spills and causes beyond OCTA control, including but not limited to, any incidence of fire, flood, earthquake, or other acts of God will be addressed in the CONTRACT DOCUMENTS.

107. To maintain any part of the PROJECT located outside of the current SHS right-of-way until acceptance of any such part of the PROJECT in the SHS right-of-way by CALTRANS. The PARTIES shall cooperate and use their best efforts to ensure the Conveyance of SHS PROJECT FACILITIES is accomplished no later than one year after contract acceptance.
108. That if OCTA terminates the PROJECT prior to completion thereof, CALTRANS may require OCTA, at OCTA's expense, to return the affected SHS right-of-way to its original condition or a condition acceptable for permanent public operations. If OCTA fails to do so, CALTRANS reserves the right to finish the PROJECT FACILITIES or to place the PROJECT FACILITIES in a condition satisfactory for permanent public operations. CALTRANS will bill OCTA for all actual expenses incurred and OCTA agrees to pay said expenses within thirty (30) days of issuance of that invoice or CALTRANS, acting through the State Controller or State Treasurer, may withhold an equal amount from future apportionments due OCTA from STIP or other sources.
109. If unanticipated cultural, archaeological, paleontological, biological, or other protected resources are encountered during construction of the PROJECT, OCTA 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. OCTA shall immediately notify CALTRANS of any said discovery. The costs for any removal or protection shall be covered as a PROJECT cost.
110. OCTA shall provide CALTRANS personnel dedicated to the PROJECT acceptable office space, furniture, connection to CT network, and utilities necessary to perform their work at no expense to CALTRANS for the duration of the PROJECT in accordance with CONTRACT DOCUMENTS.
111. Final Acceptance of the PROJECT shall include, but not limited to, 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.
112. OCTA shall obtain all required permits for construction of the PROJECT from third parties, including but not limited to railroads, cities, counties, State agencies, and resource agencies. OCTA shall provide CALTRANS an opportunity to review such required application or permits. If a permitting agency requires a permit be for the PROJECT, OCTA will obtain that permit.
113. 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. OCTA may take delivery of the SFM after CALTRANS' receipt of OCTA's payment at the location directed by CALTRANS. SFM shall be considered a PROJECT cost.
114. To pay CALTRANS, within thirty (30) days of receipt of CALTRANS billing, the actual cost invoiced for the requested SFM. The estimated cost of SFM is listed on Exhibit E.
115. If OCTA includes State or Federal funds for the PROJECT other than those identified in Exhibit B, PARTIES agree to execute an amendment to this AGREEMENT prior to the funds being expended, to include all provisions to meet the requirements of the State, Federal or other funds to be used.
116. To pay CALTRANS, within thirty (30) days of receipt of CALTRANS' billing, the actual cost invoiced for the REIMBURSED DIRECT WORK, up to the OCTA ESTIMATED MAXIMUM PAYMENT OBLIGATION, as defined in SECTION I, of this AGREEMENT. If Federal funds are used to fund Caltrans for REIMBURSED DIRECT WORK and/or CALTRANS ENHANCED

OVERSIGHT, OCTA hereby authorizes CALTRANS direct access to these funds. CALTRANS and OCTA will review project expenditures on a monthly basis.

117. Upon allocation of funds by the California Transportation Commission, FHWA approval and execution of this Cooperative Agreement, OCTA shall invoice Caltrans for an initial deposit of \$5 million to partially cover the CALTRANS CONTRIBUTION costs for the PROJECT. This deposit shall be paid within 60 days of the invoice. OCTA shall subsequently periodic invoices to CALTRANS for the remainder of the CALTRANS CONTRIBUTION, up to the maximum agreed amount shown in Exhibit B, which shall be paid within 60 days of the invoice. It is agreed that the maximum funding shown in Exhibit B for the CALTRANS CONTRIBUTION is based on an estimate and should the actual cost of the PROJECT be higher or lower than this estimate, an adjustment to this estimate will be agreed to in writing by the PARTIES.
118. OCTA acknowledges and agrees that CALTRANS' performance of CONSTRUCTION INSPECTION SERVICES, in no way relieves OCTA of its responsibilities, obligations, or liabilities in administering the DESIGN-BUILD contract.

SECTION II

CALTRANS ROLES AND RESPONSIBILITIES

CALTRANS shall have the following roles and responsibilities:

119. To be responsible for one hundred percent (100%) of all construction and right-of-way costs incurred by OCTA due to BETTERMENTS. CALTRANS shall reimburse OCTA for any and all such costs within 60 days of issuance of an invoice for such costs from OCTA. This AGREEMENT will be amended to identify any future requested BETTERMENTS, estimated amounts, and funding sources from CALTRANS for BETTERMENTS, and will also include invoicing procedures.
120. To make the CALTRANS CONTRIBUTION in the manner set forth in this AGREEMENT.
121. CALTRANS shall assist OCTA as requested, and when necessary, exercise its rights under the Utility Relocation Law or as applicable, any CALTRANS Utility Master Agreements of record, in causing each utility to rearrange or relocate its utility facilities.
122. CALTRANS shall provide its review and concurrence of the REQUEST FOR QUALIFICATIONS or any addenda and the review and approval of the REQUEST FOR PROPOSALS or any addenda for the PROJECT prior to issuance by OCTA.
123. CALTRANS shall provide its review and approval of the PROJECT MANAGEMENT PLAN, finance plan and cost estimate review prior to the issuance of the final REQUEST FOR PROPOSAL by OCTA.
124. CALTRANS shall participate, through the review of procurement documents and involvement in the evaluation process, in the selection of the DESIGN-BUILDER and any other consultant services towards the implementation of the PROJECT.
125. CALTRANS shall provide its concurrence in a timely manner to OCTA for the issuance of a Certificate of Substantial Completion and a Certificate of Final Acceptance for the DESIGN-BUILD contract.
126. CALTRANS shall perform CONSTRUCTION INSPECTION SERVICES for the PROJECT using CALTRANS employees or consultants under contract with CALTRANS.
127. As part of its CONSTRUCTION INSPECTION SERVICES responsibilities, CALTRANS shall include a direct reporting relationship between the CALTRANS inspectors and senior CALTRANS engineers responsible for all CALTRANS inspectors and construction inspection services.

128. Notwithstanding any other provision of law, CALTRANS retains the authority to stop the DESIGN-BUILDER's work wholly or in part and take appropriate action when public safety and convenience is jeopardized on the PROJECT. CALTRANS' authority to stop the DESIGN-BUILDER'S work includes but is not limited to work performed under an encroachment permit within the SHS right-of-way, including, but not limited to, work performed that includes lane closures, signing, work performed at night, detours, dust control, temporary pavement quality, crash cushions, temporary railings, pavement transitions, falsework, shoring, and delineation. CALTRANS shall regularly inspect the job sites for safety compliance and any possible deficiencies. If any deficiency is observed, a written notice shall be sent by CALTRANS to OCTA for corrective action. Once the deficiency is corrected, a written notice describing the resolution of the deficiency shall be sent to CALTRANS by OCTA and documented.
129. CALTRANS shall perform the REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT identified in Exhibit D, at OCTA costs.
130. To provide CALTRANS OVERSIGHT, at CALTRANS' sole cost and expense beyond the level of effort described as CALTRANS ENHANCED OVERSIGHT.
131. To be responsible for timely performing, upon execution of an amendment to this AGREEMENT authorizing additional costs, and if feasible, for, any and all CALTRANS ENHANCED OVERSIGHT, or REIMBURSED DIRECT WORK identified in Exhibit D and required for the PROJECT, in excess of the OCTA ESTIMATED MAXIMUM PAYMENT OBLIGATION, as set forth in Exhibit D.
132. That the purpose of Exhibit D is to illustrate the estimated CALTRANS resources assigned to perform REIMBURSED DIRECT WORK, and CALTRANS ENHANCED OVERSIGHT, and that CALTRANS shall manage such resources and classifications, including the use of consultants, at CALTRANS' sole discretion, up to the ESTIMATED MAXIMUM PAYMENT OBLIGATION. It is agreed that CALTRANS has no obligation to provide CALTRANS personnel services beyond what is provided for in Exhibit D unless otherwise agreed to in writing by the PARTIES.
133. To provide additional REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT not included herein as requested in writing by OCTA and agreed to in writing by CALTRANS followed by an amendment to Exhibit D.
134. To make available to OCTA all necessary regulations, policies, procedures, manuals, standard plans and specifications, and other standards required for the administration of the PROJECT.
135. To process, review and approve/concur, as appropriate, complete and accurate the PROJECT submittals by OCTA. Incomplete submittals will be returned without review. CALTRANS and OCTA will cooperate with the development of the PROJECT. All submittals shall meet the standards specified in the CONTRACT DOCUMENTS and the CALTRANS standards and policies and the quality assurance procedures contained in the QUALITY MANAGEMENT PROGRAM. Nothing in this paragraph precludes the reasonable exercise of the professional discretion by CALTRANS with respect to review and approval in accordance with the terms of the CONTRACT DOCUMENTS. CALTRANS will provide reviews and any comments to each submittal provided to CALTRANS.
136. To make a determination of need for a NEPA/CEQA revalidation/reevaluation within 30 calendar days of receiving the proper documentation from OCTA. CALTRANS' 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 OCTA.
137. That CALTRANS will participate in the selection and approval of OCTA's consultants and contractors who will perform work for the PROJECT. CALTRANS recognizes that OCTA has,

prior to the Effective Date of this AGREEMENT, selected and retained certain consultants to work on the PROJECT.

138. CALTRANS may upon OCTA's written request and, in its sole discretion, and subject to reimbursement by OCTA, engage additional staff for the PROJECT who may be available, as needed, to perform any PROJECT work or services as necessary, as further specified in this AGREEMENT.
139. To issue, at no cost to OCTA, upon receipt of complete, accurate and acceptable completed applications by OCTA and its consultants or DESIGN-BUILDER, those necessary encroachment permits to authorize entry onto SHS right-of-way to perform activities required for the PROJECT, within thirty (30) days following receipt of an acceptable application. If OCTA 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, CALTRANS shall approve encroachment permits that are consistent with the CONTRACT DOCUMENTS which will have been approved by CALTRANS. 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. OCTA's Permit shall be contingent upon submittal of the Quality Management Plan prepared by the DESIGN-BUILDER, or if applicable, OCTA or its consultants Quality Management Plan, is to be submitted to CALTRANS for review and concurrence prior to issuance of encroachment permits for construction, in accordance with pre-contract work or the CONTRACT DOCUMENTS.
140. That, except to the extent that CALTRANS reasonably determines that work is required for public safety or to prevent significant property damage, CALTRANS will, to the extent possible, avoid performing major maintenance, rehabilitation or construction within the existing SHS right-of-way that would increase costs, delay the PROJECT completion or otherwise adversely and materially impact the PROJECT. Prior to issuance, any CALTRANS encroachment permit for work within the PROJECT limits shall be forwarded to OCTA's Resident Engineer for review and comment.
141. To work with OCTA with the goal that all applicable State and Federal rules and regulations are followed and approvals obtained. Exceptions to applicable CALTRANS STANDARDS needed for DESIGN-BUILD procurement are to be approved in the sole discretion of CALTRANS, and such approval shall be in writing. Incorporation of such approved exceptions into the CONTRACT DOCUMENTS shall satisfy the foregoing requirement.
142. To timely provide, at OCTA's cost and upon OCTA's request, any SFM as determined by CALTRANS to be appropriate and available during construction of the PROJECT. Upon receipt of OCTA's request for any such SFM, CALTRANS will order the SFM, and CALTRANS' Project Manager will have an invoice submitted to OCTA for the cost of the SFM. Upon receipt of the SFM and OCTA's payment, CALTRANS will make the SFM available to OCTA at a CALTRANS designated site.
143. Upon completion of the PROJECT, to furnish OCTA with a detailed final accounting of the SFM, REIMBURSED DIRECT WORK, and CALTRANS ENHANCED OVERSIGHT. Based on the final accounting, CALTRANS will refund or invoice as necessary in order to satisfy the financial obligations of this AGREEMENT.
144. To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred by CALTRANS and make such materials available at the respective offices of CALTRANS and its consultants and contractors at all reasonable times during the contract period and for three years from the date of COMPLETION OF WORK or Federal Final Voucher, whichever is later. Upon request, CALTRANS agrees to provide copies of any books, records, and documents that are

pertinent to this AGREEMENT.

145. If readily available, CALTRANS agrees to provide primary horizontal and vertical survey control information for use in developing the survey control for the PROJECT.
146. CALTRANS agrees to grant RELIEF OF MAINTENANCE for the PROJECT within the SHS right-of-way upon CALTRANS' acceptance of the PROJECT, except as otherwise agreed to by both PARTIES. Upon such grant of relief, CALTRANS will accept control of and operate and maintain, at CALTRANS' sole cost and expense, PROJECT FACILITIES lying within the SHS right-of-way, except as otherwise agreed to by both PARTIES and local roads delegated to local agencies for maintenance.
147. Independent assurance testing, and approval of the type of asphalt and concrete plants shall be performed by CALTRANS, and shall be considered REIMBURSED DIRECT WORK.
148. If requested by OCTA, specialty testing including Pile Load testing, Gama-Gama testing and other specialty testing may be performed by CALTRANS as REIMBURSED DIRECT WORK and an amendment will be executed for this work.
149. To invoice OCTA for SFM within thirty (30) days of CALTRANS' receipt of OCTA's request for the SFM.
150. CALTRANS will invoice OCTA for an initial deposit of \$1,300,000 4 months prior to NTP of CONTRACT for REIMBURSED DIRECT WORK. This deposit will represent 4 months' estimated support costs for REIMBURSED DIRECT WORK. For right-of-way activities, CALTRANS ENHANCED OVERSIGHT will begin when work required by CALTRANS is mutually agreed to by PARTIES.
151. Thereafter, CALTRANS will submit to OCTA monthly invoices or expenditure reports if State or Federal funds are used for REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT expenditures based on the prior month's actual expenditures in a format currently available to CALTRANS. The monthly invoice shall be submitted within 30 days of any expenditures included in the invoice and include the specific work for which payment is requested, the time period covered by the invoice, and the labor (staff names, hours charged, rates, and overhead assessment) performed during the billing period.
152. After the PARTIES agree that all REIMBURSED DIRECT WORK is complete for construction, and CALTRANS ENHANCED OVERSIGHT is complete, billing 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.

SECTION III

GENERAL CONDITIONS

CALTRANS and OCTA agree to the following General Conditions:

153. PARTIES will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
154. Each PARTY will ensure that all of its personnel participating in OBLIGATIONS are appropriately qualified, and if necessary, licensed to perform the tasks assigned to them. PARTIES will invite each other to participate in the selection and retention of any consultants who participate in OBLIGATIONS.
155. CALTRANS and OCTA desire to implement a collaborative approach for the development of the PROJECT, using the resources of both agencies to expedite the process and agree to implement all the provisions of California Public Contract Code section 6820 et seq. The PROJECT Design-Build Organization Chart, which details the integrated effort of both OCTA and CALTRANS is attached

hereto as Exhibit C.

156. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS 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 adjusts annually and the effective Indirect Cost Rate Proposal and salary rates at the time of the performance of the work by CALTRANS will be used.
157. CALTRANS and OCTA recognize that applicable CALTRANS STANDARDS and other standards may be in conflict with a DESIGN-BUILD procurement and project delivery method. OCTA shall coordinate with CALTRANS during development of the CONTRACT DOCUMENTS, and CALTRANS shall be afforded the opportunity to review, comment, and approve the CONTRACT DOCUMENTS during the development of the RFQ and RFP in accordance with the terms of this AGREEMENT. Once approved by CALTRANS in writing, the CONTRACT DOCUMENTS shall control the design and construction of the PROJECT and any deviations to the applicable CALTRANS STANDARDS and other standards that are set forth in the CONTRACT DOCUMENTS shall be deemed approved by CALTRANS.
158. That all obligations of CALTRANS under the terms of this AGREEMENT are subject to the appropriation of resources by the Legislature to CALTRANS for the purposes of fulfilling CALTRANS obligations herein.
159. PARTIES acknowledge that CALTRANS resources necessary for the performance of those services identified herein as CALTRANS ENHANCED OVERSIGHT, and REIMBURSED DIRECT WORK, including personnel requirements, are legally mandated to be included in CALTRANS' capital outlay support program for workload purposes in the annual Budget Act.
160. In the event this AGREEMENT is terminated in accordance with SECTION I, payments to CALTRANS shall be made through and including the entire month in which the termination occurred.
161. That timely and accurate invoicing by CALTRANS and subsequent payment by OCTA is of high importance to both PARTIES. Accordingly, the following shall be implemented:
 - (a) CALTRANS' Manager, or his/her designee, shall review and approve all monthly CALTRANS expenditure reports and/or invoices prior to submission to OCTA.
 - (b) CALTRANS shall submit to OCTA an approved monthly expenditure reports and/or invoice no more than 30 calendar days following the close of the previous month's billing cycle. CALTRANS invoices for support costs shall include all direct and applicable indirect costs and shall be in accordance with Exhibit D.
 - (c) OCTA shall remit payment to CALTRANS for REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT, up to the OCTA ESTIMATED MAXIMUM PAYMENT OBLIGATION, as defined in SECTION I, of this AGREEMENT, within 30 days of OCTA's approval of CALTRANS' invoice.
 - (d) Prior to any REIMBURSED DIRECT WORK or CALTRANS ENHANCED OVERSIGHT being performed on the PROJECT, CALTRANS and OCTA Project Managers shall mutually agree on the positions allowed to charge for REIMBURSED DIRECT WORK or CALTRANS ENHANCED OVERSIGHT. CALTRANS Project Manager shall update this agreed list monthly. REIMBURSED DIRECT WORK or CALTRANS ENHANCED OVERSIGHT shall not begin until issuance of NTP to the DESIGN-BUILDER by OCTA. However, CALTRANS ENHANCED OVERSIGHT for right-of-way services could begin prior to NTP, if mutually agreed to by PARTIES.

- (e) CALTRANS will be responsible for the development of the REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT invoice format, and as noted in Item 151, including cost, schedule and status reports, to be jointly agreed upon prior to invoicing and payment.
162. In the event CALTRANS requests BETTERMENTS for incorporation into the PROJECT after release of the RFP, and OCTA agrees to incorporate such BETTERMENTS into the PROJECT, CALTRANS shall be solely responsible for all costs and expenses agreed to at time of execution of contract change order for such BETTERMENTS. Notwithstanding the foregoing, a change in law as defined in the CONTRACT DOCUMENTS or changes in safety standards that apply to the PROJECT that do not constitute a BETTERMENT, and all costs associated with these changes shall be borne by OCTA.
163. That CALTRANS shall designate a CALTRANS representative and OCTA shall designate a PROJECT representative through whom all communications between the PARTIES shall be channeled. The CALTRANS representative or other official designated by CALTRANS shall review the work of OCTA through completion of the PROJECT.
164. That OCTA shall establish a PROJECT document control system acceptable to CALTRANS. Document control, storage, and retrieval methods will include the use of both hard copies and electronic records. When the 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.
165. The PARTIES will cooperate to develop warranty terms and requirements consistent with DESIGN-BUILD projects delivered on the SHS which shall be included in the RFP.
166. OCTA shall prepare and CALTRANS shall execute acceptable Freeway and Maintenance Agreements with the local agencies for the PROJECT to the extent they are required. Freeway Agreements shall be executed prior to Project Approval/Environmental Document (PA/ED). Maintenance Agreements shall be executed prior to the CALTRANS' granting of RELIEF OF MAINTENANCE for the PROJECT.
167. That CALTRANS shall issue encroachment permits for utility improvements which lie within the SHS right-of-way by individual relocation.
168. That OCTA shall not start the 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.
169. That the PROJECT will allow construction to be completed in segments based upon right-of-way availability, including accommodating of utility relocation facilities, including accommodating of railroad construction and maintenance agreements, in compliance with applicable State and Federal acquisition and relocation policies. To meet the right-of-way availability requirements for construction, OCTA shall submit right-of-way segment/section certification for work to be performed by segment/section, for CALTRANS and FHWA review, concurrence, and/or approval. The CONTRACT DOCUMENTS will include language that provide that construction will not commence until all property is acquired, improvement demolition accommodated for, utility relocation accommodated for, including accommodating of railroad construction and maintenance agreements and relocation of the occupants has been completed in each defined segment, or section.
170. That during the construction of the PROJECT, representatives of OCTA and CALTRANS will cooperate and consult with each other, and all work pursuant to the PROJECT shall be accomplished according to the CONTRACT DOCUMENTS. Satisfaction of these requirements shall be verified

by CALTRANS' representatives who are authorized to enter the PROJECT limits during construction for the purpose of monitoring, inspecting, and coordinating construction and post-construction activities.

171. That any and all material changes to the CONTRACT DOCUMENTS shall be approved by CALTRANS in advance of performing the work.
172. Unless otherwise concurred to by CALTRANS representative, changes authorized as provided herein will 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. CALTRANS 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.
173. That OCTA shall provide a contract claims process reasonably acceptable to CALTRANS and shall process any and all claims through OCTA's claim process. CALTRANS' representative will be made available to OCTA to provide advice and technical input in any claim process. Said representative shall not be deemed to be an agent of OCTA.
174. The party that discovers hazardous material (HM) will immediately notify the other PARTY(IES) to this AGREEMENT.
175. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within existing SHS right-of-way. CALTRANS will undertake or cause to be undertaken HM-1 management activities with minimum impact to the PROJECT schedule, CALTRANS, independent of the PROJECT will pay or cause to be paid all costs for HM-1 management activities related to HM-1 found within the existing SHS right-of-way.
176. If HM-1 is found within PROJECT limits and outside the existing SHS right of way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. OCTA, in concert with the local agency having land use jurisdiction over the parcel(s), will ensure that HM-1 management activities are undertaken with minimum impact to the PROJECT schedule. Independent of the PROJECT, all costs for management activities related to HM-1 found within PROJECT limits and outside the existing SHS right of way will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located
177. If HM-2 is found within the limits of the PROJECT, OCTA will be responsible for HM-2 management activities. Any management activity cost associated with HM-2 is a PROJECT cost.
178. Management activities associated with HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
179. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
180. The PARTIES agree that OCTA 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 as mandated by the Construction General Permit.
181. 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, OCTA shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. OCTA shall take all necessary precautions for safe operation of OCTA vehicles, the construction contractor's equipment and vehicles and/or vehicles of personnel retained by OCTA, and for the protection of the traveling public from injury and damage from such vehicles or equipment.

182. Except for the EXPRESS LANES FACILITY and except as otherwise agreed to by both PARTIES, CALTRANS will accept control and operate and maintain, at its own cost and expense, PROJECT FACILITIES lying within the SHS right-of-way upon granting of RELIEF OF MAINTENANCE except local roads delegated to local agencies for maintenance. Upon granting of RELIEF OF MAINTENANCE by CALTRANS of the PROJECT CALTRANS shall also be deemed to exercise control of those facilities for which RELIEF OF MAINTENANCE has been granted.
183. Upon issuance of an encroachment permit to OCTA's DESIGN-BUILDER, OCTA shall control and maintain, at its own cost and expense, those portions of the PROJECT 1 lying within the SHS right-of-way. OCTA will also maintain, at OCTA 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 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.
184. That upon completion of all work under this AGREEMENT, ownership and title to materials, equipment and appurtenances installed within SHS right-of-way will automatically be vested in State. No further agreement will be necessary to transfer ownership as herein above stated. OCTA shall arrange for the transfer of ownership and title to materials, equipment and appurtenances installed outside of SHS right-of-way, excluding those materials, equipment and appurtenances owned by OCTA as described in the foregoing sentence, to be retained by appropriate local agencies, unless otherwise agreed to by CALTRANS and OCTA.
185. 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 CALTRANS STANDARDS.
186. Neither CALTRANS 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 OCTA, the DESIGN-BUILDER and/or their agents under or in connection with any work, authority or jurisdiction conferred upon OCTA under this AGREEMENT. It is understood and agreed that OCTA, to the extent permitted by law, will defend, indemnify and save harmless CALTRANS 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 OCTA and/or its agents under this AGREEMENT.
187. Neither OCTA 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 CALTRANS and/or its agents under or in connection with any work, authority or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that, CALTRANS, to the extent permitted by law, will defend, indemnify and save harmless OCTA 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 CALTRANS and/or its agents under this AGREEMENT.
188. Notwithstanding any other term of this AGREEMENT, existing SHS utility service expenses, including water and electrical, shall remain the responsibility of CALTRANS, whereas OCTA will be responsible for temporary utility service expenses when modifying existing utilities. OCTA will not utilize existing CALTRANS sources for any temporary connection, unless otherwise approved by CALTRANS.
189. 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.

190. 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.
191. The PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this AGREEMENT. PARTIES do not intend this Agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
192. The PARTIES will not assign or attempt to assign OBLIGATIONS to a non-PARTY.
193. The PARTIES will not interpret any ambiguity contained in this AGREEMENT against each other. PARTIES waive the provisions of California Civil Code section 1654.
194. A waiver of a PARTY's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this AGREEMENT does not constitute an amendment to or negate all other articles or sections of this AGREEMENT.
195. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
196. If any PARTY defaults in its OBLIGATIONS, a non-defaulting PARTY will request in writing that the default be remedied within 30 calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution. If the PARTIES are unable to reach agreement on a particular issue including concerns over timeliness of submittal reviews or performance of REIMBURSED DIRECT WORK, or CALTRANS ENHANCED OVERSIGHT the PARTIES will first attempt to resolve the disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of OCTA will attempt to negotiate a resolution. If the PARTIES do not reach a resolution, the PARTIES' legal counsel will initiate mediation. The PARTIES agree to participate in mediation in good faith and will share equally in its costs. Neither the dispute nor the mediation process relieves the PARTIES from full and timely performance of its OBLIGATIONS in accordance with the terms of this Agreement. However, if any PARTY stops fulfilling its OBLIGATIONS, the other PARTY may seek equitable relief to ensure that the OBLIGATIONS continue.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

The PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located. The prevailing PARTY will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this AGREEMENT or to enforce the provisions of this AGREEMENT including equitable relief.

197. The PARTIES, upon mutual agreement, maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
198. If any provisions in this AGREEMENT are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

199. If during performance of OBLIGATIONS additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTIES will amend this Agreement or Agreement 12-0594 to provide for completion of those additional tasks.
200. Except as otherwise provided in the AGREEMENT the PARTIES will execute a formal written amendment if there are any changes to the OBLIGATIONS.
201. 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.
202. 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 CALTRANS and OCTA, 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.
203. PARTIES shall develop a mutually agreed upon issue resolution process, as described below, with a primary objective: to ensure the project stays on schedule and issues between the PARTIES are resolved in a timely manner. The PARTIES agree to the following
 - a. If the PARTIES are unable to reach agreement on any particular issue relating to either PARTIES' obligations pursuant to this AGREEMENT, including but not limited to concerns over timeliness of submittal reviews, performance of REIMBURSED DIRECT WORK, or OCTA's administration of the DESIGN-BUILD contract, 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 G. The final form and content of the issue resolution process will be mutually developed prior to the release of the RFP. The primary objective of the issue resolution process is timely decision making to ensure that the PROJECT stays on schedule and issues between the PARTIES are resolved in a timely manner.
 - b. 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 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.

{Signatures on following page}

SIGNATURES

PARTIES declare that:

1. Each party is an authorized legal entity under California state law.
2. Each party has the authority to enter into this AGREEMENT.
3. The people signing this AGREEMENT have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
ADNAN MAIAH
Deputy District Director
Capital Outlay Program

By: _____
DARRELL JOHNSON
Chief Executive Officer

CERTIFIED AS TO FUNDS:

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
HQ Accounting

By: _____
JAMES M. DONICH
General Counsel

By: _____
NEDA SABER
District Budget Manager

APPROVED AS TO FORM AND
PROCEDURE:

APPROVED:

By: _____
GLENN B. MUELLER
Assistant Chief Counsel

By: _____
JIM BEIL, P.E.
Executive Director
Capital Programs

EXHIBIT A PROJECT

Scope of Work:

- One general purpose lane in each direction of the I-405 from Euclid Street to the I-605 Interchange
- One tolled Express Lane in each direction from SR-73 to SR-22 East
- Existing HOV lane and Express Lane managed jointly as tolled Express Facility w/ two lanes in each direction from SR-73 to I-605
- Auxiliary Lane Improvements
- Arterial Improvements
- Drainage Improvements
- Toll Infrastructure
- Ramp Improvements
- Structure Improvements
- TSM/TDM Improvements
- Other Miscellaneous Improvements

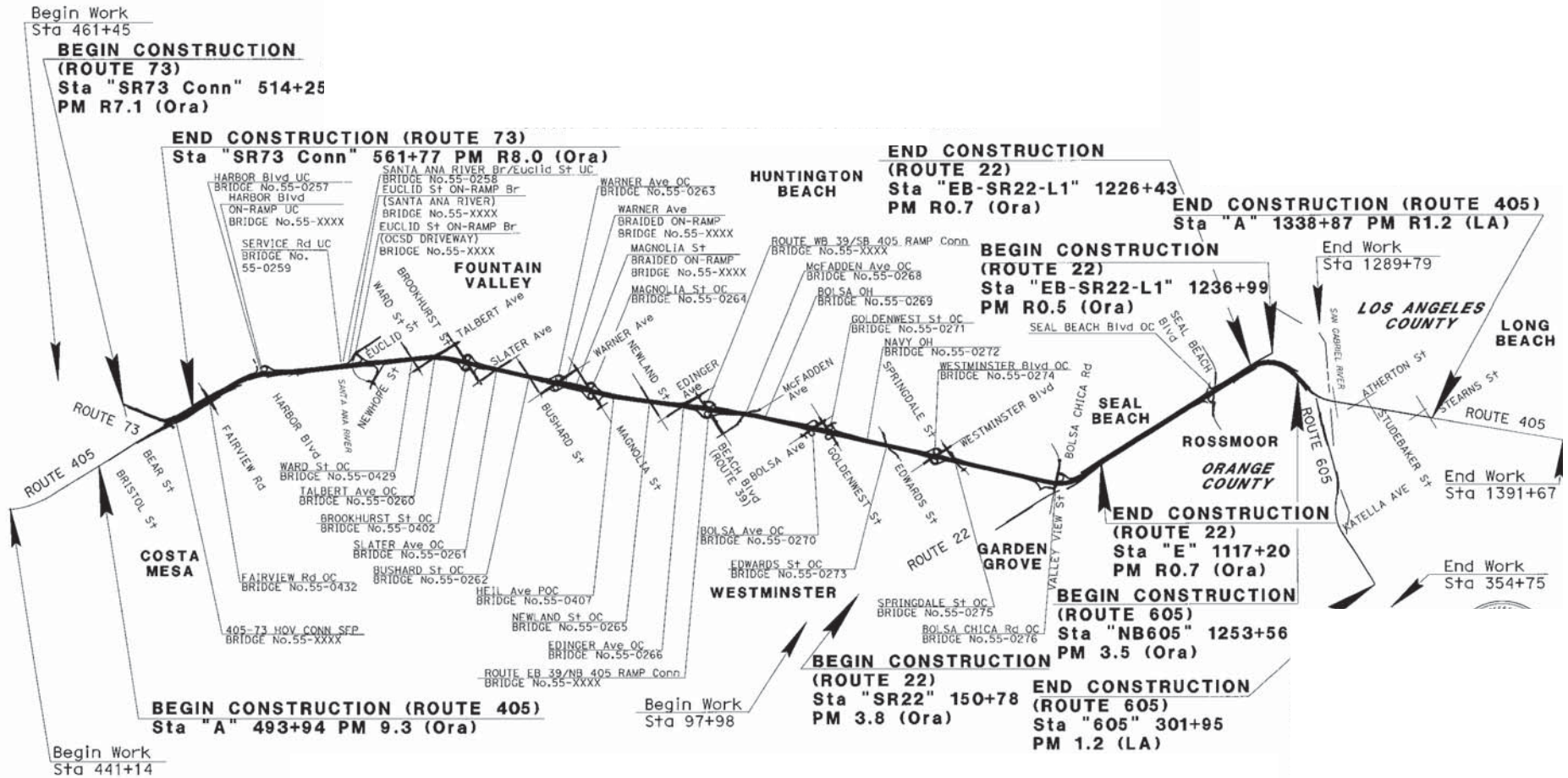


EXHIBIT B

PROJECT FUNDING SUMMARY

<i>Funding Source</i>	<i>Funding Partner</i>	<i>Fund Type</i>	<i>R/W Support</i>	<i>R/W Capital</i>	<i>Construction Capital</i>	<i>Design Support</i>	<i>Construction Support</i>	<i>Subtotal Funds Type</i>
M2	OCTA	Local	\$10,000,000	\$86,000,000	\$1,015,000,000	\$75,143,900	\$68,208,100	\$1,254,352,000
TOLL	OCTA	Local	\$1,000,000	\$3,000,000	\$261,000,000	\$27,000,000	\$26,000,000	\$318,000,000
RSTP	OCTA	Federal	\$745,600			\$10,923,200	\$23,331,200	\$35,000,000
STATE	CALTRANS	State	\$1,000,000	\$6,000,000	\$63,000,000	\$6,000,000	\$6,000,000	\$82,000,000
IMD	OCTA	Federal					\$1,130,000	\$1,130,000
DEMO SAFETEA-LU	OCTA	Federal				\$8,528,000		\$8,528,000
EARMARK	OCTA	Federal				\$990,000		\$990,000
<i>Subtotals by Component</i>			\$12,745,600	\$95,000,000	\$1,339,000,000	\$128,585,100	\$124,669,300	
TOTAL								\$1,700,000,000

REIMBURSED DIRECT WORK and CALTRANS ENHANCED OVERSIGHT FUNDING SUMMARY

<i>Funding Source</i>	<i>Funding Partner</i>	<i>Fund Type</i>	<i>Caltrans Enhanced Oversight</i>	<i>Reimbursed Direct Work</i>	<i>Subtotal Funds Type</i>
M2	OCTA	Local	\$150,000	\$19,120,000	\$19,270,000
RSTP	OCTA	Federal	\$11,700,000	\$23,300,000	\$35,000,000
IMD	OCTA	Federal		\$1,130,000	\$1,130,000
<i>Subtotals by Component</i>			\$11,850,000	\$43,550,000	
TOTAL					\$55,400,000

**EXHIBIT B
FUNDING SUMMARY
SIGNATURE SHEET**

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
ADNAN MAIAH
Deputy District Director
Capital Outlay Program

By: _____
DARRELL JOHNSON
Chief Executive Officer

CERTIFIED AS TO FUNDS:

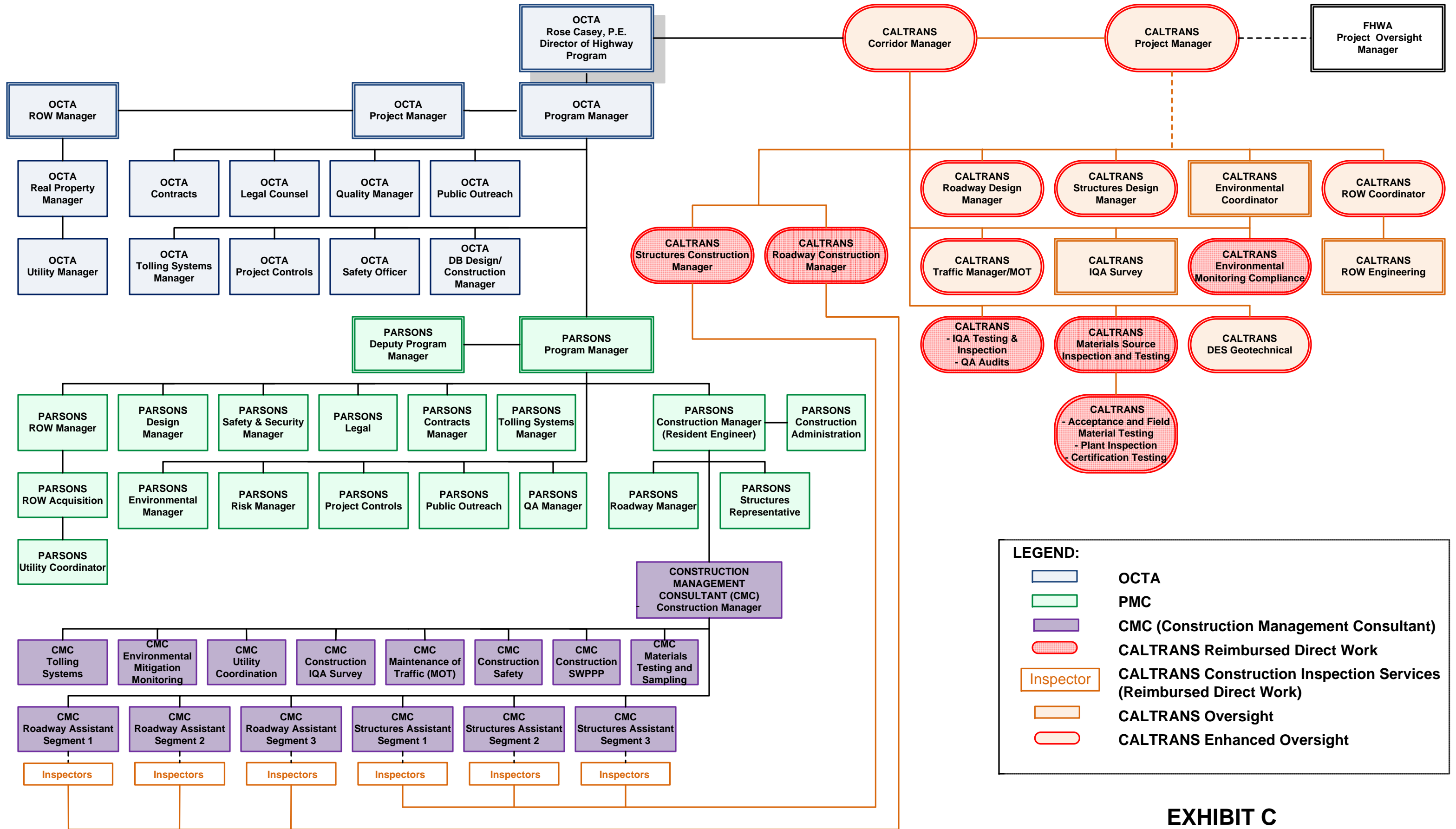
APPROVED:

By: _____
NEDA SABER
District Budget Manager

By: _____
JIM BEIL, P.E.
Executive Director, Capital Programs

By: _____
HQ Accounting

I-405 IMPROVEMENT PROJECT DESIGN-BUILD ORGANIZATION CHART



LEGEND:

- OCTA
- PMC
- CMC (Construction Management Consultant)
- CALTRANS Reimbursed Direct Work
- CALTRANS Construction Inspection Services (Reimbursed Direct Work)
- CALTRANS Oversight
- CALTRANS Enhanced Oversight

EXHIBIT C

EXHIBIT D

26-Mar-15

1 of 2

REIMBURSED DIRECT WORK

ROADWAY

Title	Classification (1)	Total Manhours	2015/2016 Hourly Rate	Payroll Reserve Rate	Loaded Rate	Total Cost	ICRP Multiplier (%)	Billable Rate	Total Cost w/ Multiplier
Lead Inspector	Transportation Engr, D	30,820	\$53.49	72.66%	\$92.36	\$2,846,406.80	1.7374	\$160.46	\$4,945,347
Roadway Inspector	Transportation Engr, D	85,760	\$53.49	72.66%	\$92.36	\$7,920,436.32	1.4257	\$131.67	\$11,292,166
Sr Roadway Manager	Sr Transp Engr, Sup	7,630	\$63.01	72.66%	\$108.79	\$830,067.70	1.4257	\$155.10	\$1,183,428
Sr Roadway Manager	Sr Transp Engr, Sup	3,090	\$63.01	72.66%	\$108.79	\$336,170.57	1.7374	\$189.02	\$584,063
Subtotal		127,300							\$18,005,004

STRUCTURES

Lead Structures Inspector	Transportation Engr, D	Included in Structures Inspector Row Below							
Structures Inspector	Transportation Engr, D	78,390	\$53.49	72.66%	\$92.36	\$7,239,773.83	1.4257	\$131.67	\$10,321,746
Sr Structures Manager	Sr Transp Engr, Spec	10,720	\$63.01	72.66%	\$108.79	\$1,166,261.67	1.4257	\$155.11	\$1,662,739
Subtotal		89,110							\$11,984,485

MISCELLANEOUS

Environmental Monitoring Compliance Specialist	Associate Environmental Planner	6,700	\$36.28	72.66%	\$62.64	\$419,695.02	1.7374	\$108.83	\$729,178
Acceptance and Field Material Testing/Plant Inspection	Transportation Engr, C	47,199	\$47.32	72.66%	\$81.70	\$3,856,335.45	1.7374	\$141.95	\$6,699,997
Materials Source Inspection and Testing	Transportation Engr, C	42,951	\$47.32	72.66%	\$81.70	\$3,509,272.93	1.7374	\$141.95	\$6,097,011
Subtotal		96,850							\$13,526,186
Labor (AB 401 - Reimbursed Direct Work) Total							Reimbursable Direct Cost		\$43,515,674
							USE		\$43,550,000

EXHIBIT D (Continued)

ENHANCED OVERSIGHT

Title	Classification (1)	Total Manhours (90% of Total Hours)	2015/2016 Hourly Rate	Payroll Reserve Rate	Loaded Rate	Total Cost	ICRP Multiplier (%)	Billable Rate	Total Cost w/ Multiplier
Manager	Supervisor Transp Engr	6,030	\$69.47	72.66%	\$119.95	\$723,279.82	1.4257	\$171.01	\$1,031,180
Project Manager	Sr Transp Engr, Special	10,251	\$63.01	72.66%	\$108.79	\$1,115,237.72	1.4257	\$155.11	\$1,589,994
Roadway Design Mngr	Sr Transp Engr, Sup	10,251	\$63.01	72.66%	\$108.79	\$1,115,237.72	1.4257	\$155.11	\$1,589,994
Roadway Design Lead	Transp Engr, D	27,014	\$53.49	72.66%	\$92.36	\$2,494,937.44	1.4257	\$131.67	\$3,557,032
Structures Design Mngr	Sr Bridge Engr, Sup	8,201	\$63.01	72.66%	\$108.79	\$892,190.18	1.4257	\$155.11	\$1,271,996
Geotech Design Mngr	Sr Transp Engr, Sup	6,566	\$63.01	72.66%	\$108.79	\$714,335.27	1.4257	\$155.11	\$1,018,428
Right-of-Way Manager	Sr ROW Agent	6,968	\$43.47	72.66%	\$75.06	\$522,985.34	1.4257	\$107.01	\$745,620
Traffic Manager/MOT	Transp Engr, D	6,566	\$53.49	72.66%	\$92.36	\$606,408.41	1.4257	\$131.67	\$864,556

Labor (Enhanced Oversight) 81,847 \$11,668,801

- Notes: (1) For budgetary purposes, higher of possible inspector classifications listed
- (2) For budgetary purposes, assumes ICRP rates of 73.74% (Local) and 42.57% (RSTP)
- (3) For budgetary purposes, assumes 4.5 years of construction
- (4) For budgetary purposes, assumes single shift and 10% overtime
- (5) For budgetary purposes, assumes 2,000 hours/year
- (6) Excludes State Furnished Material (SFM)

HQ Enhanced Oversight (Structures) Per Diem	\$150,000
Subtotal Enhanced Oversight	\$11,818,801
USE ENHANCED OVERSIGHT	\$11,850,000
USE REIMBURSED DIRECT WORK	\$43,550,000
TOTAL	\$55,400,000

EXHIBIT E

STATE FURNISHED MATERIAL

Item No.	Item	Estimated Quantity	Estimated Unit Cost	Final Cost
1	Model 332 Cabinet	40	\$4,000	\$160,000
2	Model 2070 traffic signal controller assembly (excluding cabinet)	40	\$4,000	\$160,000
3	Battery Back-up System	40	\$1,000	\$40,000
4	Model 170 Traffic Controller	54	\$1,100	\$59,400
5	Model 334 Cabinet	58	\$3,600	\$208,800
6	Model 170 Controller Assembly (excluding cabinet)	48	\$3,400	\$163,200
7	Model 222 Two Channel Loop Detector	1262	\$50	\$63,100
8	Model 500 CMS (Left Hand) or (Right Hand)	4	\$60,000	\$240,000
9	Harness #4 for CMS500	4	\$2,300	\$9,200
10	Harness #5 for CMS500	4	\$700	\$2,800
			Total Estimated Cost =	\$1,106,500

- Notes:
1. Final quantities to be determined by DESIGN-BUILD Contractor
 2. Estimate unit cost provide by CALTRANS in November 2014
 3. Final Cost to be determined by DESIGN-BUILD Contractor provided quantities and CALTRANS cost at the time of requesting State Furnished Materials (SFM)

EXHIBIT F

COOPERATIVE AGREEMENT CLOSURE STATEMENT

CALTRANS and OCTA agree that all scope, cost and schedule commitments included in the Cooperative Agreement and all Amendments to Agreement for DESIGN-BUILD of the Interstate 405 Improvements Project entered into as of _____ have been completed. As of the date this COOPERATIVE CLOSURE STATEMENT has been executed by the representatives of the PARTNERS, as set forth below, the Agreement shall terminate.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

ORANGE COUNTY
TRANSPORTATION AUTHORITY

By: _____
District Director

By: _____
Executive Director

Date: _____

Date: _____

EXHIBIT G
ESCALATION LADDER

I-405 DESIGN-BUILD IMPROVEMENT PROJECT			
ISSUE RESOLUTION LADDER			
OCTA		CALTRANS	
LEVEL I - FIELD			
Construction	Design	Construction	Design
name (TBD) name (TBD)	name (TBD) name (TBD)	District	
		name (TBD)	name (TBD)
		Structures	
		name (TBD)	name (TBD)
LEVEL II - PROJECT MANAGERS			
name (TBD)		name (TBD)	
LEVEL III - SPONSORS			
name (TBD)		name (TBD)	
LEVEL IV - EXECUTIVES (EOC)			
name (TBD)		name (TBD)	



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project Terms and Conditions, Design-Build Cooperative
Agreement, and Next Steps for the Interstate 405
Improvement Project**

Attachment C

Capital Funding Program

HIGHWAYS CAPITAL FUNDING PROGRAM	M Code	(in thousands) Total Programmed Funding	STATE		FEDERAL		M1	M2	Local Other
			STIP/Other State	State Bonds	RSTP/CMAQ	Federal Other			
I-5 HOV lane widening, SR-55 to SR-57	A	\$ 42,471	36,262	-	2,800	-	-	3,409	-
I-5 high-occupancy vehicle (HOV) lane, Avenida Pico to Avenida Vista Hermosa	C	\$ 100,736	49,529	-	36,242	1,600	-	13,365	-
I-5 HOV lane, Avenida Vista Hermosa to Pacific Coast Highway	C	\$ 68,711	46,779	-	13,472	-	-	8,460	-
I-5 HOV lane, SR-1 to San Juan Creek Road	C	\$ 56,861	-	20,789	10,472	-	-	25,600	-
I-5 widening, SR-73 to Oso Parkway	C	\$ 137,415	78,949	-	28,167	-	-	30,299	-
I-5 widening, Oso Parkway to Alicia Parkway	C	\$ 166,800	-	-	43,667	-	-	123,133	-
I-5 widening, Alicia Parkway to El Toro Road	C	\$ 114,259	-	-	8,166	-	-	106,093	-
I-5/SR-74 interchange improvements	D	\$ 77,977	45,594	24,109	-	-	-	2,500	5,774
I-5/El Toro Road interchange	D	\$ 3,000	-	-	3,000	-	-	-	-
I-5/SR-74 landscaping, interchange improvements	-	\$ 1,420	1,420	-	-	-	-	-	-
I-5 southbound off-ramp storage lane, Oso Parkway (04S-26)	-	\$ 22,872	22,773	-	-	-	-	-	99
I-5, Camino Capistrano interchange improvements	-	\$ 19,151	19,151	-	-	-	-	-	-
I-5 southbound off-ramp and auxiliary lane, Jamboree Road	-	\$ 8,485	8,485	-	-	-	-	-	-
I-5 soundwall at El Camino Real	-	\$ 4,974	4,974	-	-	-	-	-	-
I-5 soundwall at Avenida Vaquero	-	\$ 2,754	2,754	-	-	-	-	-	-
I-5 HOV lane operational improvements, SR-57 to SR-91	-	\$ 4,790	3,600	-	-	-	-	-	1,190
I-5 at Gene Autry Way bridge overcrossing	M1	\$ 66,829	-	-	37,600	9,883	8,601	-	10,745
SR-55 widening between I-405 and I-5 (PS&E and PAED) ¹	F	\$ 17,837	-	-	12,000	-	-	5,837	-
SR-55 environmental, I-5 to SR-91	F	\$ 5,000	-	-	5,000	-	-	-	-
SR-55 southbound auxiliary lanes, Dyer Road to MacArthur Boulevard environmental	-	\$ 2,397	2,397	-	-	-	-	-	-
SR-55 continuous access HOV lane restriping environmental	-	\$ 1,500	-	-	-	-	-	-	1,500
SR-55 extension project study report (psr), Industrial Way to 19th Street	-	\$ 1,130	-	-	1,000	-	-	-	130
SR-57 northbound widening, Yorba Linda Boulevard to Lambert Road	G	\$ 52,709	-	41,250	-	-	-	11,459	-
SR-57 northbound widening, SR-91 to Yorba Linda Boulevard	G	\$ 50,659	-	40,925	-	-	-	9,734	-
SR-57 northbound widening, Katella Avenue to Lincoln Avenue	G	\$ 34,428	-	24,127	-	-	-	10,301	-
SR-57 northbound widening landscaping, SR-91 to Lambert Road	G	\$ 2,688	-	-	-	-	-	2,688	-
SR-57 environmental, Orangewood Avenue to Katella Avenue	G	\$ 4,000	-	-	4,000	-	-	-	-
SR-74 widening, Calle Entradero-city/County line	-	\$ 42,694	5,513	-	-	-	-	-	37,181
SR-74 widening, city/County line to Antonio Parkway	-	\$ 40,905	10,000	-	5,285	-	-	-	25,620
SR-90 Imperial Highway grade separation landscaping	-	\$ 1,669	1,669	-	-	-	-	-	-
SR-91 westbound connect existing auxiliary lanes, I-5 to SR-57	H	\$ 62,977	-	27,227	-	-	-	35,750	-
SR-91/SR-55 to Tustin Avenue interchange improvements	I	\$ 41,530	13,530	14,000	-	-	-	14,000	-
SR-91 eastbound widening, SR-57 to SR-55	I	\$ 9,000	-	-	7,000	-	-	2,000	-
SR-91 landscaping, SR-55 to Weir Canyon Road	-	\$ 2,498	2,498	-	-	-	-	-	-
SR-91 widening, SR-55 to SR-241 (Weir Canyon/Gypsum Canyon)	-	\$ 77,510	59,573	17,937	-	-	-	-	-
SR-91 eastbound widening, SR-241 to SR-71	-	\$ 57,611	-	-	-	47,888	-	-	9,723
I-405 southbound auxiliary lane, University Drive to Sand Canyon Avenue and Sand Canyon Avenue to SR-133	-	\$ 16,379	16,379	-	-	-	-	-	-
I-405 widening environmental, SR-55 to I-605 ^{2,3}	K	\$ 1,700,000	82,000	-	35,000	10,648	-	1,254,352	318,000
West Orange County connectors, I-405 and I-605	M1	\$ 175,830	-	135,430	22,200	-	13,000	-	5,200
West Orange County connectors, I-405 and SR-22	M1	\$ 121,306	-	-	69,671	49,635	2,000	-	-
Planning, programming, and monitoring	-	\$ 7,138	7,138	-	-	-	-	-	-

HIGHWAYS CAPITAL FUNDING TOTAL	\$ 3,428,899	\$ 520,967	\$ 345,794	\$ 344,742	\$ 119,654	\$ 23,601	\$ 1,658,980	\$ 415,162
State Funding Total	\$ 866,761							
Federal Funding Total	\$ 464,396							
Local Funding Total	\$ 2,097,743							

Note for Project Included in Board Item:

1. Authorize the use of \$588,599 in M2 to complete additional studies.
2. Authorize the use of \$35 million in RSTP in place of M2, \$82 million in State Funds,
3. Authorize the use of future toll or other revenues (\$318 million) to fund the balance, subject to the results of the investment grade traffic and revenue study and the financial plan

M Code - Project codes in M2 Program
 STIP - State Transportation Improvement Program
 RSTP - Regional Surface Transportation Program
 CMAQ - Congestion Mitigation and Air Quality
 M1 - Measure M
 M2 - Measure M2
 I-5 - Interstate 5
 SR-1 - State Route 1
 SR-74 - State Route 74
 SR-73 - State Route 73
 SR-55 - State Route 55
 SR-57 - State Route 57
 SR-91 - State Route 91
 SR-90 - State Route 90
 SR-241 - State Route 241
 SR-71 - State Route 71
 I-405 - Interstate 405
 I-605 - Interstate 605
 SR-22 - State Route 22
 SR-133 - State Route 133



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project Terms and Conditions, Design-Build Cooperative
Agreement, and Next Steps for the Interstate 405
Improvement Project**

Attachment D

**Interstate 405 Improvement Project
Draft Revised Project Schedule
April 2015**

Activity	2015												2016												2017									
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O
ENVIRONMENTAL																																		
Final Environmental Impact Report/Environmental Impact Statement			█																															
Record of Decision					█																													
FINANCIAL																																		
Evaluate Tolling Policy Options		█	█	█	█	█	█																											
Adopt Draft Tolling Policy											█																							
Adopt Final Tolling Policy												█																						
California Transportation Commission Approval/Public Hearing/Legislature Review					█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█										
Transportation Infrastructure Finance and Innovation Act Loan Pursuit					█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█										
Financial Plan					█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█										
Investment Grade Traffic and Revenue								█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█										
Operating Toll Agreement								█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█
Financing Legal Documents																									█	█	█	█	█	█	█	█	█	█
Secure/Issue Debt																									█	█	█	█	█	█	█	█	█	█
PROCUREMENT																																		
Update/Amend Request for Qualifications					█																													
Shortlist and Release Draft Request for Proposals (RFP)										█																								
Release Final RFP																																		
Design-Build Award																																		
Notice to Proceed 1																																		
Notice to Proceed 2																																		

Board direction to be lead agency in implementation of Project required



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Project Terms and Conditions, Design-Build Cooperative
Agreement, and Next Steps for the Interstate 405
Improvement Project**

PowerPoint (Board)



Project Terms and Conditions, Design-Build Cooperative Agreement, and Next Steps for the Interstate 405 Improvement Project





Background

Action	Time Frame
California Department of Transportation (Caltrans) recommends Alternative 3 as the project preferred alternative	July 25, 2014
Caltrans identifies \$82 million in state funding	January 2015
Orange County Transportation Authority (OCTA) re-engages with Caltrans: <ul style="list-style-type: none">• Local control• Minimize construction impacts	February 2015
Interstate 405 (I-405) ad hoc committee formed	February 2015
OCTA-Caltrans discussions underway	February-April 2015
Signed final environmental impact report/environmental impact study published in Federal Register	April 3, 2015
Publish Record of Decision in Federal Register	May 2015



Project Preferred Alternative



* The existing carpool lane is combined with the new express lane to provide a dual lane express lanes facility

Typical cross section is 7 lanes each direction (5 general purpose lanes and 2 express lanes)



Travel Time Benefit Comparison

2040 Travel Time from State Route 73 to Interstate 605

	Add One General Purpose Lane	Add One General Purpose Lane and One Express Lane
General Purpose Lanes	57 min	29 min
High-Occupancy Vehicle/Express Lanes	54 min	13 min



I-405 Ad Hoc Committee

- ❖ Met six times
- ❖ Provided guidance to the Chief Executive Officer for negotiations with Caltrans
- ❖ Explored agreement parameters
- ❖ Discussed:
 - Terms of agreement
 - Project delivery – roles and responsibilities
 - Operations and maintenance (including toll policy)
 - Funding and financing
 - Use of net excess revenues
 - Project risks



Proposed Terms and Conditions:

Key Considerations: Delivery, Funding, Financing

❖ Project Delivery

- OCTA lead agency for design-build (DB) contractor, systems integrator, toll collection services
- Delivery consistent with tolling authorization and AB 401
- Revised cooperative agreement to be used
- Operating toll agreement to follow

❖ Funding and Financing

- OCTA lead on funding/financing; plan to be shared with Caltrans
- Caltrans provides \$82 million
- TIFIA to be considered*
- Financing “tail” is a minimum of five years

* TIFIA = Transportation Financing and Innovation Act



Proposed Terms and Conditions: Key Considerations - Operations

- ❖ OCTA or its contractor operates toll collection facilities
- ❖ OCTA sets toll policy
- ❖ High-occupancy vehicle 2+ free for no less than three years*
- ❖ Continuous access should not be precluded in future
- ❖ Congestion management pricing used:
 - Triggers put in place to adjust tolls
 - Speed optimized for mobility, reliability

* Subject to results of the Investment Grade Traffic and Revenue Study and further additional funding considerations.



Proposed Terms and Conditions: Key Considerations – Net Excess Revenues

- ❖ OCTA and Caltrans, in partnership, develop a multi-year expenditure plan
 - Expenditure plan updated annually
 - OCTA Board of Directors adopts the multi-year expenditure plan and each annual update
 - Net excess revenues used for projects that maintain or improve the safety, operations, or travel reliability of any transportation mode in the corridor, or provide or improve travel options in the corridor
- ❖ OCTA responsible for express lane projects
- ❖ Caltrans responsible for non-express lane projects on State highway system



Recommendations

- ❖ Approve I-405 terms and conditions
- ❖ Direct staff to take actions to implement the I-405 project and return to Board of Directors with:
 - Draft toll policy
 - Financing plan, including TIFIA and other grant opportunities
 - Operating toll agreement
- ❖ Include \$82 million from Caltrans
- ❖ Pursue California Transportation Commission (CTC) project approval



Recommendations (continued)

- ❖ Modify and issue addenda, as necessary, to the DB Request for Qualifications
- ❖ Authorize the Chief Executive Officer to negotiate and execute the DB cooperative agreement with Caltrans including:
 - \$55.4 million for reimbursed direct work (inspection) and enhanced oversight services
- ❖ Replace \$35 million in Measure M2 project funds with Regional Surface Transportation Program funds
- ❖ Pursue Federal Transportation Improvement Program amendment



Next Steps

2015

Finalize environmental process

Obtain authorization to acquire right-of-way

Execute construction management agreement

Amend consultant agreements

Obtain CTC approval

Develop toll policy options

Develop preliminary financial plan, including pursuing TIFIA and other opportunities



Next Steps

2016

Adopt toll policy

Develop investment grade traffic and revenue study

Adopt financial plan and develop financing documents

Approve an operating toll agreement with Caltrans

Award DB contract

2017-2022

Secure financing

Full DB contract notice to proceed

Design and build project