

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY COOPERATIVE AGREEMENT – NON-COMPETE

BACKGROUND

The non-compete clause is part of the larger Cooperative Agreement between the State of California Department of Transportation (Caltrans) and Foothill/Eastern Transportation Corridor Agency (F/ETCA) that was entered into on May 13, 1993.¹ The purpose of the Cooperative Agreement is to outline the responsibilities and respective obligations of the parties to the Cooperative Agreement, such as liability, ownership, right-of-way, utilities and maintenance. Caltrans agreed that “any and all costs of State in connection with maintenance and operation of the project and oversight of right-of-way, design and construction activities will be borne by the State . . .” In turn, the F/ETCA is responsible for design and construction of the project. Cooperative Agreement documents are routinely drafted by Caltrans for projects that involve other public entities.

OVERVIEW OF NON-COMPETE CLAUSE

The non-compete provisions do not prohibit construction of ANY transportation improvement. However, in order to build the 67 miles of new highways with private bond financing, non-compete agreements with Caltrans were required. These agreements simply require Caltrans to make up lost toll revenue if the TCA is not able to meet debt service as a result of other highway improvements.

The agreements, which expire in 2020, brought millions of dollars of private investment into Orange County’s transportation network. Transportation projects that were planned at the time the agreements were signed are not subject to these covenants. The non-compete provisions do not affect safety improvement projects regardless of when they were planned.

FACTS

TCA cannot stop a project, but TCA can require compensation for revenue loss that leads to defaulting on its revenue bonds.

TCA’s non-compete agreement does not have the power to stop Caltrans or any other agency from improving or widening any roadway. The clause states that if projects are build that reduce toll-road traffic – and therefore put TCA at risk of defaulting on its toll-construction bonds – then TCA would have to be compensated only to the minimum level required to cover bond debt.

¹ The non-compete clause is in Section 2.1.6 of the 1993 Agreement. The non-compete zone was revised in the 2003 Amendment No. 3 to the Agreement. See item 4 of the mutual agreements (page 3) and Exhibit “B” in the 2003 Amendment.

Non-compete clauses are necessary to obtain private bond financing.

The purpose of the non-compete clause is to disclose projects that could divert traffic off the project that is being financed with revenue bonds. Projects not disclosed at the time of the financing must comply with the non-compete agreement. To date the clause has enabled the financing of \$3.7 billion to construct 51-miles of toll roads.

Billions of dollars worth of future transportation projects were exempted from TCA's non-compete clause as well as any project deemed a safety improvement.

Projects that are exempted from the non-compete clause are all measure M tax projects (such as improvements to the El Toro Y and the 55 Freeway Widening), improvements identified in the 1992 and 1994 State Transportation Improvement Program, all projects outlined in the Master Plan of Arterial Highways, and any project consistent with OCTA's 2020 Orange County Transportation Vision Plan.

The non-compete agreement expires in 2020 therefore any project constructed after that date will not be effected. See the following list of exemptions for further detail.

TCA Non Competition Exemptions

1. Any STATE highway projects included with the 1994 STATE Transportation Improvement Program adopted by the California Transportation Commission on March 30, 1994; and
2. Those STATE highway improvements specifically described in OCTA's "Revised Improvement and Growth Management Plan" (Measure "M") which were approved in the November 1990 election, including widening of SR 55 (SR 22 – SR 91) and the 22/55 interchange funded by any source of revenue; and
3. Any STATE highway improvements necessary for improved safety, maintenance or operational purposes; and
4. Any project identified for the Congestion Management Plan (CMP), adopted by the Orange County Transportation Authority on September 26, 1994; and
5. Any project that is consistent with the Master Plan of Arterial Highways adopted by the Orange County Board of Supervisors on June 14, 1994; and
6. Any project that is consistent with the 2020 Orange County Transportation Vision adopted by the Orange County Transportation Authority's Board of Directors on February 28, 1994; and
7. Any Intercity, Commuter, Urban and/or High Speed rail projects supported by STATE and/or others; and

8. Any HOV exclusive lanes operationally required by environmental regulatory agencies; and
9. Any HOV exclusive lanes on I-5; and
10. Improvements deemed necessary to the SR 91 Privatization Project to provide additional access to and from the toll facility and/or localized operational improvements.