

Foothill South

12-ORA-241 PM 1.0/6.3 (District 11),
3.9/26.5 (District 12)

12336-111010/111020

District Agreement No. 12-210

COOPERATIVE AGREEMENT FOR
FOOTHILL TRANSPORTATION CORRIDOR

This Agreement, entered into on May 13, 1993 is between the STATE of CALIFORNIA, Department of Transportation, referred to herein as "STATE", and

FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY

a California joint powers agency,

referred to herein as "AGENCY"

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EXHIBIT A

RECITALS

- (1) STATE and AGENCY, pursuant to Streets and Highways Code Sections 114 and 130 are authorized to enter into Cooperative Agreements for construction of proposed STATE highways, improvements to existing STATE highways and construction of facilities required for the maintenance of said STATE highways and improvements.
- (2) Pursuant to authority granted in Government Code Section 66484.3(f), AGENCY desires to construct STATE highway improvements, (including a highway maintenance station), on proposed Route 241 from its connection with I-5 in San Diego County to proposed Route 231 (Eastern Transportation Corridor) referred to herein as PROJECT.
- (3) Pursuant to the above stated authority, which may be supplemented as necessary and appropriate by Section 30800 of the Streets and Highways Code, STATE and AGENCY desire to enter into this Cooperative Agreement for the purpose of further clarifying the obligations of the parties with respect to design, construction, operation and maintenance of the PROJECT.
- (4) This Agreement supplements the Agreement dated November 14, 1988, between STATE and AGENCY and supersedes Cooperative Agreement No. 12-077 dated July 25, 1991. In the event of any conflict between provisions of the November 14, 1988 Agreement and this Agreement, the provisions of this Agreement shall supersede and prevail over the provisions of the November 14, 1988 Agreement.
- (5) Design and construction of the PROJECT will be financed by development impact fees, grant fund bonds to be issued by AGENCY and possibly other sources of funds and financing devices. The toll revenue bonds will be payable from toll revenues collected from users of the Corridor. 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 STATE, with the exception of the travel expenses specified in Section 3.1.5 of this Agreement.
- (6) As described in Government Code Section 66484.3(f), upon Substantial Completion of the PROJECT or any usable segment thereof, Title (excluding the Toll Facilities) will be transferred to STATE and STATE will thereupon assume responsibility for operation and maintenance of the PROJECT or such segment thereof.

1.0 AGENCY AGREES:

1.1 Administration

- 1.1.1 To advertise, award and administer the design and construction contracts and any work performed under encroachment permit for PROJECT in accordance with the applicable requirements of the Local Agency Public Construction Act and the applicable requirements of Labor Code Sections 1720 et seq governing prevailing wage requirements.
- 1.1.2 That all construction work shall be accomplished according to AGENCY approved Design Documents and Construction Documents, subject to review and approval by STATE, which approval shall not be unreasonably withheld.
- 1.1.3 To submit to STATE all necessary Design and Construction Documents for review and approval by STATE's District Director of Transportation or the District Director's delegated agent, prior to commencement of construction of the portion of the PROJECT which is the subject of the Design and Construction Documents. Changes to approved Design Documents shall be implemented only by contract change orders approved by STATE. All changes affecting public safety or public convenience on existing STATE Highways, and all applicable major changes as defined in STATE's Construction Manual, shall be concurred with by STATE in advance of performing the work. All changes shall be shown on the PROJECT as-built plans.
- 1.1.4 That construction by AGENCY of improvements referred to herein which lie within existing STATE highway Rights-of-Way or affect STATE facilities, shall not be commenced until an encroachment permit authorizing such work has been issued by STATE.
- 1.1.5 That contract administration procedures shall conform to the requirements set forth in the Construction Contracts, applicable portions of Volume IV of AGENCY's Project Manual and the applicable requirements of STATE's

Construction Manual and Local Programs Manual for construction of PROJECT. In the event of any technical, non-administrative conflicts, STATE'S Manuals shall prevail.

- 1.1.6 That construction within the existing or ultimate STATE Right-of-Way shall comply with the requirements in STATE's Standard Specifications and PROJECT Special Provisions requirements set forth in the Construction Contract and applicable portions of Volume IV of AGENCY's Project Manual and applicable requirements of STATE Documents. In the event of any technical, non-administrative conflicts, STATE Documents shall prevail. AGENCY may, at its option with written approval from STATE, construct PROJECT in accordance with specifications which differ from STATE's Standard Specifications.
- 1.1.7 That all surveys performed by AGENCY staff or AGENCY's Contractors shall conform to the methods, procedures and requirements of STATE's Surveys Manual.
- 1.1.8 At AGENCY expense, to furnish a field site representative for each Construction Contract, subject to reasonable approval of STATE, who is a licensed Civil Engineer in the STATE of California, to perform the functions of Resident Engineer. The PROJECT plans and specifications are being prepared by private design consultants. The Resident Engineer shall not be an employee of either the consulting firm that prepared the plans and specifications, or those Construction Contractors providing construction services for the portion of Project for which the resident engineer is responsible.
- 1.1.9 At AGENCY expense, to furnish qualified support staff to assist the Resident Engineer in construction inspection and staff services necessary to assure that the construction is being performed in accordance with STATE Documents and the requirements of each Construction Contract. Qualified support staff shall not be employees of the consulting firm that prepared the plans and specifications or of the Construction Contractors providing construction services for the portion of Project for which said support staff is responsible. AGENCY also agrees, if requested by STATE, to consider terminating the services of any personnel

considered to be unqualified on the basis of deficiency of credentials or professional expertise, or for failure to perform in accordance with the scope of work and/or other pertinent criteria.

1.2 Right-of-Way

1.2.1 To contract with a qualified public agency and/or qualified consultants to perform all Right-of-Way activities, including eminent domain activities, if necessary, to be performed at no cost to STATE in accordance with STATE procedures as contained in Right-of-Way Procedural Handbook, Volume 9, and in compliance with all applicable STATE and Federal laws and regulations, subject to STATE oversight to ensure that the completed work is acceptable for incorporation into the STATE highway Right-of-Way.

1.2.2 To permit STATE to monitor and participate in the selection of consultant personnel who will perform Right-of-Way activities. Also, if requested by STATE, to consider terminating the services of all personnel considered to be unqualified on the basis of deficiency of credentials or professional expertise, or for failure to perform in accordance with the scope of work and/or other pertinent criteria.

1.2.3 That Uniform Act Properties will be acquired in accordance with applicable STATE and Federal laws and regulations, including the Federal Uniform Relocation Assistance and Real Property Acquisition Regulations (49 CFR Part 24), and that AGENCY shall certify legal and physical control of the Right of Way subject to review and approval of STATE in accordance with this Agreement prior to transfer of Title.

1.2.4 To deliver legal Title to the Right-of-Way to STATE, with the exception of Toll Facilities, concurrent with the date of acceptance by STATE of maintenance and operation of PROJECT. Acceptance of said Title by STATE is subject to a Policy of Title Insurance in STATE's name to be provided and paid for by AGENCY.

1.3 Utilities

1.3.1 To identify or cause the Agency's Design and Construction Contractors to identify and locate all utilities within the proposed Right-of-Way on AGENCY's PROJECT plans and specifications, in accordance with the requirements of Government Code Section 4215 as clarified in the Construction Contract, and all underground facilities within the PROJECT area, to identify as high or low risk, and protect or otherwise provide for such utilities in accordance with the Construction Contract and in accordance with STATE's Manual. High and Low Risk Underground Facilities Within Highway Rights of Way, and Right-of-Way Procedural Handbook, Volume 5. In the event of any technical, non-administrative conflicts, STATE's Manual and Handbook shall prevail.

1.3.2 That if existing public and/or private utilities conflict with the construction of PROJECT, or any AGENCY planned rehabilitation, expansion or extension of PROJECT, AGENCY shall make all necessary arrangements with the owners of such utilities for their protection, relocation or removal. AGENCY shall inspect the protection, relocation or removal of such facilities. If any protection, relocation or removal of utilities is required, such work shall be performed in accordance with STATE policy and procedures for those utilities within proposed or Existing STATE Rights-of-Way and in accordance with AGENCY policy for those utilities outside proposed or Existing STATE Rights-of-Way. STATE shall have no responsibility for costs of such protection, relocation or removal. AGENCY shall require any utility owner performing relocation work in Existing STATE Rights-of-Way to obtain a STATE encroachment permit prior to the performance of said relocation work. Any relocated or new utilities shall be correctly shown and identified on the as-built plans.

1.4 Permits

- 1.4.1 That prior to commencement of work within Existing STATE Rights of Way or which affect STATE facilities, AGENCY and its Contractor will each apply for encroachment permits for construction work through the office of STATE's District Permit Engineer and each application shall be accompanied by five (5) reduced sets of applicable Design Documents approved as provided in this Agreement and shall include proof said Contractor has obtained a payment and performance surety bond meeting the requirements of Civil Code Section 3248.
- 1.4.2 That prior to commencement of work within Existing STATE Rights of Way or which would affect STATE facilities, AGENCY and the Toll Facilities Contractor shall each apply for encroachment permits for the installation of Toll Facilities through the office of STATE's District Permit Engineer. Each application shall be accompanied by five (5) reduced sets of plans showing the location of the Toll Facilities, if any, within Existing STATE Rights-of-Way. Said encroachment permits will be issued at no expense to AGENCY and will not be unreasonably withheld by STATE. The Toll Facilities installation permit shall include temporary permission to operate the Toll Facilities pending issuance of the permanent encroachment permit for such operations under Section 1.4.3 below.
- 1.4.3 That no later than 60 days prior to the anticipated date for achievement of Substantial Completion of the PROJECT or any usable Segment or Sub-segment thereof, AGENCY shall apply through the STATE's District Permit Engineer for an encroachment permit, on mutually agreeable terms, for the Toll Facilities which AGENCY shall retain on existing STATE Right-of-Way. AGENCY's application shall be accompanied by five (5) reduced sets of aforesaid STATE approved plans. Said encroachment permits will be issued at no expense to AGENCY and will allow AGENCY, the Toll Facilities Contractor and other contractors and agents of AGENCY to operate, maintain and repair said facilities within STATE's then current Right-of-Way. Said

encroachment permits shall not be unreasonably withheld by STATE, and shall become effective concurrent with the conveyance of Title to STATE of PROJECT, or any Segment thereof, and shall terminate upon cessation of all toll collection activities necessary to retire any and all bonded indebtedness and obligations AGENCY has incurred or may incur in connection with, or secured by, the PROJECT, including the cost to remove the Toll Facilities if so required by STATE.

1.5 Insurance

1.5.1 To require the Construction Contractors and any subcontractors performing construction work within the Existing STATE Rights-of-Way to maintain in force, from the date of commencement of construction until Completion of each Construction Contract, a policy of General Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability in accordance with Section 7-1.12 of STATE Standard Specifications. Such policy shall contain an additional insured endorsement naming STATE, its officers, agents and employees as additional insureds. Coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to STATE which shall be delivered to STATE before the issuance of any applicable encroachment permit.

1.6 Finance

1.6.1 To pay the actual costs of construction required for satisfactory completion of each Construction Contract, including changes pursuant to contract change orders concurred in by STATE's representative necessary to complete Project. Nothing in this paragraph is intended to preclude AGENCY from obtaining STATE funding for each Construction Contract as authorized by law.

1.7 Acceptance

1.7.1 To notify STATE in writing of each Construction Contractor's projected date for achievement of Completion of PROJECT or any Segment thereof at least forty five (45) days prior to such projected date.

1.7.2 To require each Construction Contractor to undertake all actions necessary to obtain Completion of the PROJECT or portion thereof, including completion of Punch list items, within ninety (90) days after achievement of substantial Completion thereof.

1.7.3 To furnish STATE a complete set of acceptable full-sized film positive reproducible as-built plans and all contract records, including soil tests, hydrology reports, survey documents and microfilm copy of all shop drawings immediately upon receipt thereof from the Contractor.

1.8 Termination

Refer to Section 3.8.

1.9 Toll Operations

1.9.1 To permit toll-free passage on PROJECT to all vehicles owned, leased, rented or operated by STATE and so identified when engaged in construction, maintenance or operation of PROJECT.

1.10 Highway Maintenance

Refer to Sections 2.10 and 3.10.

1.11 Hazardous Waste

1.11.1 To, within the limits of their legally prescribed responsibilities, be responsible during the construction period for the investigations of potential hazardous waste sites within the Right of Way, the remediation of those sites that will impact PROJECT, and any unknown hazardous wastes or underground tanks encountered during construction of PROJECT, excepting (a) those on existing STATE owned or operated facilities and (b) those hazardous wastes or underground tanks located on facilities previously owned or operated by STATE and for which STATE is ultimately found responsible by administrative or judicial order.

2.0 STATE AGREES:

2.1 Administration

2.1.1 STATE shall cooperate fully with AGENCY in connection with the development of the PROJECT on existing STATE Rights-of-Way including, without limitation, the execution of utility easements and other instruments necessary or desirable in connection therewith.

2.1.2 To provide as oversight, at no cost to AGENCY, a qualified STATE representative and a qualified STATE structures representative who shall (a) review and approve or disapprove complete submittals within the time periods set forth in Exhibit A (b) upon timely submission by AGENCY, review complete Right-of-Way documentation and provide comments thereon within six weeks time to allow AGENCY to meet the deadlines for completion of the PROJECT, (c) perform independent assurance testing, specialty testing, and off-site source inspection and testing, (including type approval of asphalt and concrete plants) and (d) notify AGENCY of any unacceptable work and materials and of any actions needed for public safety or the preservation of property.

STATE'S review and approval of any submittals within the above stated time frames may be delayed by, and during the dependency of, Force Majeure events as defined herein.

2.1.3 That whenever STATE approval is required by the terms of this Agreement, the Design Documents, the Construction Contract or the Construction Documents, that approval shall not be unreasonably withheld or delayed. STATE agrees to meet the applicable deadlines outlined in Exhibit A for approval of submittals subject to Force Majeure. STATE acknowledges and agrees that it has approved AGENCY Standards.

2.1.4 That, except for those design standard changes mandated by a STATE order to conform to a critical safety standard, STATE, for purposes of potential changes to design standards, shall treat as projects under construction: (a) the

portion of PROJECT between Antonio Parkway and Portola Parkway North, and (b) any Segment of Project for which STATE has approved bid documents or for which a construction contract has been awarded.

2.1.5 To provide, at AGENCY expense, any "STATE furnished material" as shown on the plans or each Construction Contract and as provided in the "Special Provisions" for each Construction Contract.

2.1.6 Non-Competition

(a) That STATE shall use its best efforts to exercise its discretionary power to support PROJECT and, except as specifically authorized in this Section 2.1.6, STATE shall refrain from exercising that discretionary authority relative to initiating, supporting or approving any Capital Project on the State Highway System within the Non-Competition Zone which would have the purpose or reasonably foreseeable effect of significantly adversely affecting AGENCY's toll operations. In addition, STATE agrees to advise AGENCY of any activity on the State Highway System within the Non-Competition Zone proposed by any other governmental or private entity which could materially impair, delay, frustrate, obstruct or otherwise impede construction or operation of the PROJECT, including the toll operations.

(b) Without limiting in any way the generality of the foregoing, for the period commencing with the execution of this Agreement and thereafter STATE shall not construct, operate, assist or support, directly or indirectly, and shall exercise all discretionary authority available to it under applicable law to persuade other governmental or private entities, directly or indirectly, from constructing, operating, permitting, assisting or supporting any STATE highway Capital Projects or improvements, realignments or enhancements of STATE highway projects within the Non-Competition Zone which would principally run parallel to the PROJECT, which

would reasonably be expected to have an adverse effect on PROJECT tolls and which would become operational prior to the year 2020 or the earlier termination of this Agreement except for:

- (i) ✓ Any STATE highway projects included with the 1992 STATE Transportation Improvement Program adopted by the California Transportation Commission on March 20, 1992; and
- (ii) ✓ Those STATE highway improvements specifically described in OCTA's "Revised Improvement and Growth Management Plan" (Measure "M") which were approved in November 1990 election; and
- ✓ (iii) Any STATE highway improvements necessary for improved safety, maintenance or operational purposes; and
- (iv) ✓ Any project identified for the Congestion Management Plan (CMP), adopted by the Orange County Transportation Authority but limited to intersection improvements and those that are consistent with the Master Plan of Arterial Highways adopted by the Orange County Board of Supervisors on August 11, 1992; and;
- (v) Any Intercity, Commuter, Urban and/or High Speed rail projects supported by STATE and/or others; and
- (vi) Any HOV exclusive lanes operationally required by environmental regulatory agencies.
- (vii) Any HOV exclusive lanes on I-5 between Avenida Pico and State Route 1.

- (c) This agreement is based on the assumptions that construction of the San Joaquin Hills Transportation Corridor (with three lanes in each direction over its entire length) will be completed by 1999 and the Eastern Transportation Corridor (with two lanes in each direction over its entire length) will be completed by the year 2007 and that PROJECT will be completed by 2012. Should any of these events not occur, other projects not herein identified may be implemented by STATE or others within the Non-Competition Zone as substitute service for the greater I-5 corridor.
- (d) Subject to subsection (e) hereof, nothing in this Section 2.1.6 shall be deemed to limit the right of STATE and its agents to act, or to render such advice or make such recommendation as it or they may deem to be in the best interests of the State of California and the public in accordance with STATE's constitutional and statutory responsibilities.
- (e) Should STATE contravene this limited covenant of non-competition as set forth herein, STATE agrees to pay AGENCY on an annual basis, an amount not to exceed the difference, if any, between:
 - (i) the payments required under bond indentures to service any and all toll revenue bonded indebtedness and obligations owed to financial institutions guaranteeing such bonded indebtedness AGENCY has incurred or may incur in connection with, or secured by, the PROJECT, excluding any payments or reimbursements for any loans, advances, or other funding provided to AGENCY from any local, state or federal source; and
 - (ii) the net toll revenues AGENCY has available to meet such bonded indebtedness and obligations guaranteeing such bonded indebtedness in the ordinary course of business, excluding payments

on loans, advances or scheduled obligations from Local, STATE or Federal sources.

In no event shall amount paid by STATE be greater than an amount equal to the loss of toll revenues directly or indirectly resulting from STATE's action, as determined by a mutually agreed toll revenue consultant.

- (f) STATE hereby agrees that AGENCY has the sole discretion, for such time as AGENCY, its assignees or a Financing Entity retains control over the PROJECT Toll Facilities, to set, establish modify and adjust the rate of tolls to be charged for any use of the PROJECT and further agrees that STATE shall not regulate, set, establish, modify or change such tolls.

Should STATE contravene the covenant contained in this Section 2.1.6(f), in addition to any and all remedies available to AGENCY at law or in equity now or hereafter existing, STATE shall be obligated to pay AGENCY the diminution in toll revenues resulting from such STATE action but only to the extent that AGENCY is unable to satisfy all of its obligations under the Indenture(s) of Trust or otherwise pay all of its debts and obligations, including without limitation, all costs of operation, all loans, advances scheduled obligations and bonded indebtedness whether incurred before or after the effective date of this Agreement.

After retirement of all bonded indebtedness, any unexpended reserves will be applied by the AGENCY first to reimburse STATE to the extent that STATE contributed to such reserves.

- (g) The obligation of STATE to pay the amounts under this Section 2.1.6 is subject to appropriation of funds by the state legislature and the allocation of resources for the remedies provided hereinabove, by the California Transportation Commission. Immediately upon an entry of a final order in arbitration or judgement establishing the extent of any payment,

award or damages to which AGENCY is entitled, STATE agrees to use its best efforts to obtain from the state legislature an appropriation or authorization and an allocation from the California Transportation Commission, sufficient to enable STATE to pay AGENCY the amount of such award.

- 2.1.7 That the requirements of the Design Contract Documents may differ from current STATE requirements, provided STATE has delivered prior written approval to AGENCY designating such differences as design exceptions.

2.2 Right-of-Way

Refer to Recitals (5), and Section 2.1.2.

2.3 Utilities

- 2.3.1 That after PROJECT acceptance by STATE, if public and/or private utilities conflict with any future STATE planned rehabilitation, expansion or extension of PROJECT facilities, other than Toll Facilities, STATE shall be responsible for arranging with the owners of such utilities for their protection, relocation or removal. STATE shall coordinate and cooperate with AGENCY in planning such work so as to avoid any adverse impact on the Toll Operations.

2.4 Permits

- 2.4.1 To issue, at no cost to AGENCY, Construction Contractors, Toll Facilities Contractor and its other contractors and agents within 60 days of receipt by STATE of acceptable completed applications, the necessary encroachment permits under Streets and Highways Code Section 670 for required work, including construction, maintenance, repair, replacement and operation of the Toll Facilities within existing STATE Rights-of-Way.

2.5 Insurance

Refer to Section 1.5.

2.6 Finance

Refer to Section 1.6.

2.7 Acceptance

2.7.1 To accompany AGENCY's representatives in inspecting the PROJECT (or portions thereof) to determine whether Substantial Completion has been achieved and to assist in establishing the Punch List. STATE's failure to notify AGENCY within 30 calendar days after such inspection of any nonconformance and stating the specific reasons for such nonconformance shall be deemed confirmation that Substantial Completion has been achieved. The purpose of this coordination is to ensure that STATE will not impose any additional requirements for Acceptance after AGENCY's Construction Contractors have been notified that Substantial Completion has been achieved.

2.7.2 That upon Substantial Completion of the PROJECT, or any Segment, AGENCY shall deliver to STATE a grant deed, in a mutually acceptable form, granting to STATE Title to the Right-of-Way thereto and improvements thereon (excluding the Toll Facilities and excluding any portion of the Right-of-Way already owned by STATE). STATE agrees to accept and record such grant deed, evidencing its Acceptance of the PROJECT or such portion thereof.

STATE agrees to initiate, recommend and support such action as is necessary for the California Transportation Commission to include the PROJECT, legislatively enacted as Route 241, as a part of the STATE Highway System prior to or concurrently with satisfaction of the above-stated conditions of Acceptance.

2.7.3 That whenever PROJECT or any portion thereof has been Substantially Completed and Accepted by STATE, AGENCY may open such portion thereof to use by public traffic, and AGENCY will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of such use. AGENCY agrees to complete PROJECT or such portion thereof, including Punch

List items. within ninety (90) days of STATE's Acceptance of PROJECT or portion thereof. STATE will not be liable for any compensation due by AGENCY to its Construction Contractors or other third parties due to any delay, hindrance, or inconvenience to the completion of PROJECT caused by such public traffic.

2.8 Termination

Refer to Section 3.8.

2.9 Toll Operations

Refer to Section 1.9 and 3.9.

2.10 Highway Maintenance

2.10.1 That upon Substantial Completion of work under this Agreement, adoption of any part of PROJECT, including the maintenance station, into the STATE Highway System by the California Transportation Commission, approval by the Federal Highway Administration, if required, and conveyance of Title to STATE. STATE shall assume responsibility for maintenance of PROJECT. Prior to acceptance of any part of PROJECT south of Oso Parkway, maintenance facilities will be provided by AGENCY to maintain that part of PROJECT.

2.10.2 That from and after the conveyance of the PROJECT or portion thereof to STATE, the PROJECT or portion thereof shall be part of the STATE Highway System and shall be maintained and repaired by STATE, at its own cost and expense (except as provided below), in accordance with all requirements applicable to the STATE Highway System, including but not limited to Streets and Highways Code Sections 91, 92 and 118.4, and Government Code Section 14030(d). Without limiting the generality of the foregoing, STATE's maintenance and repair of the PROJECT shall be equivalent to the maintenance and repair on Interstate 5 and Interstate 405. The foregoing shall not be construed to require STATE to have any obligation to perform any work

(such as punch list items, warranty work, or repair of damage done by AGENCY or its Construction Contractors) which the Construction Contractor is obligated to perform, or to perform any maintenance, repair or replacement of the Toll Facilities. STATE specifically agrees that it shall not seek recourse against AGENCY with regard to any work required as the result of design defects in PROJECT except to the extent that the design deviated from applicable STATE standards without STATE's prior written approval.

3.0 MUTUALLY AGREED:

3.1 Administration

- 3.1.1 That AGENCY shall be responsible for seeking to finance the construction and Toll Facility operation of the PROJECT, provided that the foregoing shall not preclude AGENCY from obtaining STATE funding for the PROJECT as authorized by law or from obtaining funding from any other public or private source. STATE shall have no responsibility to meet debt service obligations on any debt incurred by AGENCY in the course of developing, constructing and operating the PROJECT, or collecting tolls.
- 3.1.2 That AGENCY and STATE agree to cooperate and consult with each other in design and construction of the PROJECT. If requested to do so by AGENCY, STATE agrees to use its best efforts to assist AGENCY in obtaining governmental approvals required for the PROJECT.
- 3.1.3 That the obligations of STATE to provide construction oversight and Right-of-Way oversight under the terms of this Agreement are contingent upon the appropriation of resources by the state legislature and the allocation of resources by the California Transportation Commission; provided that STATE shall use best efforts to include sufficient funds in its budget for performance of its oversight obligations hereunder.
- 3.1.4 That in construction of said PROJECT, all work shall be accomplished according to approved PROJECT plans, specifications and applicable STATE Standards. Satisfaction of these requirements shall be verified by STATE's

representative. STATE's representative, who will coordinate activities with the Resident Engineer, is authorized to enter on to AGENCY's construction site during construction for the purpose of monitoring construction activities.

- 3.1.5 That material testing and quality control shall conform to the requirements set forth in the applicable Construction Contract, applicable portions of Volume IV of AGENCY's Project Manual, and the applicable requirements of STATE's Construction Manual and Material Testing Manual, and shall be performed, at AGENCY expense, by STATE certified material testing consultants. In the event of any technical, non-administrative conflicts, STATE's Manuals shall prevail. AGENCY selection of such consultants shall be subject to STATE approval, which approval shall not be unreasonably withheld. Independent assurance testing, specialty testing, and off-site source inspection and testing, will be performed by STATE at no cost to AGENCY except as noted herein. AGENCY shall reimburse STATE for any additional travel expenses incurred by STATE for off-site inspection and testing performed by STATE which is more than 300 airline miles from either Sacramento or Los Angeles. Type approval of asphalt and concrete plants shall be by STATE, at STATE expense.
- 3.1.6 That pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas as are within the limits of PROJECT and are open to public traffic, AGENCY shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. AGENCY shall take all necessary precautions to protect the traveling public from injury and damage related to the operation of AGENCY's vehicles, the Construction Contractor's equipment and vehicles, and vehicles of other contractors and consultants retained by AGENCY.
- 3.1.7 That the parties to this Agreement anticipate potential need for future Corridor improvements identified in the PROJECT environmental documents, including but not limited to, HOV lanes, rail transit improvements and other transit improvements. The parties to this Agreement agree to cooperate with each other in planning, constructing,

maintaining and operating these additional improvements. In the event that AGENCY agrees to assume responsibility for design and construction of said improvements, the terms of this Agreement shall govern the parties respective rights and obligations with respect to the improvements. Furthermore, in such event AGENCY shall, subject to appropriate STATE review and approval through the encroachment permit process, which approval shall not be unreasonably withheld, have the right to enter STATE Right-of-Way to construct the aforesaid improvements.

3.2 Right-of-Way

3.2.1 That the process for STATE's acceptance and approval of Title to any portion of the Right-of-Way is as follows: AGENCY shall supply to STATE for approval, a package containing the title report, legal description and Right-of-Way requirement map (and, for non-dedicated properties, the appraisal) of each property within the Right-of-Way. Provided that AGENCY submits complete packages to STATE in reasonable numbers and in reasonable intervals, STATE shall notify AGENCY within 30 days after receipt of any objections to any such package. If STATE fails to so respond during such periods, STATE shall be deemed to have approved the title exceptions set forth in the title report (other than any monetary liens), the legal description, map and appraisal (if any).

3.2.2 That upon recordation of the deed for each portion of the Right-of-Way to STATE, ownership and title to materials, equipment and appurtenances, other than the Toll Facilities, which are permanently installed within such portion of the Right-of-Way will automatically be vested in STATE. Title to materials, equipment and appurtenances (other than the Toll Facilities) installed within Existing STATE Rights-of-Way or installed within the Right-of-Way following Acceptance thereof by STATE, will automatically be vested in STATE upon such installation. No further agreement will be necessary to transfer ownership of these items as hereinabove stated.

3.3 Utilities

3.3 Utilities

Refer to Section 1.3.

3.4 Permits

Refer to Section 1.4.

3.5 Insurance

Refer to Section 1.5.

3.6 Finance

Refer to Section 1.6.

3.7 Acceptance

3.7.1

That upon Acceptance by STATE of the PROJECT or any Segment thereof, STATE shall be responsible for maintenance thereof as described in Section 2.10, at no cost or expense to AGENCY, and STATE rather than AGENCY shall be considered to "own and control" the PROJECT (or Segment) as such term is used in Government Code Section 830(c), exclusive of the Toll Facilities. Notwithstanding the foregoing, following acceptance, AGENCY shall retain responsibility and liability for (a) AGENCY's responsibilities set forth in Section 3.9 regarding maintenance and operation of Toll Facilities located thereon, until removal or conveyance thereof to STATE at STATE's option as provided herein, and (b) any work remaining to be completed by a Construction Contractor thereon as described in Section 2.10.2.

3.7.2

That following Acceptance of any portion of the PROJECT, STATE shall not have the right to require AGENCY or its employees, consultants, contractors, or agents to perform or pay for any further work with respect thereto, other than (a) maintenance and repair of the said portion of PROJECT damaged or destroyed by AGENCY or its contractors (b) completion of work (such as the Punch List and delivery of

as-built plans) necessary to achieve Completion and, (c) any work warranted by each Construction Contractor.

3.7.3 After Acceptance by STATE of any Segment of the PROJECT STATE will notify AGENCY of any required Warranty Work, and upon such notification, AGENCY agrees to require Construction Contractor responsible for such work of its obligation to promptly repair such Work.

3.8 Termination

3.8.1 That those portions of this Agreement pertaining to parties' obligations regarding construction of PROJECT shall terminate upon Completion of PROJECT. However, the ownership, operations, maintenance, liability and indemnification clauses shall remain in effect until terminated or modified in writing by mutual agreement, but in no event beyond that date when toll operations by AGENCY cease, or January 1, 2040, whichever is earlier in time.

3.8.2 That if AGENCY terminates PROJECT or any segment thereof prior to completion of the PROJECT, STATE may require AGENCY, at AGENCY expense, to return Existing STATE Rights-of-Way to its original condition or to a condition of acceptable permanent operation, provided no betterment is required. If AGENCY fails to do so, STATE reserves the right to place Existing STATE Rights-of-Way in satisfactory permanent operating condition. STATE will bill AGENCY for all appropriate and reasonable actual expenses incurred and AGENCY agrees to pay said expenses within thirty (30) days.

3.9 Toll Operations

3.9.1 That until the Toll Facilities are removed by AGENCY at AGENCY's expense or conveyed to STATE at STATE's option, AGENCY shall be responsible for (a) maintenance of and liability for the Toll Facilities and (b) all toll collection processes, including traffic control entering and exiting the toll collection points.

- 3.9.2 STATE acknowledges and agrees that AGENCY has the sole discretion to establish, modify and adjust the rate of tolls to be charged for all classes of vehicles utilizing the PROJECT without regulation, participation or limitation by STATE, and to collect and retain all tolls collected without obligation to share any revenues with STATE.
- 3.9.3 AGENCY shall have the right to modify or relocate the Toll Facilities to such points as AGENCY shall establish, subject to STATE approval based upon safety of the traveling public or standards for operations of STATE Highways, and upon issuance of an encroachment permit for the specific work. Said encroachment permit shall not be unreasonably withheld by STATE.
- 3.9.4 At any time following Acceptance of the PROJECT, AGENCY may terminate its toll collection operations. AGENCY shall provide STATE with a notice of termination setting forth the date operations will be terminated. No such termination shall occur during any period in which an assignment under Section 3.13.2(b) is in effect, without the approval of the Financing Entities. Upon receipt of notice of termination, STATE shall notify AGENCY whether it wishes AGENCY to remove the Toll Facilities from the PROJECT.

3.10 Highway Maintenance

- 3.10.1 If STATE and AGENCY agree that it is necessary to replace or repair any portion of the PROJECT, but STATE is unwilling or unable to perform the necessary work in an expeditious manner, then AGENCY shall have the right, but not the obligation, to perform such work. STATE agrees to issue encroachment permits for such work as necessary, in accordance with the requirements set forth in Section 1.4 hereof. AGENCY shall be entitled to reimbursement for its costs incurred in such replacement or repair, provided that STATE shall not be obligated to reimburse AGENCY for any amount in excess of the cost which would have been incurred by STATE for the same work. The reimbursement amount shall be due and payable at such time as STATE would have performed such work in the ordinary course of business, subject to funds being appropriated by STATE Legislature

and allocated by California Transportation Commission. STATE agrees to seek such legislation and allocation in good faith.

3.11 Indemnifications

3.11.1 That neither STATE nor any officer or employee is responsible for any damage or liability occurring by reason of anything done or omitted to be done by AGENCY under or in connection with any work, authority or jurisdiction delegated to AGENCY under this Agreement, except as otherwise provided in Section 2.7.3 and 3.7.1. It is understood and agreed that, pursuant to Government Code Section 895.4, AGENCY shall fully release, indemnify and save harmless the STATE of California, its officers, agents, and employees from all liability, claims, damages, response costs, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AGENCY under or in connection with any work, authority or jurisdiction delegated to AGENCY under this Agreement, except as otherwise provided in Sections 2.7.3 and 3.7.1, and specifically excluding from such indemnity any injury to the extent caused by the negligent or willful act of STATE its officers, employees, agents, contractors or representatives.

3.11.2 That neither AGENCY nor any member of AGENCY nor any of their respective officers, directors, employees or agents is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement (including STATE'S responsibility for maintenance of and liability for the PROJECT as provided in Section 2.7.3 and 3.7.1). It is understood and agreed that pursuant to Government Code Section 895.4, STATE shall fully release, indemnify and save harmless AGENCY, its members and their respective officers, directors, employees and agents from all liability, claims, damages, response costs, suits or actions of every name, kind and description brought for or on account of

injury (as defined in Government Code Section 810.8) occurring, by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement (including STATE'S responsibility for maintenance of and liability for the PROJECT as provided in Sections 2.7.3 and 3.7.1). The foregoing indemnity specifically excludes any injury to the extent caused by the negligent or willful act of AGENCY or its employees, agents, contractors or representatives, however, any such negligent or willful act which has occurred prior to Acceptance shall not impact STATE'S agreement to accept liability for the PROJECT following Acceptance.

3.12 Amendments

3.12.1 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 not incorporated herein shall be binding on any of the parties hereto.

3.13 Assignment

3.13.1 That this Agreement is made solely and specifically between, binding upon and for the benefit of the parties hereto, and, except as specified in Section 3.11, no person, individual, corporation or entity, whatsoever, other than AGENCY, AGENCY's permitted assignees and STATE, shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

3.13.2 That this Agreement may not be assigned by AGENCY without the written consent of STATE, except:

- (a) To another entity formed pursuant to Government Code Section 66484.3(f) or (m) and which assumes full responsibility for performance of the obligation of AGENCY under this Agreement; or

- (b) To a Financing Entity or agent of a Financing Entity or Entities as a condition of obtaining financing, provided AGENCY retains responsibility for fulfilling its material obligations under this Agreement.

AGENCY shall be released of any and all liability under this Agreement upon an assignment hereunder to an entity approved by STATE as professionally and financially competent to undertake all the duties and delegations of AGENCY under this Agreement, and written assumption by the assignee of all obligations of AGENCY under this Agreement and delivery of such assumption to STATE.

3.14 Notices

- 3.14.1 That all notices or demands of any kind required or desired to be given by STATE or AGENCY hereunder, in order to be effective, shall be in writing and shall be deemed delivered 72 hours after depositing the notice or demand in the United STATES mail, certified or registered, postage prepaid, addressed to STATE or AGENCY, as the case may be, at the address specified after the signatures on this Agreement, provided that either party may change its address for notice by giving to the other party written notice of the new address at least ten (10) days prior to the effective date of such new notice address. Further, any such notice or demand to be given to AGENCY hereunder also must be given to all assignees under Section 3.13 hereof as an additional condition of the effectiveness of such notice or demand.

3.15 Partnership

- 3.15.1 That neither this Agreement nor the exercise of any rights or remedies hereunder shall evidence or establish, or be construed as evidencing or establishing any partnership, joint venture or similar relationship between the parties hereto.

3.16 Attorney Fees

3.16.1 That the prevailing party in any litigation relating to this Agreement shall be entitled to recover from the other party all reasonable attorneys' fees, witness fees, and court costs (including those on appeal) incurred by such prevailing party in connection with such litigation.

3.17 Severability

3.17.1 That if any part of this Agreement is found to be invalid or unenforceable by a court having proper jurisdiction, such finding shall not invalidate the remaining portions hereof, but such provisions shall remain in full force and effect; provided, however, that the parties shall immediately renegotiate, reasonably and in good faith, the terms or provisions found to be invalid, as well as any other terms and provisions as necessary to achieve as nearly as possible the parties original contractual intent.

3.18 Headings

3.18.1 That the captions of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

4.0 DEFINITIONS

As used herein, the following terms shall have the following meaning:

4.1 "Acceptance" shall mean the acceptance by STATE of any Segment (including acceptance of operational control of or Title to the Right-of-Way for such Segment and acceptance of Title to the improvements thereon other than the Toll Facilities) in accordance with this Agreement. Acceptance shall occur upon Substantial Completion of such Segment and satisfaction of the other conditions to acceptance set forth in this Agreement. Acceptance shall be evidenced by STATE's signature on each deed of conveyance.

4.2 "AGENCY" shall mean the Foothill/Eastern Transportation Corridor AGENCY, a joint powers authority.

- 4.3 "AGENCY Standards" shall mean the requirements applicable to design and construction of the PROJECT as described in the PROJECT Manual, Volume III and Volume IV.
- 4.4 "Assurance testing" shall mean the testing performed on material entering the PROJECT for the purpose of verifying that acceptance testing is being performed correctly and to ensure that acceptance testing equipment is properly maintained, calibrated and used.
- 4.5 "Capital Projects" shall mean those projects undertaken to construct a transportation facility for motorized vehicular traffic where no such facility existed previously or to construct a portion of a transportation facility where additional traffic lanes are physically added on to existing traffic lanes on an already constructed facility. Expressly excluded from this definition are projects undertaken to increase traffic capacity by modifying already constructed facilities through the installation of traffic sensors, metering devices and Intelligent Vehicle Highway Systems (IVHS) equipment or work involving the re-striping of traffic lanes, medians and shoulders.
- 4.6 "Chief Engineer" The Chief Engineer of the Agency acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.
- 4.7 "Completion" shall mean satisfaction of the conditions set forth in each Construction Contract and the following:
- (a) Satisfaction of all requirements for Substantial Completion;
 - (b) Delivery of all Design Documents, as-built drawings of the PROJECT, Right-of-Way record maps, test data and other technical information required under the Construction Contract ;
 - (c) Removal of all Construction Contractors' and their subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities from each Construction contract site;
 - (d) Completion of the Punch List items to the reasonable satisfaction of STATE and AGENCY;

- (e) Satisfaction of all of Construction Contractors' other obligations under the Construction Contract (other than obligations which by their nature are required to be performed after Completion); and
 - (f) Delivery of a notice of completion for each Construction Contract in recordable form and meeting all statutory requirements.
- 4.8 "Construction Contract" shall mean the written agreement between AGENCY and Construction Contractor covering the performance of the work on all or any part of a Segment of the PROJECT and the furnishing of labor materials, tools and equipment during the Construction of the work.
- 4.9 "Construction Documents" shall mean all shop drawings, working drawings and samples necessary for construction of the PROJECT.
- 4.10 "Construction Contractor" shall mean any entity under contract to the AGENCY to provide construction services to the AGENCY.
- 4.11 "Critical Safety Standard" shall mean a Standard (a) adopted and published by the Federal Highway Administration, The American Association of STATE Highway and Transportation Officials, or STATE; (b) applied by STATE to all similar STATE Highway Projects; and (c) that is necessary to correct an anticipated or actual imminent and substantial endangerment to human life.
- 4.12 "Design Contractor" shall mean any entity under contract to the AGENCY to provide design services to the AGENCY.
- 4.13 "Design Documents" shall mean all drawings (including plans, elevations, sections, details and diagrams), specifications, reports, calculations, records and submittals necessary for design of the PROJECT following approval thereof by AGENCY and others as required.
- 4.14 "Eastern Transportation Corridor" shall mean a divided, limited access highway serving all or a portion of the corridor between I-5 and STATE Route 91.

- 4.15 "Existing STATE Rights of Way" shall mean existing and in-service portions of STATE Routes 241 and Interstate 5.
- 4.16 "Financing Entity" shall mean the financial institution or institutions (including their agents and participants) providing AGENCY with financing or refinancing with respect to the PROJECT or any activity related thereto, including any Person or Persons (including their agents or participants) providing any credit enhancement with respect to or financing to pay interest on or to repay the bonds, notes or other obligations issued to finance design and construction of the PROJECT.
- 4.17 "Force Majeure" shall mean any of the following events which materially and adversely affect STATE'S obligations hereunder and which could not have been avoided by due diligence and use of reasonable efforts by STATE:
- (a) Any earthquake exceeding 3.5 on the Richter scale;
 - (b) Any epidemic, blockade, rebellion, war, riot or act of sabotage or acts of environmental activists in the nature of civil commotion or sabotage at or near the PROJECT intended to delay construction of the PROJECT.
 - (c) Any change in a Governmental Rule, or change in the judicial or administrative interpretation of, or adoption of any new Governmental Rule which is materially inconsistent with Governmental Rules in effect at the execution of this Agreement; and
 - (d) Any lawsuit seeking to restrain, enjoin, challenge or delay the granting or renewal of any Governmental Approval of the PROJECT.
- 4.18 "Non-Competition Zone" shall mean the area bounded by two imaginary lines running a distance of five (5) miles on either side of the centerline of the PROJECT, from Interstate 5 northerly to proposed State Route 231 as preliminarily depicted in Exhibit B.

- 4.19 "Person" shall mean any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.
- 4.20 "Policy of Title Insurance" shall mean an ALTA or a CLTA policy of title insurance, as determined by AGENCY, with access rights endorsements when access rights are acquired, issued by a title insurance company with respect to all or a portion of the Right-of-Way on the date STATE accepts Title to such Right-of-Way, with coverage in an amount equal to AGENCY's negotiated purchase price (or the fee credit allocation for dedicated properties) or eminent domain award, excluding damages and excluding the value of the PROJECT improvements.
- 4.21 "Project" shall have the meaning set forth in Recital 2 hereto.
- 4.22 "Punch List" shall mean the list of work with respect to the PROJECT or Segment thereof which remains to be completed after achievement of Substantial Completion, and shall be limited to minor incidental items of work necessary to correct imperfections which have no adverse effect on the safety or operability of the PROJECT or such Segment of the PROJECT, as the case may be.
- 4.23 "Resident Engineer" The professional engineer registered in the State of California who is the authorized agent delegated by the Chief Engineer of the Agency to provide contract administration, quality control and construction acceptance for each construction contract to which he is assigned.
- 4.24 "Right-of-Way" shall mean the real property, including all easements, Rights of Way and other interests on which the PROJECT is to be located and/or necessary for operation and maintenance of the PROJECT.
- 4.25 "Segment" shall mean any useable segment of the PROJECT as identified by the Agency.
- 4.26 "San Joaquin Hills Transportation Corridor" shall mean State Route 73, from Interstate 5 in the City of San Juan Capistrano northerly to the existing freeway terminus near Jamboree Road in the City of Newport Beach.
- 4.27 "Special Provisions" shall mean specific clauses setting forth conditions or requirements peculiar to the work and supplementary to the STATE Standard Specifications.

- 4.28 "STATE" shall mean the Department of Transportation of the State of California.
- 4.29 "STATE Documents" shall mean the STATE Standard Plans, the STATE Standard Specifications and all other provisions of publications, manuals and handbooks, and such rules and regulations of STATE which are specifically referenced in each Construction Contract, the Contract Scope of Work, the AGENCY Standards or the Design Documents.
- 4.30 "STATE Standard Plans" shall mean the Standard Plans, dated January 1988, published by STATE for the portion of the PROJECT between Portola Parkway North and Antonio Parkway, and the Standard Plans, dated July 1992 (or the most current issue at the time of advertising), published by STATE for all other segments of the PROJECT.
- 4.31 "STATE Standard Specifications" shall mean the Standard Specifications dated January 1988 published by STATE for the portion of the PROJECT between Antonio Parkway and Portola Parkway North and the Standard Specifications dated July, 1992 (or the most current issue) for all other segments of the PROJECT, each as adapted to AGENCY use as approved by STATE.
- 4.32 "Substantial Completion" of the PROJECT, or a Segment shall mean satisfaction of the conditions set forth in each Construction Contract with respect to the PROJECT or such portion thereof, and approval or acceptance by STATE that the portion of the PROJECT to be transferred to STATE conforms to all STATE's Standards, including any pre-approved interpretations of or exceptions to design standards for a STATE Highway open to public traffic.
- 4.33 "TCARMS Contracts" shall mean the AGENCY contracts to design, build, operate and maintain the toll collection and revenue management systems, including the fiber-optic communication system.
- 4.34 "Title" shall mean legal title to the Right-of-Way, in fee simple absolute, also known as fee simple or such form of permanent easement as is mutually agreed between STATE and AGENCY, free and clear of all restrictions and encumbrances except necessary slope and utility easements as appropriate with encumbrances agreed to by STATE, with the exception of Toll Facilities prior to the date of acceptance by STATE of maintenance and operation of PROJECT.

- 4.35 "Toll Facilities" shall mean all improvements to the PROJECT installed under TCARMS Contracts and including without limitation the improvements described in Construction Contract scopes of work, together with the permits and rights necessary in connection therewith, and any future replacements or substitutions.
- 4.36 "Toll Facilities Contractor" shall mean the Contractor, its subcontractors and agents responsible for installing and/or operating the Toll Facilities.
- 4.37 "Uniform Act Properties" shall mean those parcels of real property the acquisition of which is governed by the Federal Uniform Relocation Assistance and Real Property Acquisition Regulations (49 C.F.R. Part 24).

STATE OF CALIFORNIA, acting by
and through its Department of
Transportation

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR AGENCY
a Joint Powers Agency

By: *William Woollett, Jr.*
William Woollett, Jr.
Chief Executive Officer

By: *J. W. van Loben Sels*
J. W. van Loben Sels
Director

ATTEST:

Kathy Besnard
Kathy Besnard, Assistant
Secretary of the Board of
Directors of the Foothill/Eastern
Transportation Corridor AGENCY

Approved as to Form
and Procedure

William B. Bassett
Attorney
Department of Transportation

Approved as to Form
William Woollett, Jr.
By: *William Woollett, Jr.*
AGENCY Counsel

Certified as to Funds
and Procedures

Address:
Transportation Corridor Agencies
345 Clinton Street
Costa Mesa, CA 92626-6011

for *Victoria Oravio*
District Accounting
Administrator

Address:

8759

8759

Exhibit A

CALTRANS REVIEW PERIODS

Roadway Designs

Initial Submittal	6 Weeks
Intermediate Design Submittal	4 Weeks
Pre-final Design Submittal	N/A
Final Design Submittal	6 Weeks
Resubmittals	2 Weeks
Shop and Working Drawings	5 Weeks

Structures Design

Initial Submittal	6 Weeks
Intermediate Design Submittal	N/A
Pre-final Design Submittal	N/A
Final Design Submittal	6 Weeks
Resubmittals	2 Weeks
Shop and Working Drawings	5 Weeks

RESOLUTION NO. F93-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
APPROVING COOPERATIVE AGREEMENT WITH THE
STATE OF CALIFORNIA

May 13, 1993

WHEREAS, the State of California ("STATE") and the Foothill/Eastern Transportation Corridor Agency ("AGENCY") pursuant to Streets and Highways Code Sections 114 and 130 are authorized to enter into Cooperative Agreements for construction of proposed STATE highways, improvements to existing STATE highways, and construction of facilities required for the maintenance of said STATE highways and improvements within the County of Orange.

WHEREAS, pursuant to authority granted in Government Code Section 66484.3(f), AGENCY desires to construct State highway improvements, (including a highway maintenance station), on proposed Route 241 from its connection with I-5 near Basilone Road in San Diego County to proposed Route 231 (Eastern Transportation Corridor), referred to herein as PROJECT.

WHEREAS, STATE and AGENCY desire to enter into this Cooperative Agreement for the purpose of clarifying the obligations of the parties with respect to design, construction, operation and maintenance of the PROJECT.

WHEREAS, this agreement supplements the Agreement dated November 14, 1988, and supercedes the Cooperative Agreement dated July 25, 1991 between STATE and AGENCY.

Now, therefore, be it resolved:

The Board of Directors approves in substantial final form Cooperative Agreement No. 12-210 between the Foothill/Eastern Transportation Corridor Agency and the State of California and authorizes the Chief Executive Officer to execute the Agreement.

6528

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Be it further resolved that. this Resolution is approved, adopted and signed this 13th day of May 1993 and shall take effect immediately.

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR

By: Helen Wilson
Scott Diehl, Chairman

Attest: Kathy Besnard
Secretary
Foothill/Eastern Transportation Corridor Agency

I hereby certify that the foregoing Resolution was duly adopted by the Board of Directors of the Foothill/Eastern Transportation Corridor Agency at a regularly scheduled meeting thereof on the 13th day of May 1993. by the following vote of the Board:

Ayes: Wilson, Beyer, Craycraft, Krause, Nash, Rickler, Potts, Richardson, Riley, Steiner, Vasquez, Werner, Schwing
Nos: Absent

Absent: Diehl

8750

Kathy Besnard
Secretary
Foothill/Eastern Transportation Corridor Agency

8750

CoopAgmt

I, Kathy Besnard, hereby certify the foregoing instrument to be a full, true and correct copy of the original instrument now on file in our office.

I, Kathy Besnard, hereby certify the foregoing instrument to be a full, true and correct copy of the original instrument now on file in our office.

Date: 7/15/93
Kathy Besnard
Kathy Besnard
Transportation Corridor Agencies

Date: 6/11/93
Kathy Besnard
Kathy Besnard
Transportation Corridor Agencies

8750

#4

12-ORA-241 PM 1.09/6.3 (District 11)
3.9/26.5 (District 12)
12336-111010/111020
District Agreement No. 12-210 A-2

AMENDMENT No. 2 TO AGREEMENT

This AMENDMENT No. 2 TO AGREEMENT, entered into on December 8, 2003 is between the STATE OF CALIFORNIA, Department of Transportation, referred to herein as "STATE", and

FOOTHILL/EASTERN
TRANSPORTATION
CORRIDOR AGENCY

a California joint powers agency,
referred to herein as "AGENCY"

008759

RECITALS

- (1) The parties hereto entered into an Agreement (District Agreement No. 12-210, Document No. 8759) on May 13, 1993, referred to herein as "AGREEMENT". Said AGREEMENT defining the terms and conditions of Project to construct State highway improvements (including a highway maintenance station) on proposed Route 241 from its connection with I-5 in San Diego County to proposed Route 231 (Eastern Transportation Corridor).
- (2) The parties hereto also entered into an Amendment to AGREEMENT (District Agreement No. 12-210 A-1, Document No. 8759) on May 12, 1994 to address the following:
 - A. Clarification, assignment of, and responsibility for certain right-of-way related activities.
 - B. Definition of the supervision and oversight services of right-of-way activities as outlined in the scope of Work.
 - C. Assurance that the AGENCY performs all right-of-way activities and related activities pursuant to appropriate State and Federal (if applicable) policies and procedures.
 - D. Clarification of those activities in the category of STATE supervision services which may be rendered to AGENCY at AGENCY's cost.
- (3) AGENCY desires to extend the term of the Agreement from the date of January 1, 2040 to January 1, 2050 in order to continue toll collection operations on the PROJECT in order to meet debt service obligations.

IT IS THEREFORE MUTUALLY AGREED

1. The second sentence of Paragraph 3.8.1 of the Agreement shall be revised as follows:

However, the ownership, operations, maintenance, liability, and indemnification clauses shall remain in effect until terminated or modified in writing by mutual agreement, but in no event beyond that date when toll operations by AGENCY cease, or January 1, 2050, whichever is earlier in time.
2. This AMENDMENT to AGREEMENT is hereby deemed to be part of Document No. 8759.
3. Except as expressly provided herein, this second amendment shall not be deemed to be a waiver or modification of any term, condition or covenant of the AGREEMENT. Except as expressly amended hereby, all terms and conditions set forth in the AGREEMENT are hereby affirmed by STATE and AGENCY and shall remain in full force and effect. Without limiting the generality of the foregoing, it is expressly acknowledged and agreed that the expiration date set forth in the non-competition provisions of this AGREEMENT shall not be changed by this AMENDMENT. Only Projects which become operational prior to January 1, 2020 may be considered in evaluating the non-competition provision in this AGREEMENT. This second amendment is hereby incorporated into the AGREEMENT, as applicable, with the same effect as if set forth therein in its entirety, and each and every provision of the AGREEMENT shall apply to this second amendment.
4. This Amendment to AGREEMENT is null and void in the event the consolidation of SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY and FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY does not occur.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Agreement by their duly authorized officers.

STATE OF CALIFORNIA,
acting by and through its
Department of Transportation

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR AGENCY
a joint powers agency

JEFF MORALES
Director of Transportation

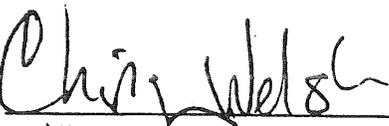
Walter D. Kreutzen
Chief Executive Officer

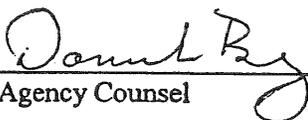
By: 
Cindy Quon
District Director

By: 
Walter D. Kreutzen

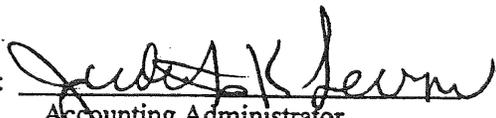
Approved as to Form and Procedure

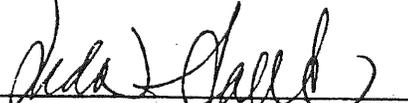
APPROVED AS TO FORM
AND PROCEDURE
Nossaman, Guthner, Knox & Elliott, LLP

By: 
Chris Welsh
Attorney

By: 
Donald Rye
Agency Counsel

Certified as Form and Procedure

By: 
Jacob K. Seem
Accounting Administrator
Certified as to Funds

By: 
David J. Chubb
District Budget Manager

HS

12-ORA-241 PM 1.0/6.3 (District 11)
3.9/26.5 (District 12)
12336-111010/111020
District Agreement No. 12-210 A-3

AMENDMENT No. 3 TO AGREEMENT

This AMENDMENT No. 3 to AGREEMENT, entered into effective on Dec. 8, 2003 is between the STATE OF CALIFORNIA, Department of Transportation, referred to herein as "STATE", and

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR AGENCY

a California joint powers agency,
Referred to herein as "AGENCY"

008759

RECITALS

1. The parties hereto entered into the original Cooperative Agreement (Document No. 8759) on May 13, 1993 referred to herein as "AGREEMENT". Said AGREEMENT defining the terms and conditions of Project to construct State highway improvements (including a highway maintenance station) on proposed Route 241 from its connection with I-5 in San Diego County to proposed Route 231 (Eastern Transportation Corridor).
2. The parties hereto also entered into an Amendment No. 1 to the AGREEMENT (Document 8759) on May 12, 1994 to address the following:
 - A. Clarification, assignment of, and responsibilities for certain right-of-way related activities.
 - B. Definition of the supervision and oversight services of right-of-way activities as outlined in the Scope of Work.
 - C. Assurance that AGENCY would perform all right-of-way activities and related activities pursuant to appropriate State and Federal (if applicable) policies and procedures.
 - D. Clarification of those activities in the category of STATE supervision services which may be rendered to AGENCY at AGENCY's cost.
3. The parties hereto also entered into an Amendment No. 2 to the AGREEMENT to extend the term of the AGREEMENT from the date of January 1, 2040 to January 1, 2050 in order to continue toll collection operations and meet debt service obligations.
4. AGENCY desires to make certain clarifications with respect to the reference in the AGREEMENT to its indebtedness payable from tolls and the financing entities extending credit to the Agency, and to amend the exhibit referenced in the definition of "Non-Competition Zone."

IT IS THEREFORE MUTUALLY AGREED

1. Sections 2.1.6(e)(i) and (ii) of the AGREEMENT are hereby amended in their entirety as follows:

“(i) the payments required under any bond indenture or other agreement with a Financing Entity with respect to indebtedness incurred by AGENCY in connection with, or secured by, the Project and/or revenues from the Project; and

(ii) the net toll revenues AGENCY has available to meet its obligations with respect to such indebtedness, excluding payments on loans, advances or scheduled obligations from local, STATE or Federal sources.”

2. The second paragraph of Section 2.1.6(f) is amended to read in its entirety as follows:

“Should STATE contravene the covenant contained in this Section 2.1.7(f), in addition to any and all remedies available to AGENCY at law or in equity now or hereafter existing, STATE shall be obligated to pay AGENCY the diminution in toll revenues resulting from such STATE action but only to the extent that AGENCY is unable to satisfy all of its obligations under any bond indenture or other agreement with a Financing Entity or otherwise pay all of its debt and obligations, including without limitation, all costs of operation, all loans, advances, scheduled obligations and bonded indebtedness whether incurred before or after the effective date of this Agreement.”

3. The definition of “Financing Entity” contained in Section 4.16 is hereby amended in its entirety as follows:

“Financing Entity” shall mean the financial institution(s) (including their agents and participants) providing any credit enhancement and/or liquidity with respect to or financing (including interest rate swap or cap agreements) to pay interest on or to repay the bonds, notes or other obligations issued to finance design and construction of the Project. The term “Financing Entity” shall also mean the bond trustee (including successors thereto and co-bond trustees), paying agent or other designated representative of the bondholders and the United States Department of Transportation, Federal Highways Administration, in connection with the provision of a line of credit or loan relating to the Project. The Design/Build Contractor and the entity providing financing for the TCARMS are specifically excluded from the term.

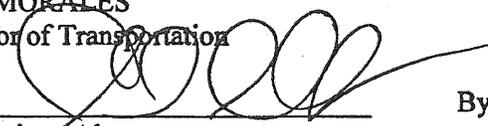
4. Exhibit “B” of the AGREEMENT, entitled Foothill Transportation Corridor Non-Competition Zone, is hereby deleted in its entirety, and the map attached hereto as Attachment 1, entitled “Transportation Corridor System Non-Competition Zone - Exhibit B” is hereby substituted in its place and incorporated by reference as Exhibit “B” to the AGREEMENT.
5. This AMENDMENT No. 3 TO AGREEMENT is hereby deemed to be part of Document No. 8759.
6. Except as expressly provided herein, this Amendment No. 3 to AGREEMENT shall not be deemed to be a waiver or modification of any term, condition or covenant of the AGREEMENT. Except as expressly amended hereby, all terms and conditions set forth in the AGREEMENT are hereby affirmed by STATE and AGENCY and shall remain in full force and effect. This third amendment is hereby incorporated into the Agreement, as applicable, with the same effect as if set forth therein in its entirety, and each and every provision of the Agreement shall apply to this Amendment No. 3 to AGREEMENT.

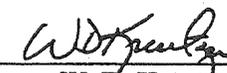
7. This AMENDMENT to AGREEMENT is null and void in the event the consolidation of the SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY and the FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY does not occur.

STATE OF CALIFORNIA,
acting by and through its
Department of Transportation

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR AGENCY
a joint powers agency

JEFF MORALES
Director of Transportation

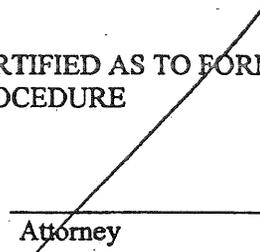
By: 
Enrique Alonso
District 12 Director

By: 
W. D. Kreutzen
Chief Executive Officer

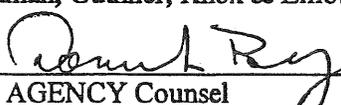
APPROVED AS TO FORM AND
PROCEDURE

By: 
Attorney

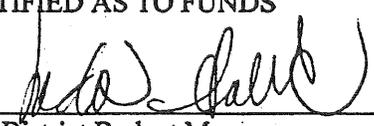
CERTIFIED AS TO FORM AND
PROCEDURE

By: 
Attorney

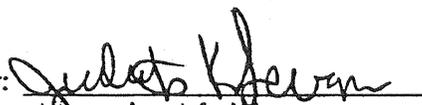
APPROVED AS TO FORM
AND PROCEDURE
Nossaman, Guthner, Knox & Elliott, LLP

By: 
AGENCY Counsel

CERTIFIED AS TO FUNDS

By: 
District Budget Manager

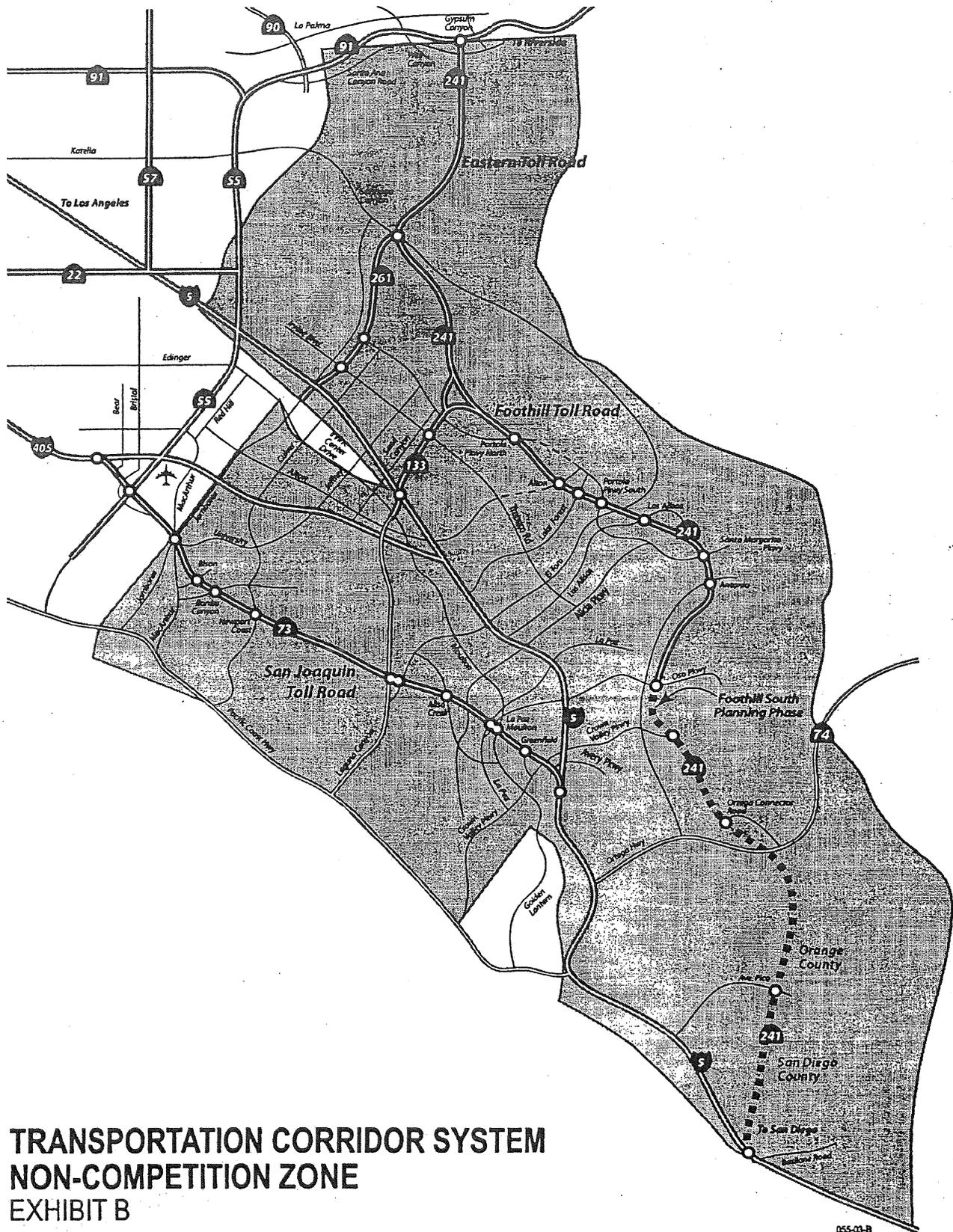
CERTIFIED AS TO FINANCIAL TERMS
AND CONDITIONS

By: 
Accounting Administrator
Certified as to Funds

ATTACHMENT 1

Transportation Corridor System Non-Competition Zone - Exhibit B

[Attached]



**TRANSPORTATION CORRIDOR SYSTEM
NON-COMPETITION ZONE
EXHIBIT B**

055-03-B

008759

08759

12-ORA-241 PM 1.0/6.3 (District
11), 3.9/26.5 (District 12)

12336 - 111010/111020

District Agreement No. 12-210 A-1

RIGHT OF WAY SERVICE AGREEMENT

08759

This AGREEMENT is entered into on May 12, 1994,
between the STATE OF CALIFORNIA, acting by and through its
Department of Transportation, referred to herein as "STATE", and

The FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR AGENCY,
a California joint powers agency,
referred to herein as "AGENCY".

District Agreement No. 12-210 A-1

RECITALS

1. The parties hereto entered into an AGREEMENT (District Agreement No. 12-210, Document No. 8759) on May 13, 1993, said AGREEMENT defining the terms and conditions to construct State highway improvements, (including a highway maintenance station), on proposed Route 241 from its connection with I-5 in San Diego County to proposed Route 231 (Eastern Transportation Corridor). This AMENDMENT TO AGREEMENT herein is to cover a segment of the above stated limits, from Antonio Parkway to Portola Parkway North, herein after referred to as PROJECT (Backbone I & II and Auxiliary).

2. The purpose of this AMENDMENT is to provide:
 - A. Clarification, assignment of, and responsibility for certain right-of-way related activities.

 - B. Definition of the supervision and oversight services of right-of-way activities as outlined in the Scope of Work, Page 15.

 - C. Assurance that AGENCY performs all right-

District Agreement No. 12-210 A-1

of-way activities and related activities pursuant to appropriate State and Federal (if applicable) policies and procedures.

- D. Clarification of those activities in the category of STATE supervision services which may be rendered to AGENCY at AGENCY's cost.

SECTION I

AGENCY AGREES:

1. To perform all right-of-way activities necessary for completion of project using AGENCY'S own consultant and/or contractor forces except for those activities agreed to be performed by STATE as specified in Section II and Section III of this AGREEMENT.

2. To perform all right-of-way activities in accordance with "scope of work" descriptions or alternative procedures, as agreed to by AGENCY and STATE, and in compliance with all applicable State and Federal laws and regulations, subject to STATE supervision, to assure that the completed work is acceptable for incorporation into the State Highway System.

District Agreement No. 12-210 A-1

3. To contract with STATE which has qualified status to perform right-of-way supervision for AGENCY'S consultants.
4. To reimburse STATE for one hundred percent (100%) of STATE'S actual supervision support cost.
5. That right of way supervision services will be paid using State's Electronic Fund transfer procedure, if available.
6. A. If electronic fund transfer procedure is followed for payment to STATE, that upon receipt of STATE'S monthly summary listing of charges to be paid by AGENCY, AGENCY will within three (3) working days, transfer funds electronically to STATE equal to the amount requested therein. Such electronic transfer of funds shall not be construed as acceptance of said charges. Should AGENCY fail to make electronic fund transfer payments within the three (3) day period, STATE may at its discretion, after notification to AGENCY, require all subsequent payments by AGENCY to be made as deposits in advance of incurring obligations.

District Agreement No. 12-210 A-1

- B. Upon receipt of STATE's billing with supporting documentation, AGENCY will notify STATE in writing within thirty (30) working days, of charges with which AGENCY disagrees.
- C. If STATE approves discrepancy notices from AGENCY, STATE will credit amounts claimed in the current month's funding request if claimed amounts had previously been remitted by AGENCY.
- D. To pay for all costs associated with the establishment of electronic fund transfers for AGENCY and each outgoing bank wire transfer fee assessed to AGENCY and each incoming bank wire transfer fee assessed to the STATE.
7. In the event that electronic fund transfer is not available to AGENCY or upon termination of this Agreement or should AGENCY fail to make electronic fund transfer payments within the three (3) days working period specified in Article 6A of Section I of this Agreement, STATE may at its sole discretion, after advance notice to AGENCY, require all subsequent payments by AGENCY to STATE be made as deposits in advance of incurring obligation as follows:

08759

District Agreement No. 12-210 A-1

- A. To deposit with STATE within twenty (20) working days of receipt of billing, an advance deposit in an amount sufficient to pay for anticipated expenditures by STATE for estimated costs of \$6,700.00 for STATE supervision services. AGENCY shall reimburse STATE, within 30 days after receipt of billing, for all STATE cost for services calculated in accordance with State Administrative Manual, Section 8752. The total estimated cost for providing these services is \$6,700.00. (See Exhibit A)

- 8. Upon completion by STATE of all right of way supervision and services, performed on behalf of AGENCY, and within forty-five (45) working days of receipt of a detailed statement made upon final accounting of costs and billing therefor, to reimburse STATE any amount over and above funds deposited by AGENCY as defined in Section I, Article 7.A, required to complete AGENCY's financial obligations pursuant to this AGREEMENT. Actual cost to AGENCY for work performed by STATE on behalf of AGENCY shall be in accordance with STATE's standard accounting procedures, and will be determined upon completion of all such work and final accounting of related charges.

SECTION II

STATE AGREES:

1. At AGENCY's expense, to provide supervision of Uniform Act property acquisitions and to perform the following activities:

A. Appraisals

To supervise AGENCY and/or AGENCY's authorized consultants to ensure compliance with all State and Federal requirements in the preparation of appraisals. To review and approve appraisal for acquisition and relocation purposes.

B. Acquisition

To supervise AGENCY and/or AGENCY's authorized consultants to ensure compliance with all State and Federal requirements, for conducting negotiations with property owners and acquiring the necessary property rights. Review AGENCY's acquisition documents and proposed settlements at variance from the approved appraisal. Any settlement which varies from approved appraisals must be approved and documented in accordance with Section III, Article 3.

2. BASIS OF ACCOUNTING AND BILLING

A. In the event electronic fund transfer is available to AGENCY and followed for payment to STATE:

(1) To prepare and submit monthly on or about the 27th of each month an invoice of actual charges by electronic facsimile to AGENCY prior to AGENCY'S allotted (3) working days for transferring funds electronically to STATE.

(2) To prepare and submit summary of actual charges incurred on PROJECT to AGENCY by electronic facsimile on or about the 15th of each month prior to STATE'S submission of monthly invoice. Said figure represents the actual expenditures incurred for right of way supervision and or services.

B. In the event electronic fund transfer is not available to AGENCY:

(1) To Prepare and submit an initial billing in the amount of \$6,700.00 or the balance remaining of the estimate described in Exhibit A, if balance is less than \$6,700.00, to AGENCY. Said amount to represent estimated advance deposit for right of way supervision and services. The total cost for STATE providing these services is estimated at \$6,700.00. (See Exhibit A)

- (2) Thereafter, to prepare and submit monthly billing statements to AGENCY for actual right of way supervision and services, one month in advance to AGENCY, as project proceeds.
- (3) To refund to AGENCY upon completion of project any advanced funds which exceed the final accounting of expenditures for AGENCY's project, after any remaining STATE's costs have been deducted from AGENCY's deposit.
3. To the extent STATE staff is available, in addition to the services specified in this section, provide right-of-way services, other than oversight and supervision, on a specific project, parcel or activity basis, as requested by AGENCY, and as agreed by STATE, with the cost of such services to be fully funded by AGENCY, in accordance with State Administrative Manual, Section 8752.
4. Upon completion of PROJECT and all work incidental thereto, to furnish AGENCY with a detailed statement within forty-five (45) working days of the Right of Way support costs to be borne by AGENCY. STATE thereafter shall refund to AGENCY within forty-five (45) working days after completion of STATE'S audit, any amount of AGENCY'S deposit remaining after actual costs to be borne by AGENCY have been deducted, or to bill AGENCY for any additional amount required to complete AGENCY'S financial obligations pursuant to this Agreement.

5. Retain all accounting records and other evidence pertaining to costs incurred in performing services for AGENCY and to make such materials available for inspection and audit by AGENCY or the State Auditor General upon reasonable notice during the contract period and for five years from the date of final payment by AGENCY for STATE services.

SECTION III

IT IS MUTUALLY AGREED THAT:

1. All obligations of STATE under the terms of this AMENDMENT are contingent upon the appropriation of resources by the State Legislature and the allocation of resources by the California Transportation Commission.
2. All right-of-way activities shall be performed in accordance with applicable State and Federal laws, regulations, policies, and rules.
3. All settlements that vary from an approved appraisal must be approved by STATE in advance. AGENCY shall provide STATE with a written request outlining the reasons and amounts of such settlement and STATE shall promptly approve such settlements which are in accordance with State and Federal acquisition practices and procedures. Verbal requests will be confirmed by both parties within three (3) working days by written confirmation.

4. This AGREEMENT may be amended by mutual written agreement of the parties. No alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties thereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
5. The parties acknowledge that the cost for the services as defined in Exhibit A are only an estimate and may be exceeded due to unforeseen workload or other circumstances. In the event that STATE's actual costs to AGENCY defined in this section exceed \$356,500, then payment in excess of \$356,500 may not be made unless AGENCY's Board of Director's prior approval is obtained. AGENCY will actively pursue approval of sufficient funds to cover any amount in excess of estimate. AGENCY staff will present to the Board of Directors any such increases, with the circumstances resulting in the increase and their recommendation regarding approval. AGENCY and STATE agree to meet on a twice yearly basis or as needed to review the cost estimate as it relates to actual costs expended.
6. Neither STATE, nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by AGENCY under or in connection with any work, authority, or jurisdiction delegated to AGENCY under this AMENDMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, AGENCY shall fully indemnify and hold STATE harmless from any liability imposed for injury (as defined by Government Code

Section 810.8) occurring by reason of anything done or omitted to be done by AGENCY under or in connection with any work, authority, or jurisdiction delegated to AGENCY under this AMENDMENT.

7. Neither AGENCY nor any officer or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction delegated to STATE under this AMENDMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully indemnify and hold AGENCY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction delegated to STATE under this AMENDMENT.

08759

8. This AMENDMENT shall terminate upon completion and final acceptance by STATE of all right of way and title required to complete construction of the highway improvements contemplated by this AMENDMENT, or on January 1, 2040, whichever is earlier in time, unless extended or earlier terminated by agreement of the parties hereto. This AMENDMENT may also be terminated in the event that STATE's authority to provide services is enjoined through legal process, legislative action or withdrawal of funding.

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT to be executed by their respective officers, duly authorized, the provisions of which AMENDMENT are effective as of the day, month and year hereinabove written.

STATE OF CALIFORNIA,
Department of Transportation

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR AGENCY
a joint powers agency

JAMES W. van LOBEN SELS
Director of Transportation

By: William Woollett, Jr.
WILLIAM WOOLLETT, JR.
Chief Executive Officer

By: Walt Hagen
WALT HAGEN
Chief, Deputy District Director

ATTEST:
Kathy Besnard
KATHY BESNARD, Assistant
Secretary of the Board of
Directors of the
Foothill/Eastern
Transportation Corridor
Agency

Approved as to Form
and Procedure

William T. B...
Attorney
Department of Transportation

Approved as to Form

By: Norman G. Knapp
AGENCY Counsel

Certified as to Funds
and Procedures

Marie Shatt
District Accounting
Administrator

Address:
Transportation Corridor
Agencies
201 E. Sandpointe, Suite 200
Santa Ana, CA 92707

SCOPE OF WORK

(O) = Oversight
(S) = Supervision

PROJECT ACTIVITY

WORK RESPONSIBILITY

RIGHT-OF-WAY

STATE

AGENCY

A. R/W REQUIREMENTS

Determine Titles & Boundaries of Properties	(S)	X
Submit R/W Coordinates for Properties to R/W Engineering		X
Fence & Excess Land Review		X
Review Maps Showing R/W Requirements	X-(S)	
Update R/W & Utility Relocation Cost Estimates		X
Determine Railroad R/W Requirements		X
Prepare PUC Exhibits for RR Crossing at Grade		X
Prepare Final Utility Relocation Plans	(O)	X
Seek Approval for Non-Standard Acquisition, Utility Locations or Protection	(O)	X
Check Utility Relocation Plans	(O)	X
Submit Utility Relocation Plans for Review by Electrical Design, Landscape, & Traffic Engineering Staffs	(O)	X
Review Skeletal R/W Layouts	X-(O)	
Determine Final R/W Requirements	(S)	X
Order Survey Data & Begin R/W Monumentation		X
Prepare R/W Appraisal Maps	(S)	X
Complete Final R/W Requirements	(S)	X

PROJECT ACTIVITY

WORK RESPONSIBILITY

	<u>STATE</u>	<u>AGENCY</u>
Submit Final R/W Requirements for Review & Approval	(S)	X
R/W Engineering Approve Final R/W Requirements	(S)	X
B. R/W ACTIVITIES		
Obtain Copies of Assessor's Maps & Other R/W Maps	(O)	X
Prepare R/W Maps	(S)	X
Obtain Certificate of Sufficiency	(S)	X
Begin R/W Appraisals	(S)	X
Commence R/W Acquisitions	(S)	X
Begin Utility Conflict Investigations & Issue Relocation Notices as Appropriate	(O)	X
R/W Layout Review	(O)	X
Provide Final Monumentation and Ties	X-(S)	
Approve Final Monumentation and Ties	X-(S)	
File Monumentation Maps	(O)	X
Submit Final R/W Maps for Review and Approval	(S)	X
Approve Final R/W Maps	X-(S)	
Complete R/W Appraisals	(S)	X
Review and Approve R/W Appraisals For Acquisition and Relocation	X-(S)	
Acquire R/W	(S)	X
Provide Relocation Assistance	X-(S)	
Clear R/W Improvements	(O)	X
Review and Approve R/W Acquisition Files	X-(S)	

PROJECT ACTIVITY

WORK RESPONSIBILITY

	<u>STATE</u>	<u>AGENCY</u>
Complete Property Surveys for Utilities & Other R/W Requirements	(S)	X
Start Property Management Activities	(0)	X
Commence Relocation Assistance for People & Personal Property to be Displaced	X-(S)	
Review and Approve Relocation Assistance Files	X-(S)	
Prepare & Administer R/W Clearance Contracts	(0)	X
Review Demolition	X-(0)	
Commence Demolition & Sale of Buildings in the R/W	(0)	X
Complete R/W Acquisitions by Negotiated Settlements	(S)	X
Commence R/W Condemnation	(S)	X
Issue Notice of Intent to Property Owners Who Have Not Agreed to Terms	(S)	X
Request Resolution of Necessity	(S)	X
File Suits & Serve Appropriate Notices	(0)	X
Obtain & Serve Orders of Possession	(S)	X
Serve 90-Day Notices to Remaining Occupants of the R/W & Complete Relocation Assistance Activities	X-(S)	
Complete Demolition & Sale of Buildings in R/W	(0)	X
Obtain All RR Clearances	(0)	X

PROJECT ACTIVITY

WORK RESPONSIBILITY

	<u>STATE</u>	<u>AGENCY</u>
Transfer R/W to STATE	(S)	X
Complete Certification of R/W	X-(S)	
Clear Utilities	(O)	X
Approve and Record Title Transfer Documents	X-(S)	
Prepare Final R/W Maps	(S)	X
R/W Engineering Review & Approve Final R/W Maps	X-(S)	
Submit Final Mylar R/W Maps	(S)	X
C. R/W UTILITIES		
Request Preliminary Utility Relocation Plans from Utilities	(O)	X
Obtain Preliminary Utility Relocation Plans from Utility Companies	(O)	X
Request Utility Verification	(O)	X
Prepare R/W Utility Relocation Cost Estimates	(O)	X
Review & Comment on R/W Requirements & Utility Relocation Plans	X-(O)	
Longitudinal Encroachment Review	X-(O)	
Longitudinal Encroachment Application to District	(O)	X
Approve Longitudinal Encroachment Application	X-(O)	
Request Final Utility Relocation Plan		X
Check Utility Relocation Plans	X-(O)	
Submit Utility Relocation Plans for Approval	(O)	X

PROJECT ACTIVITY

WORK RESPONSIBILITY

	<u>STATE</u>	<u>AGENCY</u>
Approve Relocation Plans	X-(0)	
Prepare Utility Agreements	(0)	X
Develop Utility Plans (Identification of Existing)	(0)	X
Determine Liability for Utility Relocations	(0)	X
Prepare Notice to Owner & Utility Agreement Utility Owners	(0)	X
Include Approved Relocation Plans into Utility Plans	(0)	X
Submit for Review Final Utility Plans	(0)	X

EXHIBIT A

Section I, Article 6

PY'S FOR RIGHT OF WAY TO ESTIMATE COSTS FOR STATE SUPERVISION SERVICES.
(09/09/93)

<u>FOOTHILL TRANSPORTATION CORRIDOR NORTH (111010) {2 PARCELS}</u>							
FISCAL YEAR	93-94	94-95	95-96	96-97	97-98	98-99	99-00
PY'S	.13	.18	.06				

TOTAL: PY'S = .37 (LAST PYPSCAN 09/09/93)

[(PY'S X SR. SALARY) X 80% (OVERHEAD)] X 20% (SUPERVISION WORK) =
SUPERVISION SERVICES COST.

\$4,219/MO (TOP LEVEL ASSOCIATE/BOTTOM LEVEL SENIOR) = \$50,628/YR

FTC(N)

[(.37 PY'S X \$50,628) X 1.8] X 20% = \$ 6,743.65

SAY: \$ 6,700.00

.37 PY X 1770 HRS = 654.90 HRS

\$6,700.00 ÷ 654.90 HRS = \$10.23

SAY \$10.30 PER HOUR

EXHIBIT BDEFINITIONS:

- 1.) "Federal Uniform Act" - The Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and subsequent Amendments (49 C.F.R. Part 24). Differs from the State Uniform Relocation Assistance and Real Property Acquisition Act - these requirements do not apply to any activity on a State Highway System nor on a Federally-Aided highway project.
- 2.) "Final Acceptance" - Shall mean the acceptance by STATE of any Segment or Title to the Right of Way for such Segment (including acceptance of Title to the improvements thereon other than the Toll Facilities) evidenced by STATE'S signature on each deed of conveyance.
- 3.) "LPA" - Local Public Agency
- 4.) "LS&R" - Local Street and Road project off the State Highway System. If there is Federal participation in a phase of the project, FHWA has delegated the responsibility for ensuring all activities comply with the Federal Uniform Act to Caltrans.
- 5.) "Oversight" - Review of Right of Way activities performed by a Qualified LPA, review of the Agency's consultant to ensure compliance with the Federal Uniform Act and basic adherence to Caltrans practices. It is performed on a sampling of the activities and performed to a lesser degree than supervision.
- 6.) "Reimbursed Work" - Actual performance of Right of Way activities on a SHS, performed by Caltrans but which the LPA must pay for, including supervision.
- 7.) "SHS" - State Highway System. All activities must comply with the Federal Uniform Act and at least have basic adherence to Caltrans policies and procedures.
- 8.) "Supervision" - Review and approve all processes, documents, activities, related to the Right of Way activities performed by a non-qualified LPA, on a reimbursed basis for LS&R projects and 100% Measure or Toll Road Projects.
- 9.) "Uniform Act Properties" - Shall mean those parcels being acquired as part of the project which are governed by the Federal Uniform Relocation Assistance and Real Property Acquisition Regulations (49 C.F.R. Part 24).