

CAPITAL AREA REGIONAL TOLLING AUTHORITY
AGREEMENT
FOR
TOLL SYSTEM INTEGRATION, DESIGN AND
INSTALLATION, AND OPERATIONS AND
MAINTENANCE SUPPORT SERVICES OF A ROADSIDE
TOLL SYSTEM (RTS) FOR THE YOLO 80 MANAGED
LANES PROJECT

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TOLL SERVICES AGREEMENT

This Toll Services Agreement (“Agreement”) is entered into by the Capital Area Regional Tolling Authority, a California joint powers authority (“CARTA”), and Indra USA, Inc., a Georgia corporation (“Toll System Integrator” or “TSI”), executed as of _____, with reference to the definitions contained in Exhibit 1 and the following facts:

A. CARTA, in cooperation with the California Department of Transportation (“Department”) wishes to develop approximately 17 miles of tolled express lanes on Interstate 80 (I-80) between the cities of Davis and West Sacramento (the “Express Lanes”) otherwise known as the Yolo 80 Managed Lanes Project (the “Project”).

B. The Project is authorized in accordance with authority to use state owned right-of-way granted by the State of California, acting by and through Department.

C. On December 17, 2025, CARTA’s Board authorized CARTA staff to issue a Request for Proposals (as subsequently amended by addenda, the “RFP”) to provide for toll system integration, design and installation, and operations and maintenance support services as detailed in this Agreement (the “Toll Services”), select and negotiate this Agreement with the apparent best value proposer, and make a recommendation to CARTA’s Board to award this Agreement.

D. On April 30, 2026, CARTA issued the RFP to the Proposers.

E. An RFP evaluation committee determined that TSI was the Proposer that best met the selection criteria contained in the RFP and that the Proposal was the one which provided the best value to CARTA.

F. On _____, CARTA’s Board accepted the recommendation of the Executive Director of CARTA and the RFP evaluation committee to award this Agreement to TSI.

G. The Parties intend for this Agreement to be a comprehensive agreement obligating TSI to perform all Toll Services, as more particularly described in the Scope of Work, including completing the D&D Work by the Guaranteed Completion Dates and performing all Maintenance and Warranty requirements and O&M Work, for the Agreement Price, subject only to certain specified limited exceptions set out in this Agreement.

H. The Department has an existing contract with De Silva Gates, to construct the civil infrastructure portion of the Project (the “Civil Contractor”).

I. TSI shall be required to coordinate and cooperate with the Civil Contractor throughout the course of the Project.

J. Tolling is anticipated to commence on or about the Toll Commencement Date.

K. If TSI fails to complete the D&D Work so as to meet the Project Milestones by the applicable Guaranteed Completion Dates, then CARTA and the members of the public represented by CARTA will suffer substantial losses and damages.

L. The RTS's accuracy and reliability is of utmost importance to CARTA and the traveling public. CARTA will suffer substantial losses and damages if the O&M Work does not meet the Agreement requirements, including the Key Performance Indicators ("KPIs").

M. This Agreement provides that TSI shall pay CARTA substantial Delay Liquidated Damages and Performance Liquidated Damages, as applicable, if the TSI fails to meet its contractual obligations.

N. The Executive Director of CARTA has been authorized to enter into this Agreement in accordance with a Board action dated _____.

NOW, THEREFORE, in consideration of the sums to be paid to TSI by CARTA, the forgoing premises and the covenants and agreements set forth in this Agreement, the Parties agree as follows:

SECTION 1

AGREEMENT COMPONENTS; INTERPRETATION OF AGREEMENT

1.1 Definitions

Unless the context otherwise requires, capitalized terms and acronyms used in this Agreement have the meanings given in Exhibit 1.

1.2 Order of Precedence

(a) In the case of any conflict, ambiguity or inconsistency between or among any of the provisions of this Agreement, the following order of precedence applies:

1. Change Orders and Agreement amendments;
2. This Agreement;
3. The Scope of Work, including all appendices thereto;
4. For Maintenance and Warranty and O&M Work, KPIs;
5. Proposal documents.

1.2.2 Notwithstanding the foregoing, and except as otherwise directed by CARTA, in writing, the higher standard, quality, quantum or method of performance shall take

precedence over provisions establishing a lower standard, quality, quantum or method of performance regardless of the order of precedence above.

1.2.3 Notwithstanding the foregoing, if any timeframe provided in this Agreement conflicts with a timeframe provided in the Scope of Work, the timeframe provided in the Scope of Work shall govern.

1.2.4 Except as otherwise expressly provided in this Agreement, where this Agreement cites any Reference Document to define requirements of this Agreement, the cited portion of the applicable Reference Document shall (a) be deemed incorporated into this Agreement to the extent it is so cited, and (b) have the same order of priority as the part of this Agreement where the citation occurs.

1.2.5 Incorporation into this Agreement of any part of the Proposal shall not (a) limit, modify, or alter CARTA's right to review and approve any Deliverables included in the Proposal, or submitted to CARTA after the Proposal (including the Preliminary Project Schedule) or (b) be deemed as acceptance or approval of any part of the Proposal by CARTA.

1.3 Reference Documents

1.3.1 Except as otherwise expressly set forth in this Agreement, TSI acknowledges and agrees that:

(a) The Reference Documents are not mandatory or binding on TSI and are provided without any representation or warranty by, or recourse to, CARTA, all of which representations and warranties are hereby disclaimed in their entirety.

(b) TSI may not rely on the Reference Documents as presenting a feasible, complete, accurate, viable or desirable technical, design, engineering, construction, system, deployment, integration, operations or maintenance solution or other direction, means, or methods for complying with the requirements of this Agreement.

(c) The Reference Documents may include interpretations, extrapolations, analyses, and recommendations about data, design solutions, technical issues and solutions, and constructions means and methods, and such interpretations, extrapolations, analyses, and recommendations are (i) preliminary in nature and, in many cases, obsolete, (ii) not intended to express the views or preferences of CARTA or any other Governmental Entity, or represent any statement of approval or acceptance thereof by CARTA or any other Governmental Entity, and (iii) not intended to form the basis of TSI's design or to provide the means and methods for providing the Toll Services.

(d) CARTA is not liable for any Claim or Losses suffered by any TSI-Related Entity in connection with the Reference Documents, including any reliance on the Reference Documents.

(e) To the extent TSI or anyone on TSI's behalf uses the Reference Documents in any way, such use is made on the basis that TSI, not CARTA, has approved and is liable for use of the Reference Documents.

(f) TSI is capable of conducting and obligated under this Agreement to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement the Reference Documents.

(g) Use of the Reference Documents is entirely at TSI's own risk and at its own discretion.

1.4 Interpretation of Agreement

Where appropriate: references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes," and "include" shall be deemed to be followed by the words "without limitation," unless otherwise indicated; references to sections, articles or tasks are to this Agreement and include all sub-sections, sub-articles or subtasks under the article or section referenced; references to attachments shall be deemed to be followed by the words "attached hereto and incorporated herein by this reference;" words not otherwise defined that have well-known technical or industry meanings are used in accordance with such recognized meanings; references to "persons" include their respective permitted successors and assigns and, in the case of "governmental persons," persons succeeding to their respective functions and capacities; and words of any gender used herein shall include the other gender where appropriate.

TSI shall promptly provide notice to CARTA should TSI become aware of any Error or any conflict, ambiguity or inconsistency between or among the documents forming this Agreement, or if any matters related to the Toll Services are not sufficiently detailed, described or explained. If the conflict, ambiguity, inconsistency or Error cannot be reconciled by applying the provisions of this Agreement or the Parties disagree about which rule applies or the results of the application of such applicable rule(s), then CARTA will determine, in its good faith discretion, which of the conflicting items is to apply and provide Notice to TSI before TSI proceeds with the applicable aspect of the Toll Services.

1.5 Referenced Standards and Specifications

1.5.1 Except as otherwise specified in this Agreement or directed by CARTA, material and workmanship specified by the number, symbol or title of any standard established by reference to a described manual or publication affecting any portion of the Toll Services shall comply with the latest edition or revision thereof and amendments and supplements in effect as of the Setting Date.

1.5.2 Where a change occurs to a Referenced Standard after the Setting Date, TSI shall give Notice to CARTA of such change within 20 days of the change.

1.5.3 If, after such Notice, CARTA directs TSI to comply with the changed Referenced Standard (rather than with the Referenced Standard applicable at the Setting Date), then TSI shall comply with the Referenced Standard as changed. To the extent such compliance directly and materially impacts the Toll Services and would not have otherwise been taken into account by compliance with Good Industry Practice, TSI shall be entitled to a Change Order.

1.5.4 If CARTA directs TSI not to comply with the changed Referenced Standard (which direction may only be given where TSI is not otherwise legally obliged to comply with the changed Referenced Standard), then TSI shall continue to comply with the Referenced Standard applicable at the Setting Date.

1.5.5 Sections 1.5.2 through 1.5.4 shall not apply to Changes in Law.

1.5.6 In interpreting Referenced Standards, the following apply:

(a) References to the project owner shall mean CARTA;

(b) References to an “engineer” or “Engineer” in which the engineer or Engineer determines compliance with the Referenced Standard(s) may mean TSI’s Quality Manager for the D&D Work or for the O&M Work (as applicable) or similar representative or it may mean an CARTA or Department representative, depending on the context, as determined by CARTA in its good faith discretion; and

(c) References to “plan(s)” shall mean all relevant parts of the Plans that TSI is required to deliver in accordance with the Scope of Work or otherwise in accordance in this Agreement.

1.6 Standard for Approvals

If CARTA or TSI is required to provide an approval, consent or other determination under this Agreement, such approvals, consents or determinations shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where CARTA’s sole discretion is specified, the decision shall not be subject to dispute resolution or other legal challenges under the Agreement. In cases where good faith discretion is specified, the approval, consent or determination shall be binding, unless it is finally determined through the dispute resolution under this Agreement by clear and convincing evidence that such approval, consent, determination, acceptance, decision or other action was arbitrary or capricious.

SECTION 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 TSI Representations, Warranties and Covenants

TSI represents, warrants and covenants that:

2.1.1 All Toll Services performed by TSI throughout the term of the Agreement shall be performed by or under the supervision of Persons who hold all necessary and valid licenses, certifications, registration, permits or approvals to perform the Toll Services in the State, by personnel who are careful, skilled, experienced, and competent in their respective trades or professions, who are professionally qualified to perform the Toll Services in accordance with this Agreement;

2.1.2 TSI will perform the Toll Services in accordance with this Agreement;

2.1.3 TSI has evaluated the procedures under this Agreement with respect to determining the Agreement Price, Guaranteed Completion Dates, KPIs and Liquidated Damages and reasonably believes that (a) TSI can complete the D&D Phase and O&M Work during the One Year Warranty Period for the Total Capital Cost, (b) TSI can complete the O&M Work during the O&M Period for the Total O&M Cost, (c) TSI can achieve the Project Milestones by the applicable Guaranteed Completion Date(s), including furnishing such employees, materials, facilities and equipment and working such hours, extra shifts, overtime operations, Sundays and holidays as are permitted by this Agreement and which may be necessary to achieve such goal, and (d) the Liquidated Damages provided for in this Agreement are reasonable and do not constitute a penalty.

2.1.4 TSI has, in accordance with Good Industry Practice and prior to establishing the Agreement Price, (i) reviewed any Toll Services-related information provided by CARTA, (ii) taken appropriate steps to verify any such Toll Services-related information provided by CARTA, and (iii) familiarized itself with the Site and surrounding locations, including undertaking a Reasonable Investigation to the extent TSI deems necessary or advisable for performing its obligations under this Agreement;

2.1.5 TSI has evaluated the Site and other constraints affecting performance of the Toll Services and has reasonable grounds to believe and does believe that the RTS can be designed and deployed within such constraints;

2.1.6 The RTS Documentation and As-Built Technical Drawings accurately depict all governing and adjoining dimensions;

2.1.7 TSI will familiarize itself with all applicable Governmental Rules and the conditions of any relevant Governmental Approvals applicable to the Toll Services and has no reason to believe that any Governmental Approval required to be obtained by TSI will not be granted in due course and, thereafter, remain in effect so as to enable the Toll Services to proceed in accordance with this Agreement;

2.1.8 TSI has knowledge of and experience with the Governmental Rules, industry standards and business practices in the State that must or should be followed in performing the Toll Services and in the Business Rules, and shall perform the Toll Services in accordance with such standards and practices;

2.1.9 All information it or its agents provides in connection with this Agreement is complete and accurate;

2.1.10 With respect to Intellectual Property:

(a) Except as otherwise expressly provided in this Agreement, with respect to certain identified Pre-Existing Software, Commercial Off-the-Shelf Software and Third Party Intellectual Property licensed to CARTA, TSI and its Subcontractors are and will be the sole author of all works employed by TSI in preparing any and all Software;

(b) TSI has and will have sufficient right to assign or grant the rights or licenses granted in the Intellectual Property in accordance with this Agreement and acknowledges that all Intellectual Property that is used or developed in whole or in part for performance of the Toll Services shall be covered by the ownership and licensing requirements set forth in this Agreement;

(c) All Software, except any Pre-Existing Software and Commercial Off-the-Shelf Software, has not been and will not be used or published by or through any TSI-Related Entity under circumstances which have caused or will cause a loss of copyright, patent rights, trademark or other intellectual property right; and

(d) All Intellectual Property, including all Pre-Existing Software, does not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy or similar rights of any third party, nor is or has any Claim (whether or not embodied in an action, past or present) of such infringement pending, been asserted or, to the best of TSI's knowledge, been threatened against TSI (or, insofar as TSI is aware, any entity from which TSI has obtained such rights);

2.1.11 TSI is a corporation duly organized and validly existing under the laws of the State of Georgia, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted;

2.1.12 TSI is composed of a corporation in good standing, in the State, and will remain in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under this Agreement.

2.1.13 As of the Effective Date, TSI has full power, right and authority to execute, deliver and perform this Agreement, and to perform all of TSI's obligations provided for under this Agreement;

2.1.14 Each person executing this Agreement on behalf of TSI has been duly authorized to execute and deliver this Agreement

2.1.15 Each document to which TSI is (or will be) a party has been (or will be) duly executed and delivered by TSI;

2.1.16 All required Governmental Approvals have been obtained or will timely be obtained with respect to the execution, delivery and performance of the Toll Services;

2.1.17 TSI has, prior to submitting the Proposal and in accordance with Good Industry Practice reviewed this Agreement and the Reference Documents and has brought to CARTA's attention any Errors in the Agreement and the Reference Documents.

2.1.18 Performance of the Toll Services will not result in a breach of or a default under TSI's articles of incorporation, bylaws, or any indenture or loan or credit agreement or other material agreement, instrument, judgment or decree to which TSI is a party or by which its properties and assets may be bound or affected;

2.1.19 The award of this Agreement by CARTA to TSI was based, in material part, on the qualifications and experience of the personnel listed in the Proposal and TSI's commitment that such individuals would be available to undertake and perform the Work and that all such individuals, including Key Personnel, are available for and will fulfill the roles identified for them in the Proposal in connection with the Toll Services;

2.1.20 Execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of TSI, TSI's members, and any Guarantor (if applicable), and will not result in breach or default under TSI's organizational documents, any indenture, loan, or credit agreement, or any other material agreement or instrument to which TSI, any of TSI's members, or any Guarantor is a party, or by which their properties and assets may be bound or affected.

2.1.21 This Agreement constitutes the legal, valid, and binding obligation of TSI and, if applicable, each member of TSI, in accordance with the terms of this Agreement, subject only to applicable bankruptcy, insolvency, and similar Governmental Rule that affect the enforceability of the rights of creditors generally, and the general principles of equity. The Guarantees, if any, constitute the legal, valid, and binding obligation of the Guarantors, enforceable in accordance with the terms of the Guarantees, subject only to applicable bankruptcy, insolvency, and similar laws that affect the enforceability of the rights of creditors generally, and the general principles of equity;

2.1.22 There is no action, suit, proceeding, investigation or litigation pending and served on TSI that challenges: (i) TSI's authority to execute, deliver or perform, or the validity or enforceability of this Agreement; (ii) TSI's assets, properties, or operations as they relate to the Toll Services; or (iii) the authority of TSI's official to execute this Agreement; and TSI

has disclosed to CARTA any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which TSI is aware or should be aware of after reasonable inquiry and investigation;

2.1.23 Neither the execution and delivery by TSI of this Agreement, nor the consummation of the transactions contemplated by this Agreement, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under any agreement, judgment or decree to which TSI is a party or is bound;

2.1.24 The execution and delivery by TSI of this Agreement, and the performance by TSI of its obligations under this Agreement, will not conflict with any Governmental Rule applicable to TSI that are valid and in effect on the date of execution and delivery;

2.1.25 TSI is not in breach of any applicable Governmental Rule that would have a material adverse effect on the performance of any of its obligations under this Agreement;

2.1.26 No consent of any party and no Governmental Approval is required to be made in connection with the execution, delivery and performance of this Agreement, which has not already been obtained;

2.1.27 TSI agrees to avoid organizational conflicts of interest. For purposes of this Agreement, an organizational conflict of interest exists if, due to its other activities, relationships, or contracts, a consultant to CARTA is unable to render impartial assistance or advice to CARTA, or the consultant's objectivity in providing services to CARTA is or might be otherwise impaired. For purposes of the Proposal, organizational conflicts of interest also included any matters that resulted in TSI obtaining an unfair competitive advantage in connection with the procurement of this Agreement. As of the Proposal Date, to the extent Civil Contractor was actually aware, TSI provided Notice to CARTA of all organizational conflicts of interest involving TSI and TSI-Related Entities. Between the Proposal Date and the Effective Date, TSI has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to TSI or Subcontractors identified in its Proposal not approved by Notice to TSI.

2.1.28 TSI has not, in the past three (3) years, been convicted of or had a civil judgment rendered against it for (a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (e.g. federal, state or local) transaction or public contract; (b) violation of federal or state antitrust statutes or (c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

2.1.29 TSI is not presently indicted for or otherwise criminally or civilly charged by a Governmental Entity with commission of any of the offenses enumerated in Section 2.1.28;

2.1.30 TSI has not, in the past three (3) years, had one or more public transactions (federal, state or local) terminated for cause or default;

2.1.31 TSI has not received any communication or notice (written or oral), whether from a Governmental Entity, employee, citizens group, or any other Person, that alleges that TSI is not in full compliance with all Governmental Rule and Governmental Approvals in connection with the Toll Services and, to the knowledge of Civil Contractor, there are no circumstances that may prevent or interfere with full compliance in the future; and

2.1.32 TSI (i) is not in violation of (A) any applicable United States anti-money laundering laws, including those contained in the United States Bank Secrecy Act and the regulations promulgated thereunder; (B) any applicable economic sanction laws administered by Office of Foreign Assets Control of the United States Department of the Treasury (OFAC) or by the United States Department of State; or (C) any applicable United States anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; and (ii) is not a Person (1A) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws; (2B) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws; (3C) that is named on the list of "Special Designated Nationals or Blocked Persons" maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list); (4D) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business under any other applicable Governmental Rule; (5E) that is owned, controlled by, or affiliated with any Person identified in clause (1A), (2B), (3C) or (4D) of this clause (ii); or (6F) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

2.1.33 TSI is aware of the provisions of Labor Code section 3700 that require every employer to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code, and TSI shall comply with such provisions before commencing performance of the Toll Services, and at all times during the term of this Agreement, whether by providing its own insurance or self-insurance in accordance with the provisions of that Code.

2.1.34 In connection with this Agreement, TSI has not committed or caused, and will not commit or cause, a violation of: (a) Government Code sections 1090 through 1099, 84308, or 87100 through 87105; or (b) California Code of Regulations sections 18438.1 through 18438.8.

2.1.35 TSI is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal or State department or agency.

2.2 CARTA Representations, Warranties and Covenants

CARTA represents, warrants and covenants that:

2.2.1 As of the Effective Date, CARTA has full power, right and authority to execute, deliver and perform this Agreement and to perform all of CARTA's obligations provided for under this Agreement; and

2.2.2 Each person executing this Agreement on behalf of CARTA has been duly authorized to execute and deliver this Agreement on behalf of CARTA; and

2.2.3 This Agreement has been (or will be) duly executed and delivered by CARTA.

SECTION 3 TERM

3.1 Term of this Agreement

Unless extended as provided herein, the Term shall commence on the Effective Date and end on the last day of the Original Term, unless earlier terminated in accordance with the provisions of this Agreement.

3.1.1 Original Term. The Original Term shall consist of the D&D Phase, the One Year Warranty Period, commencing on the Toll Commencement Date, and the four (4) year O&M Period.

3.2 Extension of O&M Period

CARTA may, in its sole discretion, extend the O&M Period for up to five (5) additional one (1) year terms. CARTA may exercise an O&M extension option for any period of time, including partial years.

3.2.1 CARTA may exercise its O&M extension option(s) by delivery of Notice to TSI not fewer than 180 days prior to the then-scheduled expiration date specifying the period of time by which CARTA elects to extend the O&M Period.

3.2.2 O&M Period. If CARTA exercises its O&M extension option(s):

(a) The End of Agreement Transition Plan shall apply to the end of the O&M extension option Period.

(b) Payment for each O&M extension option will be payable in accordance with the cost provisions of this Agreement.

(c) The O&M Period will be extended for the term of the O&M extension option; and

(d) If CARTA exercises its O&M extension option(s), the provisions of this Agreement shall continue to apply in full force and effect. TSI shall continue to perform the Toll Services in accordance with this Agreement and shall comply with all other applicable provisions of the Agreement and TSI is not otherwise entitled to a Change Order or Directive Letter in relation to the exercise by CARTA of any O&M extension option.

3.3 Option to Require Software Maintenance After Termination

3.3.1 CARTA may exercise the Software Maintenance Option, to require TSI to carry out the Software Maintenance for all, or any one or combination, of the Software, on the terms and conditions set out in this Agreement for the Software Maintenance Option Period.

3.3.2 CARTA may exercise the Software Maintenance Option by delivery of Notice to TSI up to 30 days after termination or expiration of this Agreement which Notice shall identify the proposed term for the Software Maintenance Option, not to exceed 5 years.

3.3.3 If CARTA exercises the Software Maintenance Option, TSI shall continue to maintain the Software as required under the Agreement and shall comply with all other applicable provisions of the Agreement and TSI is not otherwise entitled to a Change Order or Directive Letter in relation to the exercise by CARTA or the Software Maintenance Option.

3.3.4 If CARTA exercises the Software Maintenance Option, the Parties shall in good faith attempt to agree upon the price for such services by reference to the itemized cost for elements of Work required for the relevant Software maintenance in the Price Sheets. If the Parties cannot agree, the price shall be determined in accordance with the methodology for pricing Change Orders, or as otherwise agreed upon by the Parties, provided that during the pendency of such dispute, TSI shall perform the O&M Work necessary to maintain the Software.

3.3.5 If CARTA exercises the Software Maintenance Option, the provisions of this Section 3.3 and all provisions of this Agreement applicable to such Software shall survive termination of this Agreement.

SECTION 4

GENERAL PROVISIONS APPLYING TO THE TOLL SERVICES

4.1 General Obligations for Toll Services

4.1.1 TSI shall perform the D&D Work:

(a) In accordance with:

(i) All applicable requirements set forth in the Appendix 2, Scope of Work requirements, and all appendices thereto;

(ii) All applicable Governmental Rules and Governmental Approvals ;

(iii) Supplier warranties in the case of Equipment;

(iv) Good Industry Practice;

(v) All other requirements of this Agreement; and

(b) So that it is free of Deviations that do not constitute CARTA approved Deviations.

4.1.2 TSI shall ensure all Equipment used in the Toll Services shall be new when installed (unless TSI obtains CARTA's prior written approval of an alternative), complies with this Agreement, is of good quality, free of Nonconforming Work and suitable for their purposes, objectives, functions, uses and requirements set out in or reasonably inferred from this Agreement.

4.1.3 TSI shall, at all times from and after Toll Commencement Date, ensure that the RTS, the Toll Services and the Work performed by TSI:

(a) Satisfy each of the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from the Agreement;

(b) Are capable of enabling TSI to perform the O&M Work in accordance with the Technical and Functional Requirements, and all other requirements contained in the Scope of Work;

(c) Are free of Deviations that do not constitute CARTA approved Deviations;

(d) Are in accordance with all applicable Governmental Rules; and

(e) Are in accordance with all other requirements of this Agreement.

4.1.4 TSI shall timely submit all Deliverables required in accordance with the Scope of Work, and all such Deliverables shall be accurate and complete as required under this Agreement.

4.1.5 Except as otherwise expressly provided in this Agreement, TSI:

(a) Accepts all risks in connection with delivering the Toll Services in accordance with this Agreement; and

(b) Is not entitled to make any Claim against CARTA for any Losses in connection with the Toll Services or this Agreement except as expressly provided in Section 19.

4.1.6 Whenever performance of the Toll Services creates a condition hazardous to the public, TSI shall notify CARTA and furnish, erect and maintain such temporary railings, barricades, lights, signs, and other devices and take such other protective measures as are necessary to prevent accidents, damage or injury to the public, in accordance with applicable health and safety provisions set forth in the Scope of Work, including the Safety Plan. Further, TSI shall adhere to all applicable Governmental Rules, standards, regulations, codes and statutes related to health and safety.

4.2 Coordination and Cooperation

TSI acknowledges and agrees that:

4.2.1 Other CARTA Contractors may be working at or otherwise present on the Site during the performance of the Toll Services (Other CARTA Contractor Work);

4.2.2 The Other CARTA Contractor Work may interfere with TSI's use of certain facilities on or near the Site;

4.2.3 TSI shall cooperate with CARTA and any Other CARTA Contractors in the performance of the Other CARTA Contractor Work, as may be applicable;

4.2.4 TSI-Related Entities shall fully cooperate and be solely responsible for coordinating its activities under this Agreement with the work schedules of Other CARTA Contractors performing the Other CARTA Contractor Work and shall schedule and sequence TSI's activities as reasonably necessary to accommodate the Other CARTA Contractor Work.

4.2.5 TSI shall perform the Toll Services so as not to:

(a) Enter upon, disturb or use any property of any person except with the express permission of, and in compliance with all requirements of, the owner of such property;

(b) Damage, close or obstruct any Utility installation, highway, road or other property unless and until all applicable Governmental Approvals have been obtained; or

(c) Disrupt or otherwise interfere with the operation of any telephone line, electric transmission line, improvement or structure unless otherwise specifically

authorized by this Agreement, applicable Governmental Rule or any Governmental Approval.

4.2.6 TSI shall cooperate and coordinate with CARTA, Other CARTA Contractors and CARTA Parties with respect to the ongoing operation, maintenance, renewal and replacement of the Project and other obligations under this Agreement.

4.2.7 TSI shall cooperate and coordinate with CARTA, Other CARTA Contractors, CARTA's consultants, Department and other Governmental Entities with jurisdiction over the Toll Services in performing oversight and conducting inspections during the design development, installation, integration, deployment and testing, of the RTS and any other matters relating to the Toll Services. As part of this effort, TSI shall review and provide detailed and timely input on Civil Contractor's Civil Design Plans and any civil design change orders.

4.2.8 If CARTA, Department, TCAs or Utility Owners award or perform other, separate contracts or projects that affect the Work, TSI shall perform the Toll Services without interfering with or hindering the progress or completion of the work performed under such contracts or as part of such projects.

4.2.9 If TSI asserts that a contractor of Department or TCAs has caused damage to the Work, or has hindered or interfered with the progress or completion of the Work, then except as expressly set forth in the Agreement, TSI shall have no recourse or rights against CARTA under this Agreement, but may pursue recourse, to the extent permitted by the Governmental Rules, against the respective contractor.

SECTION 5

ACCESS TO SITE; UTILITIES; ENVIRONMENTAL COMPLIANCE, GOVERNMENTAL APPROVALS AND EMERGENCIES

5.1 Access to Site prior to Turnover

5.1.1 Access for D&D Work

(a) Where TSI requires access to any part of the Site prior to Turnover, TSI shall:

(i) Provide Civil Contractor, if applicable, and CARTA with at least 72 hours prior written Notice of TSI's need to access the Site, or such other period as agreed upon in writing by the Parties, and coordinate and cooperate with Civil Contractor, as applicable, so as not to interfere with or adversely impact performance of any Caltrans Work;

(ii) Obtain an encroachment permit rider from the Department and other applicable Governmental Entities providing TSI with access to the Site and comply with the requirements of such permit rider;

- (iii) Comply with TSI's safety and security procedures;
 - (iv) Comply with Civil Contractor's safety and security procedures, if applicable, and request Civil Contractor's directions as to access to and occupancy of such areas; and
 - (v) Leave the Site in the same or better condition than exists at the time of accessing such area.
- (b) Access to any part of the Site in connection with Turnover is addressed in the Scope of Work.

5.1.2 Access for O&M Work When performing O&M Work, TSI shall provide Maintenance of Traffic (MOT), as detailed in the Scope of Work, and follow the requirements set forth in the Scope of Work, including obtaining any encroachment permits from the Department and other applicable Governmental Entities required for such access and in the approved Maintenance Plan.

5.1.3 Risk of Obtaining Access to Additional Land.

(a) TSI is solely responsible for obtaining access to and from any areas outside of the Site to which access is required to perform the Toll Services. CARTA has no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such property rights or interests, including the use of CARTA's power of eminent domain.

(b) TSI shall comply with all applicable Governmental Rules in acquiring and maintaining or disposing of any such property rights or interests. TSI shall cause the documentation of any such property rights or interest to contain the grantor's express acknowledgment that CARTA has no liability with respect to such acquisition, maintenance or disposition.

5.1.4 No Exclusive Access.

5.1.5 Except to the extent required in an Individual Test Plan approved by CARTA, CARTA is not required to provide TSI exclusive access to the Site and TSI shall allow CARTA, Other CARTA Contractors and CARTA Parties access to the Site.

5.2 Utilities

5.2.1 TSI shall review and verify the location of all Utilities related to D&D Work and shown on any utility information provided by CARTA.

5.2.2 CARTA shall provide the Utility services required to perform the D&D Work. CARTA shall bear the Costs of all Utility services at the roadside, to the CBO Provider and at the TMC that are incurred in order to perform such D&D Work.

5.2.3 Provided that CARTA has complied with any of its obligation to provide the electric services described as CARTA's responsibility in the Scope of Work, TSI shall arrange for all Utility installations, hook-ups and service extensions that are required to perform the O&M Work, and for coordination with Utility owners in accordance with the RTS Infrastructure Demarcation of Responsibilities, Scope of Work and otherwise perform its obligations with respect to Utilities in the Agreement. During the One Year Warranty Period and O&M Period, TSI shall arrange for all additional or modified Utility installations, hook-ups and service extensions and changes that are required to perform the O&M Work, and for coordination with Utility owners.

5.2.4 CARTA shall bear the Costs of all Utility services at the roadside, to the CBO Provider and at the Traffic Management Center (TMC) as described in the Scope of Work, to the extent that Caltrans does not pay for such services, including any third-party communications services, that are incurred in order to perform the O&M Work.

5.2.5 Without limiting any other provision of this Agreement, TSI shall use its best efforts to minimize costs for which TSI is entitled to compensation relating to Utilities, including avoidance of an unidentified Utility where feasible rather than its removal and/or reinstallation in a new location.

5.2.6 Utilities required to operate the RTS on the roadside, including any third-party communications services, will be in CARTA's name and paid directly by CARTA.

5.2.7 TSI shall be responsible for obtaining and paying the cost of any other Utility services that TSI may require for performance of the O&M Work.

5.3 Hazardous Materials Management

5.3.1 Procedures for Hazardous Materials Management

(a) Except for Hazardous Materials Management undertaken by Department under Section 5.3.6, TSI shall manage, treat, handle, store, remediate, remove, transport (where applicable), document and dispose of all Hazardous Materials, including Contaminated Groundwater required under this Agreement, in accordance with Governmental Rules, Governmental Approvals, and all provisions of this Agreement.

(b) If, in performing the Toll Services, TSI encounters material quantities of Hazardous Materials in connection with the Site or the Toll Services, TSI shall immediately:

(i) Notify CARTA by telephone or in person, to be followed immediately by Notice, with a copy of the Notice provided directly to Department; and

(ii) Except where TSI is required to take immediate action under this Agreement or applicable Governmental Rules, stop Work in and secure the area.

(c) TSI's Notice under Section 5.3.1(a) shall:

(i) Specify the nature of the discovery, including, if possible, whether the potential Hazardous Material is HM-1 or HM-2;

(ii) Specify whether the Hazardous Material is located within Existing Department ROW; and

(iii) Advise CARTA of any obligation to notify any Governmental Entities under applicable Governmental Rules and Governmental Approvals.

(d) Except where TSI is required to take immediate action under this Agreement or applicable Governmental Rules, CARTA and Department shall have five (5) days after CARTA receives Notice to inspect the area and consult with TSI about the recommended approach before any other action is taken that would inhibit CARTA's or Department's ability to ascertain the nature and extent of the discovery.

5.3.2 CARTA Response

(a) Upon receipt of Notice under Section 5.3.1(b) CARTA will:

(i) View the location and conduct such further investigation as CARTA deems appropriate; and

(ii) Use reasonable efforts to provide Notice to TSI within five (5) days of receiving Notice under Section 5.3.1(b), as to whether Work should be resumed, whether further investigation is required, whether additional action is required to be undertaken by the TSI, or whether in CARTA's opinion the situation falls within the scope of Section 5.3.6.

(iii) If Hazardous Materials or Contaminated Groundwater is involved, CARTA's Notice under Section 5.3.1(b) shall describe the type of remediation measures, if any, that TSI is to undertake with respect to such Hazardous Materials or Contaminated Groundwater.

5.3.3 Notification to CARTA

(i) If any Governmental Approval or this Agreement specifies a procedure to be followed that differs from the procedure in this Agreement, TSI shall follow the procedure set forth in the Governmental Approval or this Agreement in lieu of the procedure in this Section 5.3.

(ii) CARTA may require TSI to recommence Work in the area at any time, even though an investigation may still be ongoing. TSI shall promptly recommence Work in the area upon Notice from CARTA to do so. Upon recommencing Work, TSI shall

follow all applicable procedures contained in this Agreement and all other Governmental Rules with respect to such Work, consistent with CARTA's determination or preliminary determination regarding the nature of the material or condition and the basis upon which TSI may recommence Work.

5.3.4 TSI Action

(a) TSI shall take reasonable steps, including design modifications, installation and integration and O&M Work techniques, to avoid excavation or dewatering or other active, intrusive management in areas where Hazardous Materials are encountered.

(b) Where excavation or dewatering is unavoidable, TSI shall use appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by CARTA or Department. Wherever feasible and consistent with applicable Governmental Rules, contaminated soil and groundwater shall not be disposed off-site. All Hazardous Materials shall be managed in accordance with applicable Governmental Rules, Governmental Approvals, the approved Plans required to be provided under the Scope of Work including, but not limited to the Safety Plan, and the Installation Plan.

(c) For purposes of this Section 5.3, the term "material quantities" means quantities that trigger any reporting, investigation or remediation requirements under any Environmental Law.

(d) Each Subcontractor performing environmental remediation work shall, to the extent required by Governmental Rules for the Toll Services they are undertaking, have all necessary licenses including a Hazardous Substance Removal Certification from the State of California Contractors State License Board.

5.3.5 Hazardous Materials Generator

5.3.5.1 Subject to Sections 5.3.5.2 and 5.3.5.3, as between TSI and CARTA only, CARTA shall be considered the generator of Hazardous Materials on the ROW as of the Effective Date.

5.3.5.2 Section 5.3.5.1 does not preclude or limit any rights that CARTA may have against Third Parties and/or prior owners, lessees, licensees and occupants of the ROW.

5.3.5.3 TSI shall be considered the generator of any Hazardous Materials on the ROW and shall be responsible for all Hazardous Materials Management Costs as a result of a TSI Release of Hazardous Materials.

5.3.6 HM-1 in Existing Department ROW

5.3.6.1 The Department is responsible for Hazardous Materials Management of HM-1 discovered within the Existing Department ROW excluding any costs of testing to determine if such material is HM-1, which costs shall be borne by the TSI under this Agreement. If HM-1 is discovered within the Existing Department ROW, Department may either (i) undertake the Hazardous Materials Management with Department forces or contractors or (ii) delegate the Hazardous Materials Management investigation work to CARTA.

5.3.6.2 Upon receipt of the Notice under Section 5.3.1(b), Department or its representative will investigate and commence Hazardous Materials Management of any HM-1 located within the Existing Department ROW.

5.3.6.3 During the period of Department's investigation and Hazardous Materials Management of any HM-1 discovered within the Existing Department ROW, TSI shall fully cooperate with CARTA to work around and re-sequence and redeploy around the area, including rescheduling Work so as to avoid any delay to the overall Toll Services.

5.4 Approvals and Governmental Entities

5.4.1 TSI Governmental Approval Obligations TSI shall:

(a) Obtain and maintain any Governmental Approvals required for TSI's performance of this Agreement, including all Governmental Approvals relating to Hazardous Materials Management as required under this Agreement, including, to the extent applicable, federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials required for performance of the Toll Services;

(b) Comply with all conditions imposed by all Governmental Approvals, including all environmental requirements, mitigation measures and conditions relating to the Toll Services;

(c) Undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals;

(d) Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), TSI shall submit the same, together with any supporting environmental or technical studies, data and analyses, to CARTA. CARTA reserves the right, in its sole discretion, to approve any application for a proposed modification, renewal, extension or waiver of a CARTA-Provided Approval. All other applications for Governmental Approvals shall be subject to CARTA's review and comment; and

(e) Promptly provide CARTA with copies of all Governmental Approvals issued to TSI, or agreement entered into between TSI and any Governmental Entity or other third party relating to the Toll Services or the Project.

5.5 Assistance with Governmental Entities and Administrative Hearings and Lawsuits

5.5.1 TSI shall provide any assistance reasonably requested by CARTA: (a) to deal with Governmental Entities, (b) to prosecute and defend lawsuits, administrative hearings and other official proceedings, and (c) in any and all matters in connection with the Toll Services. In providing assistance, TSI shall provide TSI's staff and consultants to provide testimony and act as witnesses in such lawsuits and proceedings, provide information, reports, graphs, photos, plans, renderings, data, images, reports and similar materials regarding the Toll Services, execute declarations and attend meetings and hearings. CARTA shall remit to TSI any amounts collected on TSI's behalf as a result of any such action or proceeding.

5.5.2 Except as expressly stated otherwise, this Section 5.5 is not intended to require TSI to provide legal services for the benefit of CARTA and any assistance provided by CARTA shall not relieve TSI of its responsibility for the satisfactory compliance of its obligations under this Agreement.

5.6 Emergencies

5.6.1 If an Emergency arises, TSI shall:

(a) Immediately provide Notice to CARTA and implement the protocol for Emergencies in any Standard Operating Procedures agreed upon by the Parties;

(b) Subject to Section 5.6.1(c) and 5.6.1(d), take actions intended to prevent damage, injury or loss to persons, property or the RTS;

(c) Act in accordance with applicable State emergency management plans and procedures provided to or known to TSI for dealing with Emergencies at the Project;

(d) Comply with any CARTA direction with respect to the Emergency; and

(e) Permit CARTA, or its nominee, to remedy the Emergency, if CARTA, acting in good faith, determines it is prudent to do so, in which case, the Costs of remedy that relate to the Toll Services, shall, without limiting CARTA's rights under this Agreement, be due and payable from TSI to CARTA upon demand.

5.6.2 Except as otherwise expressly provided in this Agreement, any direction or action by CARTA under Section 5.6.1(d) or Section 5.6.1(e) shall not:

(a) Expose CARTA to any liability to any TSI-Related Entity or entitle TSI to any other remedy, it being acknowledged by TSI that CARTA has a paramount public interest in providing and maintaining public safety; and

(b) Limit or modify CARTA's rights to any Liquidated Damages that may arise out of such direction or action, which are in addition to the obligations to undertake and pay for such remedy.

SECTION 6

NOTICES TO PROCEED

6.1 Commencement of NTP1 Work

TSI shall not perform any NTP1 Work until issuance of NTP1. CARTA anticipates issuing NTP1 on or about the Effective Date.

6.2 NTP1

6.2.1 CARTA shall not issue NTP1 until the following requirements for the Toll Services have been satisfied:

- (a) Satisfaction of all conditions to award and execution of this Agreement;
- (b) TSI has delivered to CARTA the NTP1 Performance Bond and the NTP1 Payment Bond, each executed by the issuing Eligible Surety;
- (c) TSI has provided to CARTA the insurance policies, certificates of insurance, riders to its existing insurance policies or other evidence reasonably required by CARTA to confirm the existence of all the insurance coverages required for the NTP1 Work in accordance with this Agreement;
- (d) TSI has provided to CARTA any other documents, things or assurances required by this Agreement as a condition of NTP1 and has received CARTA approval for such documents, things or assurances to the extent required by this Agreement.

6.2.2 TSI acknowledges and agrees that: (a) CARTA has no obligation to issue NTP1, and (b) unless and until NTP1 is issued, CARTA has no liability to TSI under this Agreement.

6.3 Commencement of NTP2 Work

TSI shall not perform any NTP2 Work until issuance of NTP2.

6.4 NTP2

6.4.1 CARTA shall not issue NTP2 until the satisfaction of the following requirements for the Toll Services:

(a) CARTA has received all financing commitments from Caltrans required for the Project;

(b) TSI has delivered to CARTA the NTP2 Performance Bond, executed by the issuing Eligible Surety;

(c) TSI has delivered to CARTA the NTP2 Payment Bond, executed by the issuing Eligible Surety;

(d) TSI has completed the NTP1 Work in accordance with this Agreement;

(e) TSI has provided to CARTA the insurance policies, certificates of insurance, riders to its existing insurance policies or other evidence reasonably required by CARTA to confirm the existence of all the insurance coverages required for the NTP2 Work in accordance with this Agreement;

(f) The Guaranty of TSI's obligations in accordance with this Agreement, as applicable, remains in full force and effect;

(g) TSI has executed an agreement, in the form provided by CARTA, that obligates TSI to maintain the confidentiality of Personally Identifiable Information and expressly identifies the CBO Provider as a third-party beneficiary with respect to such confidentiality obligation; and

(h) TSI has provided to CARTA any other documents, things or assurances required by this Agreement as a condition of NTP2 and has received CARTA approval for such documents, things or assurances to the extent required by this Agreement, including CARTA approval of all NTP1 Deliverables identified in the Scope of Work.

6.4.2 TSI acknowledges and agrees that: (a) CARTA has no obligation to issue NTP2, and (b) except as otherwise provided in this Agreement, unless and until NTP2 is issued, CARTA has no liability to TSI under this Agreement, except with respect to the NTP1 Work.

6.5 NTP 3

TSI shall not perform any NTP3 Work until issuance of NTP3.

6.5.1 CARTA shall not issue NTP3 until the satisfaction of the following requirements for the Toll Services:

(a) TSI has delivered to CARTA the O&M Bond, executed by the issuing Eligible Surety;

(b) TSI has completed the NTP2 Work in accordance with this Agreement;

(c) TSI has provided to CARTA evidence of all insurance policies, certificates of insurance, riders to its existing insurance policies or other evidence reasonably required by CARTA to confirm that insurance coverages required for the NTP3 Work in accordance with this Agreement are in effect;

(d) The Guaranty of TSI's obligations in accordance with this Agreement, as applicable, remains in full force and effect; and

(e) TSI has provided to CARTA any other documents, things or assurances required by this Agreement as a condition of NTP3 and has received CARTA approval for such documents, things or assurances to the extent required by this Agreement, including CARTA approval of all NTP2 Deliverables identified in the Scope of Work.

6.5.2 TSI acknowledges and agrees that: (a) CARTA has no obligation to issue NTP3, and (b) except as otherwise provided in this Agreement, CARTA has no liability to TSI under this Agreement for any delay or determination not to issue NTP3. If CARTA does not issue NTP3 within twelve (12) months of commencement of the One Year Warranty, or otherwise terminate this Agreement, payment for continued O&M Work will be made to TSI in accordance with the monthly pricing for the O&M Period.

6.6 Delay in Issuance of NTP2

6.6.1 Provided that TSI has satisfied all TSI conditions to issuance of NTP2, CARTA anticipates it will issue NTP2 following receipt of binding commitments from the Department to fully fund the Project. If the effective date of NTP2 is more than 400 days after the Proposal Date, and only if such delay in issuing NTP2 is not caused in whole or in part by any act or omission of any TSI-Related Entity or any TSI Fault, then the Total D&D Cost (less any amounts previously earned or paid) shall be adjusted based on the lesser of 3% or the change in the three-year rolling average of the monthly CPI, by adding or subtracting the product of the following from the Total D&D Cost:

$$D = (\text{Total D\&D Cost (less any amounts previously earned or paid)} \times 0.50) * B]/B)$$

where:

“D” is the adjustment amount;

“A” is the average of the CPI published during the 36-month period preceding the date of issuance of NTP2 (i.e., the amount determined by taking the average of the index most recently published as of the date of the NTP2, the index most recently published as of the date one month prior to that date, etc.); and

“B” is the average of the CPI published during the 36-month period preceding the date that is 365 days after the Proposal Date.

6.6.2 If CARTA does not issue NTP2 on or before 600 days after the Proposal Date, the Parties may agree to terms allowing an extension in time for issuance of the NTP2 that is mutually acceptable to both Parties. Provided the delay in issuing NTP2 is not caused in whole or in part any act or omission of any TSI-Related Entity or any TSI Fault, if TSI does not wish to negotiate an extension or the Parties fail to reach agreement in accordance with this Section, then TSI’s sole remedy shall be to terminate this Agreement in accordance with Section 21.10 and TSI shall not be entitled to an increase in the cost of the Total D&D Cost or extension of the Guaranteed Completion Dates with respect to any delay in issuance of NTP2 except as set forth above.

6.6.3 Any Total D&D Cost increase under the provisions above shall be amortized proportionally over all Work at issue, and shall be evidenced by a Change Order accompanied by a revised Project Schedule.

SECTION 7

D&D WORK

7.1 Time of Essence and General Scope of D&D Work

TSI acknowledges that achieving the Project Milestones by the relevant Guaranteed Completion Dates are of the essence of this Agreement. TSI shall perform the D&D Work on a turnkey basis in accordance with this Agreement.

7.2 Monthly Progress Report

TSI shall submit to CARTA for review and approval in accordance with the Submittal Process, a D&D Monthly Progress Report monthly during the D&D Phase.

7.3 Coordination of D&D Work

Without limiting TSI’s obligations under this Agreement, to the extent applicable, TSI shall cooperate and coordinate the D&D Work with the Civil Contractor as set out in the RTS Infrastructure Demarcation of Responsibilities and otherwise in accordance with the Scope of Work and as may be necessary to avoid interference with the Caltrans Work.

7.4 CARTA Review of D&D Work

TSI shall provide CARTA with the opportunity to perform “over-the-shoulder” reviews of all aspects of the D&D Work. The over-the-shoulder reviews may be conducted in the office of TSI or its Subcontractors located in California and in the presence of TSI’s relevant

personnel. The over-the-shoulder reviews may be of design, progress prints, computer images, draft documents, interface documents, Software, working calculations, draft specifications or reports or other documents as determined by CARTA in connection with the D&D Work. CARTA shall reasonably coordinate with TSI in connection with such over-the-shoulder reviews in order to help TSI identify the appropriate CARTA personnel to be involved with such reviews.

7.5 Colocation

CARTA may provide TSI with office space at a co-located office during the D&D Phase on or before NTP2. If a co-located office is provided, TSI will ensure that Key Personnel are available to work at the co-located office as agreed upon in writing by the Parties.

7.6 Contractor Licenses for D&D Work

To the extent required under applicable Governmental Rules, TSI shall:

(a) Prepare Installation Drawings for any civil construction elements of the D&D Work under the responsible charge of Registered Professional Engineers in the State, as applicable, and all such elements of the Installation Drawings shall be stamped by Registered Professional Engineers licensed in the State.

(b) Perform D&D Work at the Site with contractors licensed to perform work in the State, as appropriate; and

(c) Possess: A valid C10 (Electrical Contractor) license and possess or ensure a Subcontractor possesses a valid C31 (Construction Zone Traffic Control Contractor) license and any other license(s) required for the Work. No Subcontractor may start any D&D Work until after CARTA receives a copy of such Subcontractor's valid State contractor license.

7.7 Procurement of Equipment

TSI shall:

(a) Procure all Equipment required to perform the D&D Work;

(b) Perform any inspection, receipt, warehousing, expediting, quality surveillance, traffic, shipment, transportation and other services in connection with the procurement of Equipment under Section 7.7(a); and

(c) Clear Equipment through customs and take any other actions necessary to import such Equipment, as may be necessary.

7.8 Spare Parts

7.8.1 TSI shall ensure that an adequate quantity of spare parts shall be available at all times to meet the Agreement requirements. TSI shall be responsible for payment for repair and replacement for all spare parts as a part of its maintenance responsibilities as further set forth in the Scope of Work.

7.8.2 TSI shall procure, inventory and store all spare parts at secure facility(ies) identified to CARTA as specified in the Scope of Work.

7.8.3 The Total D&D Cost includes all spare parts required for the initial inventory prior to Toll Commencement, and for the One Year Warranty, as described in the Scope of Work. TSI shall be responsible for the purchase, delivery, testing and maintenance of all spare parts which shall be as approved in the System Design Document, except as otherwise set forth in the Scope of Work.

7.8.4 If, at any time, CARTA determines, in its sole discretion, that the rate of failure or time taken to acquire replacements of spare parts indicates that the level of inventory maintained with reference to the System Maintenance Plan, System Design Document, or any other plan required by the Scope of Work, is insufficient to ensure the continuous operation of the RTS or performance of the Toll Services in accordance with this Agreement, CARTA may direct TSI to increase the spare parts inventory level within a reasonable time, at TSI's Cost.

7.8.5 TSI shall ensure that all spare parts held in TSI's inventory are new when installed and fully tested, and maintained in good operating condition at all times during the One Year Warranty Period and the O&M Period. TSI shall promptly return rejected or failed items under warranty to the Supplier for credit or replacement.

7.9 Integration with Caltrans Work

7.9.1 TSI shall:

(a) Comply with its obligations to coordinate and cooperate with Civil Contractor in accordance with this Agreement, the Scope of Work and the RTS Infrastructure Demarcation of Responsibilities.

(b) As requested by CARTA, (i) review and comment on any submissions that Civil Contractor makes to CARTA under the Caltrans Contract or inspect any work CARTA is required to inspect under the Caltrans Contract, and (ii) provide written comments to CARTA, in the form requested by CARTA, no later than five (5) days before CARTA is required to respond to the applicable submission or inspection under Caltrans Contract, or if the Caltrans Contract provides no applicable response time, 14 days after CARTA makes the request.

(c) Promptly provide Civil Contractor requested information in connection with D&D Work;

(d) Participate with and assist CARTA in inspection, testing and acceptance of elements of the Caltrans Work that interface or integrate with the D&D Work;

(e) Except as otherwise expressly provided under this Agreement, prior to proceeding with that portion of the D&D Work that depends on performance of the Caltrans Work, inspect and promptly report to CARTA any defects in such Caltrans Work that impact proper execution of the D&D Work; and

(f) Subject to Section 7.9.3 and notwithstanding the division of responsibilities as shown in the RTS Infrastructure Demarcation of Responsibilities, be responsible for validating that all of the D&D Work integrates with the Caltrans Work and any other work performed by others to produce a comprehensive RTS that is in accordance with this Agreement, including providing the Civil Site Acceptance Checklist and any Communications Network Acceptance Checklist.

7.9.2 CARTA shall reasonably coordinate with TSI in connection with any inspections required under Section 7.9.1(d) and shall reasonably attempt to have such inspections done reasonably efficiently.

7.9.3 To the extent that the Civil Contractor RTS Infrastructure is installed as designed and does not meet the requirements of this Agreement, subject to Section 7.9.4 below, TSI shall be responsible for all schedule delay and all costs associated with modifying the Civil Contractor RTS Infrastructure to address TSI's inability to meet Agreement requirements, including (i) the costs of redesign, (ii) Civil Contractor RTS Infrastructure rework by Civil Contractor, (iii) other Civil Contractor costs incurred or related to such modification and (iv) additional equipment costs.

7.9.4 TSI shall not have any liability with respect to the design, construction and performance of the portions of Caltrans Work undertaken by Civil Contractor provided TSI has undertaken the D&D Work in compliance with this Agreement, including all requirements in the Scope of Work.

7.10 Prevailing Wage

7.10.1 TSI shall comply and cause its Subcontractors performing D&D Work that is construction of public works under applicable Governmental Rules to comply with.

(a) All Governmental Rules, regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates;

(b) All applicable requirements of Division 2, Part 7, Chapter 1 of the Labor Code.

(c) If it is found that a laborer or mechanic employed by TSI or a Subcontractor has been or is being paid a rate of wages less than the rate of wages required by this Agreement to be paid, CARTA may declare a TSI Event of Default.

7.11 Labor Code Requirements

7.11.1 TSI shall:

(a) Comply and cause its Subcontractors performing D&D Work that is construction of public works under applicable Governmental Rules to comply with applicable provisions of the Labor Code and implementing regulations, including requirements with respect to prevailing wages, and employment and training of apprentices, and

(b) Monitor and enforce prevailing wage requirements of applicable labor Governmental Rules to ensure that all contractors performing the Toll Services are in compliance with State (Division 2, Part 7, Chapter 1 of the Labor Code) prevailing wage statutes and regulations.

7.11.2 TSI is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR) as set forth in Title 8, Chapter 8, Subchapter 4.5 of the California Code of Regulations, which include, among other requirements, the obligation to furnish payroll records directly to the DIR Labor Commissioner.

7.11.3 Comply with all applicable labor compliance requirements under Labor Code Section 1776.

7.11.4 Pursuant to Labor Code section 1725.5, no Subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a). No contractor or Subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR.

7.11.5 TSI shall post a Notice at the Site containing the following language:

“This public works project is subject to monitoring and investigative activities by the Division of Labor Standards Enforcement, Department of Industrial Relations (DLSE), State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the Project. These rates are listed on

a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this Project may be filed with the office of the DLSE.

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the Project and the Toll Services that the DLSE may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 hours per day or 40 per week, etc.) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the Project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/PublicWorks.html”.

7.11.6 By entering into this Agreement, TSI makes the following certification to CARTA pursuant to Labor Code Section 1861:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

7.12 Notice of Labor Dispute

Whenever TSI has knowledge that any actual or potential labor dispute may delay its performance under this Agreement, TSI shall immediately notify and submit all relevant information to CARTA. TSI shall ensure that a comparable requirement is included in each Subcontract as to which a labor dispute may delay performance under this Agreement, requiring each Subcontractor to give notice and information to the next higher tier Subcontractor (or to TSI, if it is a direct Subcontract).

7.13 Payment to Subcontractors.

7.13.1 Within seven (7) days of receipt of payment from CARTA on account of a Subcontractor’s portion of the Toll Services, TSI shall pay such Subcontractor the amount to which such Subcontractor is entitled. Each Subcontract shall require the Subcontractor to make payments to sub-subcontractors and Suppliers in a similar manner.

7.13.2 Any breach of this Section shall subject TSI to the penalties, sanctions and other rights specified in Section 7108.5 of the Business and Professions Code and may result in the application of appropriate administrative sanctions, including CARTA's right to withhold two (2) percent of the invoice amount due to TSI as a penalty for every month that full payment is not made to a Subcontractor.

7.13.3 This Section shall not limit or impair any contractual, administrative, judicial or equitable rights otherwise available to TSI or any Subcontractor against each other in the event of a dispute involving late payment or nonpayment by TSI or deficient Subcontract performance or noncompliance by a Subcontractor.

7.13.4 CARTA has no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by applicable Governmental Rules.

7.13.5 Any delay or postponement of payments to Subcontractors from the requirements above may occur only for good cause following written approval by CARTA, in its sole discretion.

7.13.6 Subcontractor Claims. Within five (5) days of submission of any Notice of Claim (including any Change Notice) or other similar notification under this Agreement, in each case that is based in whole or in part on a request by a Subcontractor for a price increase or time extension under its Subcontract, TSI shall review and analyze the claim, determine in good faith and certify that it is justified under the Subcontract and that Civil Contractor is justified in making its request for an increase in compensation and/or time extension. Each such Notice of Claim (or similar notification) involving Subcontractor work shall include a summary of Civil Contractor's analysis of the claim. Any Notice of Claim (or similar notification) under this Section shall be considered incomplete if it involves Subcontractor work and is not accompanied by such analysis and certification.

7.14 Suspension and Debarment.

7.14.1 Pursuant to Public Contract Code Section 6109, TSI shall not perform the Work with a Subcontractor who is ineligible to perform work pursuant to Section 1777.1 or 1777.7 of the Labor Code. By entering into this Agreement, TSI certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Section, the term "principal" means an officer, director, owner, partner, Key Personnel, employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of TSI.

7.14.2 No later than January 31 of each year of the Term, TSI shall deliver to CARTA signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from TSI, from each affiliate of TSI (as "affiliate" is defined in

29 CFR § 16.105 or successor regulation of similar import), and from each Subcontractor whose contract amount equals or exceeds \$100,000. The annual certification shall be in a form approved or provided by CARTA.

7.15 Cleaning Up.

In performing the D&D Work, TSI shall keep the Site occupied by TSI in a neat, clean and safe condition. Upon completion of any portion of the D&D Work, TSI shall promptly remove from the Site all equipment, temporary structures, and surplus materials not required to be used at or near the same location during later stages of the D&D Work.

7.16 Safety and Security

TSI shall:

(a) Be responsible for safety and security of its own personnel, and all other Persons accessing the Site in connection with the Toll Services in accordance with the Safety Plan and such other safety precautions as are reasonably required by Civil Contractor's safety plan, as may be applicable.

(b) Act to prevent threatened damage, injury or loss of property and life;
and

(c) Be responsible for the safety and security of any other persons involved in the testing activities.

7.17 Title

7.17.1 Except as otherwise expressly provided in this Agreement (i) TSI warrants that it owns, or will own, and has, or will have, good and marketable title to all Equipment, Hardware and Software furnished, or to be furnished, by it and its Subcontractors under this Agreement, free and clear of all Liens; and (ii) title to Equipment, Hardware and Software which has been delivered to the Site that becomes part of the RTS or used in connection with the Toll Services, or that is delivered to a secure storage area pending delivery to the Site or use in connection with the Toll Services, shall pass to CARTA, free and clear of all Liens, upon the sooner of (x) incorporation into the Toll Services and CARTA approval of such installation, or (y) payment by CARTA to TSI of invoiced amounts pertaining to such Equipment, Hardware and Software.

7.17.2 Notwithstanding that title shall pass to CARTA as set forth in this section and except as otherwise set forth in this Agreement, TSI shall:

(a) Retain sole care, custody and control of such Equipment, Hardware and Software and exercise due care with respect to such Equipment, Hardware and Software through and until the expiration or termination of this Agreement; and

(b) Remain solely responsible and liable for risk of loss to such Equipment, Hardware and Software as set forth in this Agreement.

7.18 Maintenance During Performance of D&D Work

Except as otherwise set forth in this Agreement, during performance of the D&D Work, TSI shall maintain, rebuild, repair, restore or replace:

(a) All D&D Work, including Equipment, Hardware, Software or RTS Infrastructure (excluding any elements of the RTS Infrastructure that are Caltrans Work) that is damaged prior to Toll Commencement, regardless of who has title to such Equipment, Hardware or RTS Infrastructure under this Agreement and regardless of the cause of the damage; and

(b) If directed to do so by CARTA, any aspect of the Caltrans Work that is damaged prior to the commencement of the One Year Warranty Period, where such damage is caused by an act or omission by any TSI-Related Entity or any TSI Fault. If CARTA does not direct TSI to make such repairs or TSI fails to make such repairs in a timely manner, the necessary repairs will, at CARTA's direction, be made by Civil Contractor or another contractor retained by CARTA and payment for such repairs shall be due and payable from TSI to CARTA upon demand.

SECTION 8

D&D WORK SCHEDULE. COMPLETION AND ACCEPTANCE

8.1 Guaranteed Completion Dates

TSI shall carry out the D&D Work so as to achieve each of the Project Milestones by the applicable Guaranteed Completion Dates.

8.2 Project Schedule

8.2.1 TSI shall undertake the D&D Work in accordance with the Project Schedule.

8.2.2 TSI shall prepare and submit Project Schedule Deliverables to CARTA within the times specified in Scope of Work for review and approval in accordance with the Submittal Process. The Project Schedule shall be used by the Parties for planning and monitoring the progress of the D&D Work.

8.3 Project Schedule Development; Project Schedule Updates

8.3.1 TSI shall use the Preliminary Project Schedule as a foundation to prepare the Project Schedule to be submitted in accordance with the Scope of Work; provided, however, that CARTA's acceptance of TSI's Proposal and award and execution of the TSI Contract shall

not be construed as CARTA approval of Preliminary Project Schedule or any subsequent Project Schedule.

8.3.2 TSI shall incorporate the schedule milestones, projected dates for achievement of Payment Milestones and Guaranteed Completion Dates into its proposed Project Schedule in accordance with the methodology described in the Scope of Work.

8.3.3 Notwithstanding that TSI may have completed one or more Payment Milestones or Project Milestones, TSI has no right to receive payments until such time as TSI has prepared and CARTA has approved the Project Schedule.

8.3.4 The Project Schedule shall be updated monthly or as required in the Scope of Work including to incorporate approved Recovery Schedules submitted by TSI.

8.3.5 All changes to the Project Schedule shall be subject to approval by CARTA, in its sole discretion.

8.4 Float

8.4.1 All Float contained in the Project Schedule, or generated after CARTA's approval of the Project Schedule, shall be a Project resource available to either Party or both Parties, as needed, to absorb delays caused by any event and to achieve schedule milestones, interim completion dates, and/or Guaranteed Completion Dates.

8.4.2 All Float shall be shown as such in the Project Schedule and on each applicable schedule path. CARTA shall consider TSI's identification of (or failure to identify) Float on the Project Schedule in determining whether to approve the Project Schedule. Once identified, TSI shall monitor, account for and maintain Float in accordance with CPM.

8.5 Extensions of Time

The Guaranteed Completion Dates shall not be modified except by Change Order in accordance with Section 19.

8.6 Progress Reports and Notices

8.6.1 TSI shall provide CARTA all progress and other reports specified in this Agreement together with any further information CARTA may reasonably require to verify actual progress and to predict future progress of the Toll Services.

8.6.2 If TSI considers that the D&D Work will not be performed consistent with the milestone dates in the Baseline Schedule or the Guaranteed Completion Dates, TSI shall promptly provide Notice to CARTA.

8.6.3 Within 30 days after the earlier of (i) receipt of TSI's Notice under Section 8.6.2 or (ii) CARTA's Notice to TSI that it reasonably believes that the D&D Work will not be performed consistent with the milestone dates set forth in the Baseline Schedule or the Guaranteed Completion Dates, TSI shall (i) demonstrate to CARTA's reasonable satisfaction that the delay will have no adverse effect on TSI's ability to complete the D&D Work in accordance with the applicable Guaranteed Completion Dates, even though other milestone dates may be missed, or (ii) submit for CARTA's review and approval, in accordance with the Submittal Process, a Recovery Schedule for restoring the impacted Project Milestones and/or milestone dates set forth in the Baseline Schedule to a state of compliance.

8.6.4 If a Recovery Schedule is submitted under Section 8.6.3, TSI shall promptly comply with the approved Recovery Schedule. If TSI does not comply with the approved Recovery Schedule, CARTA may require an increase in TSI's resources. Failure of TSI to comply with this Section 8.6 may be grounds for determination by CARTA that TSI is not prosecuting the D&D Work with the diligence required to ensure completion in accordance with this Agreement and CARTA may exercise its rights for a TSI Event of Default in Section 22.

8.7 Release for Civil Design Plans; Civil Design Change Orders; RFIs and Shop Drawings

8.7.1 TSI shall review and provide comments on Civil Contractor's Civil Design Plans and any civil design change orders and respond to Requests for Information (RFI) submittals and review shop drawings within the timeframes set forth in the Scope of Work.

8.7.2 The timelines in the Scope of Work for TSI initial review and comment on the documents identified in Section 8.7.1 above shall apply to any resubmittal(s) of such documents to TSI.

8.7.3 Except as otherwise set forth in this Agreement, failure of TSI to provide comments on the Civil Contractor's Civil Design Plans or civil design change orders within the specified timeframes shall be deemed to evidence that the Civil Design Plans and applicable civil design change orders provide for civil work that meets the TSI's requirements for successful RTS installation, integration and operation in accordance with the requirements of this Agreement.

8.8 Master Installation and Cutover Plan; Coordination of Work in Turnover Areas with Civil Contractor

8.8.1 The Project is comprised of various Turnover Areas, each consisting of one Read Point and certain Equipment and civil infrastructure required for TSI to install the RTS, and each subject to Civil Site Acceptance and Network Site Acceptance prior to TSI accepting the Turnover Area.

8.8.2 TSI is responsible for coordinating the performance of the D&D Work with any remaining Caltrans Work to be performed by the Civil Contractor, including any Civil Contractor change order work, in accordance with this Agreement and the Scope of Work.

8.8.3 TSI shall timely prepare and deliver the Master Installation and Cutover Plan, as required by the Scope of Work, and the Detailed Installation Plan, and all other plans required by the Scope of Work, for approval.

8.8.4 TSI shall review and continually update and adjust performance of the D&D Work to coordinate with any remaining work or change order work of the Civil Contractor, and shall comply with any other requirements set forth in the Scope of Work.

8.9 Inspection of Turnover Areas

8.9.1 As set forth in the Scope of Work, TSI shall be responsible for conducting a field inspection at each Turnover Area at the same time CARTA or a CARTA representative conducts their inspection. TSI shall comply with all Civil Site Acceptance and Network Site Acceptance requirements and timelines, as specified in the Scope of Work.

8.9.2 MOT and Access

Commencing on the applicable Turnover Date for each Turnover Area and continuing through and until System Acceptance:

8.9.2.1 TSI shall be responsible for Lane Closures as set forth in the Scope of Work, and in accordance with the TCP approved by CARTA and Caltrans; and

8.9.2.2 TSI shall provide Civil Contractor with reasonable access to such Turnover Area and shall coordinate with Civil Contractor and allow Civil Contractor to complete any punch list work, change order work and any other work that Civil Contractor is required to undertake as part of the Caltrans Work.

8.10 Testing Prior to Toll Commencement

8.10.1 Without limiting any other provision of this Agreement, TSI shall:

(a) Conduct all testing as required by the Implementation Requirements and obtain CARTA's written approval, in accordance with the Submittal Process, of the test results on or before the milestone dates for such testing indicated in the Project Schedule; and

(b) Provide Notice to CARTA of any Nonconforming Work in the D&D Work performed by TSI under this Agreement demonstrated by such testing and promptly remedy any such Nonconforming Work.

8.10.2 Upon satisfactory completion of each test, TSI shall provide Notice to CARTA that TSI has satisfactorily completed such test in accordance with this Agreement. Such certificates shall include TSI's acknowledgment that TSI assumes full responsibility for the continued operation and maintenance of the RTS and the Host, in accordance with this Agreement.

8.10.3 All operating personnel required for each test shall be supplied by TSI and all testing inputs, services and facilities required to conduct such tests shall be the responsibility of TSI.

8.10.4 The test results of each test shall be compiled in a test report submitted by TSI to CARTA for review and approval in accordance with the Submittal Process.

8.11 Toll Commencement

8.11.1 Process for Determining Toll Commencement

(a) TSI shall provide CARTA at least fourteen (14) days' prior Notice of the date TSI determines it will achieve Toll Commencement. During such fourteen (14) day period, TSI and CARTA shall meet and confer and exchange information on a regular cooperative basis with the goal being CARTA's orderly, timely inspection and review of the Toll Services pertaining to Toll Commencement.

(b) TSI shall provide CARTA a second Notice when TSI believes it has achieved Toll Commencement.

(c) Within 14 days after the Notice under Section 8.11.1(b), but not fewer than 30 days after the original Notice under Section 8.11.1(a), or such sooner date as CARTA determines that TSI has achieved Toll Commencement, CARTA shall (i) issue a Notice of Toll Commencement, or (ii) provide Notice to TSI listing the Work which, in CARTA's opinion, remains to be performed to achieve Toll Commencement.

(d) TSI shall give Notice to CARTA when TSI considers that the Work listed in a Notice issued by CARTA under paragraph (c) above has been completed and paragraphs (b) and (c) will apply to such Notice, including CARTA inspection and review rights, in the same way as if it were the original Notice. The process shall be repeated until such time as CARTA issues a Notice of Toll Commencement.

(e) TSI shall not commence O&M Work until the date specified by CARTA for the start of O&M Work in a Notice of Toll Commencement. In CARTA's sole discretion, the date specified for the start of Revenue Service may differ from the Toll Commencement Date even if TSI has achieved Toll Commencement by the Toll Commencement Deadline.

(f) Toll Commencement requires completion and satisfaction of all requirements thereto. Opening of the Express Lanes and the commencement of tolling and

revenue collection or any other beneficial use of the Express Lanes and the Project shall not be deemed to be Toll Commencement if all requirements thereto have not been completed and satisfied and TSI shall remain liable for the completion of such requirements.

8.11.2 Punch List

Within 30 days after delivery of the Notice of Toll Commencement, or such longer period as CARTA may reasonably require, CARTA shall prepare and deliver to TSI a Punch List. TSI and CARTA may each add items to the Punch List provided no items may be removed without the consent of both Parties. TSI shall immediately commence Work on the Punch List items and prosecute such Work to completion to CARTA's reasonable satisfaction and in accordance with this Agreement. Such Work shall be completed by TSI within 30 days after issuance of the Punch List or such longer period as, in CARTA's reasonable determination, is necessitated in case of materials or equipment with long delivery lead-times.

8.12 **System Acceptance**

8.12.1 Operational Acceptance Test

(a) TSI shall perform the Operational Acceptance Test following Toll Commencement in accordance with the Scope of Work.

(b) CARTA shall be provided at least 30 days' advance Notice of all operations testing as part of the Operational Acceptance Testing Plan, or such other Notice as specified in said plan and CARTA may witness and monitor such Operational Acceptance Testing.

(c) The test results of the Operational Acceptance Testing shall be compiled in a proposed test report submitted to CARTA for review and approval in accordance with the Submittal Process and the Schedule and Project Milestones without regard to system performance at that time. The TSI shall continue to deliver Operations Test reports at 30-day intervals until the system meets the standards for approval.

8.12.2 Final Acceptance of the RTS

(a) Final Acceptance of the RTS shall not occur prior to TSI's submission of the As-Built DDD as set forth in the Scope of Work.

(b) TSI shall provide Notice to CARTA when it believes it has met the requirements for Final Acceptance of the RTS.

(c) Within fourteen (14) days after receipt of TSI's Notice as described above, CARTA shall (i) issue Notice of Final Acceptance of the RTS, or (ii) provide Notice to

TSI listing the work which, in CARTA's opinion, remains to be performed to achieve Final Acceptance of the RTS.

(d) The process for further Notice by TSI and further review by CARTA shall be repeated until such time as CARTA issues a Notice of Final Acceptance of the RTS.

SECTION 9

MAINTENANCE WORK

9.1 Maintenance Work

9.1.1 During the One Year Warranty and O&M Period, TSI shall:

(a) Perform the Maintenance Work in accordance with the Agreement requirements;

(b) Maintain, rebuild, repair, restore or replace any aspect of the O&M Work or RTS Infrastructure that is damaged during the One Year Warranty Period or the O&M Period, regardless of who has title to the RTS Services and RTS Infrastructure under this Agreement and regardless of the cause of the damage;

(c) Coordinate with and provide Notice to CARTA where performance of the Maintenance Work or inspections will result in shutdowns of the RTS, inability of the RTS to comply with the KPIs or other Agreement requirements or require management or diversion of traffic; and

(d) Use diligent efforts to schedule any such shutdowns so as to minimize disruption of Express Lanes Operations and any adverse impact on Toll revenues.

9.1.2 Where pavement, structure or other repairs to Caltrans Work or RTS Infrastructure are required as a result of TSI's performance of the Maintenance Work or otherwise as a result of a TSI Fault, the costs of such repairs shall be due and payable from TSI to CARTA upon demand.

9.1.3 Maintenance Work shall not result in any Lane Closure of an Express Lane unless such closure is in accordance with the Maintenance Plan and undertaken to the maximum extent possible to prevent the loss of Toll revenues.

9.1.4 Where unscheduled Maintenance Work is required in order to continue or restore the full operation of the RTS so that it meets all of the KPIs and other requirements of this Agreement, TSI shall exercise best efforts to perform such Maintenance Work as quickly as possible as necessary to resolve the issue.

9.2 Agreement Requirements for RTS Performance

(a) If the Agreement requirements for RTS performance, including the KPIs are not met in any calendar month, or performance records (including any O&M Monthly Progress Report or any other performance audit report) indicate such requirements have not been or will not be met, TSI shall promptly provide Notice to CARTA and TSI shall take action to remedy the cause.

(b) Where the cause(s) of a series of failures to meet an Agreement requirement for RTS performance is the same, or where temporary remedy is unsuccessful, TSI shall undertake a study, to determine the cause(s) of the failure(s) and propose a plan to remedy such cause(s). The proposed plan shall be subject to the Submittal Process and, once approved, TSI shall promptly implement such plan.

9.3 Transfer of O&M to CARTA at End of O&M Period

9.3.1 Training of Personnel TSI shall:

(a) Train CARTA personnel or any person designated by CARTA to perform the O&M Work in accordance with the approved End of Agreement Transition Plan; and

(b) Provide qualified instructors who will prepare the course material, including the latest modifications, Equipment and Hardware changes, Software changes, maintenance updates, and any revised maintenance procedures, and may enlist Subcontractors or Suppliers to augment TSI's own trainers. Up to date copies of all literature, training aids, and equipment used in training shall be turned over to CARTA promptly at the end of the O&M Period.

9.3.2 Security and Safety for the O&M Work. TSI shall implement the provisions of the Safety Plan and any other Plans concerning safety and security at all times while performing the O&M Work and shall ensure that TSI-Related Entities conduct O&M Work at the Site in such a manner as to minimize the risk of bodily harm to persons or damage to property, minimize the impact on toll revenues and protect against vandalism, theft, and other similar risks, and promptly take all precautions which are reasonable to safeguard against such risks.

SECTION 10 EXPRESS LANES OPERATIONS

10.1 General

Unless directed otherwise by CARTA, TSI shall commence performance of the Express Lanes Operations at the Notice of Toll Commencement and continue performance of the Express Lanes Operations throughout the One Year Warranty Period and O&M Period.

10.2 Business Rules

10.2.1 TSI shall conduct the O&M Work in accordance with the Business Rules provided in the Scope of Work, as updated by TSI and approved by CARTA during the D&D Phase in accordance with the Scope of Work, any approved Standard Operating Procedures and CARTA's toll policies.

10.2.2 CARTA, in its sole discretion, may revise, amend, revoke, modify or supplement the Business Rules, and all Plans that relate to collection and enforcement of tolls charged for the Project, and to change the toll collection policies and procedures described in such Business Rules and Plans as often as it deems necessary or advisable. Any revisions to a Configurable Parameter within its specified range in the Business Rules shall be provided to TSI no less than 10 days prior to the proposed effective date, except for changes necessitated by Governmental Rule, Emergency or safety.

10.2.3 TSI shall conform the O&M Work to any changes directed under Section 10.2.2 and make necessary changes to any policies and procedures that are established in writing by CARTA on the effective date of the applicable change.

10.2.4 CARTA shall reasonably consult with TSI regarding any changes CARTA desires to make to the Business Rules after the final system design review, as described in the Scope of Work, and if CARTA desires any change under Section 10.2.2 that is not Configurable or required by this Agreement, CARTA shall submit a TSI Change Request.

10.3 Trip Building and Trip Transaction Processing

TSI shall comply with the trip building requirements in accordance with the Scope of Work. Complete Trip Transactions shall be sent to the CBO Provider for processing.

10.4 Motorist Privacy

10.4.1 TSI acknowledges and agrees that:

(a) Privacy of the customers is of paramount importance to CARTA and the traveling public; and

(b) All Toll Services Data shall be the sole property of CARTA.

10.4.2 TSI shall comply with CARTA's Privacy Policy, CBO Provider's privacy policy and all applicable Governmental Rules, and Business Rules pertaining to confidentiality, privacy, handling, retention, reporting and disclosure, and limiting or restricting collection, use or dissemination of Personally Identifiable Information.

10.4.3 Subject to Section 10.4.4, TSI shall treat all Toll Services Data in accordance with the data security and privacy requirements set forth in this Agreement including the Scope of Work, and shall not sell, transfer, disclose or otherwise use such information for any purpose other than in performance of its duties under this Agreement.

10.4.4 Subject to Section 10.4.5, in the case of Personally Identifiable Information, TSI may use such information for trip processing and assigning Toll Rates to Trip Transactions and shall release or disclose the Personally Identifiable Information:

- (a) To the CBO Provider to process the Trip Transaction for payment and to perform accounting functions, such as reconciliation, billing and collection;
- (b) To CARTA upon request for the purposes of carrying out this Agreement or CARTA's functions with respect to the Project;
- (c) As required by Governmental Rules; and
- (d) With the prior written consent of CARTA, in its sole discretion, or, if the Personally Identifiable Information came from CBO Provider, with the prior written consent of the CBO Provider, in its sole discretion.

10.4.5 TSI shall implement physical, electronic and managerial safeguards to prevent unauthorized access to Personally Identifiable Information and to implement destruction of records containing Personally Identifiable Information in accordance with the records retention provisions of this Agreement.

10.4.6 Immediately upon the expiration or termination of this Agreement, TSI shall, at CARTA's option: (i) certify to CARTA that TSI has destroyed all Personally Identifiable Information, (ii) returned all Personally Identifiable Information to CARTA; or (iii) handled all Personally Identifiable Information in accordance with operations shutdown plan in the End of Agreement Transition Plan.

10.4.7 TSI shall comply with all applicable Governmental Rules regarding disclosure of CARTA privacy policies to Project customers, and shall disclose TSI's policies regarding privacy of Personally Identifiable Information in writing to each user of the Project for whom TSI holds Personally Identifiable Information. Such disclosure shall be posted on the Customer Website. The content of the form of disclosures, and any changes thereto that TSI may make from time to time, shall be subject to CARTA's prior review and approval in accordance with the Submittal Process.

10.4.8 TSI shall execute an agreement, in a form to be provided by CARTA, that obligates TSI to maintain the confidentiality of Personally Identifiable Information and expressly identifies the CBO Provider as a third-party beneficiary with respect to such confidentiality obligation.

10.5 Host Requirements and Coordination with CBO Provider

(a) TSI shall establish, furnish, operate and maintain the Host in accordance with this Agreement, including all requirements set forth in the Scope of Work.

(b) TSI shall establish, staff and operate the Host by the Toll Commencement Deadline, provided that TSI shall not commence the O&M Work until the date specified by CARTA in a Notice of Toll Commencement.

(c) TSI shall coordinate its Work and cooperate with the CBO Provider (including the Third Party vendors and service providers engaged by the CBO Provider for installation and/or operations, as applicable) in all areas of Work, including the maintenance of interfaces, timely reporting, transmission and reconciliation of Transactions, and timely response to research and data questions from the CBO Provider.

(d) TSI shall access CBO Provider's systems and customer information solely for the purpose of handling inquiries, disputes and other actions directly related to the use of the Express Lanes, and solely in accordance with the CBO Provider's customer service business rules. TSI acknowledges and agrees that the information and data accessed for such purpose shall remain CBO Provider's sole and exclusive property, and TSI shall not use or disclose such information other than for the sole purpose, and to the limited extent necessary, in connection with the handling of inquiries, disputes and civil enforcement actions with respect to the Express Lanes, or as otherwise required by law or court order. TSI shall notify CARTA and CBO Provider as soon as possible prior to any such disclosure that TSI determines is required by law or court order, and shall delay such disclosure to the extent legally possible so that CARTA and/or CBO Provider may take such actions as each of them, in their respective sole discretion, determines appropriate.

10.6 Supplies and Materials for O&M Work

10.6.1 Inspection and Handling.

TSI shall:

(a) Inspect all Equipment and Hardware in accordance with Good Industry Practices to identify any Nonconforming Work and promptly return, or cause to be returned, Equipment or Hardware with Nonconforming Work to the Supplier for credit or replacement; and

(b) Maintain safe, secure and segregated storage areas for all Equipment and Hardware at the Site.

10.6.2 Passage and Warranty of Title.

(a) Title to all Equipment and Hardware shall pass to and vest in CARTA without further action of the Parties as provided in this Agreement.

(b) TSI warrants good title to all Equipment and Hardware and warrants that title when it passes to and vests in CARTA as provided under this Agreement shall be free and clear of any Liens and rights of other persons arising as a result of any actions or failure to act of any TSI-Related Entity.

(c) This Section does not apply to title relating to Pre-Existing Software.

10.7 Noncompliance O&M Events and KPIs

10.7.1 TSI guarantees that the O&M Work shall comply with the KPIs and all other Agreement requirements regarding performance of the RTS.

10.7.2 The Scope of Work sets out requirements for the identification of Noncompliance O&M Events that will result in the assessment of Performance Liquidated Damages, as well as corresponding Response Times and Repair Times for certain specified Priority O&M Events.

10.7.3 Performance Liquidated Damages are a system to measure TSI's performance levels and compliance with the requirements of this Agreement throughout the One Year Warranty Period and the O&M Period.

10.8 Extension of Response Time or Repair Time

10.8.1 TSI will be entitled to an extension of time to the Response Time or Repair Time (as applicable) if TSI is unable to Respond or Repair a Priority O&M Event within the time specified due to:

(a) A direction of the CARTA Representative to delay or reschedule the Response or Repair;

(b) Material maintenance or other activities by an Other CARTA Contractor;

(c) An O&M Relief Event or Force Majeure Event; or

(d) Where a Lane Closure is required to Respond or Repair and TSI has submitted a request to CARTA and Department (if the request relates to a Freeway Lane Closure), in the proper form within the required Response Time, TSI has not received authorization to (i) implement the Lane Closure and (ii) access any other necessary Department-controlled facilities by CARTA or Department, as applicable; provided however, such extension shall apply only until such time as TSI has been authorized to implement the Lane Closure and access such Department-controlled facilities.

Any extensions shall apply only to the extent and for the period that TSI's ability to Respond or Repair the Priority O&M Event was directly and adversely affected, as determined by the CARTA Representative, acting in good faith.

10.8.2 Any extension pursuant to Section 10.8.1 shall apply only to the applicable Maintenance KPIs that include Response and Repair times and all other KPIs shall remain in full force and effect during this extension period.

10.8.3 TSI shall bear the burden of proof that the conditions in Section 10.8.1 are satisfied.

SECTION 11

LIQUIDATED DAMAGES; MAZEEP/COZEEP COSTS

11.1 Late Opening of Permitted Freeway Lane Closure

11.1.1 TSI shall perform the Toll Services in a manner that will minimize impacts to the operations of Interstate 80, including minimizing Lane Closures.

11.1.2 Where a Permitted Freeway Lane Closure goes beyond or outside the duration approved by CARTA or does not comply with the requirements for Lane Closures in this Agreement, TSI shall pay Liquidated Damages in the amounts as follows:

- (a) First half hour: \$3,500 per 10-minute interval
- (b) Second half hour: \$5,500 per 10-minute interval
- (c) Second hour and beyond: \$7,500 per 10-minute interval

(d) These liquidated damages are in addition to any fees or costs associated with the Construction Zone Enhanced Enforcement Program (COZEEP) or Maintenance Zone Enhanced Enforcement Program (MAZEEP) , which TSI shall reimburse CARTA.

11.1.3 TSI acknowledges that, because of the unique nature of the Project, proper management of Permitted Lane Closures and avoidance of Unpermitted Lane Closures is essential to CARTA's ability to collect toll revenue to enable CARTA to continue to finance, construct, operate and maintain and improve its highway systems, it is not possible to ascertain and determine the actual Losses, including lost toll revenues, which would accrue to CARTA and the public from such failures.

11.2 COZEEP or MAZEEP Payments for Failure to Utilize a Lane Closure or Late Cancelled Lane Closure

11.2.1 If TSI fails to (a) utilize a Lane Closure that TSI has requested pursuant to the Scope of Work, or (b) provide CARTA advance Notice canceling the requested Lane Closure at least 72 hours before the date and time that the requested Lane Closure is scheduled to commence, TSI shall reimburse CARTA for any COZEEP or MAZEEP costs incurred by CARTA, and any other closure fees paid by CARTA which cannot be avoided due to the late cancellation.

11.2.2 Without limiting CARTA's rights under this Agreement, TSI shall pay to CARTA such amounts owing directly to CARTA, within thirty days of receipt of an invoice therefor, or CARTA may withhold such amounts from any funds due to TSI..

11.2.3 Reasonableness of Charges and Liquidated Damages. TSI acknowledges that the Lane Closure Charges are reasonable in order to compensate CARTA for damages it will incur in connection with Lane Closures. Such damages include loss of potential revenue for CARTA, loss of use, enjoyment and benefit of the Project and connecting CARTA's transportation facilities by the general public, injury to the credibility and reputation of CARTA's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting transportation facilities, and additional costs to CARTA of administering this Agreement (including legal, engineering, accounting, overhead and other administrative costs). TSI further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Toll Services and that as of the Execution Date, the amounts of Lane Closure Charges represent a good faith estimate as to a portion only of the potential actual damages that CARTA would incur as a result of Lane Closures and do not constitute a penalty. TSI acknowledges and agrees that the liquidated damages respecting TSI's failure to utilize a requested Lane Closure or timely cancel a Lane Closure, as described above, are reasonable in order to compensate CARTA for the impact of preparation for a Lane Closure that has been scheduled and not used or cancelled too late. TSI further acknowledges that these damages are incapable of accurate measurement because of, among other things, their imprecise nature. The Parties have agreed to liquidated damages under this Section 11.2 in order to fix and limit TSI's costs and to avoid later Disputes over what amounts of damages are properly chargeable to TSI.

11.3 Delay Liquidated Damages for Failure to Achieve Guaranteed Completion Dates

11.3.1 TSI shall pay the following Delay Liquidated Damages to CARTA:

- (a) \$5,000 for each day after the Toll Commencement Deadline through the date that TSI achieves Toll Commencement;
- (b) \$2,000 for each day of a System Acceptance Delay.

11.3.2 Except as otherwise provided herein, Delay Liquidated Damages shall be due and payable directly to CARTA or to such other person as directed by CARTA in writing, without notice or demand, on the 14m day of the following month.

11.3.3 Except as otherwise provided herein, the Parties agree that the payment of Delay Liquidated Damages is CARTA's sole right to monetary compensation from TSI for delay in meeting a Guaranteed Completion Date for the periods in which the Delay Liquidated Damages are assessed.

11.3.4 The provisions above related to Delay Liquidated Damages shall not preclude CARTA from exercising any other non-monetary rights respecting the delay under this Agreement.

11.3.5 CARTA agrees not to exercise non-monetary rights in relation to a delay in meeting a Guaranteed Completion Date provided (a) the Baseline Schedule demonstrates that TSI is capable of meeting the applicable Guaranteed Completion Date within the time specified in the Scope of Work, and (b) TSI diligently performs the Toll Services in accordance with such Baseline Schedule.

11.3.6 Without limiting CARTA's right to continue to assess Delay Liquidated Damages as set forth above, CARTA may not exercise non-monetary rights relating solely to a failure to achieve Toll Commencement until the delay exceeds 90 days after the Toll Commencement Deadline.

11.3.7 The Parties acknowledge and agree that:

(a) In the event that TSI fails to achieve any Project Milestone by the applicable Guaranteed Completion Date, CARTA shall incur damages that are incapable of accurate measurement because of, among other things, the unique nature of the Project. Such damages include loss of potential revenue, loss of use, enjoyment and benefit of the Project and connecting CARTA transportation facilities by the general public, injury to the credibility and reputation of CARTA's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the Toll Commencement Deadline, which injury to credibility and reputation may directly result in loss of ridership on the Project, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Therefore, TSI and CARTA have agreed to stipulate the amount payable by TSI in the event of its failure to achieve the Project Milestones by the applicable Guaranteed Completion Dates.

(b) As of the Effective Date, the amounts of Delay Liquidated Damages set forth above represent a good faith estimate as to a portion only of the potential actual damages that CARTA would incur as a result of TSI's failure to achieve a Project Milestone by the applicable Guaranteed Completion Date and do not constitute a penalty; and

(c) Delay Liquidated Damages may be owing even though no TSI Event of Default has occurred.

11.4 Performance Liquidated Damages

11.4.1 Assessment of Performance of Liquidated Damages:

(a) Where a Priority O&M Event is not Responded to within the Response Time or is not Repaired within the Repair Time or a Noncompliance O&M Event (excluding a Priority O&M Event) occurs, CARTA may impose Performance Liquidated Damages on TSI.

(b) Performance Liquidated Damages shall be due and payable directly to CARTA without notice or demand on the 14th day of the following month.

(c) The decision to assess Performance Liquidated Damages and for failure to comply with the KPIs shall be within the sole discretion of the CARTA Representative. The exercise of that discretion by the CARTA Representative shall not be subject to any challenge or the Dispute resolution procedures set forth in this Agreement; provided, however, that the foregoing shall not preclude TSI from utilizing the Dispute resolution procedures to challenge whether a failure to comply with the KPIs has occurred.

(d) Limitations on Performance Liquidated Damages shall be as specified in the Scope of Work.

11.4.2 The Parties acknowledge and agree that:

(a) In the event that if a Priority O&M Event is not Responded to within the Response Time or is not Repaired within the Repair Time, or a Noncompliance O&M Event (excluding a Priority O&M Event) occurs, CARTA shall incur damages that are incapable of accurate measurement including additional costs to CARTA of administering this Agreement (including engineering, management, legal, accounting, overhead and other administrative costs), loss of toll revenues, additional operating costs for the RTS and CARTA's ability to collect toll revenue to enable CARTA to continue to finance, construct, operate and maintain and improve its highway systems;

(b) As of the Effective Date, the amounts of Performance Liquidated Damages represent a good faith estimate as to a portion only of the potential actual damages that CARTA would incur as a result of such failure;

(c) The Performance Liquidated Damages do not constitute a penalty;

(d) Performance Liquidated Damages may be owing even though no TSI Event of Default has occurred.

11.5 Liquidated Damages for Toll Collection Revenue Loss; Calculation

11.5.1 CARTA may impose Liquidated Damages for a Toll Collection Revenue Loss. Such Liquidated Damages shall be calculated as detailed in the Scope of Work. A determination of a comparable period for the basis of the calculation shall be made by CARTA, acting reasonably, and shall consider the day, month, time of day, location, season, whether the day is a weekday, weekend or holiday and such other factors as CARTA shall reasonably determine. CARTA may also consider available live traffic data from the RTS and other subsystems for such period. Performance Liquidated Damages for a Noncompliance O&M Event or a Priority O&M Event shall not be imposed if CARTA elects to impose Liquidated Damages for a Toll Collection Revenue Loss for such event.

11.5.1.1 During the first 6 months of the One Year Warranty Period, Liquidated Damages for Toll Collection Revenue Loss shall be determined by reference to the traffic and revenue study estimates for the period of time in question and may also consider available live traffic data from the RTS and other subsystems for such period.

11.5.2 The calculation of Liquidated Damages for Toll Revenue Loss can never be a negative number or result in TSI being entitled to additional payment from CARTA.

11.6 Performance Liquidated Damages and Liquidated Damages for Toll Collection Revenue Loss as Sole Monetary Remedy

11.6.1 Subject to this Section 11, any termination for cause, the Performance Liquidated Damages and Liquidated Damages for Toll Collection Revenue Loss payable under this Agreement are CARTA's sole monetary remedy for TSI's failure to Respond to or Repair a Priority O&M Event within the Response Time or Repair Time (as applicable), or a Noncompliance O&M Event (excluding a Priority O&M Event).

11.6.2 The limitation above does not preclude CARTA from making a Claim against TSI with respect to failure to Respond to or Repair a Priority O&M Event within the Response Time or Repair Time (as applicable), or a Noncompliance O&M Event (excluding a Priority O&M Event) or for any other toll collection revenue loss for:

(a) Losses or damages to the extent (i) covered by the proceeds of insurance required to be carried in accordance with this Agreement, or (ii) covered by the proceeds of insurance actually carried by or insuring TSI under policies solely with respect to the Toll Services, regardless of whether required to be carried under this Agreement;

(b) Losses or damages arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence on the part of any TSI-Related Entity;

(c) Losses or damages arising out of any TSI Release of Hazardous Materials;

(d) CARTA's right under, including the right to enforce, TSI's indemnities under this Agreement; and

(e) Losses or damages arising as a result of CARTA exercising its default and termination rights under this Agreement.

SECTION 12
NO LIABILITY ARISING FROM CARTA ACTIONS;
NONCONFORMING WORK, CORRECTION OF WORK AND WARRANTIES

12.1 No Liability Arising From CARTA Actions

12.1.1 TSI acknowledges and agrees that CARTA's and Department's rights under this Agreement to review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other act of CARTA or Department in connection with any Deliverable or the Toll Services exist solely for the benefit and protection of CARTA or the Department (as applicable).

12.1.2 Subject to any rights of TSI with respect to a CARTA-Caused Delay, CARTA owes no obligation or duty of care to TSI to:

(a) Review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other act or omission of CARTA in connection with any Deliverable, the Project or the Toll Services; or

(b) Inspect or review the Work for Nonconforming Work.

12.1.3 Failure of CARTA to review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other act or omission of CARTA in connection with any Deliverable submitted by TSI or the Toll Services or inspect or review the Work shall not:

(a) Relieve TSI from, or alter or affect, its liabilities, obligations or responsibilities, whether under this Agreement or otherwise at law;

(b) Prejudice CARTA's rights against TSI under this Agreement or Governmental Rule;

(c) Be deemed or construed as any kind of representation or warranty, express or implied, by CARTA or be relied upon by TSI in determining whether TSI has satisfied the requirements of this Agreement; or

(d) Be asserted against CARTA by TSI as a defense, legal or equitable, to TSI's obligation to satisfy the requirements of this Agreement.

12.1.4 Notwithstanding the foregoing, TSI may rely on specific written directions CARTA gives under this Agreement, (b) CARTA is not relieved from any liability in connection with a material misrepresentation under any written statement CARTA knowingly and intentionally delivers, and (c) CARTA is not relieved from its obligations under this Agreement.

12.2 Notice of Nonconforming Work

CARTA shall give a Notice to TSI within a reasonable period after CARTA has Actual Knowledge of any Nonconforming Work during the Term. If CARTA fails to provide Notice within a reasonable period after obtaining Actual Knowledge of the Nonconforming Work, such failure shall not constitute a waiver of CARTA's rights under this Section 12, but TSI shall not be responsible for the increase in Cost, if any, directly and solely resulting from CARTA's failure to provide timely Notice unless TSI had Actual Knowledge of, or should have been aware, in the exercise of reasonable diligence or in the performance of its obligations under this Agreement, of such Nonconforming Work.

12.3 Remedy of Nonconforming Work

12.3.1 During the Term, if TSI has Actual Knowledge of a Nonconforming Work or has received notice of a Nonconforming Work from CARTA under Section 12.2, TSI shall promptly remedy such Nonconforming Work and any damage to the Caltrans Work or property of Third Parties to the extent caused by such Nonconforming Work in order to return the same to its condition existing immediately prior to the damage or Nonconforming Work.

12.3.2 TSI shall perform such tests as CARTA may, in its good faith discretion, require to remedy, and to demonstrate the cure of, a Nonconforming Work.

12.3.3 TSI acknowledges and agrees that any Nonconforming Work may have severe economic, safety and travel consequences to CARTA and the traveling public if such Nonconforming Work is not immediately remedied.

12.3.4 TSI shall perform all remedy Work in a timely and expeditious manner, and so as to minimize the revenue loss to CARTA and to avoid disruption of normal RTS operations.

12.3.5 TSI shall remain liable for under this Agreement, at law or in equity with respect to the Toll Services, including liability for Liquidated Damages, design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud notwithstanding the remedy of any Nonconforming Work.

12.4 Failure to Remedy a Nonconforming Work

If:

12.4.1 TSI has received Notice of a Nonconforming Work from CARTA under Section 12.2 during the Term and states or by its action (or failure to act) indicates that it is unable or unwilling to proceed with remedy of the Nonconforming Work within 10 days following receipt of such Notice; or

12.4.2 TSI fails to remedy the Nonconforming Work in accordance with this Agreement, then CARTA, upon Notice to TSI, may, or may procure another party to, remedy the Nonconforming Work, and the cost of such remedy (plus an administrative charge equal to 10% of the cost) will be due and payable from TSI to CARTA upon demand. CARTA's right to remedy Nonconforming Work shall be in addition to all other rights and remedies provided under this Agreement or by applicable Governmental Rules, and shall not relieve TSI of any of its responsibilities under this Agreement.

12.5 Damages for Breach of Warranty

Except as otherwise set forth in this Agreement, and in addition to CARTA's other rights under this Agreement, at law or in equity, TSI shall be liable for actual damages resulting from any breach of an express or implied warranty, Subcontractor warranty, or any Nonconforming Work, including the cost of performance of such obligations by others.

SECTION 13 END OF O&M PERIOD ACCEPTANCE

13.1 Requirements

13.1.1 Upon the expiration or termination of this Agreement, TSI shall perform each of the required elements of the End of Agreement Transition Plan in accordance with Agreement requirements.

13.1.2 TSI shall provide Notice to CARTA when it has complied with all elements of the End of Agreement Transition Plan, including a list of all transferrable items to be assigned to CARTA at the end of this Agreement, including all items required to operate and maintain the RTS, sufficient to allow all transaction information to be posted and processed by a back office system provided by others.

13.1.3 TSI shall provide Notice to CARTA when all of the following have occurred, which shall be not fewer than 90 days prior to the expiration or termination of this Agreement:

(a) TSI has provided, and CARTA has approved in accordance with the Submittal Process, updated As-Built Technical Drawings reflecting any and all changes and modifications that may have occurred during the Term;

(b) TSI has provided, and CARTA has approved in accordance with the Submittal Process, all Components required to properly maintain the RTS in the standard

required by this Agreement during the Term, whether or not the same are indicated in the spare parts inventory;

(c) TSI has supplied, and CARTA has approved in accordance with the Submittal Process, all necessary manuals to operate and maintain the RTS, revised as necessary to reflect any and all changes and modifications that may have been made to the RTS since the manuals were originally provided by TSI;

(d) TSI has supplied, and CARTA has approved and accepted, completed maintenance records from the MOMS and O&M Monthly Progress Reports;

(e) TSI has trained CARTA's designated maintenance staff to CARTA's satisfaction in accordance with this Agreement and has transferred all literature, training aids, and equipment used in training;

(f) TSI has transferred to CARTA or its designee all rights in Software as required by this Agreement;

(g) To the extent required in accordance with this Agreement, TSI has deposited all Software Source Code necessary for continued operation and maintenance of the RTS into the Source Code Escrow and the Code Escrow Agent has verified such deposit is accurate and complete; and

(h) TSI has furnished a complete and current set of all transferrable system configuration data and Software and Personally Identifiable Information, financial data, and traffic data.

13.2 Certificate of End of O&M Period Acceptance

CARTA will issue a Certificate of End of O&M Period Acceptance as soon as reasonably practicable after: (a) CARTA determines that all conditions in Section 13.1 and all other provisions of this Agreement and the Scope of Work have been satisfied; (b) CARTA determines that all Nonconforming Work have been fully corrected; and (c) any other conditions precedent to End of O&M Period in this Agreement have occurred.

SECTION 14

PARTIES REPRESENTATIVES; CIVIL RIGHTS; SUBCONTRACTORS; KEY PERSONNEL

14.1 Designation of Representatives; Cooperation with Representatives

14.1.1 CARTA and TSI shall each designate an individual or individuals who are authorized to make decisions and bind the parties on matters relating to this Agreement (Representatives). Exhibit 2 provides the Parties' initial Representative designations.

14.1.2 The TSI Representative shall (a) have full responsibility for the prosecution of the Toll Services, (b) act as agent and be a single point of contact in all matters on behalf of TSI, (c) be available to execute instructions and directions received from CARTA or its Representatives; and (d) be available at all times while Toll Services is actually in progress.

14.1.3 The designation of the TSI Representative or CARTA Representative may be changed by Notice to the other Party.

14.1.4 The Parties may also designate technical representatives who shall be authorized to investigate and report on technical matters relating to the Toll Services and negotiate on behalf of each of the Parties but who do not have authority to bind CARTA or TSI.

14.2 Equal Employment Opportunity

14.2.1 TSI shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Toll Services.

14.2.2 TSI shall ensure that Section 14.2.1 is included in every Subcontract (including purchase orders and in every subcontract of any TSI-Related Entity), so that such provisions will be binding upon each Subcontractor.

14.3 General

14.3.1 TSI may perform the Toll Services with its own personnel or pursuant to Subcontracts.

14.3.2 TSI is responsible for:

- (a) The engagement and management of each Subcontract,
- (b) All Toll Services performed by its Subcontractors;
- (c) Proper supervision and coordination of the Toll Services performed by its Subcontractors so as to ensure that all Toll Services are in accordance with this Agreement;
- (d) The actions, errors omissions, negligence, willful misconduct, or breach of applicable Governmental Rule or contract by any TSI-Related Entity or Subcontractor, as though TSI directly employed all such Persons.
- (e) Within 14 days after execution of a Subcontract, TSI shall deliver true, correct and complete copies of such Subcontract to CARTA.

(f) TSI may not amend or terminate any Subcontract without the prior written consent of CARTA, in its sole discretion except that TSI may terminate a Subcontract in the event of material default by the Subcontractor.

14.4 Subcontract Requirements

14.4.1 Each Subcontract shall:

14.4.1.1 Include express requirements that, for a Subcontract valued at 10% or more of the Toll Services: (1) CARTA is a third party beneficiary of the Subcontract, and shall have the independent right to enforce all of the terms of the Subcontract for their own benefit; (2) all guarantees and warranties, express or implied, shall inure to the benefit of CARTA, and its respective successors and assigns; (3) the rights of TSI under such instrument are assigned to CARTA contingent only upon delivery of Notice from CARTA following default by TSI or termination or expiration of this Agreement, allowing CARTA to assume the benefit of TSI's rights with liability only for those remaining obligations of TSI accruing after the date of assumption by CARTA;

14.4.1.2 Not impose upon CARTA or Department any obligation or liability;

14.4.1.3 Not create any contractual relationship between CARTA or Department and the applicable Subcontractor;

14.4.1.4 Include express requirements that Subcontractor will: (a) maintain Books and Records and will permit audit of Books and Records by TSI, CARTA, and Department (b) warrant the completeness and accuracy of all information the Subcontractor or its agents provide in connection with this Agreement; (c) not assign the Subcontract without TSI's prior written consent;

14.4.1.5 Require the Subcontractor to carry out its applicable scope of work in accordance with this Agreement, Governmental Approvals, and Governmental Rules, and to be joined in any dispute resolution proceeding under this Agreement if CARTA determines such joinder is reasonably necessary to resolve the Dispute;

14.4.1.6 Set forth effective procedures for claims and change orders, which procedures are consistent with the Change Order process in this Agreement;

14.4.1.7 Include an indemnity from the Subcontractor in favor of TSI and the Indemnified Parties against any and all Losses in connection with any negligent act error, or omission, gross negligence, fraud, recklessness, willful misconduct, or breach of Governmental Approvals, violation of Governmental Rules, or breach of contract by the Subcontractor or any of its officers, employees, agents or representatives; provided, however that, to the extent prohibited by law, such Subcontractor indemnities shall not inure

to the benefit of an Indemnified Party so as to impose liability on the Subcontractor for the active negligence of CARTA, or to relieve CARTA of liability for such active negligence.

14.4.1.8 Include the right of TSI to terminate the Subcontract in whole or in part upon any Termination for Convenience of this Agreement without liability of TSI or CARTA for the Subcontractor's lost profits, consequential, or other damages, or business opportunity;

14.4.1.9 Include the prompt payment requirements of this Agreement and require the Subcontractor to make payments to sub-subcontractors and Suppliers in a similar manner;

14.4.1.10 TSI shall ensure that, when prevailing wage rates are applicable to work performed under this Agreement, they shall apply to labor performed under subcontracts or by assignment;

14.4.1.11 Applicable provisions of this Agreement including, but not limited to, the requirements specified in this Section, shall be included in any Subcontract in excess of \$25,000 entered into under this Agreement;

14.4.1.12 Failure of a Subcontractor to provide insurance in accordance with this Agreement shall be at the risk of TSI.

14.4.2 To the extent commercially feasible (and TSI shall bear the burden of proof that such items are not commercially feasible if not included), TSI shall include the following patent and copyright infringement and trade secret misappropriation provisions in its purchase orders and licensing agreements with TSI's RTS equipment and RTS Software Suppliers. Inclusion of such provisions in TSI purchase orders and licensing agreements with Suppliers shall be subject to verification by CARTA:

(a) Suppliers shall represent and warrant that any Equipment is free of any rightful claim of any third party for infringement of any United States patent or copyright or misappropriation of any trade secret;

(b) If promptly provided Notice and given authority, information and assistance, the Supplier shall defend, or may settle, at its expense, any further proceeding against TSI and/or CARTA and the CARTA Parties, insofar as it is based on any claimed patent or copyright infringement or misappropriation of any trade secret which would result in a breach of this warranty and the Supplier shall defend, indemnify and hold harmless TSI, CARTA and the CARTA Parties from and against any Claim or Losses incurred in connection therewith;

(c) The Supplier shall provide Notice to TSI and CARTA promptly and in reasonable detail, each notice or Claim of patent or copyright infringement or misappropriation of any trade secret based on the performance of this Agreement of which the Supplier has knowledge; and

(d) In the event of any Claim or dispute against TSI and/or CARTA on account of any alleged patent or copyright infringement or misappropriation of any trade secret in connection with the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Supplier shall furnish to TSI and CARTA all evidence and information in the possession of the Supplier pertaining to such Claim at its expense.

14.4.3 TSI shall interface with a collection agency and provide such assistance with referring debt to a collection agency as required by CARTA.

14.4.4 CARTA may review the form of Subcontract used by TSI for the Project or any Subcontract and require modifications to such form to conform to the requirements set forth in this Agreement.

14.4.5 No Subcontractor may start any Work until after CARTA receives copy of its Subcontract, a copy of required license, and any insurance documents required under this Agreement.

14.4.6 CARTA is not bound by any Subcontract, and no Subcontract shall include a provision purporting to bind it.

14.4.7 Within ten (10) days after issuance of NTP2, TSI shall complete and provide to CARTA a schedule listing its current Subcontractors, identifying (i) the Subcontractor's name, address and telephone number; (ii) the Subcontractor's work and role; (iii) the dollar amount of the Subcontract; and (iv) the estimated time of performance. TSI shall provide an updated schedule monthly throughout performance of the term of the Agreement.

14.4.8 TSI shall allow CARTA access to all Subcontracts and records regarding Subcontracts and shall deliver to CARTA, within ten (10) days after receipt of a request from CARTA, true and complete copies of all Subcontracts as may be requested.

14.5 Subcontracts with Affiliates

14.5.1 In addition to satisfying the provisions set forth in Section 14.4, TSI may have Toll Services performed by Affiliates only under the following terms and conditions:

(a) TSI shall execute a written Subcontract with the Affiliate which complies with all requirements for Subcontracts under this Agreement;

(b) The terms and conditions of the Subcontract (including pricing and scheduling) shall be no less favorable to TSI than those that TSI could reasonably obtain in an arm's length, competitively procured transaction with an unaffiliated Subcontractor. TSI shall bear the burden of proving that the same are no less favorable to TSI; and

(c) No Affiliate shall be engaged to perform any Toll Services that this Agreement requires be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Toll Services that would be inconsistent with Good Industry Practice or other Agreement requirements.

14.5.2 Before entering into or amending any Subcontract with an Affiliate, TSI shall submit a true and complete copy of the proposed Subcontract to CARTA for review and comment. CARTA has 20 days after receipt to deliver its comments to TSI.

14.5.3 TSI shall make no payments to Affiliates for Toll Services in advance of provision of such Toll Services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope.

14.6 Key Personnel; Qualifications of Employees

14.6.1 TSI shall:

(a) Appoint or procure the engagement of the Key Personnel in the positions stated in the Scope of Work;

(b) Not change, or permit any change in any Key Personnel without the prior written consent of CARTA, in its sole discretion;

(c) Provide Notice to CARTA of any proposed changes in any Key Personnel;

(d) Provide phone, email and mobile telephone numbers for all Key Personnel. CARTA requires the ability to contact a Key Personnel member identified in writing to CARTA by TSI 24 hours per day, seven days per week;

(e) Ensure the Key Personnel are available for the time commitment required under this Agreement; and

(f) Ensure that all Persons performing Toll Services:

(i) Have the skill and experience and any licenses required to perform the Toll Services assigned to them; and

(ii) Are available for the Toll Services and shall maintain active involvement in the prosecution and performance of the Toll Services unless such individual is unavailable due to the application of Governmental Rule, death, retirement, injury or no longer being employed by the applicable TSI-Related Entity (provided that moving to an affiliated company or a Subcontractor is not considered grounds for avoiding this provision).

14.6.2 If CARTA determines, in its sole discretion, that any Person (a) is not performing the Toll Services in a proper, desirable and skillful manner or is detrimental to Work; (b) poses a potential health, safety or security threat to CARTA's customers, CARTA Parties or assets; or (c) does not meet the minimum performance requirements for the Toll Services, then, upon Notice from CARTA, TSI or its Subcontractor shall remove such Person from the Toll Services and such Person shall not be reemployed on the Toll Services without the prior written approval of CARTA.

14.6.3 CARTA may review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Subcontractors) and may approve or disapprove, in its sole discretion, use of such individual in such position prior to the commencement of any Toll Services by such individual or during the prosecution of the Toll Services.

14.7 Key Personnel Liquidated Damages

14.7.1 TSI acknowledges that CARTA and the Toll Services will suffer significant and substantial damages and that it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to CARTA in such event if a Key Personnel is not available for or actively involved in the performance of the Toll Services as required under the Scope of Work or TSI elects not to appoint any Key Personnel position. If TSI appoints more than one individual to serve in a Key Personnel position, each appointed individual shall be considered a Key Personnel for purposes of this Section 14.7, including with respect to TSI's obligation to pay liquidated damages in the event such individual is unavailable for or not actively involved in the performance of the Toll Services.

14.7.2 TSI shall pay CARTA a liquidated amount as follows, for each occasion when an individual performing a Key Personnel role is not available for or actively involved in the performance of the Toll Services as required in the Scope of Work or where TSI elects not to appoint any Key such Personnel as determined by CARTA, in its good faith discretion:

POSITION	LIQUIDATED AMOUNT
Project Manager	\$150,000
O&M Manager	\$50,000
Installation Manager	\$20,000

14.7.3 TSI understands and agrees that any damages payable in accordance with this Section 14.7 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Proposal Date.

14.7.4 TSI is not liable for liquidated damages under Section 14.7.2 if: (a) TSI removes or replaces such personnel at the direction of CARTA; (b) such individual is

unavailable due to the application of Governmental Rule, death, retirement, injury or no longer being employed by the applicable TSI-Related Entity (provided that moving to an affiliated company or a Subcontractor is not considered grounds for avoiding Key Personnel Liquidated Damages); or (c) such individual is unavailable due to either CARTA's failure to issue NTP1 within 300 days of the Proposal Date, or CARTA's failure to issue NTP2 within 450 days of the Proposal Date, for a reason other than the acts or omissions of any TSI-Related Entity, or any TSI Fault. TSI shall promptly propose to CARTA a replacement for such personnel for review and approval within 15 days of unavailability, in the case of Sections 14.7.4(a) or 14.7.4(b) or 15 days from the issuance of NTP1 or NTP2, in the case of Section 14.7.4(c). Any proposed replacement for such personnel shall meet at least the minimum requirements listed in the RFP for that role. Following any CARTA-approved substitution or replacement of a Key Personnel pursuant to the terms hereof, including as a result of a CARTA delay in issuance of NTP1 or NTP2, the new individual shall be considered a Key Personnel for all purposes under this Agreement, including the provisions of Section 14.7.2 relative to Key Personnel Liquidated Damages.

14.7.5 If any other Key Personnel leave or are removed from the Project, the TSI shall immediately inform CARTA. The TSI shall identify a replacement candidate that meets at least the minimum requirements listed in the RFP and shall submit that candidate to CARTA for approval within 30 days. That candidate must not be an "interim" candidate who temporarily fills the role, and must be in that role for at least six months, or until their relative scope of responsibilities is complete. If the replacement Key Personnel does not stay in the role for at least six months or until their relative scope of responsibilities is complete, the TSI shall be liable to CARTA as liquidated damages the amount of \$2000.

14.7.6 If the TSI does not submit a qualified candidate to CARTA for approval within the timeframes specified in 14.7.4 or 14.7.5, TSI shall be liable to CARTA as liquidated damages the amount of \$500 for each day after the specified period.

SECTION 15

PERFORMANCE AND PAYMENT BONDS; GUARANTY; FINANCIAL INFORMATION

15.1 Provision of Bonds

TSI shall (a) provide and continuously maintain in place for the benefit of CARTA payment and performance bonds to CARTA securing TSI's obligations under this Agreement, each in the amount specified in Exhibit 3, and (b) maintain such bonds in full force and effect as described in this Section 15.

15.1.1 As a condition precedent to issuance of NTP1, TSI shall provide CARTA a performance bond in the initial amount specified in Exhibit 3, which shall be no less than the proposed value of the Work to be provided under NTP1 (the "NTP1 Performance Bond Amount"), including a dual obligee rider in favor of Department, and in the form of Exhibit 4 (the "NTP1 Performance Bond").

15.1.2 As a condition precedent to issuance of NTP1, TSI shall provide CARTA a payment bond in the amount specified in Exhibit 3, which shall be no less than the proposed value of the NTP1 Work (the “NTP1 Payment Bond Amount”), including a dual obligee rider in favor of Department, and in the form of Exhibit 4 (the “NTP1 Payment Bond”).

15.1.3 As a condition precedent to issuance of NTP2, the amount of the NTP1 Performance Bond shall increase to the amount specified in Exhibit 3, which shall be no less than the proposed total value of the Work to be provided under NTP1 Work and NTP2 Work (“NTP2 Performance Bond Amount”), in accordance with the rider included in Exhibit 4 for the D&D Work (with such modifications as CARTA approves by Notice, in its sole discretion) (the “NTP2 Performance Bond”). Subject to complying with Section 15.1.5, CARTA will release the Performance Bond upon NTP3 issuance, provided that: (i) TSI is not in default under this Agreement and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under this Agreement, and (ii) no outstanding claims are then pending or threatened against the Performance Bond or TSI under this Agreement.

15.1.4 As a condition precedent to issuance of NTP2, the amount of the NTP1 Payment Bond shall increase to the amount specified in Exhibit 3, which shall be no less than the proposed total value of the NTP1 Work and NTP2 Work (“NTP2 Payment Bond Amount”), in accordance with the rider included in Exhibit 4 for the D&D Work (with such modifications as CARTA approves by Notice, in its sole discretion) (the “NTP2 Payment Bond”). Subject to complying with Section 15.1.5, CARTA will release the Payment Bond (a) upon receipt of (i) evidence satisfactory to CARTA that all Persons eligible to file a claim against the bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the Payment Bond, or (b) upon expiration of the statutory period for Subcontractors to file a claim against the Payment Bond if no Claims have been filed.

15.1.5 As a condition precedent to NTP3 issuance, TSI shall provide and maintain (a) a O&M Performance Bond in the form of Exhibit 4, which shall include a dual obligee rider, in form and substance consistent with that in Exhibit 4, in favor of the Department, (with such modifications as CARTA approves by Notice, in its sole discretion), and (b) a O&M Payment Bond in the form of Exhibit 4, which shall include a dual obligee rider, in form and substance consistent with that in Exhibit 4, in favor of the Department (with such modifications as CARTA approves in writing, in its sole discretion). The O&M Performance Bond and O&M Payment Bond shall be in the amount specified in Exhibit 3.

15.1.6 If CARTA exercises the Software Maintenance Option, then subject to the satisfaction of the conditions stated below for release of the O&M Performance Bond and the O&M Payment Bond, during the Software Maintenance Option Period, each of the O&M Performance Bond and the O&M Payment Bond may be reduced to an amount equal to the total payment due by CARTA for the Software Maintenance Option Period.

15.1.7 TSI's obligation to maintain and provide a current O&M Performance Bond and O&M Payment Bond shall continue throughout the O&M Period. If CARTA exercises the Software Maintenance Option, TSI's obligation to maintain and provide the O&M Performance Bond and the O&M Payment Bond shall continue throughout the Software Maintenance Option Period, subject to reduction in amount as stated above. Notwithstanding the foregoing sentence, CARTA will accept a O&M Performance Bond and a O&M Payment Bond with a stated term of at least one year with a statement in the applicable Bond that it shall be renewable annually in accordance with the Surety's customary renewal practices.

15.1.8 If CARTA has not exercised the Software Maintenance Option, CARTA will release:

(a) The O&M Performance Bond(s) after the satisfaction of all conditions to Final Payment of the O&M Cost in accordance with this Agreement and provided that no outstanding claims are then pending or threatened against the O&M Performance Bond or TSI under this Agreement; and

(b) The O&M Payment Bond (i) upon receipt of (A) evidence satisfactory to CARTA that all Persons eligible to file a Claim against the Bond have been fully paid, and (B) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a Claim against the O&M Payment Bond, or (ii) upon expiration of the statutory period for Subcontractors to file a claim against the O&M Payment Bond if no Claims have been filed.

15.1.9 If CARTA exercises the Software Maintenance Option, CARTA will release:

15.1.9.1 The O&M Performance Bond(s) after satisfactory completion of all Software maintenance work TSI is obligated to perform prior to the end of the Software Maintenance Option Period; and

15.1.9.2 The O&M Payment Bond (i) upon receipt of (A) evidence satisfactory to CARTA that all persons eligible to file a Claim against the Bond have been fully paid, and (B) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notices of a Claim against the O&M Payment Bond, or (ii) upon expiration of the statutory period for Subcontractors to file a Claim against the O&M Payment Bond if no Claims have been filed.

15.1.10 Each Bond shall be issued by an Eligible Surety authorized to do business in the State and listed on United States Department of the Treasury's Listing of Approved Sureties and otherwise approved by CARTA in its sole discretion.

15.1.11 If any Bond previously provided becomes ineffective, or if the Eligible Surety that provided the Bond no longer meets the Agreement requirements, TSI shall provide a

replacement Bond in the same form issued by an Eligible Surety. TSI shall provide Notice to CARTA promptly following such Bond being rendered ineffective or when such Bond's surety is no longer an Eligible Surety, in no case later than three days thereafter.

15.1.12 If the Agreement Price is increased in connection with a Change Order, CARTA may, in its sole discretion, require a corresponding proportionate increase in the amount of each Bond or alternative security.

15.2 No Relief of Liability

15.2.1 No draw under any Bond shall preclude, inhibit, alter or modify CARTA's rights to exercise any and all other rights under this Agreement, at law or in equity; except that any recovery under any Bond shall reduce the obligations of Guarantor under any Guaranty.

15.2.2 Notwithstanding any other provision of this Agreement, performance by a Surety or Guarantor of any of the obligations of TSI shall not relieve TSI of any of its obligations under this Agreement.

15.3 Guaranty

15.3.1.1 The Guarantor shall provide and maintain the guaranty, in a form provided or approved by CARTA, in full force and effect throughout the Term.

15.3.1.2 If, at any point during the Term, the Guarantor's financial capacity is materially negatively affected, as determined by CARTA, in its good faith discretion, CARTA may require, and TSI shall provide, one or more additional guarantees so that the combined financial capacity of the Guarantor and the additional guarantors provides equivalent security to CARTA as the guaranty provided as of the Effective Date. Each such additional guaranty shall be in a form provided or approved by CARTA, together with appropriate evidence of authorization, execution, delivery and validity of such guarantee.

15.4 Periodic Updated Financial Information

15.4.1 Each year during the Term, within 60 days following the completion of TSI's and the Guarantor's annual audited financials, TSI shall deliver to CARTA:

(a) The audited financial statements for the prior year, audited by a certified public accountant in accordance with generally accepted accounting principles (GAAP) for TSI, its equity members and each Guarantor. If an entity does not have individual financial statements, but, rather, financial statements are prepared on a consolidated basis for that entity and other entities, the consolidated financial statements shall be acceptable. Financial statements must be provided in U.S. dollars. If financial statements submitted are prepared in accordance with other than U. S. GAAP, TSI shall include a letter from the entity's chief financial officer, treasurer, or certified public accountant discussing the areas of the financial statements that would be materially affected by a conversion to U.S. GAAP and

providing an estimate of changes required to recalculate in accordance with U.S. GAAP. If audited financials are not available TSI shall include unaudited financials for such member, certified as true, correct and accurate by the chief financial officer or treasurer of the entity. Provision of financial statements and information for a parent company or other affiliate will not be sufficient to satisfy the requirement to provide financial statements;

(b) Any financial ratings obtained; and

(c) The most recent United States Securities and Exchange Commission 10 K and 10 Q reports and any 8-Ks filed since submission of the prior year's financial information (if TSI is publicly held or otherwise required to make such filings).

15.4.2 Within 60 days of NTP1 and otherwise 60 days prior to the end of each year during the Term, TSI shall provide to CARTA, for review and approval in accordance with the Submittal Process, separate Audited Overhead for field and office work to be applicable for the forthcoming year, including a breakdown to verify all components of each Audited Overhead. For the purposes of this Section, (a) the office Audited Overhead will be applied where the relevant employee spends 50% or more of their time performing office related functions and (b) the field Audited Overhead will be applied where the relevant employee spends 50% or more of their time performing field related functions.

SECTION 16

INSURANCE

16.1 General

The insurance provided under this Agreement shall be available for the benefit of CARTA and TSI with respect to covered claims, but shall not be interpreted to relieve TSI of any obligations under this Agreement. All insurance required under this Agreement shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VII or better, or as otherwise approved by CARTA and authorized or approved to do business in the State. All insurance coverage and limits provided by TSI and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

16.2 TSI Provided Insurance

TSI shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance listed in Exhibit 5, Insurance Requirements, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of Work under this Agreement. TSI may satisfy these requirements for specific coverages and limits through various methods including the use of combined forms, e.g.,

professional liability and technology errors and omissions liability, to meet coverage requirements and combinations of primary and excess policies for achieving required limits. Use of such options is permissible provided that the resulting insurance policies meet all the requirements specified in this Section and are approved in advance by CARTA.

Contractor's responsibilities under this Section shall apply to the following additional insureds: CARTA, the Department, the CARTA member agencies, including any new member agencies joining CARTA following execution of this Agreement, and their directors, officers, agents, representatives and employees.

16.2.1 TSI/Subcontractor Insurance for Personal Property and Equipment

TSI and its Subcontractors shall be solely responsible for any loss or damage to their personal property including their tools, Equipment, Hardware, Software, mobile installation equipment, scaffolding, and temporary structures, whether owned, borrowed, used, leased or rented by TSI or any Subcontractor. TSI and Subcontractors may wish, at their sole cost, to purchase and maintain insurance or self-insure such equipment and property, and any deductible in relation thereto shall be their sole responsibility. Any insurance, including self-insurance, shall be the sole source of recovery for TSI and Subcontractors in the event of a loss.

16.2.2 Verification of Coverage

(a) Evidence of Insurance. Upon the Effective Date, TSI will deliver to CARTA (1) a certificate of insurance with respect to each policy required to be provided by TSI under this Section and (2) copies of all endorsements to the policies that evidence compliance with requirements of this Section, including additional insured endorsements. CARTA has no duty to pay or perform under this Agreement until such certificate(s) and endorsements, in compliance with all requirements of this Section 16, have been provided. Upon CARTA's request in conjunction with a dispute, claim, item for which the insurance required under this Agreement is contemplated to cover and/or CARTA's reasonable belief that TSI has not complied with this Section, TSI shall provide to CARTA certified, true and exact copies of each of the insurance policies (including renewal policies) required under this Section. TSI acknowledges and agrees that any actual or alleged failure on the part of CARTA to inform TSI of non-compliance with any requirement imposes no additional obligations on CARTA nor does it waive any rights under this Agreement.

(b) Renewal Policies. TSI shall promptly deliver to CARTA a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such evidence of insurance shall be delivered 15 days prior to the expiration date of any policy, or such shorter period as approved in advance by CARTA. If certificates and endorsements are not available prior to renewal, TSI shall provide a binder or equivalent form of evidence of renewed insurance for each expired line of insurance until policy

certificates and endorsements are available. Policies and endorsements shall be forwarded promptly to CARTA, but in no event later than 30 days after policy renewal. If requested by CARTA from time to time, certified duplicate copies of the renewal policy shall also be provided. To the extent TSI is unable to deliver such evidence of insurance by the specified date through no fault of TSI and despite making its best efforts and provided that such certificate is delivered prior to the expiration date of the relevant policy, TSI will not be deemed to be in default of this Section. However, in the event that TSI is unable to deliver such evidence of insurance as provided in this Section, TSI shall provide some other form of evidence of coverage prior to expiration of the current policy. Such evidence may include a binder of insurance or other form of written confirmation signed by TSI's insurance broker or insurer representative indicating that such coverage has been bound. The required evidence of insurance shall be provided as soon as it is available but in no case later than five days after the renewal policies have inceptioned.

16.2.3 Subcontractor Insurance Requirements

TSI shall cause each Subcontractor to provide insurance that complies with requirements for TSI-provided insurance as set forth in this Agreement in circumstances where the Subcontractor is not covered by TSI-provided insurance and provided that TSI has sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. TSI shall also require any other type of insurance that TSI determines to be appropriate for the nature of the subcontracted work. TSI shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractor's general liability and auto liability insurance policies. TSI shall require each such Subcontractor to waive its rights of recovery against the Indemnified Parties and to require that its workers' compensation insurer agrees to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by CARTA, TSI shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. CARTA may contact the Subcontractors directly in order to verify the above coverage.

16.2.4 Endorsements and Waivers

All insurance policies required to be provided by TSI under this Agreement shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only Section 16.2.4(c) shall not be applicable:

(a) For claims and Losses covered by the insurance specified under this Agreement, insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that TSI has left the Site. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or additional insured shall be in excess of such insurance and shall not contribute with it.

(b) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability. Any policies covering additional insureds shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion), the effect of which would be to prevent, bar, or otherwise preclude any additional insured under the policy from making a claim that would otherwise be covered by such policy.

(c) All endorsements adding additional insureds to required policies shall be on ISO form CG-20-10-01 or an equivalent form(s) providing additional insureds with coverage for "completed operations." If equivalent form(s) are used, TSI shall ensure that such form(s) provides coverage equivalent to the 1985 Form with respect to liability arising from performance of the Toll Services irrespective of where it is performed and that completed operations coverage for additional insureds is afforded. Such completed operations coverage for additional insureds may be provided on a separate endorsement such as ISO form CG 20 37.

(d) All insurance policies that are required to insure Persons (whether as named or additional insureds) in addition to TSI shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds, including any additional insureds, provided that professional liability policies shall not be required to comply with this paragraph. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the insurance policies, any breach of warranty, any action or inaction of a named insured or others, any misrepresentation, act or omission of the named insured, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and consultants).

16.2.5 Waivers of Subrogation

CARTA and TSI waive all rights against each other, against each of their respective agents and employees and against Subcontractors and their respective members, directors, officers, employees, agents and consultants for any claims, to the extent covered by insurance obtained in accordance with this Section, except such rights as they may have to the proceeds of such. TSI shall require all Subcontractors to provide similar waivers in writing, with each such waiver of subrogation written in such a manner that claims, losses or damages covered by the insurance required under this Section cannot be subrogated as contribution and indemnity claims against the Indemnified Parties (and their respective members, directors, officers, employees, agents and consultants).

16.2.6 Changes in Requirements

CARTA shall provide Notice of any changes in the requirements applicable to insurance required to be provided by TSI which may be subject to a Change Order in accordance with Section 19.

16.2.7 No Recourse

There shall be no recourse against CARTA for payment of premiums or other amounts with respect to the insurance required to be provided by TSI under this Agreement.

16.2.8 Support of Indemnifications

The insurance coverage provided under this Agreement by TSI is not intended to limit TSI's indemnification obligations under this Agreement.

16.2.9 Commercial Unavailability of Required Coverages

(a) If, through no fault of TSI, any of the coverages required in this Section (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, CARTA will consider in good faith alternative insurance packages and programs that TSI proposes, with the goal of reaching agreement on a package that provides coverage equivalent to that specified in this Agreement.

(b) TSI shall demonstrate to CARTA's satisfaction that TSI used diligent efforts in the global insurance markets to place the required insurance coverages, and shall advise CARTA of the specific results of those efforts.

(c) TSI shall not be entitled to any increase in the Agreement Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. CARTA shall be entitled to a reduction in the Agreement Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined based on evidence of insurance premiums as of the Proposal Date. CARTA's right to a reduction in the Agreement Price in the preceding sentence shall be without regard to the insurance costs expended by TSI for the less than equivalent coverage or on other insurance required under this Section.

16.2.10 Notice of Change or Cancellation of Coverage

TSI shall provide Notice to CARTA immediately upon becoming aware of any change or pending change in coverage or of any modification or reduction in coverage or limits.

16.3 Prosecution of Claims

Unless otherwise directed by Notice from CARTA, TSI shall report and process all potential claims under the insurance required to be provided under this Section 16. TSI shall report

timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of CARTA, whether for defense or indemnity or both. CARTA shall promptly Notify TSI of CARTA's incidents, potential claims, and matters which may give rise to an insurance claim by CARTA, to tender its defense or the claim to TSI, and cooperate with TSI as necessary for TSI to fulfill its duties under this Agreement.

16.4 Commencement of Work

TSI shall not commence the Toll Services until it has obtained the insurance required under this Section 16, has furnished original certificates of insurance and endorsements evidencing the coverage as required and such insurance has been approved in writing by CARTA. TSI shall not allow any Subcontractor (or shall such Subcontractor be entitled) to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by TSI. No delay in securing such insurance, certificates of insurance or approvals shall extend any time period or Guaranteed Completion Date or provide TSI any other relief or entitlement for a Change Order.

16.5 CARTA's Right to Remedy Breach by TSI

If TSI or any Subcontractor fails to provide insurance as required under this Agreement, CARTA may purchase such insurance or to suspend TSI's right to proceed until proper evidence of insurance is provided. Any amounts paid by CARTA shall, at CARTA's sole option, be deducted from amounts payable to TSI or reimbursed by TSI upon demand, with interest thereon from the date of payment by CARTA to the reimbursement date, at the maximum rate allowable under applicable Governmental Rule. Nothing under this Agreement shall preclude CARTA from exercising its rights under this Agreement as a result of the failure of TSI or any Subcontractor to satisfy the obligations of this Section.

16.6 Disclaimer

TSI and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified under this Agreement. CARTA makes no representation or warranty that the coverage, limits of liability or other terms specified for the insurance policies to be carried in accordance with this Section 16 are adequate to protect TSI against its undertakings under this Agreement or its liability to any third party or preclude CARTA from taking any actions as are available to it under this Agreement or otherwise at law.

SECTION 17 PAYMENT FOR TOLL SERVICES

17.1 Toll Services Compensation

17.1.1 Except as otherwise provided herein, Payments to TSI required under this Agreement shall not exceed the Agreement Price and shall be paid in arrears as indicated in Exhibit 6, Payment Schedule and Terms, subject to any applicable adjustments described herein. All Work performed by TSI in meeting the requirements of this Agreement shall be paid as provided in this Section, and such payment shall constitute full compensation for the Work, including, without limitation, all applicable surcharges such as taxes, insurance, bond premiums , and fringe benefits, as well as indirect costs, overhead and profit allowance, Subcontractor costs, travel, materials, supplies, the cost of obtaining all Governmental Approvals and compliance with and maintenance of such Governmental Approvals, and all risk of inflation, currency risk, interest and other costs of funds associated with the Payment Schedule for the Work.

17.1.2 Subject to duly executed Change Orders, it is expressly understood and agreed that in no event shall the total compensation paid to TSI under this Agreement exceed the maximum payment, which equals the sum of Forty-Six Million Six Hundred Thirty Six Thousand Eighty-Nine Dollars (\$46,636,089) ("Agreement Price"), subject to the availability of funds and annual budget authorization by CARTA and issuance of Notices to Proceed as provided for in this Agreement.

17.2 Deductions of Payment

17.2.1 Notwithstanding any other provision of this Agreement, CARTA may deduct from any payment owing under this Agreement:

(a) Any debt, charge, payment or other moneys due from TSI to CARTA whether under this Agreement, under applicable Governmental Rules or in equity, including (i) amounts payable or that may be payable under Section 25 and (ii) Liquidated Damages that have accrued as of the date of the application for payment or in the case of Delay Liquidated Damages that are anticipated to accrue based on the Guaranteed Completion Dates shown in the Project Schedule; and

(b) Any Claim that CARTA or others as specified below may have against TSI including;

(i) Failure of TSI to make payments of undisputed amounts to a Subcontractor when such payments are due under the Subcontract, which failure is not cured by TSI;

(ii) Third Party Claims for which TSI is responsible under this Agreement;

(c) If a notice to stop payment is filed with CARTA, due to TSI's failure to pay for labor or materials used in the Toll Services, money due for such labor or materials,

plus the 25% prescribed by law, will be withheld from payment to TSI. In accordance with Civil Code Section 9364, CARTA may accept a bond by a corporate surety in lieu of withholding payment;

(d) Such amount as CARTA deems advisable to cover liens, encumbrances and stop notices of Subcontractors, Suppliers, laborers and Utility Owners against TSI or against CARTA as a result of the actions or failure to act TSI relating to the Toll Services unless TSI provides either (A) (i) reasonable assurance that it is contesting the item in good faith and an unconditional written commitment to CARTA from the Guarantor and the surety under the Payment Bond or Performance Bond that the item is covered by the guaranty and bonds, respectively, and will be promptly paid if TSI does not prevail in such contest (or other security adequate to CARTA, in its sole discretion); and (ii) as requested by CARTA, security assuring payment of such lien, encumbrance, stop notice amount or item, in the form of a bond, cash collateral or a letter of credit, for an amount up to 125% of the amount of such lien, encumbrance, stop notice amount or item; or (B) proof that payment has been made;

(e) Any amounts CARTA is required to retain under applicable federal law, including 26 U.S.C. Section 3402;

(f) Any sums expended by CARTA in performing any of TSI's obligations under this Agreement which TSI has failed to perform or which CARTA may elect to undertake itself plus an administrative charge equal to 10% of such costs;

(g) Any sums for Nonconforming Work that are not timely remedied by TSI pursuant to the terms of this Agreement;

(h) Any amounts CARTA may withhold in accordance with the terms of the Agreement;

(i) Any amounts expended by or owing to CARTA in accordance with the terms of this Agreement; and

(j) All legally required sums for, but not limited to labor and tax liens including any fines or penalties CARTA or Department incurs because of the failure or alleged failure by any TSI-Related Entity to comply with the Governmental Approvals or Governmental Rules (including any Environmental Laws).

17.2.2 The failure by CARTA to deduct any of these sums from any payment owing to TSI shall not constitute a waiver of CARTA's rights (i) to such sums or (ii) with respect to any breach or default related thereto.

17.2.3 When the reasons for deducting, offsetting or withholding payment are removed, CARTA shall pay TSI for amounts previously deducted as part of the next monthly payment.

17.3 Interest

17.3.1 Any amount that TSI owes to CARTA under this Agreement shall earn interest from the date such amounts are due to CARTA at the lesser of (a) 10% per annum or (b) the maximum rate allowable under applicable Governmental Rules.

17.3.2 Except with respect to Claims under Section 25, if payment of any undisputed amount is made after the 45th day following the proper submission of an undisputed and properly complete invoice, then the payment shall include interest on the amount owing, at the rate set forth in Code of Civil Procedure Section 685.010(a), from the 45th day after the payment was due until the date of payment. Interest shall not accrue on monies withheld pursuant to stop notices or the final payment.

17.4 Waiver of Claims

(a) TSI's acceptance of Final Payment for the D&D Work shall constitute a waiver of all Claims by TSI, known or unknown, suspected or unsuspected, except those previously made in writing and identified as unsettled at the time of Final Payment for the D&D Work and Claims which TSI may be entitled to assert against CARTA with respect to CARTA's material breach of obligations under this Agreement to be performed after Final Payment.

(b) TSI's acceptance of Final Payment for the O&M Work shall constitute a waiver of all Claims by TSI, known or unknown, suspected or unsuspected, except those previously made in writing and identified as unsettled at the time of final payment for the O&M Work and Claims which TSI may be entitled to assert against CARTA with respect to CARTA's material breach of obligations under this Agreement to be performed after Final Payment.

17.5 Payment for Subsequent Claims

Except as provided for herein, if, after any Final Payment is made, it is determined through the dispute resolution process in this Agreement, that either Party is entitled to payment from the other with respect to Claims (i) that were identified in the release and waivers of Claims as being unsettled, (ii) which TSI may be entitled to assert against CARTA with respect to CARTA's material breach of obligations under this Agreement which may occur after Final Payment, or (iii) which CARTA may be entitled to assert against TSI with respect to TSI's continuing obligations under this Agreement, such Party shall pay the amounts determined to be owing to the other Party within fourteen (14) days after such determination. TSI may only bring any such Dispute if TSI has not accepted Final Payment for the Work, and thus waived all such Claims.

17.6 Payments Not Acceptance of Work

Any payment of moneys is not (a) evidence of the value of work, (b) evidence that work has been satisfactorily carried out in accordance with this Agreement, (c) an admission of liability or approval by CARTA of TSI's performance or compliance with this Agreement, (e) an acknowledgement that CARTA has inspected or accepted the Work or (f) a waiver of any Claim or right that CARTA may then or thereafter have, including among others, warranty and indemnity rights. All payments made by CARTA shall be subject to correction or adjustment in subsequent progress reviews and payments.

17.7 Cost Principles

If applicable, in order to be reimbursed with state funds, TSI shall comply with the cost principles established in 2 CFR Part 200, et. seq. that specify that all reimbursed costs are allowable, reasonable, and allocable to the Toll Services.

17.8 Disputes

Failure by CARTA to pay any amount in dispute shall not alleviate, diminish, release or modify in any respect TSI's obligation to perform the Toll Services in accordance with this Agreement, and TSI shall not cease or slow down its performance under this Agreement on account of any such amount in dispute. Any dispute regarding payment shall be resolved in accordance with the Agreement's provisions governing disputes. TSI shall proceed as directed by CARTA pending resolution of the dispute. Upon resolution of any such dispute, each of TSI and CARTA shall promptly pay to the other any amount owing.

17.9 Payment of "Claims" under Pub. Cont. Code § 9204

The Parties acknowledge that Pub. Cont. Code § 9204 requires CARTA to make payments to TSI with respect to any portion of a "claim" as that term is defined in Pub. Cont. Code § 9204, which CARTA identifies as undisputed. If any such payments are made, future invoices shall account for such payments in a manner acceptable to CARTA.

SECTION 18 GENERAL PROVISIONS APPLYING TO CHANGES IN TOLL SERVICES

18.1 Mitigation

18.1.1 If an Eligible Change or any other event occurs as a result of which the Toll Services are delayed or TSI considers that it is entitled to claim an extension of time, compensation or relief from performance of its obligations under this Agreement (each, a "Relevant Event" and, together, "Relevant Events"), TSI shall and shall require TSI-Related Entities to use and continue to use commercially reasonable efforts to eliminate or mitigate the Losses, schedule impact and other consequences of the Relevant Event in performance of the Toll Services, including by re-sequencing, reallocating or redeploying TSI forces to other work, as appropriate.

(a) Except as expressly provided in this Agreement, TSI shall continue to perform and remain liable and responsible for its obligations under this Agreement notwithstanding the Relevant Event; and

(b) Resume performance of its obligations under this Agreement affected by the Relevant Event as soon as practicable and, in all events, promptly after the cessation or mitigation of the Relevant Event.

18.1.2 To the extent that TSI does not use commercially reasonable efforts to eliminate or mitigate the Losses, then TSI's entitlement to claim an extension of time, compensation or relief from performance of its obligations under this Agreement with respect to the Relevant Event will be reduced or eliminated to the extent of such failure.

18.2 Deductions for Relevant Events

The compensation payable, extension of time granted or relief provided to TSI with respect to any Relevant Event will be reduced:

(a) By any amount which a TSI-Related Entity recovers under any insurance policy required under this Agreement or otherwise maintained by TSI-Related Entities, or would have recovered if the TSI-Related Entity had complied with this Agreement in respect of any insurance policy required under this Agreement, which amount, for greater certainty, will not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy;

(b) In the case of an extension of time, by the amount of time avoided or otherwise reduced as a result of the Relevant Event;

(c) By the amount of any Costs avoided or otherwise reduced as a result of the Relevant Event;

(d) In the case of an extension of time, to the extent that the delay is not on the Critical Path; and

(e) To the extent the Relevant Event arises in connection with any act or omission of any TSI-Related Entity or TSI Fault.

18.3 Sole Entitlement

TSI acknowledges and agrees that the Agreement Price constitutes full compensation for performance of all of the Toll Services; and TSI's sole right to claim an extension of time, compensation or relief from performance of its obligations under this Agreement or otherwise make any Claim for any Losses in connection with any Change or Eligible Change is as set out in Section 19.

18.4 Notifications, Delay in Notification

18.4.1 Subject to Sections 18.4.2 through 18.4.5, if TSI submits any Notice or any required information with respect to a Relevant Event (Relevant Event Notice) after the due date under this Agreement, then TSI will be deemed to have waived:

(a) The right to collect any Costs, in connection with the Relevant Event, that TSI incurs or accrues prior to the delivery date of the Relevant Event Notice; and

(b) The right to an extension of any Guaranteed Completion Date for any Critical Path delay in connection with the Relevant Event, which accrued prior to the delivery date of the Relevant Event Notice.

18.4.2 If TSI fails to provide a Relevant Event Notice to CARTA within the earlier of (a) the timeframe expressly stated within this Agreement with respect to the specific Relevant Event; or (b) 30 days after the earlier of (i) obtaining Actual Knowledge of a Relevant Event; or (ii) the date on which it should have, in the exercise of reasonable diligence or in the performance of its obligations under this Agreement, been aware of the Relevant Event, TSI shall not be entitled to any relief in connection with the Relevant Event unless TSI can show, based on clear and convincing evidence, that:

(a) CARTA was not materially prejudiced by the lack of a Relevant Event Notice; or

(b) CARTA's Representative had Actual Knowledge of the Relevant Event prior to the due date for the Relevant Event Notice.

18.4.3 In the event that TSI makes the showing required in Section 18.4.2 after the expiration of the period for providing the applicable Relevant Event Notice, TSI may not collect Costs incurred prior to the date of delivery of the Relevant Event Notice, and shall be deemed to have waived the right to seek an extension of any Guaranteed Completion Date in accordance with this Agreement that accrued prior to the date of delivery of the Relevant Event Notice.

18.4.4 The following matters (among others) shall be considered in determining whether CARTA has been prejudiced by TSI's failure to provide a timely Relevant Event Notice: (a) the effect of the delay on alternatives available to CARTA (that is, a comparison of alternatives that are available at the time the Relevant Event Notice was actually given and alternatives that would have been available had a Relevant Event Notice been given within 15 Business Days as required under Section 18.4.2; and (b) the impact of the delay on CARTA's ability to obtain and review objective information contemporaneously with the alleged Relevant Event.

18.4.5 TSI's failure to provide a Relevant Event Notice within (a) 30 days of the timeframe expressly stated within this Agreement with respect to the specific Relevant Event; or (b) 45 days after the earlier of (i) obtaining Actual Knowledge of a Relevant Event; or (ii) the date on which it should have, in the exercise of reasonable diligence or in the performance of its obligations under this Agreement, been aware of the Relevant Event shall preclude TSI from any relief due to the occurrence of the Relevant Event, including the right to receive payment for any Costs, receive a Change Order or make any Claim for any Losses or Costs in connection with the Relevant Event.

18.4.6 TSI HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH TSI FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES OR TIME EXTENSION WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE AGREEMENT EXPRESSLY SPECIFIES THAT TSI IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION, DAMAGES OR TIME EXTENSION.

SECTION 19

CHANGES IN THE TOLL SERVICES

19.1 CARTA's Right to Order Changes

CARTA reserves the right to make changes to the Work and to require such changes in the extent or manner of performance of the Work as are determined by CARTA to be necessary or desirable, subject to the provisions of this Section. All changes to this Agreement shall be incorporated in a written Change Order that shall specify the changes in Work performed and any adjustments to compensation and the schedule, signed by the CARTA Executive Director or a designated representative and TSI. The CARTA Project Manager is not a designated representative for the purposes of approving a Change Order. Changes that do not modify, add to or delete a provision or requirement of this Agreement do not require a Change Order.

19.2 Mitigation

If a Change Order is issued, TSI shall and shall require TSI-Related Entities to use and continue to use commercially reasonable efforts to:

(a) Eliminate or mitigate the Losses, schedule impact and other consequences of the Relevant Event in performance of the Toll Services, including by re-sequencing, reallocating or redeploying TSI forces to other work, as appropriate;

(b) Except as expressly provided in this Agreement, continue to perform and remain liable and responsible for its obligations under this Agreement ; and

(c) Resume performance of its obligations under this as soon as practicable and, in all events, promptly.

(a) To the extent that TSI does not comply with its obligations under this Section, then TSI's entitlement to claim an extension of time, compensation or relief from performance of its obligations under this Agreement will be reduced or eliminated to the extent of such failure. Any time extension or compensation granted shall be reduced by insurance proceeds recovered or recoverable, Costs or time avoided, and any impacts caused or contributed to by TSI or TSI-Related Entities.

19.3 Right of CARTA to Issue Change Orders and Directive Letters

19.3.1 CARTA may, at any time and for any reason, without notice to any Surety or Guarantor, authorize and/or require a change within the general scope of this Agreement pursuant to a Change Order or Directive Letter. TSI has no obligation to perform any material change, outside the general scope of this Agreement, except on terms mutually acceptable to CARTA and TSI. The Parties agree that any direction to perform Work shall be considered within the general scope of this Agreement if it is related in whole or in part, or directly or indirectly, to the Toll Services and any direction to delete or modify the Toll Services shall be considered within the general scope unless, as a result, this Agreement would no longer be considered a contract to design, implement, install, integrate, operate and/or maintain a toll collection system of the general nature described in the RFP.

19.4 Issuance of Directive Letter

CARTA may, at any time and for any reason, issue a Directive Letter to TSI with respect to a change or in the event of any dispute regarding the pricing or scope of Toll Services. Any Directive Letter shall provide a written description of the change, and the proposed basis for compensation or reduction in compensation, if any. Directive Letters shall be effective upon issuance by CARTA. If CARTA issues a Directive Letter, TSI shall proceed immediately with the Toll Services as directed in accordance with the Directive Letter, regardless of whether a formal Change Order has been issued in the case of a Change. If TSI considers the directed Toll Services to constitute a Change, TSI may request that CARTA issue a Change Order.

19.5 CARTA Initiated Change Order

Each proposed change to this Agreement initiated by CARTA shall be initiated by means of a written Change Notice issued by CARTA. The Change Notice shall include a description of the scope of the proposed change and a request for TSI to submit a proposal for performance of the changed work, including all compensation and/or schedule impacts, as described in Section 19.6 below, TSI Change Notice proposal.

TSI shall have fourteen (14) Days to review and respond to the Change Notice, unless CARTA has specified a longer period. If TSI fails to respond to the Change Notice within the specified period, CARTA may issue a Preliminary Change Order, subject to TSI's right to protest under Section 19.9.

19.6 TSI Change Notice Proposal

TSI shall provide to CARTA a Change Notice proposal for providing the changed work within the time specified in the Change Notice. No additional compensation shall be paid by CARTA for TSI's costs for preparing Change Notice proposals. If TSI believes the changed work shall have a schedule impact, the Change Notice proposal must include changes to the Baseline Schedule.

The Change Notice proposal shall contain cost or price information sufficient to allow CARTA to make a determination that any increase in compensation to TSI is fair and reasonable.

In determining additional compensation to be paid for Change, TSI shall use the labor, Equipment, unit, and material costs and rates included in the Proposal, including the final Proposal's fully loaded labor rates for additional Work. TSI is required to use the overhead and profit rate identified in the final Proposal. For Equipment, and materials costs not covered or anticipated in the Proposal, a catalog or market price of a commercial product sold in substantial quantities shall be used as the basis for proposed costs. If the cost of the Change cannot be established on this basis or on the basis of prices set by this Agreement, law or regulation, TSI shall submit detailed cost breakdowns, including information on, Equipment, and materials costs and any other direct costs.

CARTA shall review the Change Notice proposal, and the parties shall negotiate in good faith to determine the final terms and conditions of the Change Order. If the parties cannot agree on terms, CARTA may issue a Change Order, subject to TSI's right to protest under Section 19.9.

19.7 TSI Initiated Change Orders

19.7.1 Should circumstances arise which, in the opinion of TSI, justify additional compensation or time or require changes in the Work specified by this Agreement, including an Excusable Delay, TSI may initiate a Change Order by written request. TSI shall provide written notification within fifteen (15) days after TSI knew or should have known of the need for a Change Order. TSI will be deemed to have waived the right to collect any Costs that TSI incurs or accrues prior to the date of delivery of notice and the right to an extension of any Completion Deadline for any Critical Path delay which accrued prior to the delivery of notice.

If TSI fails to provide notice to CARTA within the earlier of (a) the timeframe expressly stated within this Agreement with respect to the specific need for a Change Order;

or (b) 15 days after the earlier of (i) obtaining Actual Knowledge; or (ii) the date on which it should have, in the exercise of reasonable diligence or in the performance of its obligations under this Agreement, been aware of the need for a Change Order, TSI shall not be entitled to any relief unless TSI can show, based on clear and convincing evidence that CARTA was not materially prejudiced or had actual knowledge of the need for a Change Order before notice was due. In no event may TSI recover for pre-notice Costs or pre-notice delay.

TSI's written Change Order request shall provide sufficient information regarding cost and schedule to provide a basis for negotiation with CARTA, as provided in Section 19.6 above, including references to applicable provisions of this Agreement; the factual reasons for which TSI believes a revision to the Specifications, additional compensation, or a schedule extension is called for; and an estimate of any cost increase or schedule extension.

TSI shall meet with the CARTA Project Manager or any other designated representative of CARTA involved in evaluating TSI's request for a Change Order. Following such discussion(s), CARTA shall either: (i) issue a Change Order for TSI's signature under Section 19.8; (ii) issue a written denial of TSI's request for a Change Order; or (iii) accept the request in part and deny it in part. If TSI agrees with the terms and conditions of a Change Order, TSI shall sign a copy of the Change Order and return it to the CARTA Project Manager, and TSI shall promptly proceed with the Work as indicated therein. If TSI disagrees with CARTA's action, it may file a protest under Section 19.9. If the TSI fails to protest in accordance with the applicable procedures, TSI shall not be entitled to file a claim for additional compensation or schedule extension or other remedy under this Agreement. Notwithstanding any request for a Change Order, TSI's duty to complete the Work in accordance with the provisions of this Agreement shall not be postponed or abated.

19.7.2 So long as TSI complies with the Change Order notification process in this section, if a TSI Change Order request is submitted as a result of an Excusable Delay that has caused or will result in an identifiable and measurable disruption of the D&D Work and has impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to achieve a Completion Milestone beyond the applicable Guaranteed Completion Date), TSI shall be entitled to:

(a) A Change Order that provides for either (i) an adjustment of the applicable Guaranteed Completion Date (based on Critical Path Method analysis) to the extent of the actual delay caused by the Excusable Delay or (ii) Acceleration Costs where CARTA elects to order acceleration, in which case, no extension of time will be granted to a Completion Date; and

(b) Delay and disruption damages only if the Excusable Delay is an event falling within the definition of CARTA-Caused Delay, which shall be limited to (i) direct costs solely and directly attributable to the CARTA-Caused Delay, and any allowable markups on

such direct costs, and (ii) any additional field office and jobsite overhead costs incurred by TSI solely and directly attributable to such delays at TSI's applicable Audited Overhead rate.

19.7.3 TSI shall not be entitled to an extension of time or delay or disruption damages if the Excusable Delay or Force Majeure Event is concurrent with any other unrelated delay to a Critical Path that is TSI's responsibility under this Agreement.

19.7.4 TSI HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH TSI FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES OR TIME EXTENSION WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT EXPRESSLY SPECIFIES THAT TSI IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION, DAMAGES OR TIME EXTENSION.

19.8 Issuance of Change Orders

Change Orders shall be issued by CARTA as soon as practicable after their initiation by either party. CARTA may issue a Change Order if it does not receive a TSI response to a Change Notice or if it agrees in part and disagrees in part to a TSI-initiated Change Notice. If TSI disagrees with the terms and/or conditions of the Change Order, TSI may file a protest under Section 19.9.

CARTA shall issue a Change Order if the terms of the Change Order have been agreed to by TSI or if TSI's protest of a Change Order has been denied. If TSI agrees with the terms and conditions of such Change Order, TSI shall sign the Change Order and return it to the CARTA Project Manager.

If TSI fails to protest a Change Order, TSI shall not be entitled to any claim for additional compensation or schedule extension arising out of or relating to any change in the Work other than that specified in the Change Order, and payment shall be made as set forth in the Change Order. Such payment shall constitute full compensation and schedule adjustment for any Work required therein, or all events giving rise to a TSI requested Change Order. TSI shall be deemed to have consented to the terms and conditions set forth in any Preliminary Change Order that TSI does not dispute within ten (10) Days or such other reasonable time period stated in the Change Order for protest.

The following constitute amendments of this Agreement:

- a) a Change Order signed by both parties;

- b) a Change Order issued by CARTA based on a Change Order that was not protested by TSI in accordance with Section 19.9 or, if protested, was decided against TSI; and
- c) a revised Change Order signed by the parties as a result of a protest filed pursuant to Section 19.9 decided in favor of TSI.

When the Change Order becomes effective for any of these reasons, TSI shall promptly proceed with the Work as indicated in the Change Order. All documentation related to or impacted by a Change Order shall be updated and submitted for review and approval by CARTA.

19.9 Change Order Protests

TSI shall have ten (10) Days from receipt of a CARTA denial of a TSI-initiated Change Notice, or a Change Order issued by CARTA, to protest such action by writing to the CARTA Executive Director. Thereafter, TSI shall have up to ten (10) additional Days to supplement its protest with additional information or documentation in support of its protest. The CARTA Executive Director shall review the protest and shall respond within twenty (20) Days to TSI. CARTA and TSI agree to negotiate in good faith to resolve disputed Change Orders.

An undisputed Change Order, and any disputed Change Order for which TSI's protest is denied, shall be considered as part of this Agreement. CARTA's denial of a protest is subject to the claims and disputes provisions in Section 26.

19.10 Change Order Records; Time and Materials Change Order

19.10.1 For cost data submitted in connection with Change Orders, unless such data is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, CARTA and its representatives have the right to examine all books, records, documents and other data of CARTA related to the negotiation of or performance of Work under such Change Orders, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by CARTA and its representatives to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

19.10.2 Where CARTA elects to request, in writing, a time and materials Change Order including if the Parties cannot reach agreement on the cost of the Change Order, TSI shall keep and present, in such form as CARTA may reasonably require, an itemized accounting together with appropriate supporting data. Time and materials Change Orders shall use the Unit Prices and the hourly rates attached to this Agreement. Costs evidenced by daily extra work reports furnished less than five (5) days prior to preparation of the invoice shall be included in the subsequent month's invoice.

SECTION 20

SUSPENSION

20.1 Suspension for Convenience

20.1.1 CARTA may, at any time and for any reason, by Notice, order TSI to suspend all or any part of the Toll Services for its convenience for the period of time that CARTA deems appropriate. TSI shall promptly comply with such Notice.

20.1.2 TSI shall promptly recommence the Toll Services upon receipt of Notice from CARTA directing TSI to resume Toll Services.

20.2 Suspensions for Cause

20.2.1 CARTA may, by Notice to TSI, order TSI to suspend the whole or any part of the Toll Services for TSI failure to:

(a) Correct conditions unsafe for the Toll Services personnel, CARTA personnel, Other CARTA Contractor personnel or the general public;

(b) Comply with any Governmental Approval, Governmental Rule or this Agreement;

(c) Carry out orders or directions of CARTA in accordance with this Agreement, Change Orders or Directive Letters;

(d) Comply with requirements for developing and implementing the Quality Management Plan;

(e) Remove or replace any Person as required under this Agreement or if TSI or its Subcontractors fail to ensure employment of an alternative skilled and experienced Person;

(f) Provide proof of required insurance coverage as provided in Section 16;

(g) Reopen lanes closed to public traffic as part of a Lane Closure by the time specified in the approved closure request;

(h) Comply with environmental requirements;

(i) Pay in full when due undisputed amounts owing to CARTA under this Agreement; or

(j) Remove from the Work and dismiss from the Project any Subcontractor that (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a State department or agency.

20.2.2 TSI shall promptly comply with a Notice under Section 20.2.1.

20.2.3 TSI shall promptly recommence the Toll Services upon receipt of Notice from CARTA directing TSI to resume the Toll Services.

20.2.4 CARTA has no liability to TSI and TSI is not entitled to make any Claim in connection with any suspension under Section 20.2.1.

20.2.5 If CARTA orders suspension of Toll Services under Section 20.2 but it is finally determined under the Dispute resolution procedures of this Agreement that such grounds did not exist, it shall be treated as a suspension for CARTA's convenience under Section 20.1.

20.3 Department Suspensions

TSI acknowledges that Department has the authority to issue an order suspending Toll Services wholly or in part and to take appropriate action when public safety is jeopardized as authorized under Streets and Highways Code § 91.2(b) and otherwise in accordance with the Cooperative Agreement. TSI shall promptly comply with any such written suspension order. TSI shall promptly recommence the Toll Services upon receipt of Notice from Department directing TSI to resume the Toll Services. Neither CARTA nor Department shall have any liability to TSI in connection with any such suspension and TSI shall have no right to any Claim in connection with any such suspension.

20.4 Responsibilities of TSI During Suspension Periods

Where the Toll Services are suspended:

20.4.1 TSI remains responsible for the Toll Services and shall prevent damage, loss or injury to the Project and the Toll Services; and

20.4.2 CARTA shall have full and immediate access to all operations, Software and Hardware, related data, transponder inventory, and any other CARTA owned assets during the suspension; and

20.4.3 TSI shall continue to perform aspects of the Toll Services not subject to the suspension Notice.

SECTION 21 TERMINATION FOR CONVENIENCE

21.1 Notice of Termination for Convenience

21.1.1 CARTA may, at any time, terminate this Agreement in whole or in part, at its convenience by giving a Notice to TSI specifying the extent of termination and its effective date (Notice of Termination for Convenience).

21.1.2 Termination (or partial termination) of this Agreement shall not relieve any Surety or Guarantor of its obligation for any Claims in connection with the Toll Services performed or remaining to be performed (in the case of a partial termination).

21.1.3 TSI acknowledges and agrees that unless and until NTP2 is issued, CARTA has no liability to TSI for a Termination for Convenience under this Agreement, except as provided under Section 21.10.

21.2 Transition Plan

21.2.1 Within three days after receipt of a Notice of Termination for Convenience, TSI shall meet and confer with CARTA for the purpose of developing an interim transition plan for the orderly transition of the terminated Toll Services, demobilization and transfer of the Toll Services project to CARTA.

21.2.2 The Parties shall use diligent efforts to complete preparation of:

(a) The interim transition plan within 15 days after TSI receives Notice of Termination for Convenience; and

(b) A final transition plan within 30 days after TSI receives Notice of Termination for Convenience.

21.2.3 The transition plan shall be in form and substance acceptable to CARTA in its good faith discretion and shall include and be consistent with this Agreement and the Scope of Work, as applicable.

21.3 Acceptance

21.3.1 TSI remains responsible for damage and loss to materials, Equipment, Hardware and Software after issuance of the Notice of Termination for Convenience, except as follows:

(a) TSI's responsibility for damage to materials, Equipment, Hardware and Software for which partial payment has been made as provided in this Agreement shall terminate when CARTA's Representative certifies that those materials, Equipment, Hardware and Software have been stored in the manner and at the locations directed by CARTA;

(b) TSI's responsibility for damage to materials, Equipment, Hardware and Software purchased by CARTA subsequent to the issuance of the Notice that the Agreement

is to be terminated shall terminate when CARTA takes title and delivery of those materials, Equipment, Hardware and Software; and

21.3.2 When CARTA's Representative determines that TSI has completed the Toll Services directed to be completed prior to termination and such other work as may have been ordered to secure the work for termination, CARTA's Representative will recommend that CARTA formally accept such Toll Services, and immediately upon and after the acceptance by CARTA, Civil Contractor will not be required to perform any further work and shall be relieved of maintenance responsibility for such terminated Toll Services.

21.4 Payment for Termination for Convenience

21.4.1 If CARTA terminates this Agreement for convenience under Section 21.1, TSI will be entitled to payment of the following amounts (collectively, the Termination for Convenience Amount):

(a) All Toll Services performed prior to the Termination Date in accordance with this Agreement but not previously paid for, including payment for any Software licensed by TSI at CARTA's request, to be determined in accordance with the Payment Milestones, excluding any amounts for anticipated profits with respect to Toll Services not yet performed or lost opportunity;

(b) TSI's documented reasonable direct Costs of demobilization, including close-out Costs and amounts payable to Subcontractors and Suppliers that have subcontracts in accordance with the terms of this Agreement for early termination; and

(c) The reasonable out-of-pocket Cost (including reasonable overhead) of the preservation and protection of property incurred in accordance with Section 23.1.9 and any other reasonable out-of-pocket Cost (including reasonable overhead) incidental to termination of the Toll Services, including the reasonable Cost to TSI of handling material returned to the vendor, delivered to CARTA or otherwise disposed of as directed by CARTA.

21.4.2 TSI and CARTA may agree upon the Termination for Convenience Amount, as provided in Section 21.2 by reason of any termination for convenience. Such negotiated settlement may include a reasonable allowance for profit solely on D&D Work that has been completed as of the Termination Date and subsequently inspected and accepted by CARTA.

21.4.3 TSI acknowledges and agrees that the Termination for Convenience Amount or any negotiated amount under Section 21.4.2 shall not exceed:

(a) The value of the Toll Services performed plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable in the Termination for Convenience Amount; or

(b) The total Agreement Price (including any adjustments thereto previously made under this Agreement) less (i) the amount of payments previously made and (ii) the Agreement Price of Toll Services not terminated.

21.4.4 In the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to CARTA by TSI and paid by CARTA, such refund shall be paid directly to CARTA or otherwise credited to CARTA or deducted from the Termination for Convenience Amount.

21.4.5 Except to the extent that CARTA will have expressly assumed the risk of loss, the Termination for Convenience Amount excludes the fair value, as determined by CARTA, of Equipment, Hardware, Software and property that is destroyed, lost, stolen, or damaged so as to become undeliverable to CARTA.

21.4.6 Upon determination of the Termination for Convenience Amount or agreement of any settlement amount, this Agreement shall be amended to reflect the agreed termination payment, TSI shall be paid the agreed amount, and the Agreement Price shall be reduced to reflect the reduced scope of the Toll Services.

21.4.7 If a partial termination occurs, TSI may file a proposal with CARTA for an equitable adjustment of the Agreement Price for the continued portion of this Agreement. Any proposal by TSI for an equitable adjustment under this clause shall be requested within 90 days from the Termination Date unless extended by Notice from CARTA. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this Agreement.

21.5 Settlement Proposal

No later than 90 days from the Notice of Termination for Convenience, TSI shall submit a final termination settlement proposal (including the proposed Termination for Convenience Amount) for review in accordance with the Submittal Process with such certifications as are requested by CARTA. TSI's termination settlement proposal shall then be reviewed by CARTA and acted upon, returned with comments, or rejected. If CARTA returns the termination settlement proposal with comments, TSI shall address such comments and resubmit the termination settlement proposal within 30 days after receiving CARTA's comments. If TSI fails to submit the proposal within the time allowed, CARTA may determine the Termination for Convenience Amount and TSI shall be bound by CARTA's determination.

21.6 Amount of Negotiated Termination Settlement

21.6.1 TSI and CARTA may agree upon the Termination for Convenience Amount, as provided and subject to the limitations in this Agreement, by reason of any termination for convenience. Such negotiated settlement may include a reasonable allowance for profit

solely on Work that has been completed as of the Termination Date and subsequently inspected and accepted by CARTA.

21.6.2 Upon determination of the settlement amount, this Agreement will be amended accordingly, and TSI will, subject to Section 21.8, be paid the agreed amount as described in this Section 21.6. CARTA's execution and delivery of any settlement agreement shall not affect any of its rights under this Agreement with respect to completed Work, relieve TSI from its obligations under this Agreement, including warranties, or affect the right and obligations of CARTA or TSI under any Bond and/or Guaranty as to such completed or non-terminated Work.

21.7 No Agreement as to Amount of Termination Settlement for Toll Services

If TSI and CARTA fail to agree upon any amount payable to TSI because of CARTA's termination of Toll Services for convenience in accordance with this Section 21, CARTA shall pay to TSI Termination for Convenience Amount (exclusive of interest charges and any amounts deducted pursuant to Section 21.9) as calculated by CARTA and without duplication of any items or of any amounts agreed upon in accordance with Section 21.6.

21.8 Conditions to Payment; Reduction in Amount of Claim

21.8.1 As a condition to its obligation to pay TSI amounts due under this Section 21, CARTA shall have received the following:

(a) A list of all outstanding or pending TSI Change Requests and all existing or threatened Claims, Liens and stop payment notices by Subcontractors or other Third Parties relating to the Toll Services;

(b) Complete and legally effective releases or waivers of Liens and stop payment notices satisfactory to CARTA, from all Persons legally eligible to file Liens and stop payment notices in connection with the Toll Services;

(c) Consent of any Guarantors and Surety(ies);

(d) Executed release(s) meeting the requirements of Section 21.11 and otherwise satisfactory in form and content to CARTA; and

(e) Such other documentation as CARTA may reasonably require.

21.9 Payment upon Termination

21.9.1 Subject to Section 21.11 and except for amounts in dispute, CARTA shall pay the Termination for Convenience Amount within 45 days after receipt of an invoice from TSI.

21.9.2 CARTA may, from time to time within such 45 day period make partial payments on account against Costs incurred by TSI in connection with the terminated portion of this Agreement, whenever in the opinion of CARTA, the aggregate of such payments shall be within the amount to which TSI will be entitled under this Agreement. If the total of such payments is in excess of the Termination for Convenience Amount finally agreed or determined to be due under this Section 21, such excess shall be payable by TSI to CARTA upon demand together with interest at the rate of the lesser of (a) 10% per annum or (b) the maximum rate allowable under applicable Governmental Rules.

21.10 Termination Based on Delay in or Failure to Issue NTP2

21.10.1 CARTA may, at any time after issuance of NTP1 and for any reason, elect not to issue NTP2 and terminate this Agreement and the performance of the Toll Services by TSI. In such event, CARTA's sole liability to TSI is to pay TSI any unpaid amounts due for Work performed pursuant to NTP1 in accordance with Section 17.2.

21.10.2 If NTP2 has not been issued on or before 600 days after the Proposal Date, and this delay is not caused by an act or failure to act by any TSI-Related Entity or any TSI Fault, TSI may terminate this Agreement at any time, which right shall be exercised by delivery of notice of termination to CARTA. In such event, no compensation shall be allowed under this Agreement in connection with the termination except as set out in Section 6.6.2.

21.11 No Waiver; Release

21.11.1 The payment to TSI determined in accordance with this Section 21 constitutes TSI's exclusive remedy for a termination under this Agreement.

21.11.2 Notwithstanding any other provision of this Agreement, a termination under this Section 21 shall not waive any Claim that CARTA may have under this Agreement and CARTA may pursue any such Claim against TSI.

21.11.3 CARTA's payment to TSI of the amounts provided under this Section 21 shall constitute full and final satisfaction of, and upon payment CARTA shall be forever released and discharged from, any and all Claims or Losses, known or unknown, suspected or unsuspected, that TSI may have against CARTA in connection with the terminated Work. Concurrently with such payment, TSI shall execute and deliver to CARTA all such releases and discharges CARTA reasonably requires to confirm the foregoing (which releases shall include an express and unconditional waiver and release sufficient, in CARTA's good faith discretion, to waive any rights and benefits TSI may have pursuant to Civil Code section 1542), but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

21.12 Dispute Resolution

The failure of the Parties to agree on amounts due under this Section 21 shall be a Dispute to be resolved in accordance with Section 26.

21.13 Allowability of Costs

All Costs claimed by TSI under this Section 21 shall be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

SECTION 22

TERMINATION FOR DEFAULT

22.1 Default of TSI

TSI shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions:

22.1.1 TSI fails to prosecute the Toll Services in a timely fashion and fails to commence or resume diligent prosecution of the Toll Services within 15 days after Notice of such breach;

22.1.2 TSI has not achieved (A) Factory Acceptance within 60 days of the commencement of the Factory Acceptance Test as shown in the Baseline Schedule, (B) Toll Commencement within 60 days following the Toll Commencement Deadline; or (C) System Acceptance within 90 days following the System Acceptance Deadline;

22.1.3 TSI fails to maintain or provide the insurance, Bonds, guarantees, letters of credit or other performance security as and when required under this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same;

22.1.4 TSI attempts or purports to assign or transfer this Agreement or any right or interest in this Agreement, except as expressly permitted under this Agreement;

22.1.5 TSI (i) fails, absent a valid dispute, to make payment when due for labor or Equipment in accordance with its agreements with Subcontractors and applicable Governmental Rule, (ii) fails to comply with any Governmental Rule, (iii) fails reasonably to comply with the instructions of CARTA consistent with this Agreement, or (iv) fails to make payment to CARTA when due of any amounts owing to CARTA under this Agreement;

22.1.6 TSI breaches any other agreement, covenant, representation or warranty contained in this Agreement that is not otherwise specifically listed in this Section 22.1;

22.1.7 Any Guarantor revokes or attempts to revoke its obligations under its guaranty or otherwise takes the position that such instrument is no longer in full force and effect;

22.1.8 Any final judgment is issued holding TSI or any Guarantor liable for an amount in excess of \$100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act;

22.1.9 Any representation or warranty made by TSI in this Agreement or any Guarantor in the Guaranty or any certificate, schedule, instrument or other document delivered by TSI in accordance with this Agreement or the Guarantor under the Guarantee was false or materially misleading when made;

22.1.10 TSI commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any of TSI's partners, members or joint venturers, any material Subcontractors, or any surety, Guarantor or letter of credit Bank;

22.1.11 An involuntary case is commenced against TSI seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to TSI or TSI's debts under any bankruptcy, insolvency or other similar Governmental Rules now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of TSI or any substantial part of TSI's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by TSI in good faith or shall remain undismissed and unstayed for a period of 60 days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any of TSI's partners, members or joint venturers, any material Subcontractors, or any surety, Guarantor or letter of credit bank;

22.1.12 In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to TSI or its debts under any bankruptcy, insolvency or other similar Governmental Rule now or hereafter in effect, this Agreement is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute;

22.1.13 TSI is a party to fraud;

22.1.14 A Persistent Breach occurs;

22.1.15 TSI causes or allows a closing or shutdown of all or a portion of the Project or the RTS Infrastructure in a way not authorized by this Agreement, or the Business Rules, or causes or allows to exist any other condition on or with respect to the RTS Infrastructure which results or may reasonably be expected to result in a material loss of Gross Revenues

to CARTA, and TSI fails to commence diligent, sustained efforts to remedy such condition within four hours, or fails to complete the remedy of such condition within 48 hours, after Notice of such breach; provided that such cure period shall not preclude or delay CARTA's immediate exercise, without Notice or demand, of its rights to cure this condition; and provided further that where an act or omission of TSI constitutes a breach under this Section and any other Section, this Section shall control; or

22.1.16 TSI suspends, ceases, stops or abandons the Work or fails to continuously and diligently prosecute the Work (exclusive of Work stoppage (i) due to termination by CARTA, (ii) due to and during the continuance of a Force Majeure Event or suspension by CARTA, or (iii) for failure of CARTA to make undisputed payments following such period as specified in this Agreement); or

22.1.17 After any rights of appeal have been exhausted, TSI, any Affiliate, or any Subcontractor (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a State department or agency or (ii) has not dismissed any Subcontractor whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or a State department or agency.

22.2 Notice and Opportunity to Cure

(a) Except as otherwise provided below, TSI shall be entitled to 15 days' Notice and opportunity to cure any breach before a TSI Event of Default is declared.

(b) No Notice or opportunity to cure is required for any breach which by its nature cannot be cured, or for which notice and opportunity to remedy or cure has already been provided in accordance with this Agreement.

(c) If a breach is capable of cure but, by its nature, cannot be cured within 15 days, as determined by CARTA, such additional period of time may be provided as reasonably necessary to cure the breach. In such case, TSI shall, within 15 days, provide a plan acceptable to CARTA for curing the breach, including a timeframe for such cure to be completed, and immediately commence implementation and thereafter diligently prosecute such cure to completion. In no event shall any cure period under this paragraph exceed sixty (60) days in total unless CARTA, in its sole discretion, agrees by Notice to extend such time.

(d) In the event of existence of a condition on or affecting the RTS Infrastructure which CARTA believes poses an immediate and imminent danger to public health or safety, CARTA may, without Notice and without awaiting lapse of the period to cure any default, rectify the dangerous condition at TSI's cost. and so long as CARTA undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose CARTA to any liability to TSI and shall not entitle TSI to any other

remedy, Change Order or Claim, it being acknowledged that CARTA has a paramount public interest in providing and maintaining safe public use of and access to the RTS Infrastructure. CARTA's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

22.3 Remedies

22.3.1 If a breach is not subject to cure or is not cured within the period specified in the Notice and opportunity to cure, CARTA may provide a Notice to TSI that a "TSI Event of Default" has occurred and notify TSI to discontinue the Toll Services. In addition to all other rights provided by law or equity and such rights as are otherwise available under this Agreement, (but in each case subject to the applicable limitation of liability in this Agreement), the Performance Bond(s), the O&M Bond(s), any guaranty and any letters of credit, if a TSI Event of Default shall occur, CARTA may, without further notice and without waiving or releasing TSI from any obligations, do any and all of the following and TSI shall have the following obligations (as applicable):

(a) CARTA may terminate this Agreement, or a portion of it, including TSI's rights of entry upon, possession, control, operation and maintenance of the RTS Infrastructure and the Host by providing Notice to TSI specifying the extent of termination and its effective date (Termination for Default Notice);

(b) If, and as directed by CARTA, TSI shall discontinue the Toll Services and withdraw from the Project, as specified by CARTA, and shall remove, at CARTA's direction, materials, Equipment, tools and instruments used by, and any debris or waste materials generated by, any TSI-Related Entity in the performance of the Toll Services;

(c) TSI shall deliver to CARTA documents, Equipment, Hardware, Software, materials, tools, instruments and facilities related to the Toll Services that CARTA deems necessary for completion of the Toll Services and the operation and maintenance of the RTS and Host;

(d) TSI shall confirm the assignment to CARTA of the Subcontracts requested by CARTA and TSI shall terminate, at its sole cost, all other Subcontracts;

(e) CARTA may, deduct and offset any such amounts payable by TSI to CARTA, including (i) the aggregate of reimbursements owing; (ii) Liquidated Damages; (iii) Lane Closure Charges; (iv) 125% of the amounts CARTA deems advisable to cover any existing or threatened claims, Liens, and stop payment notices of Subcontractors, laborers, or other Persons; (v) amounts of any Losses or Third Party Claims that have accrued; (vi) the cost to complete or remediate uncompleted Toll Services or Nonconforming Work, plus an administrative charge equal to 10% of such costs; and (vii) other damages, Losses or amounts that CARTA has determined are or may be payable to CARTA under this Agreement.

(f) CARTA may draw or realize upon any bonds, funds, collateral or security then held by CARTA, including the Performance Bond(s), the O&M Bonds, any guaranty and any letter of credit;

(g) CARTA may appropriate any or all materials, supplies, Hardware, Software and Equipment at the Site (including the Host) as may be suitable and acceptable to CARTA and may direct the surety to complete this Agreement or may enter into an agreement for the completion of this Agreement according to the terms and provisions of this Agreement with one or more contractors, vendors or providers or the Surety, or use such other methods as may be required for the completion of the Toll Services by CARTA; and/or

(h) If CARTA exercises any right to perform any obligations of TSI, in the exercise of such right CARTA may among other things: (i) perform or attempt to perform, or cause to be performed, such Toll Services; (ii) spend such sums as CARTA deems necessary and reasonable to employ and pay such professionals, contractors, vendors and providers and obtain materials, Equipment, Hardware and Software as may be required for the purpose of completing such Toll Services; (iii) execute all applications, certificates and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Toll Services; and (vi) prosecute and defend any action or proceeding incident to the Toll Services.

22.3.2 In addition to other damages that may be applicable under this Agreement, if a TSI Event of Default has occurred during performance of the D&D Work, TSI, Surety and each Guarantor shall be jointly and severally liable to CARTA for all Costs incurred by CARTA or any party acting on CARTA's behalf in completing the Toll Services or having the Toll Services completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Toll Services, and increased O&M Work and financing costs under the financing closed by CARTA in connection with NTP2). Without limiting CARTA's rights under this Agreement, upon occurrence of an Event of Default and so long as it continues, CARTA may withhold all or any portion of further payments to TSI until the later of (i) the System Acceptance Date, or (ii) the date on which CARTA otherwise accepts the RTS as complete or determines that it will not proceed with completion, at which time CARTA will determine whether and to what extent TSI is entitled to further payments. Promptly following such System Acceptance Date or the date on which CARTA otherwise accepts the RTS as complete or determines that it will not proceed with completion, the total cost of all completed Toll Services shall be determined, and CARTA shall notify TSI, the Surety and each Guarantor in writing of the amount, if any, that TSI, the Surety and each Guarantor shall pay CARTA or CARTA shall pay TSI or its surety with respect thereto. CARTA will deduct, from any moneys due or which will become due to TSI or its Surety, all costs and charges incurred by CARTA, including attorneys', accountants' and expert witness fees and costs; together with. (a) the cost of completing the D&D Work under this Agreement together with an administrative charge of 10% of such costs; (b) any reimbursements owing to CARTA;

(c) any Lane Closure Charges; (d) 125% of the amounts CARTA deems advisable to cover any existing or threatened claims, Liens and stop payment notices of Subcontractors, laborers or other Persons; (e) the amounts of any Losses or Third Party Claims that have accrued; and (f) other damages or amounts that CARTA has determined are or may be payable to CARTA under this Agreement (including any Liquidated Damages). If such expense exceeds the sum which would have been payable under this Agreement, then TSI and its Surety(ies) and each Guarantor shall be liable and shall pay to CARTA the amount of such excess. If the Surety or Guarantor fails to pay such amount immediately upon CARTA's demand, then CARTA may collect interest from the Surety or Guarantor on the amounts CARTA is required to pay in excess of the remaining balance of the Agreement Price. The interest rate which the Surety and each Guarantor shall pay shall be the lesser of (a) 10% per annum or (b) the maximum rate allowable under applicable Governmental Rules. The interest rate shall accrue on all amounts CARTA has had to pay excess of the remaining balance of the Agreement Price.

22.3.3 TSI acknowledges that if a default under Sections 22.1.10, or 22.1.11 occurs, such event could impair or frustrate TSI's performance of the Toll Services. Accordingly, TSI agrees that upon the occurrence of any such event, CARTA may request of TSI, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 15 days of delivery of the request shall entitle CARTA to terminate this Agreement and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, CARTA may proceed with the Toll Services with its own forces or with other contractors, vendors and providers on a time and material or other appropriate basis, the cost of which will be credited against and deducted from CARTA's payment obligations under this Agreement. The foregoing shall be in addition to all other rights provided by Governmental Rule or equity and such rights as are otherwise available under this Agreement, any guaranty and the Performance Bond(s), the O&M Bonds and any letter of credit.

22.3.4 In lieu of the provisions of this Section 22.3 for terminating this Agreement and completing the Toll Services, CARTA may, in its sole discretion, pay TSI for the parts already done according to the provisions of this Agreement and may treat the parts remaining undone as if they had never been included or contemplated by this Agreement. No claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Toll Services uncompleted by TSI.

22.3.5 If this Agreement is terminated for grounds that are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience in accordance with Section 21.

22.3.6 The exercise or beginning of the exercise by CARTA of any one or more rights under this Section 22.3 shall not preclude the simultaneous or later exercise by CARTA of any or all other such rights, each of which shall be cumulative.

22.3.7 If CARTA suffers damages or other Losses as a result of TSI's or any TSI-Related Entity's breach or failure to perform an obligation under this Agreement, then, subject to the limitation on liability contained in Section 24, CARTA may recover such damages and Losses from TSI regardless of whether the breach or failure that gives rise to the damages or Losses ripens into a TSI Event of Default.

22.3.8 TSI, each Surety and Guarantor shall not be relieved of liability for continuing Liquidated Damages on account of a default by TSI under this Agreement or by CARTA's declaration of a TSI Event of Default, or by actions taken by CARTA under this Section 22.3.

22.3.9 CARTA's remedies associated with any false statement contained in the Responsible Proposer Questionnaire included in the Proposal or the questionnaire included in the Statement of Qualifications shall include the right to rescind the Agreement.

22.3.10 CARTA's rights with respect to Nonconforming Work shall include the right to accept such Toll Services and reduce the Total Capital Cost in lieu of the rights specified in this Section 22.

22.3.11 If CARTA exercises any right to perform any obligations of TSI with respect to Toll Services, in the exercise of such rights CARTA may, among other things:

(a) Perform or attempt to perform, or cause to be performed, such Toll Services;

(b) Employ security guards and other safeguards to protect such RTS Infrastructure and the Host;

(c) Spend such sums as CARTA deems necessary and reasonable to employ and pay such engineers, consultants, suppliers, programmers, contractors and customer service representatives, including one or more replacement contractor(s), as may be required for the purpose of completing or performing the Toll Services;

(d) Take possession of the RTS Infrastructure and the Host, and of all Equipment, Hardware, Software, materials, instruments and tools located there which are owned or provided by TSI;

(e) Draw on and use proceeds from any Bond, guaranty and any letter of credit in accordance with the terms of such document to pay such sums;

(f) Execute all applications, certificates and other documents as may be required to perform the Toll Services;

(g) Make decisions respecting, assume control over and continue the operation of the RTS as CARTA determines appropriate;

(h) Modify or terminate any contractual arrangements, including any Subcontracts;

(i) Take any and all other actions which CARTA may in its sole discretion consider necessary to perform the Toll Services; and/or

(j) Prosecute and defend any action or proceeding incident to operating or maintaining the RTS.

22.4 Failure to Comply Caused by Delay Event

Relief from Excusable Delay shall only apply to the particular element of the Toll Services with respect to which it has occurred. If TSI fails to meet the Project Schedule as a result of an Excusable Delay, CARTA shall not be entitled to terminate this Agreement or exercise any of the rights described in Section 22.3 for such failure of TSI to perform, except as follows: (i) if TSI fails to perform or delays the performance of any Toll Services as the result of an Excusable Delay, then CARTA may cause Third Parties to perform such Toll Services, and, in such event, the cost of such Toll Services shall be deducted from the Agreement Price; and (ii) occurrence of an Excusable Delay shall not excuse TSI from its obligation to pay damages, including Delay Liquidated Damages, for failure to achieve any Project Milestone by the applicable Guaranteed Completion Date; provided, however, that to the extent that TSI is excused from payment of Delay Liquidated Damages by reason of Section 24 or otherwise, CARTA may treat the Excusable Delay as a TSI Event of Default and may terminate this Agreement and exercise any and all rights available under this Agreement.

22.5 Right to Stop Work for Failure by CARTA to Make Undisputed Payment

TSI may suspend the Toll Services if CARTA fails to pay undisputed amounts due to TSI under this Agreement within 90 days from the due date for such payment and CARTA fails to make such payment within 30 days after CARTA receives from TSI Notice of such delinquency following the 90 day period. Any such work stoppage shall be considered a suspension for convenience under Section 20. TSI shall not have the right to terminate this Agreement for default as the result of any failure by CARTA to make an undisputed payment due under this Agreement, but TSI may declare a Termination for Convenience under Section 21 by delivering to CARTA a Notice of Termination for Convenience specifying the Termination Date, if such non-payment of an undisputed amount continues for more than 180 days after CARTA's receipt of Notice of nonpayment from TSI. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 21.

22.6 Anticipatory Breach

22.6.1 TSI recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous breaches or failures to perform by TSI, even if individual instances are not material or are eventually cured, will undermine the confidence and trust essential to

the success of this Agreement and will have a material, cumulative adverse impact on the value of this Agreement to CARTA and the use, operation and enjoyment of the Project by the traveling public. TSI acknowledges and agrees that the measures for determining the existence of such a pattern or practice described in the definition of Persistent Breach are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

22.6.2 Accordingly, in the event CARTA issues a notice of Persistent Breach, and notwithstanding any other provisions of this Agreement, CARTA may declare an anticipatory breach of this Agreement by TSI. So long as the circumstances under the definition of Persistent Breach have occurred, any such declaration of anticipatory breach shall be valid, conclusive and binding, and such breach shall be deemed material even if such items comprising the Persistent Breach have been cured.

22.6.3 Following declaration of an anticipatory breach, TSI shall have a reasonable period of time, in no event to exceed the time period for each requirement stated below (measured from the date CARTA issues notice of anticipatory breach), to fully and completely deliver all of the following assurances of performance, which TSI agrees and acknowledges are (i) the minimum necessary to tender adequate assurance of performance and (ii) reasonable, fair and appropriate to bring to a halt the pattern and practice of continuing, repeated and numerous breaches and failure to perform:

(a) Full and complete cure of all outstanding TSI defaults, to be completed within 30 days (provided, however, that the foregoing shall not modify or limit CARTA's rights to declare a TSI Event of Default or exercise rights with respect thereto for breaches that have no cure period or a shorter cure period than 30 days);

(b) Any new Key Personnel replacement, to the extent required by CARTA, each replacement to be acceptable to CARTA, in its sole discretion, to be completed within 30 days;

(c) A revised and restated Quality Management Plan, meeting Good Industry Practice, in form and content acceptable to CARTA, in its good faith discretion, to be completed and delivered within 15 days. As part of the revised plans, CARTA may increase the level of CARTA involvement and oversight, at the sole cost and expense of TSI, and such involvement shall not be cause for any relief or rights on the part of TSI under this Agreement or otherwise;

(d) Replacement of each Subcontractor that CARTA determines is or was a material source of any continuing, repetitive or chronic breach or failure to perform (including any Subcontractor with responsibility for quality assurance or quality control), with a substitute Subcontractor acceptable to CARTA, in its good faith discretion, within 60 days; and

(e) Notwithstanding any limitation on the maximum amount of the Bonds specified under this Agreement, TSI shall increase the bonded sums under the Bonds in place by 50%, to be completed within 15 days or, alternatively, provide a letter of credit or cash collateral in such amount or otherwise provide additional security acceptable to CARTA, in its sole discretion; provided, however, that the foregoing is not intended to increase the amounts of any applicable limitation of liability under this Agreement.

22.6.4 If, for any reason, TSI fails to complete any element of the assurances of performance described in this Section within the applicable time period, the same shall constitute an uncured material TSI Event of Default. Thereupon, CARTA, without further notice and cure period, shall be able to immediately exercise all rights under this Agreement, at law or in equity.

22.6.5 Nothing contained in this Section shall modify, alter, discharge or release TSI from any obligations to pay Liquidated Damages or other compensation under this Agreement.

SECTION 23

OBLIGATIONS UPON TERMINATION

23.1 TSI's Responsibilities After Receipt of Termination Notice during D&D Phase

After receipt of a Termination Notice during the D&D Phase, and except as otherwise directed by CARTA, TSI shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under Section 21:

23.1.1 Stop Work as specified in the Termination Notice. If TSI has commenced D&D Work at the Site, TSI shall immediately and safely demobilize and secure its work and staging areas in a manner satisfactory to CARTA.

23.1.2 Notify all affected Subcontractors that this Agreement is being terminated and that their Subcontracts (including orders for Equipment, Hardware, Software, materials, services or facilities) are not to be further performed unless otherwise authorized in writing by CARTA.

23.1.3 Enter into no further Subcontracts (including orders for Equipment, Hardware, Software, materials, services or facilities), except as necessary to complete the continued portion of the Toll Services, if any, or for mitigation of damages.

23.1.4 Unless instructed otherwise by CARTA, terminate all Subcontracts to the extent they relate to the Toll Services terminated.

23.1.5 Assign to CARTA in the manner, at the times, and to the extent directed by CARTA, in its sole discretion, all of the right, title, and interest of TSI under the Subcontracts

so terminated, in which case CARTA may accept performance, settle or pay any termination settlement proposal in connection with the termination of such Subcontract.

23.1.6 Subject to the prior written approval of CARTA, settle all outstanding liabilities, claims and all termination settlement proposals arising from termination of Subcontracts that are required to be terminated under this Agreement.

23.1.7 No later than 30 days from the Termination Date, unless extended in writing by CARTA upon written request of TSI within such 30day period, provide CARTA with an inventory list of all Equipment, Hardware and Software previously produced, purchased or ordered from Suppliers for use in the Toll Services and not yet used in the Toll Services, including its storage location, as well as any documentation or other property required to be delivered under this Agreement which is either in the process of development or previously completed but not yet delivered to CARTA, and such other information as CARTA may request; and transfer title (or, with respect to any third party licensed Software, assign to CARTA all of TSI's and any TSI-Related Entity's license to such Software, or obtain a direct license in the name of CARTA for such Software on the same terms) and deliver to CARTA through bills of sale or other documents of title, assignment or license, as applicable, as directed by CARTA, (a) the D&D Work in process, completed D&D Work, Equipment, any Hardware, Software and other material produced or acquired for the Toll Services terminated that has not already been provided to CARTA, and (b) the RTS Documentation, Plans, and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to CARTA if the D&D Work had been completed.

23.1.8 Complete performance in accordance with this Agreement of all D&D Work not terminated.

23.1.9 Take all action that may be necessary, or that CARTA may direct, in its sole discretion, for the safety, protection and preservation of (a) the public, including public and private vehicular movement, (b) the D&D Work and (c) Equipment Hardware, Software and property related to the Toll Services that is in the possession of TSI and in which CARTA has or may acquire an interest.

23.1.10 If requested by CARTA, withdraw from the portions of the Site designated by CARTA and remove such Equipment used by, and any debris or waste materials generated by, TSI and any Subcontractor in the performance of the D&D Work as CARTA may direct.

23.1.11 Take other actions directed by CARTA.

23.2 Responsibility for Equipment, Hardware and Software After Termination Notice

23.2.1 TSI shall continue to be responsible for loss or damage to Equipment, Hardware and Software after issuance of the Termination Notice, except as follows:

(a) TSI's responsibility for loss or damage to Equipment, Hardware and Software for which partial payment has been made as provided under this Agreement shall terminate when CARTA's Representative certifies that the applicable Equipment has been stored in the manner and at the locations directed by CARTA.

(b) TSI's responsibility for damage to Equipment, Hardware and Software purchased by CARTA subsequent to the issuance of the Termination Notice shall terminate when title and delivery of those materials has been taken by CARTA or its designee.

23.2.2 When CARTA's Representative determines that TSI has completed the D&D Work directed to be completed prior to termination and such other work as may have been ordered to secure the applicable portion of the Toll Services for termination, CARTA's Representative will recommend that CARTA formally accept such D&D Work, and immediately upon and after such acceptance by CARTA, TSI will not be required to provide for continuing safety, security and maintenance at the applicable Site.

23.3 TSI's Responsibilities Upon the Expiration Date or After Receipt of Termination Notice during O&M Period

23.3.1 Prior to the expiration or termination of this Agreement, TSI shall confer and cooperate with CARTA and any Successor to determine the activities required in order to terminate in a safe and orderly manner and to allow the transition without interruption of O&M Work performed by TSI under this Agreement to a Successor.

23.3.2 Upon the expiration or termination date of this Agreement, TSI shall, except as otherwise provided in Sections 23.3.3 and 23.3.6, remove its personnel from all CARTA or Department facilities, and leave such facilities in good repair in at least the condition TSI is required to maintain at that time under this Agreement, with an equivalent supply of Components as were present on the Toll Commencement Date, or such modified supply as has been agreed to by the Parties. All such items shall remain the property of CARTA without additional charge, and upon the expiration or termination of this Agreement possession and control of the facilities, and RTS shall be transferred to CARTA, unless otherwise directed by CARTA. CARTA may request that certain transition related documentation or functions be transferred to the Successor before the expiration or termination date. TSI shall comply with such requests from CARTA within 15 days. TSI shall provide full database access to the Successor for the legacy RTS a minimum of 120 days prior to the expiration date of this Agreement.

23.3.3 If the expiration or termination of this Agreement occurs during the O&M Period, TSI shall allow CARTA to recruit and retain as its employees (or as employees of any successor operator of the RTS under contract with CARTA) TSI's non-management operating

staff working exclusively on the Toll Services. No later than 90 days prior to the expiration or termination date of this Agreement (or within 30 days after receipt of a Notice of Termination during the O&M Period), TSI shall submit to CARTA detailed information relating to each such operating employee and his or her compensation, role or function and working hours in performing the Toll Services. Such information shall be in sufficient detail that CARTA or any Successor may contact such employee and seek to engage such employee on substantially the same terms and conditions as such employee is presently engaged by TSI or on such other terms and conditions as CARTA may then be bound to under any applicable labor agreement. Within 30 days of TSI's submission to CARTA of such information, CARTA shall provide Notice of each such employee whom CARTA or any such Successor wishes to recruit. TSI shall allow the Successor to conduct on-site interviews of such employees. Nothing contained in Section 23.3.3 is intended to require that TSI violate any Governmental Rule regarding employment or privacy.

23.3.4 No fewer than 90 days prior to the expiration or termination date of this Agreement (or within 30 days after receipt of a Notice of Termination during the O&M Period), TSI shall provide CARTA with an inventory list of all Equipment, Hardware and Software produced, purchased or ordered from Suppliers for use in the O&M Work and not yet used in the O&M Work, including its storage location, as well as any documentation or other property required to be delivered under this Agreement which is either in the process of development or previously completed but not yet delivered to CARTA, and such other information as CARTA may request. No fewer than 90 days prior to the expiration or termination date of this Agreement (or within 30 days after receipt of a Notice of Termination during the O&M Period), TSI shall transfer title (or, with respect to any third party licensed Software, assign to CARTA all of TSI's and any TSI-Related Entity's license to such Software, or obtain a direct license in the name of CARTA for such Software on the same terms) and deliver to CARTA through bills of sale or other documents of title, assignment or license, as applicable, as directed by CARTA, the Toll Services in process, completed Toll Services, supplies, equipment, any Hardware, Software (other than Pre-Existing Software) and other material produced or acquired for the Toll Services terminated that has not already been provided to CARTA.

23.3.5 On or before the expiration or termination date of this Agreement, and except as otherwise provided herein, all RTS Documentation, Plans, manuals, training materials, procedures, programs, operating and financial records and accounts and other such materials used or developed in the performance of the Toll Services shall be delivered to CARTA and shall remain or become the property of CARTA. TSI also shall deliver or make available to CARTA all work product and all intellectual property rights TSI is required to deliver or make available in accordance with this Agreement, and all records and archives of RTS Data.

23.3.6 At the request or direction of CARTA, TSI shall assist and cooperate with CARTA in the transitioning to replacement operating personnel of CARTA or any Successor, and shall assist in training and phasing in the services of such replacement operator or personnel.

CARTA may make such a request or give such a direction through a Directive Letter or a Change Order. TSI shall implement the approved End of Agreement Transition Plan, or if TSI has not already submitted such plan and obtained CARTA's approval, TSI shall diligently cooperate with CARTA upon request in developing the End of Agreement Transition Plan, and such plan shall be incorporated into any Change Order concerning transition services. In the event of disagreement over the End of Agreement Transition Plan, CARTA may unilaterally adopt and direct performance of an End of Agreement Transition Plan as part of the Directive Letter or Change Order. Such End of Agreement Transition Plan may include a scope of work and a schedule for training personnel in the architecture, management, operation and maintenance of the RTS, and in the performance of any other Toll Services. TSI shall be available and provide personnel to perform such transition and training services in accordance with the End of Agreement Transition Plan for the period set forth in the plan, in any event not to extend beyond 120 Days following the expiration or termination date of this Agreement.

23.3.7 RTS Agreements

(a) Upon the expiration or termination of this Agreement, TSI shall immediately upon such termination (i) assemble at its offices in the State and make available for CARTA's and/or CARTA's successor Toll System Integrator's review during normal business hours all Subcontracts, contracts with suppliers, licenses and other RTS related agreements and amendments thereto which are then in effect, including warranties (collectively, RTS Agreements); (ii) deliver to CARTA and such successor, if any, true and complete originals thereof; (iii) execute and deliver to CARTA or such successor, as applicable, a written assignment and assumption agreement with respect to any such RTS Agreement(s) which CARTA or such successor elects to assume; and (iv) terminate, or cause to be terminated, effective on the same date as the effective date of such termination, any such RTS Agreement(s) which neither CARTA nor such successor elects, in its sole discretion, to assume.

(b) CARTA's or such successor's, as applicable, assumption of any RTS Agreements in accordance with clause (a) shall pertain only to obligations arising from and after the effective date of the termination of this Agreement, and TSI shall remain liable for all obligations arising under this Agreement prior to such effective date of termination.

SECTION 24

LIMITATION OF TSI'S LIABILITY

To the extent permitted by applicable Governmental Rule, TSI's liability under this Agreement to CARTA for damages (including actual, indirect, special, consequential, multiple or punitive damages) (whether arising in contract, negligence or other tort, or any other theory of law) shall not exceed the sum of:

- (a) an amount equal to 100% of the Agreement Price; plus

- (b) any amounts paid or payable by TSI that are covered by or should have been covered by insurance proceeds under this Agreement; plus
- (c) all Losses incurred by any Indemnified Party in connection with any TSI Fault in connection with the Toll Services; plus
- (d) TSI's indemnification obligations under this Agreement regarding third party suits, actions, proceedings, judgments and claims; plus;
- (e) Losses arising out of TSI Release of Hazardous Materials.

SECTION 25

INDEMNIFICATION

25.1 Indemnifications by TSI

25.1.1 Except as otherwise specified in this Agreement, TSI shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Claims and Losses incurred in connection with the following (each an "Indemnified Claim"):

- (a) The breach or alleged breach of this Agreement by any TSI-Related Entity;
- (b) The failure or alleged failure by any TSI-Related Entity to comply with the Governmental Approvals or any applicable Governmental Rules;
- (c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in connection with the Project, this Agreement and the Toll Services and/or the system of methods, processes, Software, Hardware, designs, information, or other items furnished or communicated to CARTA or another Indemnified Party in accordance with this Agreement provided that if infringement can be avoided by modification to the allegedly infringing article, CARTA agrees to allow such modification, at TSI's sole cost and expense, unless the form, fit or function of the allegedly infringing article or the system is, in CARTA's sole determination, adversely affected; and further provided that this indemnity shall not apply to any infringement to the extent directly and solely resulting from (i) CARTA's material failure to comply with a material specific prior written instruction regarding use provided to CARTA by TSI; (ii) compliance with written specifications prescribed by CARTA with respect to which (1) TSI has complied in full; (2) the reason for the infringement solely and directly arises out of CARTA's specifications, and (3) TSI has notified CARTA in writing in advance of potential infringement and CARTA has directed TSI in writing to proceed and disregard the potential infringement, or (iii) material modifications to the Deliverables directed by CARTA and not made by a TSI-Related Entity;

(d) The actual or alleged negligent act, error or omission, illegal activities, bad faith, gross negligence, fraud, recklessness, criminal conduct or intentional misconduct of any TSI-Related Entity or any TSI Fault in or associated with performance of the Toll Services and/or this Agreement;

(e) Any and all Claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any TSI-Related Entity or any of their respective agents, officers or employees with respect to any payment for the Toll Services made to or earned by any TSI-Related Entity;

(f) Any and all stop payment notices and/or liens filed in connection with the Toll Services, including all reasonable expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop payment notice or lien and any other liability to Subcontractors for failure to pay sums due for their work or services, provided that CARTA is not in default in payments owing to TSI with respect to the applicable Toll Services;

(g) Any TSI Release of Hazardous Materials;

(h) The claim or assertion by any other contractor, including Civil Contractor or any Other CARTA Contractor, that any TSI-Related Entity (i) interfered with or hindered the progress or completion of work being performed by such other contractor, so as to cause inconvenience disruption, delay, or loss, except where the TSI-Related Entity was not in any manner engaged in performance of the Work, or (ii) failure of any TSI-Related Entity to cooperate reasonably with other contractors in accordance therewith;

(i) Errors in the Toll Services regardless of whether such Errors were also included in any CARTA Design Documents or Reference Documents; except that the foregoing indemnity shall not apply to the extent that the Errors were the direct and sole cause of the Claims and Losses and specifically included in Reference Documents and this Agreement expressly provides that TSI may rely on such Reference Documents;

(j) Any TSI-Related Entity's breach of or failure to perform an obligation that CARTA owes to a third Person, including Governmental Entities and Utility Owners under law or under any agreement between CARTA and a third Person, where (i) CARTA has delegated performance of the obligation to TSI under this Agreement, or (ii) the acts or omissions of any TSI-Related Entity which render CARTA unable to perform an obligation that CARTA owes to a third Person, including Governmental Entities and Utility Owners, under any agreement between CARTA and a third Person, where the agreement was expressly disclosed to CARTA;

(k) Any failure to pay any Liquidated Damages or Lane Closure Charges under this Agreement; and/or

(l) The unauthorized use, release or disclosure of Personally Identifiable Information.

25.1.2 The following restrictions apply to the indemnities in Section 25.1.1:

(a) Except as permitted by Civil Code Sections 2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on TSI for the active negligence of CARTA, or to relieve CARTA of liability for such active negligence;

(b) In claims by an employee of TSI, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, such indemnities are not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for TSI or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws; and

(c) Subject to the releases and disclaimers under this Agreement, such indemnities shall not extend to any Claim or Losses to the extent that such Claim or Losses was directly caused by the gross negligence, reckless or willful misconduct, bad faith or fraud of an Indemnified Party.

25.2 Defense and Indemnification Procedures

25.2.1 If an Indemnified Party receives notice of an Indemnified Claim or other item covered under Section 25, or otherwise has Actual Knowledge of a Claim that it believes is within the scope of the indemnities under Section 25.1.1, CARTA shall by Notice as soon as practicable after receipt of the Indemnified Claim: (a) inform TSI of the Indemnified Claim, (b) send to TSI a copy of all written materials CARTA has received asserting such Indemnified Claim, and (c) notify TSI that should no insurer accept defense of the Indemnified Claim, the Indemnified Party will conduct its own defense unless TSI accepts the tender of the Indemnified Claim in accordance with Section 25.2.5.

25.2.2 As soon as practicable after TSI receives Notice of an Indemnified Claim or otherwise has Actual Knowledge of an Indemnified Claim, it shall tender the Indemnified Claim by Notice to the insurers under all potentially applicable insurance policies. CARTA and other Indemnified Parties also may tender such Indemnified Claims to such insurers.

25.2.3 If the insurer under any applicable insurance policy accepts the tender of defense, CARTA and TSI shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 25.2.4 shall apply.

25.2.4 If the defense is tendered to TSI, then within 30 days after receipt of the tender, it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if

not tendered to an insurer or if the insurer has rejected the tender) shall deliver a notice stating that TSI:

(a) Accepts the tender of defense and confirms that the Indemnified Claim is subject to full indemnification under this Agreement without any “reservation of rights” to deny or disclaim full indemnification thereafter;

(b) Accepts the tender of defense but with a “reservation of rights” in whole or in part; or

(c) Rejects the tender of defense based on a determination that it is not required to indemnify against the Indemnified Claim under the terms of this Agreement.

25.2.5 If TSI accepts the tender of defense under Section 25.2.4(a), TSI may select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and TSI shall otherwise control the defense of such Indemnified Claim including settlement, and bear the fees and costs of defending and settling such Indemnified Claim; except that CARTA has the right of prior approval of any settlement that relates to or may impact the Toll Services, financing, or revenues of the Project. During such defense:

(a) TSI shall fully and regularly inform the Indemnified Party in writing of the progress of the defense and of any settlement discussions; and

(b) The Indemnified Party shall fully cooperate in said defense, provide to TSI all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and use reasonable efforts to maintain the confidentiality of all communications between it and TSI concerning such defense.

25.2.6 If TSI responds to the tender of defense as specified in Section 25.2.4(b) or Section 25.2.4(c), the Indemnified Party may select its own legal counsel and otherwise control the defense of such Indemnified Claim, including settlement.

25.2.7 Notwithstanding TSI’s acceptance of a tender of defense under Sections 25.2.4(a) and 25.2.4(b), the Indemnified Party may assume its own defense at any time by delivering to TSI notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the Indemnified Claim or at any time thereafter, reasonably determines that:

(a) A conflict exists between the Indemnified Party and TSI that prevents or potentially prevents TSI from presenting a full and effective defense;

(b) TSI is otherwise not providing an effective defense in connection with the Indemnified Claim; or

(c) TSI lacks the financial capacity to satisfy potential liability or to provide an effective defense.

25.2.8 If the Indemnified Party is entitled to and elects to conduct its own defense pursuant to Section 25.2.7 of an Indemnified Claim for which it is entitled to indemnification, TSI shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. If the Indemnified Party is entitled to and elects to conduct its own defense, then:

(a) In the case of a defense that otherwise would be conducted under Section 25.2.7(a), the Indemnified Party may settle or compromise the Indemnified Claim with TSI's prior written consent, which in each case shall not be unreasonably withheld or delayed;

(b) In the case of a defense that otherwise would be conducted under Section 25.2.7(b), the Indemnified Party may settle or compromise the Indemnified Claim with TSI's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to TSI and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by TSI; and

(c) In the case of a defense conducted under Section 25.2.7(c), the Indemnified Party shall have the right to settle or compromise the Indemnified Claim without TSI's prior written consent and without prejudice to its rights to be indemnified by TSI.

25.2.9 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party that has assumed control of defense is entitled to do so under Section 25.2.7 shall be resolved according to the dispute resolution procedures set forth in Section 26, but the foregoing shall not preclude an Indemnified Party from preserving its rights or defending the Claim pending such resolution.

25.2.10 The Parties acknowledge that while Section 25.1 contemplates that TSI will have responsibility for certain Indemnified Claims, circumstances may arise where the Parties may share liability with respect to such Indemnified Claims. In such cases, where either Party believes that an Indemnified Claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, the Party shall confer with the other Party on management of the Indemnified Claim in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by settlement, arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of this Section 25.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties concerning the Indemnified Claim.

25.2.11 In determining responsibilities and obligations for defending Indemnified Claims pursuant to this Section 25.2, specific consideration shall be given to the following factors:

- (a) The party performing the activity in question;
- (b) The location of the activity and incident;
- (c) Contractual arrangements then governing the performance of the activity; and
- (d) Allegations of respective fault contained in the Indemnified Claim.

25.3 Indemnification by CARTA

The Parties acknowledge and agree that:

25.3.1 CARTA may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Materials that may be currently present on the Site;

25.3.2 Certain State and federal statutes provide that individuals and firms may be held liable for Claims and Losses related to Hazardous Materials under such doctrines as joint and several liability and/or strict liability;

25.3.3 It is not the intention of the Parties that TSI be exposed to any Claim or Loss in connection with (a) proper Hazardous Materials management activities in connection with pre-existing Site contamination, whether known or unknown (except as a result of TSI Release of Hazardous Materials, and/or (b) the activities of any Persons other than any TSI-Related Entity).

25.4 No Effect on Other Rights

Nothing herein shall be construed to negate, abridge, or reduce other rights or obligations that would otherwise exist in favor of an Indemnified Party under this Agreement.

25.5 Intent of Indemnity for Breach of Agreement

The requirement to provide an indemnity for breach of contract is intended to provide protection to CARTA with respect to Third Party Claims associated with such breach. It is not intended to provide CARTA with an alternative cause of action for damages incurred directly by CARTA with respect to such breach.

25.6 Design Professionals Indemnity Obligation

With respect to Work performed by a design professional as defined in California Civil Code section 2782.8, the indemnities in this Section 25 shall apply only to the extent permitted by said Section 2782.8.

25.7 Notification of Third Party Claim

CARTA and TSI shall each provide timely notification to the other party of the receipt of any third party claim relating to the Agreement.

SECTION 26 DISPUTE RESOLUTION

26.1 Disputes Arising During the D&D Phase

26.1.1 Section 20104 et seq. of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on claims of \$375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code to only those claims subject to Sections 2014 et seq. and Section 9204 of the California Public Contract Code and not all claims arising under this Agreement. This Section shall be construed to be consistent with said statutes.

26.1.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Agreement has been denied by the CARTA, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of TSI pursuant to the Contract, or (C) an amount the payment of which is disputed by the CARTA. Claims governed by this Section may not be filed unless and until the TSI completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and TSI's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the CARTA and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

26.1.3 Supporting Documentation. TSI shall submit all claims in the following format:

26.1.4 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

26.1.5 List of documents relating to claim:

- (a) Specifications
- (b) Drawings
- (c) Clarifications (Requests for Information)
- (d) Schedules
- (e) Other
- (f) Chronology of events and correspondence
- (g) Analysis of claim merit
- (h) Analysis of claim cost
- (i) Time impact analysis in CPM format

(j) If TSI's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, if any, TSI shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

(k) Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 et seq.

26.1.6 CARTA's Response. Upon receipt of a claim pursuant to this Section, CARTA shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide TSI a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

26.1.7 If CARTA needs approval from its governing body to provide TSI a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, CARTA shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide TSI a written statement identifying the disputed portion and the undisputed portion.

26.1.8 Within 30 days of receipt of a claim, CARTA may request in writing additional documentation supporting the claim or relating to defenses or claims CARTA may have against TSI. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of CARTA and TSI.

26.1.9 CARTA's written response to the claim, as further documented, shall be submitted to TSI within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by TSI in producing the additional information or requested documentation, whichever is greater.

26.1.10 Meet and Confer. If TSI disputes CARTA's written response, or CARTA fails to respond within the time prescribed, TSI may so notify CARTA, in writing, either within 15 days of receipt of CARTA's response or within 15 days of CARTA's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, CARTA shall schedule a meet and confer conference within 30 days for settlement of the dispute.

26.1.11 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, CARTA shall provide TSI a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after CARTA issues its written statement. Any disputed portion of the claim, as identified by TSI in writing, shall be submitted to nonbinding mediation, with CARTA and TSI sharing the associated costs equally. CARTA and TSI shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

26.1.12 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

26.1.13 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

26.1.14 Unless otherwise agreed to by CARTA and TSI in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

26.1.15 The mediation shall be held no earlier than the date TSI completes the Work or the date that TSI last performs Work, whichever is earlier. All unresolved claims shall be

considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

26.1.16 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, TSI must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time TSI submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

26.1.17 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

26.1.18 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures.. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

26.1.19 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

26.1.20 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

26.1.21 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the CARTA. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any

prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the CARTA. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

26.1.22 Non-Waiver. CARTA's failure to respond to a claim from TSI within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. CARTA's failure to respond shall not waive CARTA's rights to any subsequent procedures for the resolution of disputed claims.

26.1.23 Timely Payment of Undisputed Amounts of any Claim. In accordance with Pub. Cont. Code § 9204, CARTA shall conduct a reasonable review of any Claim by TSI subject to Pub. Cont. Code § 9204 within 45 days (or, if any determination requires approval from CARTA's governing body, in which case within three days after the next duly publicly noticed meeting of such governing body after such 45 day period) and pay TSI within 60 days thereafter the undisputed portion of any Claim. CARTA shall provide TSI a written statement identifying what portion of any Claim is disputed and what portion is undisputed, if any. CARTA may request additional evidence from TSI to aid CARTA in identifying the disputed and undisputed portions of any Claim. TSI shall provide such evidence promptly thereafter. CARTA will pay within 60 days after receipt of sufficient evidence, in CARTA's discretion, further amounts of such Claim that CARTA identifies as undisputed. The Parties may, by mutual agreement, extend these time periods.

26.2 Disputes Arising During O&M Phase

26.2.1 TSI shall be solely responsible for providing timely written notice to CARTA of any claims in accordance with the provisions of this Agreement. It is CARTA's intent to investigate and attempt to resolve any TSI claims before TSI has performed any disputed Work. Therefore, TSI's failure to provide timely notice shall constitute a waiver of TSI's claims.

26.2.2 TSI shall not be entitled to the payment of any additional compensation or time extension for any cause, including any act, or failure to act, by CARTA, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given CARTA due written notice of a potential claim, as provided herein. In addition, TSI must follow the Change Order notification procedures, and Article 2.6.2, Excusable Delay. The potential claim shall set forth the reasons for which TSI believes additional compensation or time may be due, the nature of the costs involved, the amount of the potential claim, and the impact, if any, to the schedule. Notice of claim shall be given to CARTA no later than 30 Days following either the occurrence of the event on which such claim is based or the date on which the TSI knew or should have known of the event, or where TSI disputes the result of a protest under Article 12.2, Protests, no later than 21 Days from its receipt of CARTA's response to the protest.

26.2.3 If there is a dispute over any claim, TSI shall continue to work during the dispute resolution process in a diligent and timely manner as directed by CARTA and shall be governed by all applicable provisions of this Agreement. TSI shall maintain cost records of all Work that is the basis of any dispute.

26.2.4 If an agreement can be reached which resolves TSI's claim, the parties shall execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the TSI claim, they may choose to pursue dispute resolution pursuant to the procedure below, or CARTA may terminate this Agreement.

26.2.5 Informal Resolution of Disputes. TSI and CARTA shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that CARTA provide a written determination as to the proposed resolution of the dispute. Within 21 Days of the request, CARTA Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon TSI's written acceptance of CARTA Project Manager's determination, this Agreement may be modified and the determination implemented or, failing agreement, CARTA may in its sole discretion pay such amounts and/or revise the time for performance in accordance with CARTA Project Manager's determination.

26.2.6 If CARTA Project Manager's determination is not accepted by TSI, the matter shall promptly be referred to senior executives of the Parties having designated authority to settle the dispute. The senior executives shall exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within 30 Days of commencement of senior management negotiations, the Parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

26.2.7 Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between CARTA and TSI that cannot be resolved through the informal efforts described above, may, by specific agreement of the Parties, be submitted to alternative dispute resolution, specifically mediation with the parameters for such dispute resolution being agreed to by the Parties at the time.

26.2.8 Other Remedies. If a dispute is not resolved through discussion or the Parties do not agree to alternative dispute resolution, either party may pursue available legal remedies, subject to any restrictions agreed to in this Agreement, in the Superior Court of California located in Sacramento County. TSI must satisfy the government claims requirements as set forth in Government Code Section 910 et seq. before initiating a civil action, where applicable.

26.2.9 Pending Resolution. TSI shall continue to perform services in compliance with this Agreement during the dispute resolution process in a diligent and timely manner as

directed by CARTA and shall be governed by all applicable provisions of this Agreement. Likewise, CARTA shall continue to make non-disputed payments on non-disputed work during the dispute resolution process.

26.2.10 Costs of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

26.3 Emergency Dispute Resolution

26.3.1 If a Dispute arises that must be resolved expeditiously in order to prevent serious damage to revenues, person or property, or serious interference with a Critical Path, both Parties shall make commercially reasonable efforts to resolve that Dispute quickly. In such case, if TSI's Representative and CARTA's Representative cannot reach a resolution of that Dispute within 24 hours, they must refer the Dispute to CARTA's Executive Director and TSI's Chief Executive Officer (or other officer with authority to make final decisions subject only to board approval and any required third party approvals) for a meeting between CARTA's Executive Director and TSI's Chief Executive Officer to occur within the following 24 hours. Once the urgent aspects of the Dispute have been resolved, the Parties may continue with the remaining procedures for dispute resolution if necessary and to the extent applicable.

26.4 Effect on Surety and Guarantor

Decisions made in accordance with this Section which are binding on TSI shall also be binding on the Surety under the Performance Bond and any Guarantor; except that, unless the Surety or Guarantor, as applicable, is a party to such proceedings, such decisions shall not affect any defenses that are special to the Surety or Guarantor, as applicable (i.e. defenses available to the Surety or Guarantor, as applicable, which could not have been asserted by TSI in the underlying proceeding). In the event that the Surety or Guarantor, as applicable, is a party to any proceedings, it may, and must, assert any such special defenses therein or else such defenses are deemed waived.

26.5 Provisional Remedies

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy which may be necessary, and which is not otherwise available under this Section, to protect its rights, including temporary and preliminary injunctive relief, attachment, claim and delivery, receivership and any extraordinary writ.

26.6 Continuing Performance

During any dispute resolution proceedings, TSI shall carry on its duties under this Agreement, and CARTA shall continue to make undisputed payments in accordance with this Agreement.

26.7 Participation in Proceedings; Joinder

TSI agrees that, (a) at CARTA's request, TSI shall take appropriate action to join Civil Contractor or any Third Parties, including Subcontractors, involved in the any part of the Toll Services as parties in dispute resolution proceedings under this Section; and (b) TSI will allow itself to be joined as a participant in any Dispute, arbitration or other proceeding that involves CARTA and any other Person relating to the Toll Services (including under the Caltrans Contract), and agrees to be bound by the procedures and decisions rendered in such proceeding. This provision is for the benefit of CARTA and not for the benefit of any other party.

26.8 Time Limitation

TSI acknowledges and agrees that CARTA is subject to substantial constraints that have resulted in limitations on its ability to increase the Agreement Price or extend a Completion Deadline. TSI acknowledges and agrees that, due to limitations on funding for the Toll Services, prompt resolution of Disputes is of vital importance to CARTA. TSI agrees that the time limitations stated in this Agreement for the filing of Claims and/or complaints are necessary and reasonable. TSI expressly waives any longer statute of limitations contained in any statute, including Government Code sections 900 et seq. that would otherwise be applicable.

26.9 Performance as Directed

At all times during the Term, including during the course of any dispute, TSI shall (a) perform the Toll Services as directed by CARTA in a diligent manner and without delay, (b) abide by CARTA's decision, order or direction in accordance with this Agreement, and (c) comply with all applicable provisions of this Agreement. Except as otherwise provided in this Agreement, if a dispute arises regarding such performance, order or direction, the dispute shall be resolved in accordance with Section 26.

SECTION 27 DOCUMENTS AND RECORDS, INSPECTION AND TESTING

27.1 Reporting Requirements

27.1.1 TSI shall provide, or cause to be provided to CARTA:

(a) Financial and narrative reports, statements, certifications, budgets and information as and when required in accordance with this Agreement;

(b) Such information and statements as CARTA may reasonably request from time to time for any purpose in connection with the Toll Services and this Agreement;

(c) The periodic updated financial information required in accordance with Section 15.4, and upon request of CARTA for particular fiscal quarters, copies of all other financial statements and information reported by TSI and the Guarantor to their shareholders generally and of all reports filed by TSI and the Guarantor with the United States Securities Exchange Commission under Sections 13, 14, or 15(d) of the Exchange Act to be provided to CARTA as soon as practicable after furnishing such information to TSI's and the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as applicable;

(d) Such information as determined necessary or desirable by CARTA in connection with any Project funding.

(e) Any information to assist or facilitate the submission by CARTA of any documentation, reports or analysis required by the State, Department and/or any other Governmental Entity with jurisdiction over the Toll Services.

27.1.2 All information delivered by TSI under Sections 27.1.1(d) and 27.1.1(e) shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

27.2 Maintenance of, Access to and Audit of Books and Records

27.2.1 TSI shall maintain a complete set of all Books and Records, including copies of all original documents delivered to CARTA and/or the Department. TSI shall keep and maintain such Books and Records in accordance with applicable provisions of this Agreement and of the Project Management Plan, and in accordance with Good Industry Practice. TSI shall grant to CARTA and its Representatives and legal counsel, and Department such audit rights and allow such Persons such access to and the right to copy such Books and Records as such Persons may request from time to time in connection with the issuance of Change Orders and Agreement amendments, the resolution of disputes and claims and such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with this Agreement and applicable Governmental Rules. The right of inspection includes the right to make copies and extracts and take notes.

27.2.2 Where the payment method for any Toll Services is on a time and materials basis or unit price basis, such examination and audit rights shall include all Books and Records and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Toll Services. If an audit indicates TSI has been overcredited under a previous progress report or progress payment, that overcredit

will, at CARTA's sole option, be credited against current progress reports or payments or reimbursed to CARTA by TSI upon demand therefor.

27.2.3 For cost and pricing data submitted in connection with pricing Change Orders or Agreement amendments, unless such pricing is based on adequate price competition (as determined by CARTA, in its sole discretion), established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by Governmental Rule, such Persons and their representatives have the right to examine all books, records, documents and other data of TSI related to the negotiation of or performance of Toll Services under such Change Orders and Agreement amendments for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

27.2.4 CARTA may review and audit TSI, its Subcontractors and their respective Books and Records as and when CARTA deems necessary for purposes of verifying compliance with this Agreement, the Governmental Approvals and applicable Governmental Rule. Without limiting the foregoing, CARTA may audit TSI's Project Management Plan and compliance therewith, including the right to inspect Toll Services and/or activities and to verify the accuracy and adequacy of the Toll Services Management Plan and its component parts, plans and other documentation. CARTA may conduct any such audit of Books and Records upon 24 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud or other criminal activity or breach of obligations under this Agreement.

27.2.5 All Claims or Disputes filed against CARTA shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of CARTA or by an auditor under contract with CARTA. No notice is required before commencing any audit before 90 days after the System Acceptance Deadline. Thereafter, CARTA shall provide 15 days' notice to TSI, any Subcontractors or their respective agents before commencing an audit. TSI, Subcontractors or their agents shall provide adequate facilities, acceptable to CARTA, for the audit during normal business hours. TSI, Subcontractors and their agents shall cooperate with the auditors. Failure of TSI, Subcontractors and their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or Dispute or to permit the auditor access to the Books and Records of TSI, Subcontractors and their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder.

27.2.6 At a minimum, and only with respect to the Project, CARTA and the auditors shall have available to them the following documents:

- (a) Daily time sheets and supervisor's daily reports;

- (b) Union agreements;
- (c) Insurance, welfare, and benefits records;
- (d) Payroll registers;
- (e) Earnings records;
- (f) Payroll tax forms;
- (g) Material invoices and requisitions;
- (h) Material cost distribution work sheet;
- (i) Equipment records (list of company equipment, rates, etc.);
- (j) Subcontractors' (including Suppliers) invoices;
- (k) Subcontractors' and agents' payment certificates;
- (l) Canceled checks;
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) Project Schedules;
- (r) All documents that relate to each and every Claim and Dispute, together with all documents that support the amount of damages as to each Claim or Dispute;
- (s) Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
- (t) Email;
- (u) Network servers, data storage devices, backup tapes/media; and
- (v) Letters and correspondence.

27.2.7 Full compliance by TSI with the provisions of this Section 27 is a contractual condition precedent to TSI's right to seek relief under Section 26.

27.2.8 The Department shall also have the right to review and audit TSI, its Subcontractors and their respective books and records.

27.2.9 TSI represents and warrants the completeness and accuracy of all information it or its agents provide in connection with the audits identified under this Agreement, and shall cause all Subcontractors to warrant the completeness and accuracy of all information such Subcontractors or their agents provide in connection with this Section.

27.2.10 TSI's internal and third party quality and compliance auditing responsibilities shall be specified in the Quality Management Plan.

27.2.11 TSI shall collect and preserve each of the following types of data in written form contemporaneously during TSI's performance of the Toll Services, all of which shall be in form approved by CARTA and in conformance with the requirements of the Department Construction Manual:

(a) Monthly report of labor by classification of management, supervision, engineering and other technical personnel used on the job;

(b) Daily labor and equipment reports from TSI and each Subcontractor for construction related activities;

(c) Quality Control documentation as required by the Scope of Work;

(d) A daily occurrence log (in the form of a bound book with entries in ink) for construction related activities which shall be maintained by TSI's Representative or his designee(s), in which shall be recorded daily in a narrative form all significant occurrences relating to the Toll Services, including permit problems, unusual weather, asserted Force Majeure Events, events and conditions causing or threatening to cause delay or disruption or interference with the progress of any of the Work, known injuries to person or property, a listing of each activity depicted on the Project Schedule which is being actively prosecuted; notifications given and received, and significant Toll Services related meetings; and

(e) A daily record recording all labor, materials and equipment expenses which are being incurred by reason of any event, condition or circumstance which TSI believes is or may become the subject of a Claim against CARTA. Any initialed or signed concurrence by the Toll Services and TSI Representative (or designees) will be for purposes of verifying physical labor, material and equipment count rather than validating TSI's Claims.

27.2.12 To the extent requested by CARTA, TSI shall provide CARTA, its consultants and auditors with access to all Books and Records (provided, however, that the provision of such information shall not constitute a TSI Change Request).

27.2.13 At a minimum, CARTA, its consultants and auditors shall have available to them the following books, records, documents, data and other evidence:

(i) With respect to proposed Change Orders and Directive Letters, all pricing and bid documents;

(ii) With respect to Change Orders that are priced by unit price, all information utilized by TSI to develop and determine the unit price, if not already part of the Price Sheets, and all information which CARTA determines necessary or useful to evaluate the accuracy of TSI's designation of quantities;

(iii) With respect to Change Orders that are priced at Cost plus fee and with respect to any other Work which is performed by TSI at Cost outside of the fixed price, all information which CARTA determines necessary or useful to evaluate the accuracy, completeness and currency of the Cost or pricing data submitted, the accuracy of TSI's designation of time and material quantities and the eligibility of such quantities as Costs;

(iv) All other information which CARTA deems necessary or useful to evaluate compliance with the terms and conditions of this Agreement, or to determine that payments have not exceeded the fixed price or other applicable fixed price or lump sum amount. Where the payment method for any Work is by the fixed price or other applicable lump sum amount, no examination or audit rights shall extend to actual costs or expenditures incurred by TSI after the Parties have agreed upon such price or amount;

(v) All documents that relate to each and every claim together with all documents that support the amount of damages as to each claim; and

(vi) Work sheets used to prepare the claim establishing the cost components for items of the claim including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

Until the expiration or earlier termination of this Agreement, TSI shall provide documents, reports and information in addition to that specifically required in this Agreement that may be reasonably requested by the Joint Board from time to time, provided such additional information involves no material additional cost to TSI.

27.2.14 TSI shall ensure that each Subcontract shall provide for the same audit rights by CARTA and the State Auditor in connection with such Subcontract as they have under this Section 27.

27.2.15 Pursuant to Government Code Section 8546.7, this Agreement and TSI and CARTA, as the contracting parties, are subject to the examination and audit of the California

State Auditor, at the request of CARTA or as part of any audit of CARTA, for a period of three years after the final payment under the Agreement.

27.3 Retention of Records

TSI shall maintain all Books and Records, including copies of all original documents delivered to CARTA until five years after the expiration or termination of this Agreement. TSI shall notify CARTA where such Books and Records are kept. Notwithstanding the foregoing, all records which relate to Claims being processed or Disputes brought under the dispute resolution provisions of this Agreement shall be retained and made available until such Disputes and Claims have been finally resolved. Records to be retained include all books, electronic information, files and other evidence bearing on TSI's costs under this Agreement. TSI shall make these records and documents available for audit and inspection to CARTA, its consultants and auditors at all reasonable times, without charge, and shall allow CARTA to make copies of such documents (at no expense to TSI). If approved by CARTA, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

27.4 Inspection and Testing of Toll Services and Site

27.4.1 TSI shall, at all times, permit CARTA and CARTA's designated personnel to have safe, free and unrestricted access to the Site for monitoring, inspection, testing, observation, traffic management and other purposes.

27.4.2 CARTA shall perform its inspections and reviews of the Toll Services and Site in compliance with TSI's reasonable safety and security procedures, and in a manner intended to reasonably minimize interference with the Toll Services.

27.4.3 If this Agreement or any Governmental Rule requires any portion of the Toll Services or Site to be inspected, tested or approved, except as provided in this Section with respect to inspections or tests performed more than 90 miles from the Site, TSI shall give CARTA the advance notice specified for such inspection, test or approval in this Agreement, and at least 14 days advance Notice to CARTA of all other inspections or tests to be performed within 90 miles of the Site for which no particular notice period is specified, so CARTA may observe such inspection, testing or approval.

27.4.4 TSI shall give CARTA at least 30 days advance Notice of inspections, tests or approvals to be performed at a greater distance than 90 miles from the Site, unless a longer period of advance Notice is specified in the Agreement or the Scope of Work for any particular test. Where the inspection, test or approval does not meet the requirements of this Agreement or Governmental Rule, TSI shall be required to provide further Notice to CARTA and re-perform the inspection, test or approval in accordance with this Agreement as if it were the original inspection, test or approval.

27.4.5 TSI shall bear all of its costs of such inspections, tests, approvals and any repetition of any of the foregoing unless otherwise provided in this Agreement.

27.5 Public Records Act

27.5.1 TSI acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in CARTA's possession, including materials submitted by TSI to CARTA, are subject to the provisions of the California Public Records Act (Government Code sections 7920.000 et. seq.) (Public Records Act). If TSI believes information or materials submitted to CARTA constitute trade secrets, proprietary information or other information that is not subject to or excepted from disclosure under the Public Records Act, TSI shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary information, trade secret or other basis for exemption shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim including the specific Governmental Rule that exempts the material from disclosure under the Public Records Act. Nothing contained in this Section 27 shall modify or amend requirements and obligations imposed on CARTA by the Public Records Act or other applicable Governmental Rule, and the provisions of the Public Records Act or other Governmental Rules shall control in the event of a conflict between the procedures described above and the applicable Governmental Rule. TSI is advised to contact legal counsel concerning such Governmental Rule and its application to TSI.

27.5.2 If CARTA receives a request for public disclosure of materials marked "CONFIDENTIAL," CARTA will use reasonable efforts to notify TSI of the request and give TSI an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Records Act or other applicable Governmental Rule within the time period specified in the notice issued by CARTA and allowed under the Public Records Act. Under no circumstances, however, will CARTA be responsible or liable to TSI or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Governmental Rule, or court order, or occurs through inadvertence, mistake or negligence on the part of CARTA or its CARTA Parties.

27.5.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by TSI to CARTA, CARTA's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect to the material, and TSI shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that CARTA may intervene or participate in the litigation in such manner as it deems necessary or desirable. TSI shall pay and reimburse CARTA within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees,

including attorneys' fees and costs, CARTA incurs in connection with any litigation, proceeding or request for disclosure.

27.6 Developed Intellectual Property

27.6.1 Except as otherwise provided in this Agreement, as between CARTA and TSI, all Intellectual Property created, authored, invented or collected under the terms of this Agreement specifically for CARTA and produced or provided by TSI as a deliverable to CARTA, alone or in combination with CARTA and/or its employees, under this Agreement (Developed Intellectual Property) shall be the property of CARTA.

27.6.2 TSI acknowledges and agrees that all Developed Intellectual Property, in any medium, is specially ordered or commissioned by CARTA, including works made for hire in accordance with Section 101 of the Copyright Act of the United States, whether or not such Intellectual Property is incorporated into the Project Intellectual Property. TSI hereby assigns to the CARTA all rights, title and interest in and to the Developed Intellectual Property including any and all Software, work product and designs.

27.6.3 Except as otherwise provided in this Agreement, upon preparation or receipt of Developed Intellectual Property by TSI, CARTA (or its designee) shall receive ownership of the Developed Intellectual Property. CARTA shall own the copyrights in any Software that is Developed Intellectual Property (including both object code and Software Source Code) produced or provided by TSI, alone or in combination with CARTA and/or their employees, under this Agreement (Custom Software), and CARTA grants TSI a worldwide, fully paid-up, nonexclusive, royalty-free license to the Custom Software and the other Developed Intellectual Property. TSI grants CARTA any permissions or licenses in accordance with copyright or other intellectual property laws to effectuate transfer of ownership in such Custom Software and Developed Intellectual Property.

27.6.4 TSI acknowledges and agrees that all RTS Documentation shall be owned by CARTA, regardless of location or possession of such RTS Documentation, including Software Source Code and related documentation and work product, in any medium.

27.6.5 CARTA may use, reproduce and make derivative works from Developed Intellectual Property (including licensed Software) or RTS Documentation in connection with the Project or design of future projects owned or operated by CARTA. TSI grants CARTA any permissions or licenses in accordance with copyright or other intellectual property laws to effectuate this grant of permission. CARTA similarly may distribute or make the Developed Intellectual Property (including licensed Software) available to Third Parties who will or may provide services to CARTA and its respective agents in connection with the Project or future projects owned or operated by CARTA primarily in Sacramento or Yolo County, subject to the execution of a Non-Disclosure and Confidentiality Agreement by such third party. CARTA's and its respective agents' use of the Developed Intellectual Property either by themselves or

by distribution to Third Parties without TSI's involvement or on other projects is at CARTA's and its respective agents' sole risk.

27.6.6 Subject to any requirements in this Agreement for TSI's delivery of specific documents, not less frequently than monthly, TSI shall provide CARTA with a detailed written list of all design-related, construction-related and installation-related RTS Documentation prepared or received by TSI, and TSI shall furnish CARTA with copies of any such RTS Documentation immediately upon CARTA's written request. TSI shall maintain all other documents described in this Section and shall deliver copies to CARTA as required by this Agreement or upon request if not otherwise required to be delivered, with an indexed set delivered to CARTA as a condition to System Acceptance. For the avoidance of doubt, such RTS Documentation shall exclude Software Source Code that is deposited in Source Code Escrow as required under this Agreement.

27.6.7 TSI shall deliver the Software and the Software Source Code for any Custom Software to CARTA on an ongoing basis with each request for payment for a Payment Milestone. TSI shall deliver to CARTA Software and Custom Software Source Code and updates developed as part of the O&M Work, (x) when required in connection with an O&M Payment request, or (y) at such time as the Software and updates are implemented. TSI shall cause the Software Supplier to keep the Software Source Code up-to date by delivering to CARTA at each Payment Milestone during the D&D Phase all enhancements and modifications developed, completed or implemented since the immediately preceding Payment Milestone, and by delivering to CARTA all enhancements and modifications developed, completed or implemented during the One Year Warranty and O&M Period as such enhancements and modifications are developed, completed or implemented.

27.7 Pre-Existing Software

27.7.1 Notwithstanding anything to the contrary in this Agreement, the Software used in the Toll Services may include TSI's Pre-Existing Software. To the extent that TSI's Pre-Existing Software is included in the Software, TSI grants CARTA an irrevocable, perpetual, transferable, permanent, nonexclusive, world-wide, fully paid-up and royalty-free right and license to use, exploit, manufacture, adapt, execute, reproduce, display, perform, and distribute internally copies of, and prepare derivative works based upon, the Pre-Existing Software, the RTS design and technology and/or any other RTS idea, concept or Deliverable (Pre-Existing Works License). CARTA may use the Pre-Existing Works License as needed to manage, operate and maintain the RTS and carry out the Toll Services in connection with the Project and at any other future toll facility owned or operated by CARTA primarily in Sacramento or Yolo County in which such Software, RTS design and technology and any other RTS idea, concept and Deliverables are used in accordance with and under this Agreement.

27.7.2 TSI shall identify and disclose all Pre-Existing Software contained, or included in the Project Intellectual Property including (when reasonably available): full and specific

information detailing Intellectual Property claimed, date of authorship, creation and/or invention, date of application(s), application number(s) and registering entity(ies), date of registration(s), registration number(s) and registering entity(ies), if any, and owner including person or entity name and address. Subject to the RTS Documentation deposit requirements, TSI shall not be required to identify or disclose Pre-Existing Software only to the extent that doing so would eliminate or substantially limit the legal protections for such Intellectual Property.

27.7.3 CARTA may assign or grant any rights necessary to TSI's Pre-Existing Software in accordance with this Agreement, subject to the execution of a Non-Disclosure and Confidentiality Agreement by such third party and provided such grant or assignment are limited to the purposes set out in this Section.

27.7.4 The Pre-Existing Works License shall survive the expiration or termination of this Agreement. All rights to TSI's Pre-Existing Software not granted under this Section are reserved to TSI.

27.8 Third Party Intellectual Property

27.8.1 TSI shall secure perpetual, nonexclusive, transferable, irrevocable, unconditional, royalty-free license(s) in the name of the CARTA to use, exploit, manufacture, distribute, reproduce, adapt and display the Third Party Intellectual Property in connection with the Project or future projects owned or operated by CARTA primarily in Sacramento or Yolo County, and shall pay any and all royalties and license fees required to be paid for any Intellectual Property incorporated into the Project Intellectual Property. In no event shall TSI incorporate Third Party Intellectual Property into the Project without first securing such licenses.

27.8.2 TSI shall use reasonable efforts to:

(a) Obtain CARTA's prior written approval of the terms and conditions of Third Party Intellectual Property licenses;

(b) Identify and disclose to the CARTA all Third Party Intellectual Property contained, or included, in the Project Intellectual Property, including (when reasonably available): full and specific information detailing Intellectual Property claimed; date of authorship, creation and/or invention; date of application(s); application number(s) and registering entity(ies); date of registration(s), registration number(s) and registering entity(ies), if any, and owner, including person or entity name and address; and

(c) Obtain from each owner of the Third Party Intellectual Property consent to have the relevant Third Party Intellectual Property deposited into the Source Code Escrow, provided that no Third Party Intellectual Property shall be incorporated into the Toll Services

without CARTA's prior written approval to the extent the owner of the relevant Third Party Intellectual Property has not provided such consent.

27.9 Commercial Off-the-Shelf Software

27.9.1 CARTA's interest in and obligations with respect to any COTS Software incorporated into the Toll Services or RTS shall be determined in accordance with the standard license terms applicable to such Software and TSI shall not be subject to the requirements of this Section regarding the delivery of Software Source Code or deposit into the Source Code Escrow. TSI shall obtain CARTA's approval for any use of COTS Software, any COTS Software shall be licensed to CARTA, and shall comply with any additional requirements related to any COTS Software as set forth in the RFP or the Scope of Work.

27.9.2 TSI shall be solely responsible for all costs associated with such items and in no event shall TSI change the terms of such agreements without CARTA's written approval.

27.10 Payments Inclusive

TSI acknowledges and agrees that the payments include all royalties, fees, costs and expenses arising from or related to Project Intellectual Property.

27.11 Source Code Escrow

27.11.1 CARTA and TSI acknowledge that TSI and/or TSI's Software suppliers may not wish to disclose directly to CARTA the Software Source Code for the Pre-Existing Software (not for Developed Intellectual Property owned by CARTA), but that CARTA must be assured access to such Software Source Code in certain circumstances to permit it to realize the benefits contemplated by this Agreement.

27.11.2 As a condition to System Acceptance, TSI shall place all the Software Source Code for Pre-Existing Software owned by TSI, licensed to or by TSI or with respect to which TSI has a right to use in connection with the Toll Services in an escrow (the Source Code Escrow) with an escrow company designated by TSI and approved by CARTA in its reasonable discretion (Code Escrow Agent) engaged in the business of receiving and maintaining escrows of Software Source Code, related documentation, and other technology.

27.11.3 With regard to updates and Upgrades to the Pre-Existing Software developed as part of the O&M Work and as part of TSI's work during the Software Maintenance Option Period, TSI shall disclose to CARTA and deliver to the Source Code Escrow as updates to the Software are implemented, and shall provide to CARTA the Code Escrow Agent's confirmation that such Software and updates have been verified and deposited in the Source Code Escrow.

27.11.4 CARTA may designate and fund a third-party to follow the Source Code Documentation and load the Source Code on a server and compile it. In such case, the third-

party will provide written feedback if the compilation effort fails. If the third-party succeeds in compiling the Source Code, the Source Code is deemed to have been verified for purposes of invoice payment. TSI may request to observe the Source Code compilation.

27.11.5 TSI shall cause all Software suppliers to keep the Software Source Code up-to-date by depositing all enhancements and modifications into the Source Code Escrow during the term of its existence as such enhancements and modifications are developed, completed or implemented.

27.12 RTS Software

All RTS Software furnished as part of the Toll Services during the Term shall be suitable for its intended purpose and free from programming errors affecting performance and from Nonconforming Work in workmanship and materials and shall operate in conformity with the performance capabilities, specifications, functions and other applicable descriptions and standards specified in this Agreement, and such Software shall conform to the standards generally observed in the industry for similar Software. All RTS Software shall be compatible with the RTS equipment. TSI expressly disclaims any and all warranties in connection with any derivative works or software modifications created by CARTA or any of its agents to the extent authorized in this Agreement. THE SOFTWARE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND ARE IN LIEU OF ANY IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

27.13 Infringement

If any service or product provided by TSI under this Agreement is held to constitute an infringement of the patent rights or copyrights or other intellectual property rights of a third party and its use is enjoined, TSI shall promptly:

(a) Secure for CARTA, its representatives, agents, and designees the right to continue using the infringing item by suspension or removal of the injunction, or by procuring a perpetual, non-revocable, paid-up, royalty-free, assignable, non-exclusive license(s) to reproduce, publish, or otherwise use for CARTA's direct purposes;

(b) Replace the infringing item with a non-infringing substitute that meets or exceeds the requirements of this Agreement; or

(c) Modify the infringing item so that it becomes non-infringing provided the resulting service or product meets or exceeds the requirements of this Agreement.

If the amount of time necessary to proceed with one of these options is deemed excessive by CARTA, CARTA may direct TSI to select another option or alternatively TSI's failure may be considered an event of default.

SECTION 28

CARTA SUBMITTAL PROCESS

28.1 Submittal Process

28.1.1 All documents, reports, tests, requests, determinations and consents required by this Agreement to be submitted to CARTA for review, comment, approval and disapproval shall be subject to the applicable processes and provisions in this Section 28.1 (collectively, the Submittal Process).

28.1.2 TSI shall deliver the applicable document or request to CARTA with Notice stating that the document, request, determination or consent, as applicable, is subject to the Submittal Process.

28.1.3 Except as set forth below, CARTA has 14 days after receipt of such submission or such other longer time period as CARTA and TSI may agree, to issue written comments, proposed changes, approval, conditional approval, determination and/or disapproval of the submission (together, CARTA Comments), provided, however, that such period shall be subject to extension at the election of CARTA if TSI delivers an unreasonable number of submissions for concurrent CARTA review.

28.1.4 If any provision of this Agreement or the Scope of Work expressly provides a longer or shorter period for CARTA to act than as set forth in this Section, such period shall control over any timeframes set forth in this Section. If the time period for CARTA and/or Department to act should end on a day when CARTA or Department, as applicable, is closed or when, as to Department, Department employees are on furlough, the time period shall automatically be extended to the next day when both CARTA and Department are open or when, as to Department, such employees are no longer on furlough.

28.1.5 If CARTA Comments are provided within the timeframe required, TSI shall reflect the CARTA Comments in a revised draft of the submission (if such submission is a document, report or test), and shall deliver to CARTA such revised draft within the earlier of the date in the Project Schedule, the date required in the Scope of Work, 14 days (for documents containing less than 100 pages) or 30 days (for documents containing 100 or more pages) following TSI's receipt of CARTA's Comments. If the submission is a request, determination or consent, CARTA's denial or disapproval shall not be subject to a further submission but may be subject to dispute resolution as to whether CARTA acted reasonably (if the standard for CARTA's approval or consent rights was reasonable discretion) or in good faith (if the standard for CARTA's approval or consent rights was good faith discretion).

28.1.6 CARTA has 14 days, or such other longer time period as CARTA and TSI may agree, to issue further CARTA Comments on each revised submission, provided that if CARTA's Comments include any item that (i) reasonably could have been but was not raised

or included in CARTA's initial response, (ii) does not concern determining whether TSI adequately addressed CARTA's Comments included in CARTA's initial response and (iii) is not based on a failure of the revised draft to satisfy a standard or requirement set forth in this Agreement, then such action by CARTA shall be deemed to constitute a CARTA-Caused Delay. A comment will not be considered something that could have been raised or included in CARTA's initial response if, among other things, TSI has materially changed all or any portion of the design, approach, Equipment, Hardware, Software or other element or component that was included in the initial submission or if the initial submission was at a conceptual or preliminary level of development, as reasonably determined by CARTA.

28.1.7 If CARTA Comments are provided within the timeframe required, TSI shall make further changes or revisions to reflect the CARTA Comments and submit the document to CARTA, and the foregoing process shall continue in like fashion until either CARTA issues written approval or the Parties submit any dispute to dispute resolution.

28.1.8 The time periods for CARTA Comments in this Section shall be extended by the period of any delay due to an Excusable Delay.

28.1.9 Whenever CARTA is entitled to affirmatively approve a Deliverable or other matter under this Agreement, and CARTA delivers no approval, disapproval, consent, denial, determination, decision or other action within the applicable time period under this Section, then TSI may deliver to CARTA a Notice stating the date within which CARTA was to have decided or acted and that if CARTA does not decide or act within five (5) days after receipt of TSI's Notice, delay from and after such five (5) day period may constitute an CARTA-Caused Delay (for CARTA or Department failure to decide or act) for which TSI may be entitled to relief. The foregoing does not apply where the Department acts as a regulatory authority or permitting entity, and nothing in this context shall be considered an CARTA-Caused Delay.

28.2 Civil Contractor

As requested by CARTA, TSI shall (a) review and comment on submissions that Civil Contractor makes to CARTA as part of the Caltrans Work, and (b) provide written comments to CARTA, in the form requested by CARTA, no later than five days before CARTA is required to respond to the applicable submission under the Caltrans Contract, or if the Civil Contractor provides no applicable response time, 14 days after CARTA makes the request, unless a different timeframe is specified in the Scope of Work. TSI shall inspect work performed by the Civil Contractor and provide comments to CARTA, in the form requested by CARTA, no later than five days before CARTA is required to complete inspection under the Caltrans Contract, or if the Civil Contractor provides no applicable response time, 14 days after CARTA makes the request, unless a different timeframe is specified in the Scope of Work.

SECTION 29 OPTIONAL TOLL SERVICES

CARTA may, in its sole discretion, require TSI to develop, install, test, integrate, operate and maintain, as applicable, one or more Optional Toll Services. It is the intent of CARTA and TSI that, except as set forth in this Section, the terms and conditions of this Agreement and the Option Toll Services Proposal Prices form the framework and basis for the Optional Toll Services Work.

If CARTA requires TSI to develop, install, test, integrate, operate and maintain, as applicable, one or more Optional Toll Services, TSI will perform the Optional Toll Services Work by the designated completion deadlines determined in accordance with the procedures specified herein (each an “Optional Toll Services Completion Deadline”) for the prices set forth in the Proposal.

29.1 Notice of Optional Toll Services and CARTA Discretion

CARTA may, at its sole discretion, exercise its option for any of the Optional Toll Services by providing at least 90 days’ written notice to TSI.

Nothing contained in this Agreement shall limit or modify CARTA’s unilateral right, in its sole discretion, to procure or seek other alternatives to obtaining the Optional Toll Services from TSI or having other contractors, vendors, suppliers, operators or developers perform such Optional Toll Services. TSI acknowledges and agrees that it has no contractual or other right to receive any Optional Toll Services Work.

29.2 Exercise by CARTA of Optional Toll Services

29.2.1 If CARTA exercises one or more of its options for Optional Toll Services, CARTA shall issue a draft Optional Toll Services Project Supplement

29.2.2 TSI shall, within 30 days of receipt of the draft Optional Toll Services Project Supplement, provide CARTA with written notice setting forth TSI’s proposed detailed schedule for developing and providing the applicable Optional Toll Services Work. Upon mutual agreement on the terms of an Option Toll Services Project Supplement, the Parties shall execute the same and it shall become a part of this Agreement.

29.3 Pricing for Option Toll Services Project Work

The Parties agree that the Optional Toll Services Project Proposal Prices provide a reasonable framework for establishing the Optional Toll Services Total Capital Cost for any Optional Toll Services Project designated by CARTA. The Parties further agree that the Optional Toll Services Project Proposal Prices provide a reasonable framework for establishing the Optional Toll Services O&M Cost.

29.4 Performance of Option Toll Services Project Work; Maintenance; Project Management Plan

For the Optional Toll Services Projects, TSI shall perform the Optional Toll Services Project Work based upon executed Optional Toll Service Project Supplements (or as otherwise provided in the Agreement) and upon issuance of the applicable notice to proceed. Except as expressly set forth in the executed Optional Toll Service Project Supplement, the Optional Toll Services Project Work shall include the design, installation, integration, fabrication, assembly, testing, verification, operation and maintenance of the applicable Optional Toll Service Project, in conformance with the Scope of Work and otherwise complying with the requirements of the Agreement.

TSI shall plan, schedule, and execute all aspects of the Optional Toll Services and shall coordinate its activities with all parties who are directly impacted by such Optional Toll Services Project Work. TSI shall document and report all Work in accordance with the requirements set forth herein and in the approved Project Management Plan for the Optional Toll Services Project.

29.5 Prerequisites to Issuance of NTPs and Post-issuance Requirements

29.5.1 CARTA shall not issue a notice to proceed for TSI to proceed with Optional Toll Services Project Work that is the subject of any Optional Toll Services Project Supplement unless and until CARTA and TSI have executed an Optional Toll Services Project Supplement for such Optional Toll Services Project Work (or CARTA directs that such Optional Toll Services Project Work proceed pending resolution of a dispute concerning the Optional Toll Services Project Supplement).

29.5.2 CARTA shall not issue a notice to proceed for any Optional Toll Services Project Work unless and until the following requirements for the applicable Optional Toll Services Project have been satisfied or CARTA has, in its sole discretion, waived the same in writing:

(a) TSI shall have delivered to CARTA a Performance Bond for the Optional Toll Service Project;

(b) TSI shall have delivered to CARTA a Payment Bond for the Optional Toll Service Project;

(c) TSI shall have provided to CARTA the insurance policies, certificates of insurance, riders to its existing insurance policies or other evidence reasonably required by CARTA to confirm the existence of all the insurance coverages for the Optional Toll Service Work;

(d) CARTA shall have approved any changes to the Key Personnel for the Optional Toll Services Project;

(e) CARTA shall have obtained all Environmental Approvals required under CEQA for such Optional Toll Services Project, as applicable;

(f) the Source Code Escrow shall be in place and shall be in full force and effect for the Toll Services and the Optional Toll Service Work, as applicable; and

(g) TSI shall have provided to CARTA any other documents, things or assurances reasonably required by the Contract or an executed Optional Toll Services Project Supplement or otherwise by CARTA in connection with such Optional Toll Services Project.

SECTION 30

MISCELLANEOUS PROVISIONS

30.1 Amendments

Except to the extent expressly provided otherwise in this Agreement, this Agreement may be amended only by a written instrument duly executed by the Parties.

30.2 Taxes

TSI shall pay, prior to delinquency, all applicable taxes, including its own income taxes, sales and use taxes. TSI accepts sole responsibility, and agrees that it has no right to a Change Order or to any other Claim, due to its misinterpretation of Governmental Rules respecting taxes or incorrect assumptions regarding applicability of taxes.

30.3 Waiver

30.3.1 No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee Party.

30.3.2 The exercise by a Party of any right provided under this Agreement shall not waive or preclude any other or further exercise thereof or the exercise of any other right. No waiver by any Party of any right under this Agreement shall be deemed to be a waiver of any other or subsequent right under this Agreement. The consent by one Party to any act by the other Party requiring such consent shall not create a course of conduct or be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

30.3.3 Except as provided otherwise in this Agreement, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to create a course of conduct or waive, exhaust or impair any right, remedy or power of such Party under this Agreement, or to relieve the other Party from the full performance of its obligations under this Agreement.

30.3.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way create a course of conduct or limit or waive that Party's right thereafter to enforce or compel

strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of this Agreement without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

30.4 Independent Contractor

30.4.1 TSI is an independent contractor, and nothing contained in this Agreement shall be construed as constituting any relationship with CARTA other than that of independent contractor.

30.4.2 Both Parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. Nothing in this Agreement is intended or shall be construed to create any partnership, joint venture or similar relationship between CARTA and TSI; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists.

30.4.3 In no event shall the relationship between CARTA and TSI be construed as creating any relationship whatsoever between CARTA and TSI's employees or agents. Neither TSI nor any of the employees or agents of any TSI-Related Entity is or shall be deemed to be an employee or agent of CARTA. Except as otherwise specified in this Agreement, TSI has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that TSI or any Subcontractor hires to perform or assist in performing the Toll Services.

30.5 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of CARTA and TSI and their permitted successors, assigns and legal representatives.

30.5.1 CARTA may assign all or part of its right, title and interest in and to any Contract document, including rights with respect to the Payment Bonds, Performance Bonds and the Guaranty, to any other Person.

30.5.2 TSI may not, without the prior written consent of CARTA, in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement. No partner, joint venturer, member or shareholder of TSI may directly or indirectly assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in TSI without the prior written consent of CARTA, in CARTA's sole discretion.

30.5.3 No assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant by TSI or any permitted successor and assign thereto shall release any Guarantor, any Surety or the assignor from any liabilities or obligations under this Agreement and each of such entities shall remain liable and obligated therefor.

30.5.4 Any permitted assignment of TSI's interest shall not take effect until replacement Bonds and Guarantees are provided without lapse in coverage. This requirement may be met if the Surety/ies and Guarantor(s) amend existing Bonds and Guarantees to name TSI's assignee as the Principal (under the Bonds) and "TSI" (under the Guarantees).

30.5.5 TSI shall cooperate with CARTA and all representatives of CARTA designated as described above.

30.6 Gratuities and Conflicts of Interest

30.6.1 TSI shall not permit any officer, official or employee of CARTA to have any financial interest in the Contract prohibited by Sections 1090 et seq. and 87100 et seq. of the Government Code. In addition, TSI or its employees shall not enter into any contract involving services or property with a Person or business prohibited from transacting such business with CARTA, pursuant to Sections 1090 et seq. and 87100 et seq. of the Government Code. Except to the extent explicitly disclosed in TSI's Proposal, TSI affirms that no CARTA officer, official or employee has any interest (whether contractual, non-contractual, financial, or otherwise) in this transaction or in the business of TSI. If any such interest becomes known to TSI at any time, TSI shall submit a full and complete written disclosure of such information to CARTA, even if such interest would not be considered a conflict under Sections 1090 et seq. and 87100 et seq. of the Government Code.

30.6.2 Neither TSI nor any of its employees, agents and representatives shall offer or give to an officer, official or employee of CARTA or Department gifts, entertainment, payments, loans or gratuities if the same would be in violation of Section 1090 or Section 87100 et seq. CARTA may, by written notice to TSI, terminate the right of TSI to proceed under the Contract if TSI violates this provision.

30.6.3 The rights of CARTA specified in this Section are not exclusive and are in addition to any other rights allowed under Governmental Rule.

30.7 Survival

TSI's representations and warranties, the dispute resolution provisions, the warranties, the indemnifications and releases, the Software Maintenance Option, and all other provisions which by their inherent character or express terms should survive termination of this Agreement, shall survive the termination of this Agreement, the expiration of the O&M Period, and the expiration of any Software Maintenance Option Period.

30.8 Limitation on Third Party Beneficiaries

Department is an intended third party beneficiary to this Agreement and the Indemnified Parties are intended third party beneficiaries of the indemnity provisions of this Agreement. Except as expressly provided in this Agreement (such as warranty and indemnity provisions), it is not intended by any of the provisions of this Agreement to create any other third party beneficiary hereunder or to authorize anyone not a Party to this Agreement to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. Except as otherwise provided in this Section, the duties, obligations and responsibilities of the Parties pursuant to this Agreement with respect to Third Parties shall remain as imposed by Governmental Rule. This Agreement does not create a contractual relationship of any kind between CARTA and a Subcontractor or any Person other than TSI.

30.9 Tort Liability; Personal Liability of CARTA Employees

30.9.1 CARTA's Representatives are acting solely as agents and representatives of CARTA when carrying out the provisions of or exercising any right under this Agreement. They shall not be liable either personally or as employees of CARTA for actions in their ordinary course of employment.

30.9.2 The Parties agree to provide to each other's Representative(s) Notice of any Claim that either Party receives from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide Notice in such form and within such period as is required by Governmental Rule.

30.9.3 No agent, consultant, officer or authorized employee of CARTA nor any member of CARTA's Board of Directors, shall be personally responsible for any liability arising under this Agreement.

30.10 Governing Law

This Agreement shall be governed by and construed in accordance with the law of the State, without regard to conflict of law principles. The venue of any court, judicial or referee proceeding under this Agreement shall be in Sacramento County, California, unless changed by the judicial officer.

30.11 Notices and Communications

30.11.1 All notices, requests, demands, instructions, certificates, consents, explanations, agreements, approvals and other communications (each being a "Notice") required or permitted under this Agreement shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telephone, facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the

following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with TSI shall be sent to TSI's Representative or as otherwise directed by TSI's Representative. The address for such communications shall be:

[INSERT NAME AND ADDRESS]

Attention:

Telephone:

Email address:

All communications to CARTA shall be marked as regarding this Agreement and shall be delivered as directed by CARTA's Representative. The address for such communications shall be:

Capital Area Regional Tolling Authority
Attention: Kathleen Aziz, Executive Director
1415 L Street,
Suite #300
Sacramento, CA 95814
Phone: (916) 926-3806
Email address: kaziz@carta.ca.gov

In addition, copies of all Notices regarding Claims, Disputes, termination and default notices shall be delivered to the following persons:

Capital Area Regional Tolling Authority
Attention: Andreas Booher, General Counsel
500 Capitol Mall,
Suite 2500
Sacramento, CA 95814
Phone: (916) 551-2829
E-mail: andreas.booher@bbklaw.com

Capital Area Regional Tolling Authority
Attention: Juan Kuthy, CARTA Construction Manager
4637 Chabot Dr. #200
Pleasanton, CA 94588
Phone: (925) 627-3976
E-mail: juan.kuthy@kimley-horn.com

30.11.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown

on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, Notices sent by facsimile after 4:00 p.m. PT and all other Notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Toll Services shall be conducted by TSI's Representative or TSI's Key Personnel and technical representatives designated by CARTA.

30.11.3 TSI shall copy CARTA on all written correspondence pertaining to the Toll Services between TSI and any Person other than TSI's Subcontractors, consultants and attorneys.

30.12 Further Assurances

TSI shall promptly execute and deliver to CARTA all such instruments and other documents and assurances as are reasonably requested by CARTA to further evidence the obligations of TSI under this Agreement, including assurances regarding the validity of (a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

30.13 Severability

If any clause, provision, section or part of this Agreement is ruled invalid by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Agreement Price to account for any change in the Toll Services resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, section or part.

30.14 Table of Contents and Headings

The table of contents and captions of the sections of this Agreement are for convenience only, are not part of this Agreement or to be considered in construing this Agreement.

30.15 Entire Agreement

This Agreement contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to their subject matter.

30.16 Counterparts

30.17 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

30.18 Costs

(a) Each Party is responsible for paying its own Costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement.

(b) Except as otherwise provided in this Agreement, each Party shall perform its obligations in accordance with this Agreement at its own Cost and risk.

SECTION 31
SIGNATURE WARRANTY

31.1 Signature Warranty

Each signatory to this Agreement warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed as of _____, 2026.

TOLL SYSTEM INTEGRATOR

INDRA USA, INC.

By: _____

Name:

Title:

CA Contractor License #:

CARTA:

CAPITAL AREA REGIONAL TOLLING AUTHORITY

By: _____

Name:

Title:

APPROVED AS TO FORM:

By: _____

Name:

Title: General Counsel

Date:

TABLE OF CONTENTS
Exhibits to Toll Services Contract

EXHIBIT 1 DEFINITIONS

[attached behind this page]

EXHIBIT 1

DEFINITIONS

Acceleration Costs means those fully documented increased Costs reasonably incurred by TSI (that is, reasonable Costs over and above what TSI would otherwise have incurred) that are directly and solely attributable to increasing the performance and production levels of the D&D Work to complete necessary elements or segments of the D&D Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for resequencing in connection with accelerated efforts. Audited Overhead, TSI Margin and Margin in connection with acceleration efforts shall not exceed the amount allowed under Section 19.

Actual Knowledge means and shall be strictly limited to the facts and information actually known to and present in the mind of CARTA, TSI, TSI's or CARTA's Representative, an Indemnified Party (in each case, as applicable), after due consultation with other personnel of such Person, as applicable.

Affiliate means (a) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, TSI or any of its members, partners, or shareholders holding a 10% or greater interest in Civil Contractor; and (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by (i) TSI, (ii) any of TSI's members, partners or 10% or greater shareholders, or (iii) any Affiliate of TSI under clause (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. Work performed by Affiliates shall be deemed performed by TSI's own organization.

Agreement means this Toll Services Agreement made and entered into _____, between CARTA, and TSI including all exhibits, and the other documents listed in Section 1.2 of this Agreement.

Agreement Price means the Total Capital Cost, including the One Year Warranty Period, plus the Total O&M Cost, as set forth in Section 31.

As-Built Final Design Document means an updated Final Design Document, showing and depicting a complete and accurate record of the RTS as installed, integrated and deployed.

As-Built Technical Drawings means documents required to be prepared by TSI and delivered to CARTA in accordance with the Scope of Work that constitute a complete and accurate record of the RTS as designed, installed, integrated, deployed and tested in accordance with this Agreement.

Audited Overhead means the applicable audited overhead rate in accordance with the Federal Acquisition Regulation (“FAR”) provided by TSI for each year of the Term in accordance with Section 15.4.2 which shall include and constitute full compensation to TSI for all taxes, insurance, fringe benefits, labor burden and all other payments made to, or on behalf of workers, in excess of actual wages.

Authority means CARTA.

Availability means, the time, expressed as percentage, in which the RTS or its components are properly functioning and available to perform in accordance with the KPIs.

Bond means each of the Performance Bond, Payment Bond, O&M Performance Bond and O&M Payment Bond, or all of them as the context requires.

Books and Records means any and all documents, books, records, papers, or other information relating to the Project, this Agreement and/or the Toll Services, including:

- (a) all design and deployment documents, and operations and maintenance documents including drawings, specifications, submittals, subcontracts, subconsultant agreements, purchase orders, invoices, schedules, meeting minutes, budgets, forecasts, change orders, Plans, reports and manuals;
- (b) daily time sheets and supervisor’s daily reports, union agreements, insurance, welfare and benefits records, payroll registers, material cost distribution work sheet, Subcontractors’ (including suppliers) invoices, Subcontractors’ and agents’ payment certificates, Project Schedules, earning records, payroll tax forms, invoices and requisitions, equipment records, payment certificates, cancelled checks, job cost reports, job payroll ledges, general ledger, cash disbursement journal;
- (c) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding operating income, expenses, capital expenditures and budgeted operating results;

- (d) all budgets, certificates, Claims, contract agreements, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by any TSI-Related Entity; and
- (e) with respect to clauses (a) - (d), any information that is stored electronically or on computer-related media, including in the electronic document management system; provided however, that nothing in this Agreement shall require the disclosure by any Party of Books and Records that is protected by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party.

Business Rules means the set of rules approved by CARTA that details how TSI shall design, configure and operate the RTS based on business cases and CARTA policy, procedures and applicable regulations, as updated from time to time through the D&D Phase, One Year Warranty and the O&M Period.

California Highway Patrol means a law enforcement agency of the state of California that has patrol jurisdiction over all California highways and can also act as the state police.

California Toll Operators Committee means a collaborative organization composed of California's toll facility operators/owners whose mission is to promote interoperability, operational excellence, technological advancement and exemplary customer service on California toll facilities.

Civil Contractor means De Silva Gates, Caltrans' contractor for the Project.

Civil Contractor RTS Infrastructure means the infrastructure built by Civil Contractor and provided to TSI for installation of the RTS as part of each Turnover Area in accordance with the Scope of Work and this Agreement.

Civil Contractor RTS Infrastructure Design Submittal means the documents provided from the Civil Contractor to TSI identifying the Civil Contractor's layouts and details of the Civil Contractor RTS Infrastructure, as described in the Scope of Work.

Caltrans Contract means the agreement between Caltrans and the Civil Contractor for design and construction of the civil infrastructure for the Project.

Caltrans Work means the civil infrastructure for the Toll Services to be performed by Civil Contractor under the Caltrans Contract.

CARTA or Capital Area Regional Tolling Authority means the joint powers authority established pursuant to Government Code Section 6500 et seq. by and between the Sacramento Area Council of Governments, Yolo Transportation District, and CALTRANS District 3 for purposes developing and operating toll facilities in the Sacramento region.

Unless otherwise expressly indicated in this Agreement, CARTA does not mean the Board of CARTA, but, instead, means CARTA as an entity acting through the CARTA Representative.

CARTA Comments has the meaning given in Section 28.1.3.

CARTA-Caused Delays means each of the following events:

- (a) CARTA-Directive Letter that relates to a Change or CARTA-Initiated Change;
- (b) Suspension of D&D Work for convenience to the extent such suspension is not attributable to a suspension for cause, excluding any suspension which is less than 48 hours or the first 96 hours of any combination of suspensions;
- (c) CARTA requires additional testing of the D&D Work beyond that which is required by this Agreement and no Nonconforming Work is detected as a result of such tests;
- (d) Failure or inability of CARTA or Department to provide responses to Deliverables and matters for which response is required, within the time periods (if any) indicated in this Agreement, or other failure of CARTA to act within a reasonable time period with respect to actions which it is required to take under this Agreement, including failure to provide TSI with access to the Site in accordance with the Project Schedule, following delivery of Notice from TSI reasonably requesting such action in accordance with this Agreement; and
- (e) Uncovering, removing and restoring Work, if such Work exposed or examined is in conformance with this Agreement, the Governmental Approvals and applicable Governmental Rule, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by CARTA.

Any suspension of Toll Services arising from litigation shall not be considered an CARTA-Caused Delay (although it may qualify as a Force Majeure Event under clause (e) of the definition of “Force Majeure Event”) despite the fact that CARTA may specifically direct TSI to suspend the Work.

CARTA-Initiated Change Order means any Change in the Toll Services which CARTA has directed TSI to perform or evaluate as described in Section 19.

CARTA Parties means officers, directors, board members, employees, consultants, representatives and agents of CARTA, or each of them as the context requires.

CARTA Representative means the Person designated as the CARTA Representative(s) in Exhibit 2 as amended in accordance with this Agreement.

CBO Provider means the Governmental Entity or Third Party responsible for providing or maintaining the for the Project pursuant to a separate contract between such agency or third party and CARTA.

Certificate of End of O&M Period Acceptance means the CARTA certificate issued in accordance with Section 13.2.

Change means:

- (a) Any addition, decrease, omission, deletion or removal to or from the Toll Services or the Scope of Work;
- (b) Any addition, omission or change to Policy limits or deductibles of the insurance policies; and
- (c) Other changes to this Agreement or other items the Parties agree to be a Change or which this Agreement states to be a Change,

excluding,

- (i) Deviations;
- (ii) Minor Revisions; and
- (iii) Any Change resulting from delay of Turnover to occur of a Turnover Area as a result of failure by the Civil Contractor to complete the work required in order for TSI to accept Turnover, if such delay does not affect the Critical Path.

Change in Law means the enactment, adoption, modification, repeal or other change in any Governmental Rule that occurs after the Setting Date, including any change in the judicial or administrative interpretation of any Governmental Rule, or adoption of any new Governmental Rule, which is materially inconsistent with any Governmental Rule in effect on the Setting Date, but excluding:

- (a) any change in or new Governmental Rule which was passed or adopted but not yet effective as of the Setting Date;
- (b) a Change in a Referenced Standard;
- (c) a change in the way a Governmental Rule is applied or interpreted as a result of:
 - (i) the failure of any TSI-Related Entity to comply with a Governmental Rule or any Governmental Approval;
 - (ii) any act or omission of any TSI-Related Entity; or
 - (iii) any breach of this Agreement by TSI;
- (d) a change in any Governmental Rule relating to taxes; or
- (e) a change in Governmental Rule which was not in force at issuance of NTP1 but which (i) had been published as a draft bill or draft statutory instrument or otherwise specifically referred to prior to the issuance of NTP1; (ii) a party experienced and competent in the implementation of works or services similar to the Toll Services would have reasonably foreseen or anticipated prior to the issuance of NTP1, including adoption of a national interoperability standard; or (iii) is substantially the same as a Governmental Rule in force prior to issuance of NTP1.

Change Notice means a notice issued by CARTA to TSI in accordance with Section 19.

Change Order means a written amendment to the terms and conditions of this Agreement issued by CARTA to TSI with respect to a Change in accordance with Section 19 and shall include the undisputed portion of any “claim” from TSI, as that term is defined in Pub. Cont. Code § 9204.

Civil Contractor means the Caltrans contractor(s) hired to construct the civil infrastructure portion of the Project, including De Silva Gates, any subcontractors thereof.

Civil Site Acceptance Checklist means the checklist prepared by TSI and submitted as part of the Installation Plan that TSI shall use to verify that all Civil Contractor RTS Infrastructure elements at roadside equipment locations where TSI will install RTS equipment are accepted by TSI and suitable for proper execution of the D&D Work in compliance with the requirements of the Contract.

Claim means any claim, proceeding, action, cause of action, demand, judgments, investigations or suit (including by way of contribution or indemnity) made:

- (a) in connection with this Agreement, the Toll Services, the Site or the Project;
- (b) at Governmental Rule or in equity; or
- (c) for specific performance, restitution, payment of money (including damages), an extension of time, or any other form of relief.

Closed Circuit Television System means a TV system in which signals are not publicly distributed but are monitored, primarily for surveillance and security purposes.

Code Escrow Agent means the escrow company that TSI designates and CARTA approves to hold the Source Code Escrow.

Commercial Back Office (CBO) means the database that manages customer accounts and payment collection functions of the toll program. It's functions include receiving trip transactions, customer account management, financial processing, transponder management, mail house functions, and customer interfaces.

Commercial Off-the-Shelf (COTS) means commercially available off-the-shelf hardware and software that is sold to the general public in the same precise form and requires little to no modification to use that is supplied by TSI as part of the RTS.

Commission(ed)(ing) means the CARTA approved completion of Commissioning Testing.

Network Site Acceptance Checklist means the checklist prepared by TSI and submitted as part of the Installation Plan, as further detailed in the Scope of Work, that TSI shall use to verify that all communications network elements where TSI will install RTS equipment are accepted by TSI and suitable for proper execution of the D&D Work in compliance with the requirements of this Agreement.

Components means all spare parts, supplies, consumables, tools and other operating items that are required for the continuous operation and maintenance of the RTS in accordance with this Agreement during the Term.

Configurable means where TSI may change the relevant rule, including any Business Rule, or aspect of the RTS without material modification of Software code.

Configurable Parameter means, with respect to the Business Rules or any other aspect of the RTS, that TSI may change the relevant value or aspect of the RTS without modification of the Software code.

Contaminated Groundwater means any extracted, pumped and/or ponded groundwater that contains Hazardous Materials.

Costs means the actual, documented, direct incremental costs that are incurred or expended, reported and documented by TSI in accordance with generally accepted accounting principles, to the extent applicable, to perform the Toll Services in accordance with this Agreement, excluding:

- (a) unrealized losses;
- (b) Costs of criminal proceedings if the result is a conviction;
- (c) executive compensation and gifts, gratuities and entertainment to the extent the same would not be deductible from TSI's adjusted gross income (assuming TSI were a stand-alone for-profit corporation) under the Internal Revenue Code;
- (d) legal penalties or fines assessed under applicable Governmental Rules, except penalties and/or fines (other than with respect to late payment of taxes) assessed on the basis of negligence or strict liability;
- (e) default rates of interest;
- (f) interest charges and penalties for late payment;
- (g) prepayment premiums and penalties, except to the extent the prepayment results in lower subsequent costs determined on a net present value basis;
- (h) travel costs that would not be allowable under 48 CFR 31.205-46(d), if it were applicable;
- (i) training costs that would not be allowable under 48 CFR 31.205-44, if it were applicable;
- (j) trade, business, technical and professional activity costs that would not be allowable under 48 CFR 31.205-43, if it were applicable;
- (k) fines and penalties, including late penalties on taxes, as defined under 48 CFR 31.205-15, if it were applicable except penalties and/or fines (other than with respect to late payment of taxes) assessed on the basis of negligence or strict liability;
- (l) losses on other contracts as defined under 48 CFR 31.205-23, if it were applicable;

- (m) independent research and development costs except to the extent that such costs are incurred for the benefit of the Toll Facilities or are otherwise approved by CARTA in writing;
- (n) excessive contributions or donations under 48 CFR 31.205-8, if it were applicable;
- (o) compensation incidental to business acquisitions as defined under 48 CFR 31.205-6(1), if it were applicable;
- (p) employee Stock Ownership Plan (ESOP) costs to the extent disallowed under 48 CFR 31-205-6(j)(8), if it were applicable;
- (q) unreasonable post-retirement benefits other than pensions as defined under 48 CFR 31.205-6(o), if it were applicable;
- (r) employee rebate and purchase discount plans as defined under 48 CFR 31.205-6(n), if it were applicable;
- (s) unallowable public relations and advertising costs as defined under 48 CFR 31.205-1(f)(3) and 48 CFR 31.205-1(f)(4)(i), if it were applicable;
- (t) unallowable lobbying and political activity costs under 48 CFR 31.205-22(1), (2) and (6), if it were applicable;
- (u) costs which are more than the costs for similar goods and services specified in generally available commercial list prices, taking into account reasonable seasonal variations; and
- (v) costs which are not justifiable by life cycle analysis, accelerated delivery or accelerated completion of goods or services (as used herein “life cycle analysis” means an analysis indicating that costs relating to the construction, installation, modification, maintenance or provision of services, parts, supplies, equipment or materials to the Toll Facilities or any or all parts or components thereof which are higher than the cost of functionally equivalent construction, installation, modification, maintenance service, part, supply, equipment or material are justified because such increased cost will result in a lowering of costs to be incurred in the future equal to or greater than the difference between the cost incurred and the cost of its functional equivalent; such analyses being typically performed using a net present value methodology).

CPI means the Consumer Price Index U.S. City Averages for all Urban Consumers, All Items) for the then most recent full calendar year (January — December) rounded to the nearest whole cent.

Critical Path means each critical path on the Project Schedule that ends on a Guaranteed Completion Date (i.e. the term shall apply only following consumption of all available Float in the schedule for such Guaranteed Completion Date).

Critical Path Method (CPM) means a method for scheduling the work where all major components of the Work are laid out in a diagram to show the proper sequencing of tasks and the necessary time required for each task, showing which tasks are critical to each other.

Custom Software means the Software described in Exhibit 17 as Software that TSI expects to develop for the Toll Services.

Customer Service Center (or CSC) means the system and operations that, in combination, provide the functionality, labor and services for Transaction processing, Toll invoicing and payment, Toll violation escalation processing, customer service, customer account management and other associated support functions.

D&D Monthly Progress Report means a single monthly submission and compilation of all monthly reports required by this Agreement during the D&D Phase and for review at monthly progress meetings.

D&D Phase means the period of time commencing at NTP1 and ending upon System Acceptance. Following Toll Commencement, and until System Acceptance, the D&D Phase will be concurrent with the One Year Warranty Period.

D&D Work means all Work and other activities and services required to design, install, integrate, deploy and test the RTS that TSI is required to perform to achieve System Acceptance, including design, Configuration Work, any physical structures and improvements to be developed by TSI, and all labor, management, supervision, materials, Deliverables, documents, Equipment, tools, Software, Hardware, licenses, utilities, transportation and other facilities and services and efforts necessary for proper completion of the D&D Work, as well as the TSI Insurance and the Payment Bond and Performance Bond required under this Agreement.

Delay Liquidated Damages means the amount(s) that TSI is required to pay to CARTA for delay in meeting certain Guaranteed Completion Dates in accordance with Section 11.3.

Deliverable means all requirements for work products, end products and other items, elements and submissions specified in this Agreement and that TSI is required to

prepare and submit to CARTA for its review, comment, disapproval and/or approval as specified in this Agreement.

Department means CALTRANS, the State transportation organization that is responsible for managing California's highway and freeway lanes, providing inter-city rail services, overseeing public-use airports and special-use hospital heliports, and working with local agencies.

Department of Motor Vehicles (DMV) means the agency in California that provides vehicle registration information for UV Transactions and supports the collection of penalties against toll violators referred to as the Department of Motor Vehicles.

Design means the process and documentation that define and establish all elements of the RTS, including the architecture, components, modules, interfaces and data for the RTS to satisfy the Agreement requirements. Also used to refer to the completed "Design" document.

Design and Deployment Phase (or D&D Phase) means the time period commencing on issuance of NTP1 and ending on the Toll Commencement Date.

Developed Intellectual Property has the meaning given in Section 27.6.1.

Deviations mean any change, deviation, modification or alteration from the requirements of this Agreement, applicable Governmental Rules and the Governmental Approvals.

Digital Video Audit System means a digital video and still image capture, storage, and retrieval system that provides auditing capability using digital video clips and still images to independently monitor system activities associated with vault management, personnel, toll transactions, cash management, and facility security.

Directive Letter means a written direction signed by CARTA directing a change (including a Change) that complies with the requirements of Section 19.3.

Disaster Recovery means the process of maintaining or recovering operations in the event of a business interruption from a disaster as specified in the Scope of Work.

Disaster Recovery Plan means the approved plan that documents the TSI's facilities and operations, assesses the hazards and vulnerabilities that the TSI's facilities and operations could face, and describes how TSI shall maintain or recover its operations in the event of a business interruption from a disaster as specified in the Scope of Work.

Dispute means a disagreement between the Parties as to the merits, amounts, or remedy arising out of an issue in controversy, including a disagreement regarding a Claim.

Dynamic Pricing means the process of applying the Dynamic Pricing Algorithm to establish Toll Rates for each Trip.

Dynamic Pricing Algorithm means an automated system developed and implemented by the TSI to assign Toll Rates for each trip based on collected operating conditions data and Dynamic Pricing algorithms, as described in the Scope of Work.

Effective Date means the date of issuance of NTP1.

Electromagnetic Interference means when in the radio frequency spectrum, is a disturbance generated by an external source that affects an electrical circuit by electromagnetic induction, electrostatic coupling, or conduction.

Electronic Toll Collection means the collection of tolls based on the automatic identification of vehicles using electronic systems.

Eligible Change means a Force Majeure Event, Excusable Delay or O&M Relief Event or all of them as the context requires.

Eligible Surety means a bonding surety licensed in the State, listed on the U.S. Department of the Treasury's "Listing and Approved Sureties" (found at www.fms.treas.gov/c570/c570.html), rated "A" or higher by at least two nationally-recognized rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's) or rated at least A-, X or higher according to A.M. Best's Financial Strength Rating and Financial Size.

Emergency means any situation, event, or circumstance:

- (a) Which constitutes or may constitute an immediate or imminent threat to the long term integrity of any part of the RTS or to the safety of users of the Project or the traveling public;
- (b) Which is recognized by CARTA as an emergency or is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency; or
- (c) That requires the immediate use of the Project as an emergency evacuation route.

End of Agreement Transition Plan means the plan approved by CARTA prepared by TSI describing the transition of the O&M Work to the Successor without disruption to users as specified in this Agreement including the Scope of Work.

End of O&M Period Acceptance means the occurrence of all of the events and satisfaction of all of the conditions in Section 13.

Environmental Approvals means all Governmental Approvals arising from or required by any Environmental Law in connection with the Toll Services.

Environmental Law means (a) all Governmental Rule applicable to the Toll Services now or relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases or threatened releases of Hazardous Materials into the environment including into the air, surface water or ground water or onto land, and (b) any requirements and standards that pertain to the protection of the environment, or to the management of Hazardous Materials or emissions, discharges, releases or threatened releases of Hazardous Materials into the environment, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, specified in any Governmental Approval, or other criteria and guidelines promulgated, in accordance with Governmental Rule applicable to the Toll Services, including those relating to:

- (a) The manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport or handling of Hazardous Materials;
- (b) The protection of public health, public welfare or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air);
- (c) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (d) Release of Hazardous Materials;
- (e) Protection of wildlife, endangered, threatened, and sensitive species, wetlands, water courses and water bodies, parks and recreation lands, cultural, historical, archeological, and paleontological resources and natural resources;
- (f) The operation and closure of underground or aboveground storage tanks;
- (g) Health and safety of employees and other persons with respect to Hazardous Materials; and
- (h) Notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term “Environmental Laws” shall also include the following:

- (a) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. (“CERCLA”);
- (b) The Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”);
- (c) The Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001 et seq.;
- (d) The Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- (e) The National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.;
- (f) The Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.;
- (g) The California Occupational Safety and Health Act of 1973, Lab. Code §§63000 et seq.;
- (h) The Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.;
- (i) The Endangered Species Act, 16 U.S.C. §§ 1531 et seq.;
- (j) The Clean Water Act, 33 U.S.C. §§ 1251 et seq.;
- (k) The Clean Air Act, 42 U.S.C. §§ 7401 et seq.;
- (l) The Federal Water Pollution Control Act, as amended by the Clean Water Act, 33 U.S.C. §§ 1251 et seq.;
- (m) The Oil Pollution Act, 33 U.S.C. §§ 2701, et seq.;
- (n) The Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
- (o) The Federal Safe Drinking Water Act, 42 U.S.C. §§ 300 et seq.;
- (p) The Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. §§ 7401 et seq.;
- (q) The Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 et seq.;
- (r) The Coastal Zone Management Act, 33 U.S.C. §§ 1451 et seq.;
- (s) The Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401 et seq.;

- (t) The Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.;
- (u) The Marine Mammal Protection Act, 16 U.S.C. §§ 1361 et seq.;
- (v) Section 4f of the Department of Transportation Act, 49 U.S.C. § 303;
- (w) The National Historic Preservation Act, 16 U.S.C. § 470;
- (x) 33 C.F.R. §§ 114 and 125;
- (y) The California Environmental Quality Act, §§ 21000 et seq. of the California Public Resources Code;
- (z) The California Clean Air Act of 1988, §§ 39000 et seq. of the California Health and Safety Code;
- (aa) The California Porter-Cologne Water Quality Act, §§ 13000 et seq. of the California Water Code;
- (bb) The California Coastal Act, §§ 30000 et seq. of the California Public Resource Code;
- (cc) The Integrated Waste Management Act, §§ 40000 et seq. of the California Public Resources Code;
- (dd) The California Safe Drinking Water and Toxic Enforcement Act, §§ 25249.5 et seq. of the California Health and Safety Code;
- (ee) The California Hazardous Waste Control Act, Chapter 6.5 of Division 20 of the California Health and Safety Code, §§ 25100 et seq.;
- (ff) The California Hazardous Substance Account Act, the California Health and Safety Code, §§ 25330 et seq.;
- (gg) Health and Safety Code §§ 25280 et. seq. (Underground Storage of Hazardous Substances);
- (hh) The California Hazardous Waste Management Act, the California Health and Safety Code §§ 25170.1 et seq.;
- (ii) Health and Safety Code §§ 25501 et. seq. (Hazardous Materials Response Plans and Inventory);
- (jj) Fish and Game Code §§ 1600 et seq., §§ 1360 et seq., §§ 2050 et. seq., and §§ 2080 et seq., and

- (kk) California Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, all as amended.

Equipment means all equipment, supplies, materials, tools, and spare parts required for performance of the Toll Services.

Equity Member means (a) each entity with a direct equity interest in the Proposer (whether as a member, partner, joint venture member, or otherwise), and (b) each entity proposed to have a direct equity interest in TSI.

Error means an error, omission, inconsistency, inaccuracy, deficiency or other defect.

Excusable Delay means each of the following events:

- (a) material changes to the Scope of Work necessary to conform the Toll Services to CARTA-approved material changes in the Caltrans Work from the Effective Date;
- (b) Changes in Law that (i) requires a material modification in the design of the D&D Work; or (ii) result in imposition of material additional mitigation requirements for the Toll Services due to impacts on archaeological, paleontological, biological or cultural resources;
- (c) court orders that enjoin, restrain or stay performance of the D&D Work or which directly impose or require changes in the D&D Work or the Project Schedule (as it relates to the D&D Work);
- (d) CARTA-Caused Delay;
- (e) subsurface conditions existing at the Site which differ materially from any conditions specified in the information made available to TSI by CARTA prior to the Effective Date and which could not have reasonably been anticipated by TSI as of the Effective Date in the exercise of Good Industry Practice as a result of the review and due diligence conducted by TSI;
- (f) a binding decision of a court of competent jurisdiction in relation to Claims relating to the RFID Patent which has a material adverse impact on the performance of the D&D Work relating to interoperability and integration of the RTS with the 6C tolling protocol; and
- (g) a change in Referenced Standards that TSI is required to implement by CARTA in accordance with Section 1.5 that materially modifies or impacts the Scope

of Work, Business Rules (except for those items that are Configurable), or the approved Plans.

Existing Department ROW means the real property, owned by Department as of the Effective Date, which CARTA intends to make available for permanent improvements included in the Project which is shown graphically in the Scope of Work.

Express Lane(s) or 1-80 Express Lane(s) when capitalized, has the meaning given in Recital A to this Agreement.

Express Lane Section means a portion of the Express Lanes from one point of access to the immediately succeeding point of access.

Express Lanes Operations means all services required of the RTS to perform Work during the One Year Warranty and O&M Period, including Toll processing, and Host operations, RTS Documentation, Software, Hardware and accounting, including all labor, management, supervision, Equipment, tools, software, licenses, utilities, transportation, facilities support services, data services and connections and Equipment necessary to perform such Work, as required under the Agreement.

Factory Acceptance Test(ing) means the test(ing) performed by TSI to verify that functional elements of the RTS are in conformance with the Technical and Functional Requirements.

Final Design Document means the design documents updated from the CDR as described in the Scope of Work.

Final Design Review means the review of the Final RTS Design Document as specified in the Scope of Work.

Final Payment means final payment by CARTA with respect to either (i) the D&D Work or (ii) the O&M Work in accordance with Section 31.

Financial Transaction means financial data related to the credits, debit, adjustments and reversals made within the RTS and made by any external service provider.

Fiscal Year means the CARTA-adopted financial calendar, July 1 through June 30, or any other consecutive 12-month period selected by TSI and approved by CARTA.

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect TSI's ability to achieve a Project Milestone by its applicable Guaranteed Completion Date. "Float" means generally the difference between early completion times and late completion times for activities as shown on the Project Schedule, and shall include any float contained

within an activity as well as any period containing an artificial activity (that is, one which is not encompassed within the meaning of “work”).

Force Majeure Event means any of the events listed in clauses (a) through (q) below, subject to the exclusions listed in clauses (i) through (vii) below, which materially and adversely directly affects TSI’s obligations under this Agreement:

- (a) any earthquake, tornado, hurricane, one in 100 year flood or other natural disaster that causes direct physical damage to the Project;
- (b) a public health emergency declared by Yolo County pursuant to applicable law;
- (c) any blockade, rebellion, terrorism, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) any spill of Hazardous Material by a third party that occurs after the date upon which NTP1 was issued and is required to be reported to a Governmental Entity and that renders use of the roadway or construction area unsafe absent assessment, containment and/or remediation;
- (e) issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Toll Services, except to the extent in connection with the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Governmental Rule by any of TSI-Related Entities;
- (f) a traffic incident caused by CARTA or a third party that causes physical damage to the O&M Work or RTS Infrastructure ; and
- (g) from and after System Acceptance, malicious or other acts by third parties that TSI is not required to control or supervise causing physical damage or similar occurrence to the O&M Work or RTS Infrastructure , including intentional acts of sabotage.

“Force Majeure Event” excludes:

- (i) any fire or other physical destruction or damage, or delays to the Toll Services which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause

- (ii) except as provided in clause (q), malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e);
- (v) any increased costs or delays related to failure to obtain any approval, work or other action from a Utility owner;
- (vi) the presence at, near or on a Site, as of the date upon which NTP1 is issued, of any Hazardous Material, including substances disclosed in documents made available or provided to TSI by CARTA prior to the date upon which NTP1 is issued, as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the work;
- (vii) any TSI Release of Hazardous Materials; and
- (viii) any matters not caused by CARTA or beyond the control of CARTA or any other matter not listed in clauses (a) through (a).

Freeway Lanes mean all General Purpose Lanes and HOV Lanes on Interstate 80.

General Purpose Lane(s) or GP Lane(s) means all mixed-flow lanes (including ramps and direct connectors), auxiliary lanes on Interstate 80, excluding the I-80 Managed Lanes. GP Lanes are not subject to a Toll or managed by price or occupancy.

Generally Accepted Accounting Principles (or GAAP) means the set of accounting rules and accounting standards promulgated by the “Financial Accounting Standards Board” (FASB), as updated from time to time, and adopted by the accounting profession for the form and content of financial statements and recording of financial transactions.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced professional systems integrator, engineer, constructor, installer, toll collection and violations enforcement operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable Governmental Rules and Governmental Approvals, using accepted systems design,

integration, configuration, installation, deployment, testing, commissioning, construction and maintenance standards, and toll collection and violations enforcement standards, processes, procedures and criteria normally used on similar projects in the United States, and engaged in the same type of undertaking in the United States under similar circumstances.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, mitigation agreement, agreement or memoranda of agreement/understanding, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, required by or with any Governmental Entity in order to perform the Toll Services, but excluding (a) any such approvals relating to the work to be performed by other contractors as specifically described in this Agreement and (b) any such approvals required by or with a Governmental Entity in its capacity as a Utility Owner. Governmental Approvals include Environmental Approvals.

Governmental Entity means any federal, State or local government and any- political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than CARTA, including any successor to such Governmental Entity or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Entity.

Governmental Rule means any statute, law, code, regulation, ordinance, rule, judgment, common law, writ, injunction, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Toll Services, the Project or the Site, including Environmental Laws. The term “Governmental Rule” excludes “Governmental Approvals.”

Guaranteed Completion Date(s) means each of the following:

- (a) Toll Commencement Deadline; and
- (b) System Acceptance Deadline,

or all of them as the context requires

Guarantor means _____, or any other party who provides a guaranty with respect to TSI’s obligations under this Agreement.

Hardware means the physical, tangible and permanent components of the RTS.

Hazardous Materials means any element, chemical, compound, mixture, substance, product, waste or other material, whether solid, liquid or gaseous, which is or becomes defined, listed, classified, regulated, or addressed in any way under any Environmental Laws, or any other substances or conditions (including mold and other mycotoxins, fungi or fecal matter) which may create any unsafe or hazardous condition or pose any threat or harm to the environment or human health and safety. "Hazardous Materials" includes the following:

- (a) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any Environmental Law or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;
- (b) Hazardous Waste, hazardous materials, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive substances or related materials, whether solid, liquid or gas, including substances defined as or included in the definition of "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "radioactive materials," "bio-hazardous waste," "pollutant," "toxic pollutant," "contaminant," "restricted hazardous waste," "infectious waste," "toxic substance," "toxic waste," "toxic material," or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity. "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Law);
- (c) Any petroleum or crude oil and any fraction thereof, including any refined petroleum product or any additive thereto or fraction thereof, and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto, but excluding petroleum and petroleum products contained within regularly operated motor vehicles;
- (d) Any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;
- (e) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (f) Any flammable substances or explosives, including unexploded ordnance;

- (g) Any radioactive materials;
- (h) Any asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground);
- (i) Silica;
- (j) Any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);
- (k) Any radon or radon gas;
- (l) Any methane gas or similar or regulated gaseous materials;
- (m) Any urea formaldehyde foam insulation;
- (n) Electrical equipment and components which contain any oil or dielectric fluid containing polychlorinated biphenyls;
- (o) Pesticides, herbicides or fungicides;
- (p) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of any Persons in the vicinity of the Project or to the environment; and
- (q) Soil, surface water or groundwater containing any of the Hazardous Materials as defined above.

Hazardous Materials Management means sampling, characterization, stock-piling, storage, backfilling in place, asphalt batching, recycling, assessment, containment, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Governmental Rule.

Hazardous Materials Management Plan means TSI's approved Plan for Hazardous Materials Management if Hazardous Materials or recognized Potential Environmental Conditions are encountered.

Host Software means the Software that enable computers, servers, and other computing Hardware to perform the Toll Services associated with the Host which requires such Hardware.

HM-1 means Hazardous Material that may require removal and disposal in accordance with Governmental Rules, whether disturbed by the Toll Services or not.

HM-2 means Hazardous Material that may require removal and disposal in accordance with Governmental Rules only if disturbed by the Toll Services.

Holiday or holiday means any holiday shown in the following table:

Holidays

Holiday	Date observed
New Year's Day	January 1st
Birthday of Martin Luther King, Jr.	3rd Monday in January
Lincoln's Birthday	February 12th
Washington's Birthday	3rd Monday in February
Cesar Chavez Day	March 31st
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving Day	Day after Thanksgiving Day
Christmas Day	December 25th

If January 1st, February 12th, March 31st, July 4th, November 11th, or December 25th falls on a Sunday, the Monday following is a holiday. If November 11th falls on a Saturday, the preceding Friday is a holiday.

Home Agency means an interoperable agency which owns and maintains a customer transponder (i.e., AVI) and license plate accounts to which interoperable toll transactions from away agencies are posted and payment from the account is transferred.

Host means the RTS component that receives and processes lane level data to form Trip Transactions, and supports monitoring and maintenance of the equipment, systems and subsystems of the RTS. The Host includes functionality to assign toll rates, determine pricing, and build Trip Transactions.

HOV Lane means a high occupancy vehicle lane on Interstate 80.

Image Based Transaction means a Lane Transaction which is not associated with a Transponder, and for which an image of the associated vehicle's license plate is obtained and processed for purposes of identifying the registered owner of the vehicle and billing the Toll to the registered owner of the vehicle.

Image Capture System means the in-lane subsystem used to capture and record vehicle license plate images.

Indemnified Claim has the meaning given in Section 25.1.1.

Indemnified Parties means CARTA, the members of CARTA's Board, the CARTA Representative, the CARTA member agencies, Department, the CBO Provider, environmental, regulatory and permitting agencies, and each of the foregoing's respective officers, directors, board members, employees, consultants, representatives and agents, or each of them as the context requires.

Individual Test Plan means a CARTA approved and TSI provided test plan that includes the description of items including intended testing criteria, sequences, activities and schedules.

Installation Drawings means the RTS installation requirement design drawings to be submitted to CARTA in accordance with the Scope of Work.

Installation Plan(s) means the plan(s) approved by CARTA and prepared by TSI detailing the sequence and schedule for installation of the roadside portions of the RTS as further detailed in the Scope of Work.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade names, trade dress, trade secrets and trade secret rights, designs (registered and unregistered) and design rights, utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Toll Services, Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including software used for management of traffic on the Project), Software and Software Source Code. Intellectual Property is distinguished from physical construction and equipment itself and from data, sketches, charts, calculations, drawings, plans, depictions, specifications, layouts, depictions, manuals, electronic files, artwork, correspondence, other Submittals and other documentation that disclose Intellectual Property.

Interface Testing means testing performed by TSI to verify establishment of communications as well as operational processing with each of the required interfaces, both internal and external.

Internet Protocol means a communications protocol for computers connected to a network, especially the internet, specifying the format for addresses and units of transmitted data.

Interoperability means the process that allows toll customers to use the facilities of other toll agencies who agree to exchange transaction data and toll revenue based on rules.

Key Performance Indicators or KPIs means requirements set forth in the Scope of Work with respect to which TSI's performance is measured and reported on a regular basis and which subject TSI to the imposition of Performance Liquidated Damage or Toll Collection Revenue Loss Liquidated Damages for failures to meet the specified minimum standards for performance, as set forth in the KPI Table set forth in Appendix 2 to Attachment C to the Scope of Work.

Key Personnel means those TSI personnel positions specified in Exhibit 2, as amended from time to time in accordance with Section 14.6.

Key Personnel Liquidated Damages means the amount(s) that TSI is required to pay to CARTA in accordance with Section 14.7.

KPI Table means the table set forth in Appendix 2, Attachment C to the Scope of Work.

Lane means any traffic lane including main lanes, ramps, direct connectors, frontage roads and cross roads.

Lane Closure means a Permitted Lane Closure or an Unpermitted Lane Closure, or both, as the context requires.

Lane Closure Charges means the liquidated damages described in Section 11.1 as owing from TSI to CARTA for Lane Closures.

Lane Controller means the Read Point computer that manages and controls the Read Point Equipment and communicates with the Host.

Lane Transaction means a uniquely identified record of activity, including transponder and license plate images, created as a result of a vehicle traveling through a Read Point.

Level of Service means a measure of highway performance based on volume to capacity ratio in accordance with the Highway Capacity Manual.

License Plate Recognition means automated technology that uses images of license plates to identify vehicle license plates information.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance or restriction on title or property interest of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Liquidated Damages means Delay Liquidated Damages, Performance Liquidated Damages, Performance Stipulated Damages, Key Personnel Liquidated Damages, Lane Closure Charges or each of them as the context requires.

Liquidated Damages for Toll Collection Revenue Loss means an amount to be calculated by CARTA in accordance with the Scope of Work for a Toll Collection Revenue Loss.

Losses means, whether asserted, suffered or incurred by a Party or Third Party, any loss, damage (including personal injury, property damage and natural resource damages), injury, expense, compensation, debt, obligation, charge, liability, cost, expense (including attorneys' fees, accountants' fees, expert witness fees and expenses, deductibles or increased premiums (including those incurred in connection with the enforcement of any provision of this Agreement)), fee, charge, demand, investigation, proceeding, action, suit, claim, judgment, penalty, fine or Third Party Claims, actual, prospective or contingent and whether or not currently ascertainable. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Lump Sum means a single price for the Work specified in a Line Item of the Price Sheets.

Maintenance Online Management System (MOMS) means a system used to monitor the status and health of connected Equipment and devices, process changes in status and track repairs as set forth in the Scope of Work.

Maintenance Plan means the written maintenance plan that details how maintenance activities will be performed including a plan for preventive maintenance and a preventive maintenance schedule and is developed by TSI and approved by CARTA as provided in the Scope of Work.

Maintenance Work means all Work required to maintain the RTS as set forth in the Agreement and the Scope of Work.

Margin means any amount on account of off-site and on-site overheads and administrative, general administrative, corporate and other like costs and profit.

Master Test Plan means the plan approved by CARTA and prepared by TSI establishing the system-wide framework for testing activities by integrating functional, system, and performance of RTS components, subsystems, interfaces, and the overall RTS, as specified in the Scope of Work.

Minor Revisions means changes that are primarily aesthetic in nature, do not involve material changes in system or database architecture, and are not based on Technical and Functional Requirements for the Configuration Work or statutory and non-discretionary standards relating to public health, safety and welfare. Minor Revisions include, changes or additions to Configurable Business Rules, Configurable Parameters, configurable logic, display items that can be derived from already captured data, and screen and report layouts, data inclusions, title, colors, graphics and fonts.

Noncompliance O&M Event means (a) any Priority O&M Event which is not Responded to within the applicable Response Time or Repaired within the applicable Repair Time or (b) any failure to meet any KPI for which there is no Response Time or Remedy Time in the KPI Table.

Nonconforming Work means:

- (a) any aspect of the Toll Services which does not comply with this Agreement; or
- (b) any fault, or omission in the RTS that is not consistent, or is incompatible with, its age, function, performance and use when properly maintained in accordance with Good Industry Practice and this Agreement.

Non-Disclosure and Confidentiality Agreement means a non-disclosure agreement in the form to be provided by CARTA.

Notice has the meaning given in Section 30.11.

Notice of Toll Commencement means a Notice from CARTA to TSI establishing the Toll Commencement Date and the date on which tolling will commence in accordance with the Agreement.

Notice of Termination for Convenience means Notice issued by CARTA to TSI terminating the Work of TSI for convenience in accordance with Section 21.1.

Notice to Proceed means Notice to Proceed 1 (NTP1) or Notice to Proceed 2 (NTP2), or both of them as the context requires.

Notice to Proceed 1 (NTP1) means the Notice issued by CARTA to TSI authorizing TSI to proceed with Work in accordance with Section 6.2.

Notice to Proceed 2 (NTP2) means the Notice issued by CARTA to TSI authorizing TSI to proceed with Work in accordance with Section 6.4.

Notice to Proceed 3 (NTP3) means the Notice issued by CARTA to TSI authorizing TSI to proceed with Work in accordance with Section 6.5.

NTP1 Work means the preparation, delivery and approval by CARTA, in accordance with the Submittal Process and prior to NTP2, of the Deliverables set forth in the Scope of Work as required for NTP1. Generally, NTP1 Work includes design and long lead time delivery item procurement.

NTP2 Payment Bond has the meaning set forth in Section 15.1.4.

NTP2 Performance Bond has the meaning set forth in Section 15.1.3.

NTP2 Work means the D&D Work excluding the NTP1 Work, and the O&M Work and all other work to be performed during the Warranty Period.

NTP3 Work means the O&M Work to be performed during the O&M Period.

O&M Payment Bond has the meaning given in Section 15.1.4.

O&M Performance Bond has the meaning given in Section 15.1.3.

O&M Monthly Progress Report means a single monthly submission and compilation of all monthly reports required by the Scope of Work and Agreement during the O&M Phase for use in review of KPIs and at monthly meetings.

O&M Relief Events means any of the following events:

- (a) CARTA Directive Letter issued that relates to a Change or CARTA-Initiated Change Order;
- (b) Emergencies during the O&M Period;
- (c) Changes in Law impacting the O&M Works that materially modify or materially impact the Technical & Functional Requirements, Business Rules, or the approved Plans;

- (d) a change in Referenced Standards that TSI is required to implement by CARTA in accordance with this Agreement and which materially modify or materially impact the Technical & Functional Requirements, Business Rules (except for those items that are Configurable), or the approved Plans; and
- (e) court orders which enjoin, restrain or stay performance of the O&M Work or which directly impose or require changes in the O&M Work.

O&M Period means the period commencing on the day after the One Year Warranty Period ends and continuing until the end of the Original Term, plus any extension of such period due to CARTA's exercise of an O&M extension option.

O&M Work means the Maintenance Work and the Express Lanes Operations, or either of them, as the context requires, which shall be provided during the One Year Warranty Period and during the O&M Period.

One Year Warranty Period means the period commencing upon CARTA's issuance of the Notice of Toll Commencement, and ending upon issuance of NTP3.

Open Book Basis means providing CARTA all underlying assumptions, price quotes and data associated with pricing or compensation (whether of TSI or CARTA) or adjustments, including assumptions as to costs of the Toll Services, schedule, composition of Equipment spreads, Equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, payroll, procurement and purchasing records and subcontractor invoices and other items reasonably required by CARTA to satisfy itself as to the reasonableness and accuracy of the amount.

Operational Back Office (OBO) means the central database and processor of the roadside system. It is responsible for processing toll transactions, supporting trip building, setting toll rates, compiling trips, supporting system monitoring and maintenance of roadside equipment

Operational Acceptance Testing means the testing to verify the installed operational accuracy, performance, reliability, and audit capability of the RTS, following Toll Commencement, as further set forth in the Scope of Work.

Optional Toll Services means any of the optional toll services work or projects identified in the RFP and Scope of Work.

Optional Toll Services Project Supplement means a supplement to this Agreement issued by CARTA and executed by both Parties to authorize specified Optional Toll Services Project Work to be completed in accordance with this Agreement, the Scope of Work, the

Proposal price for the applicable Optional Toll Services Project Work, and any other terms agreed upon by the Parties.

Optional Toll Services Project Work means any of the work or services required to complete the Optional Toll Services, and which is the subject of an Optional Toll Services Project Supplement.

Original Term means the date which is five years after the Toll Commencement Date.

Other CARTA Contractor means any contractor or consultant, except any TSI-Related Entity, that CARTA contracts to perform other or additional work on or near the Site or in connection with the Project, including Civil Contractor and CBO Provider.

Other CARTA Contractor Work has the meaning given in Section 4.2.1.

Party means TSI or CARTA, as the context may require, and Parties means TSI and CARTA, collectively.

Payment Bond is described in Section 15, and the form of bond is attached as part of Exhibit 4 to this Agreement.

Payment Milestone means each set of completed D&D Work for which TSI may submit an invoice to CARTA, as specified in the Scope of Work.

Performance Bond is described in Section 15, and the form of bond is attached as part of Exhibit 4 to this Agreement.

Performance Liquidated Damages means the amount specified in the KPI Table with respect to each applicable Priority O&M Event or Noncompliance O&M Event.

Project Milestones means each of the following:

(f) Toll Commencement; and

(g) System Acceptance,

or any other milestone identified in the Scope of Work.

Permitted Freeway Lane Closure means a Permitted Lane Closure of a Freeway Lane.

Permitted 1-80 EL Lane Closure means a Permitted Lane Closure of an 1-80 Express Lane during the time periods set forth in Exhibit 7.

Permitted Lane Closure means (1) a full or partial closure of any portion of a Freeway Lane or Express Lane by TSI in connection with Toll Services, or (2) ingress to or egress from a Freeway Lane or Express Lane is completely or partially blocked by TSI in connection with the Toll Services, and which is approved in advance by CARTA in accordance with the Scope of Work and occurs wholly within the time period set out in the Scope of Work and TSI otherwise complies with the provisions of the Agreement for Lane Closures.

Persistent Breach if TSI or a Tolling Zone fails to meet or exceed any one or more of the KPIs with respect to any function or system each day for more than 10 consecutive days, with compliance measured on a daily basis, or each day for more than 15 (consecutive or nonconsecutive) days in any calendar quarter (3 month period), with compliance measured on a daily basis.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

Personally Identifiable Information (PII) means information, obtained or accessed from whatever source, including CARTA and/or the CBO Provider, that identifies an individual who is a patron of the 1-80 Managed Lanes and that must be protected from disclosure under California Streets and Highways Code Section 31490 and other applicable laws, including any information collected or received from or about any person who is assessed a toll, including information or data collected through the use or operation of an automated license plate recognition system, as defined in California Civil Code Section 1798.90.5 and any other information that relates to these types of information.

Plans or plans means all CARTA-approved plans required to be developed by TSI in accordance with the Scope of Work as prepared and updated in accordance with this Agreement.

Pre-Existing Software means all “Pre Existing” Software listed in Exhibit 17, including COTS and TSI’s own Software that it owns or has developed as of the date of this Agreement and that it intends to use in connection with the Toll Services.

Pre-Existing Works License has the meaning given in Section 27.7.1.

Preliminary Change Order A Change Order issued by Carta when TSI does not respond to a change request or if CARTA and TSI cannot agree on terms of a proposed change.

Preliminary Project Schedule means the draft project schedule submitted by TSI with the Proposal and included in Exhibit __.

Preliminary Design Document means the initial design document prepared by TSI for approval by CARTA describing all the functions, applications, systems, and methods proposed for the Project as further detailed in the Scope of Work.

Preliminary Design Review means the review of the preliminary design documents as specified in the Scope of Work.

Price Proposal means TSI completed Price Sheets submitted with its Proposal and all other components noted as being part of the Price Proposal in the RFP.

Price Sheet means the completed pages of the Proposal detailing the compensation to be paid to TSI for completing the Toll Services in accordance with the Scope of Work and this Agreement, as included in Exhibit 6.

Priority O&M Event means an O&M Noncompliance event for which a Response and Repair time is specified in the KPIs, and to which a Performance Liquidated Damage applies.

Priority Level means a problem/repair status established based on level impact to the operation and customer importance or urgency.

Privacy Policy means the policy to be adopted by CARTA in connection with the Project.

Project has the meaning set forth in Recital A.

Project Intellectual Property means all Pre-Existing Software, Third Party Intellectual Property and Developed Intellectual Property incorporated into the Toll Services.

Project Management Plan means the CARTA-approved plan prepared by TSI defining the project management effort as specified in the Scope of Work.

Project Schedule means the project schedule approved by CARTA, developed and maintained by TSI as specified in the Scope of Work.

Proposal means the proposal submitted on the Proposal Date by TSI to CARTA in response to the RFP.

Proposal Date means June 26, 2026.

Proposal Price means the total price for performance of the Toll Services set forth in the Proposal documents.

Public Records Act means the provisions of Government Code sections 7920.000 et. seq.

Punch List means the list of Work remaining to be completed with respect to the RTS or Toll Commencement (as applicable) which shall be limited to items of the applicable Work that are necessary to remedy minor Nonconforming Work, but which have no material or adverse effect on the use, safety or operability of the Toll Services.

Quality Assurance/Quality Control means the total of all activities performed by TSI to assess design, deployment, installation, operations and maintenance processes so as to control the level of quality being provided in the end product. Components may include design reviews and checks, establishing procedures, calibrations and maintenance of equipment, shop drawing review, document control, process control, and any sampling, testing, and inspection done for these purposes.

Quality Manager means the individual responsible for TSI's overall QA/QC program for D&D Work or the O&M Work, as applicable.

Quality Management Plan means the approved plan, developed by TSI, which identifies TSI's overall framework for implementation of its Quality Assurance/Quality Control program across all aspects of the Work and quality program for the Toll Services, as specified in Scope of Work.

Radio-Frequency Identification means wireless, signaling communication technology, which when used in this Project, refers to communications between a Transponder in a vehicle and AVI antennas and readers mounted at a Read Point, for purpose of recording the Transponder's unique ID for use in charging the associated toll customer

Read Point means each location where the RTS detects vehicles, reads transponders, and captures images in order to create Lane Transactions.

Reasonable Investigation means the following activities by appropriate, qualified professionals prior to the date on which TSI submitted its Proposal:

- (a) visit and visual, non-intrusive inspection of the Site and adjacent locations, except areas to which access rights were not made available by the date on which TSI submitted its Proposal;
- (b) review and analysis of all Reference Documents;
- (c) review and analysis of CARTA-Provided Approvals available prior to the date on which TSI submitted its Proposal;
- (d) reasonable inquiry with Utility owners;
- (e) review and analysis of Governmental Rules applicable to the Toll Services, as of the Proposal Date; and

- (f) other activities sufficient to familiarize TSI with surface and subsurface conditions affecting the Site or surrounding locations; except that none of the foregoing activities includes conducting field studies, geotechnical investigations, or original research of private records not contained or referenced in the Reference Documents or Scope of Work.

Recovery Schedule means the approved schedule TSI is required to provide to address delays in the Baseline Schedule in accordance with Section 8.6.

Reference Documents means the documents and information included as part of the RFP for reference purposes, and identified as reference documents.

Referenced Standard means any standard applicable to the Toll Services established by reference contained in this Agreement to a described publication.

Registered Professional Engineer means a person who is duly licensed and registered by the California Board of Professional Engineers to engage in the practice of engineering in the State.

Release of Hazardous Materials means any actual or threatened spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Relevant Event has the meaning given in Section 18.1.1.

Relevant Event Notice has the meaning given in Section 18.4.1.

Repair means following the occurrence of a Priority O&M Event, remedying the Priority O&M Event in a way that TSI is in full compliance with this Agreement.

Repair Time with respect to each Priority O&M Event, the relevant period within which TSI shall Repair a Priority O&M Event as specified in the KPI Table.

Representative means the individuals authorized to make decisions and bind the parties on matters relating to this Agreement in accordance with Exhibit ____.

Request for Proposals or RFP means the Request for Proposals issued by CARTA on April 30, 2026 with respect to the Toll Services, including all attachments thereto and any subsequent addenda.

Requirements Traceability Matrix means the document developed by TSI to maintain documented traceability from business rules and requirements through design, testing, and training, as further detailed in the Scope of Work.

Respond means, following the occurrence of a Priority O&M Event:

- (a) restoring the RTS to the condition required by this Agreement;
- (b) where applicable, restoring the surrounding area to a state or condition such that in the reasonable opinion of the CARTA Representative, the area is free of conditions which might otherwise create a safety hazard for drivers, pedestrians or other Customers; and
- (c) sufficiently reducing the risk during the Response Time and Repair Time that further damage, nonperformance, safety hazards or adverse consequences caused by the Priority O&M Event might occur.

Response Time means, with respect to each Priority O&M Event, the relevant period within which TSI shall Respond to a Priority O&M Event as specified in the KPI Table.

RFP Documents means all of the information and materials supplied to TSI in connection with the issuance of the RFP, including Instructions to Proposers, this Agreement, the Reference Documents and any subsequent addenda.

Right of Way or ROW means the area available to TSI for the performance of the Toll Services.

Roadside System meaning the Sub-systems and Equipment and Software that control and manage the RTS at the Lanes as set forth in the Scope of Work.

Roadside Toll System (RTS) means the complete, functioning, electronic toll system and Subsystems that TSI is required to provide to CARTA pursuant to this Agreement, including all hardware, software, system and user interfaces, electrical and communications equipment, and various technologies to manage traffic, monitor operations, facilitate toll collection, and report on System Data collected by the RTS.

RTS may also refer to an unspecified component or subsystem of the TSI's technical solution that performs a function being identified in the requirements.

RTS Documentation means all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, data, studies, calculations, electronic files, records and submittals, including Plans, Software (including both Software Source Code and object code) and other physical or electronic materials with respect to Intellectual Property, Software, Software Source Code or required to adequately document the RTS as configured, and necessary for, or related to, the configuration, installation, integration, testing, maintenance and operation of the Toll Services in accordance with this Agreement, the Governmental Approvals and applicable Governmental Rule includes all relevant commentary, explanations and instructions to

compile source code, and all modifications, additions or substitutions made to such materials.

RTS Infrastructure means the Civil Contractor RTS Infrastructure and RTS utilized in connection with the RTS provided by both the Civil Contractor and the TSI.

RTS Infrastructure Demarcation of Responsibilities means the demarcation of responsibilities between the TSI and the Civil Contractor as identified in the Demarcation of Responsibilities exhibit contained in Appendix 2, Reference 2, *Schematics, Drawings and Diagrams*, of the Scope of Work.

RTS Site means the location of an individual RTS component or co-located RTS components, including Read Points, TRDMS, RTS CCTV and VDS.

Safety Plan means the CARTA-approved, comprehensive safety plan for the Project as described in Scope of Work.

Savings means the amount of any costs, including any TSI Margin or Margin avoided or otherwise reduced in connection with a Change or Eligible Change.

Segment means a segment of Express Lanes, which may consist of multiple successive Express Lane Sections, which is used to establish the Toll Rate.

Setting Date means the date that is 60 days prior to the Proposal Date.

Site means, depending upon the context, the ROW on which any part of the D&D Work, the RTS or the Host is to be located and any temporary rights or interests that TSI may acquire at its own cost and expense in connection with the D&D Work.

Site Commissioning Test(ing) means the testing performed by TSI to verify in separate tests that each installation is performed properly, that the equipment and interfaces function properly, and have been properly integrated with the RTS.

Software means computer programs, procedures, rules and associated documentation pertaining to the control and operation of the data processing and data storage for the RTS, as further set forth in the Technical and Functional Requirements. Software includes all associated features and functions described in the Work, including all updates, derivative works, enhancements, modifications or Upgrades thereto, and all error corrections, patches and bug fixes provided by the TSI and which is made part of the RTS, as well as all related or ancillary data files, modules, libraries, tutorial and demonstration programs, and other components thereof, all source and object code, firmware and all documentation.

Software Maintenance means performance of all the activities to service and maintain the Software.

Software Maintenance Option means CARTA's option to extend the time period during which TSI is required to service and maintain the Software for a maximum period of 5 years, including providing updates and upgrades, from and after the termination of this Agreement, whether at the end of the O&M Period, or as a result of an earlier termination, for so long as CARTA desires to continue to use the Software in connection with the Toll Services.

Software Maintenance Option Period means the time period for which CARTA's elects to require TSI to service and maintain the Software, including providing updates and upgrades as set forth in a Notice under Section 3.3.

Software Source Code means the Software written in programming languages, such as C and Fortran, including all comments and procedural code and configuration code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, and architectural standards, describing the data flows, data structures, and control logic of the Software, including TSI's version of compilers used in connection with the Software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation, and such other documentation and executables required to independently maintain the Software, and necessary information to build and replicate any specialized hardware, but excludes source code for COTS unless such source code is available to TSI.

Source Code Documentation means all documentation reasonably necessary or desirable to allow for compiling and testing of the Software Source Code, including without limitation a list of applicable proprietary software development tools, license(s) to all applicable Intellectual Property, detail on any permitted third party commercially available Software used in conjunction with the system (including name, version, sub-version number and release date), documentation on how any permitted third party commercially available Software is linked to the RTS Software, and documentation showing the identities of and most current available contact information for one or more qualified programmers who had or have responsibility for creation of the Software Source Code at issue and the methodology such that they can explain the source code and the methodology and otherwise be used as system references.

Source Code Escrow means the escrow established with the Code Escrow Agent to hold TSI's deposit of the Software Source Code in the form of the agreement in Exhibit 8, with such modifications as CARTA shall, in its sole discretion, accept.

Standard Operating Procedures means a document prepared by TSI detailing all procedures necessary for administration and operations of the RTS.

State means the State of California.

Subcontract (or subcontract) means any agreement by TSI with any other Person to perform any part of the Toll Services or provide Equipment for, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

Subcontractor (or subcontractor) means any Person, subcontractor or supplier with whom TSI has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Toll Services, at all tiers.

Submittal Process means the process specified in Section 28 for CARTA review, comment, approval and disapproval under this Agreement.

Substantial Completion means the date specified in the certificate of substantial completion issued by CARTA under the Caltrans Contract.

Substantial Guaranteed Completion Date means the date upon which substantial completion is scheduled to be achieved under the Caltrans Contract, as extended under the terms of the Caltrans Contract.

Subsystem means a self-contained system within the RTS.

Successor means the entity which undertakes the responsibilities for Toll Services at the expiration or termination of this Agreement.

Supplier (or supplier) means any Person not performing work at or on the Site which supplies machinery, equipment, materials, Hardware, Software, systems or any other appurtenance to any portion of the Toll Services to TSI or to any Subcontractor in connection with the performance of the Toll Services. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from a Site shall not be deemed to be performing Toll Services at the Site.

Surety means each properly licensed surety company, insurance company or other Person approved by the California State Insurance Commissioner to do business in the State and approved by CARTA, which has issued the Bond.

System Acceptance means the stage of the D&D Work when the following requirements have been satisfied by TSI:

- (a) Toll Commencement has been achieved;

- (b) TSI has complete all Punch List items in accordance with this Agreement;
- (c) All Liquidated Damages payable in accordance with Section 11 have been paid by TSI;
- (d) The Operational Acceptance Test(ing) has been satisfactorily conducted and completed by TSI in accordance with the Scope of Work and a final test report of the results has been received and approved by CARTA;
- (e) The Source Code Escrow Holder has confirmed in writing to CARTA that all Software Source Code that is required to be in the Source Code Escrow has in fact been delivered to the Source Code Escrow by TSI;
- (f) CARTA has approved all Deliverables required to be provided prior to System Acceptance;
- (g) No remedied failure of any equipment or Work provided by TSI to comply with the RTS Documentation or this Agreement or required submittal shall exist and be continuing;
- (h) TSI has demonstrated compliance with all KPIs;
- (i) TSI has delivered to CARTA As-Built Technical Drawings and an As-Built Final Design Document that are compliant with the Agreement requirements; and
- (j) All other conditions to System Acceptance in this Agreement and the Scope of Work have been satisfied.

System Acceptance Date means the calendar date when System Acceptance is achieved.

System Acceptance Deadline means the anticipated date that is 180 days after Toll Commencement as set forth in the Project Schedule.

System Design Document means the design document to be prepared as detailed in the Scope of Work.

Technical Proposal means TSI's completed Technical Proposal submitted in response to the RFP.

Technical and Functional Requirements means the document entitled Volume III, including attachments, Technical and Functional Requirements constituting the document describing the scope of the Toll Services and related standards, criteria, requirements, conditions, procedures, specifications and other provisions for the Project, as such

provisions may be changed, added to, deleted or replaced in accordance with this Agreement.

Term means the period commencing on the Effective Date and ending on the earlier of the last day of the O&M Period, or the Termination Date.

Termination Date means the date of termination specified in the Notice of Termination for Convenience or Termination for Default Notice (as applicable).

Termination for Convenience Amount has the meaning given in Section 21.4.1.

Termination for Default Notice has the meaning given in Section 22.3.1(a).

Termination Notice means the Notice of Termination for Convenience and the Termination for Default Notice, or either of them as the context requires.

Third Party means any Person who is not a Party to the Agreement.

Third Party Claims means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

Third Party Intellectual Property means any Intellectual Property owned by any Person unrelated to TSI or Subcontractors, and which is incorporated into the Toll Services.

Toll means the charge for use of the 1-80 Managed Lanes.

Toll Collection Revenue Loss means a Noncompliance O&M Event, a Priority O&M Event, or any other failure by the TSI to properly gather or process data, except for loss caused by the sole negligence or wrong-doing of CARTA, that triggers a revenue loss by the TSI.

Toll Commencement means the point at which TSI has satisfied the following conditions precedent to Revenue Service:

- (a) TSI, has disposed of all its surplus materials and rubbish, removed all Equipment belonging to TSI, and left the Site and all structures occupied by TSI in a neat, clean and safe condition;
- (b) the D&D Work is in a condition to safely commence Revenue Service and safely accept and continue normal, uninterrupted flow of traffic;

- (c) TSI has completed and passed all FAT, Site Commissioning Test and any other testing requirement by the Scope of Work, and obtained CARTA's written approval of the test results, and all of the requirements specified in the Scope of Work are satisfied;
- (d) TSI has secured and trained all personnel necessary to perform all O&M Work;
- (e) TSI has completed all D&D Work in accordance with this Agreement with the exception of Punch List items;
- (f) TSI has delivered to CARTA all original equipment and manufacturer's warranty certificates covering all Equipment furnished in connection with the D&D Work;
- (g) TSI has delivered to CARTA a final version of all document deliverables required by the Scope of Work except for any documents specifically required to be delivered only after the Toll Commencement Date and lapse, without disapproval, of the period for CARTA approval thereof in accordance with the Submittal Process;
- (h) TSI has completed all other Work required under this Agreement and the Scope of Work as a condition of Toll Commencement.

Toll Commencement Date means the calendar date on which TSI achieves Toll Commencement, as certified by CARTA's issuance of a Notice of Toll Commencement.

Toll Commencement Deadline means, prior to NTP2, anticipated as June 2028. After NTP2, the date for Toll Commencement set out in the Project Schedule.

Turnover means, for each Turnover Area, the stage in the Caltrans Work where Civil Contractor has completed design and construction of the elements identified as the Civil Contract responsibility in the RTS Infrastructure Demarcation of Responsibilities, and TSI has inspected and accepted the Turnover Area pursuant to a Civil Site Acceptance Checklist, or the Turnover Area is deemed accepted in accordance with this Agreement.

Toll-Exempt means a vehicle that is not charged for use of the I-80 Managed Lanes.

Toll Gantry means a gantry or series of gantries comprised of a Read Point upon which RTS equipment is mounted.

Toll Operations Center means the location where CARTA operators will monitor the express lane operations.

Toll Rate means the dollar amount assigned to a trip per Express Lane Segment.

Toll Services means the D&D Work and the O&M Work, as applicable, as the context requires.

Toll Services Data means all information and data concerning the RTS' operations, maintenance and performance, including customer information and data and Personally Identifiable Information collected by TSI or which TSI may have access to or may obtain in connection with performance of the Toll Services, and other Project information generated in connection with the Toll Services.

Toll System Integrator (TSI) means Indra USA, Inc.

Total Bonds and Insurance Cost means the amount payable to TSI to reimburse for bond and insurance premiums under Section 21.4.4.

Total Capital Cost means the Total D&D Cost, plus the Total Bonds and Insurance Cost and the One Year Warranty Cost.

Total D&D Cost means \$15,001,825.

Total O&M Cost means the Total O&M Years 1 through 4 Cost.

Total O&M Years 1 through 4 Fixed Cost has the meaning given in Section 31.6.3.1(a).

Training Plan means the approved plan prepared by TSI as specified in the Scope of Work.

Transaction means Lane Transactions, Trip Transactions, Financial Transactions, as applicable.

Transition Work means all Work necessary to transition the Work, or any portion thereof, to a Successor, including in accordance with the approved End of Agreement Transition Plan.

Transponder means a device placed on or within a motor vehicle that is capable of transmitting and receiving RFID signals used to identify a customer account with a particular home agency and information about the vehicle (e.g., classification).

Transportation Corridor Agencies or TCAs means the two joint powers authorities formed by the California legislature to plan, finance, construct, and operate Orange County's toll roads. TCA consists of two local government agencies: the San Joaquin Hills Transportation Corridor Agency which oversees the San Joaquin Hills Toll Road and the Foothill/Eastern Transportation Corridor Agency which manages both the Foothill Toll Road and the Eastern Toll Road.

Transponder Transaction means a Lane Transaction with a valid Transponder as determined by the Lane Controller.

Trip means the passage of a vehicle through an Express Lane Corridor from the point where the vehicle enters the express lane at an authorized entry location until it exits the express lane at an exit location. A Trip may include a single Zone/Read Point or multiple (but contiguous) Zones/Read Points.

Trip Building means the process within the RTS at the Host where Lane Transactions are processed to create Trip Transactions in order to charge tolls to vehicles making Trips in the express lane.

Trip Transaction means the package of information formed by the Host identifying a Trip made by a vehicle and the toll assigned to that Trip. The following modifiers can be added to Trip Transactions, as may be specified in the Scope of Work:

- Tagged – Trip Transactions associated with a valid FasTrak transponder
- Image Based – Trip Transactions without a valid FasTrak transponder, sent to the FasTrak CSC with VES images
- Non-Revenue Transaction
- Rejected - Trip Transactions which the FasTrak CSC cannot post to an account or pursue with a violation notice,

Posted – Trip Transactions which the FasTrak CSC posted to an account.

TSI Change Request means a request with respect to an Eligible Change submitted by TSI under Section 19.6 and consistent with the form of Exhibit 22.

TSI Event of Default means each of the events listed in Section 22.1.

TSI Fault means:

- (a) a breach by TSI of any of its obligations under this Agreement;
- (b) a breach of any representation or warranty made by TSI under this Agreement;
- (c) a breach of Governmental Rule or any Governmental Approval by any TSI-Related Entity;
- (d) gross negligence, fraud, criminal act or reckless or willful misconduct by any TSI-Related Entity; or

(e) a negligent or other culpable act or omission by any TSI-Related Entity.

TSI Margin means the percentage that TSI may charge on labor and the Audited Overhead in accordance with this Agreement to cover all profit and other like costs of TSI.

TSI-Related Entities means (i) TSI, (ii) partners, joint venturers and/or members in or with TSI, (iii) Subcontractors (including Suppliers), (iv) any other Persons performing any of the Work, (v) any other Persons for whom TSI may be legally or contractually responsible, and (vi) the CARTA Parties and invitees of any of the foregoing.

TSI Release of Hazardous Materials means any Release of Hazardous Material (i) brought onto the Site by any TSI-Related Entity, or (ii) attributable to the negligent acts, errors or omissions, gross negligence, willful misconduct, or breach of contract or Governmental Rule by any TSI-Related Entity.

TSI Representative means the Person designated as the TSI Representative(s) in Exhibit 2 as amended in accordance with this Agreement.

Turnover Area means each portion of the Site consisting of a Read Point and other associated equipment to be accepted or deemed accepted by the TSI.

Uninterruptible Power Supply means the battery backup device, which maintains a continuous supply of electric power when utility power is not available.

Unit means a quantity chosen as a standard in terms of which the Work described in a particular line item in the Price Sheets is measured.

Unit Price means the compensation to be paid to TSI for each Unit of Work specified in a Line Item in the Price Sheets or, where there is not applicable Unit Price, new unit prices agreed by the Parties which can be established and supported by substantiating data.

Unpermitted Freeway Lane Closure means an Unpermitted Lane Closure of a Freeway Lane.

Unpermitted 1-80 EL Lane Closure means an Unpermitted Lane Closure of an Express Lane.

Unpermitted Lane Closure means such cases where TSI (a) fully or partially closes a Freeway Lane or Express Lane, or any portion thereof, for any purpose, or (b) fully or partially blocks ingress to or egress from a Freeway Lane or Express Lane, or any portion thereof, for any purpose, and where, in the case of either clause (a) or (b), the closure or blockage is not a Permitted Lane Closure.

Upgrade means transforming or modifying and improving existing Software, including providing (i) a new version; (ii) new features and functions to address existing bugs, errors or security issues; and (iii) incidental functionality improvements. Upgrades do not include adding significant new functionality which is materially different than the existing Software.

Utility(ies) or utility(ies) a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system and any fire or police signal system as well as streetlights. However, the term “Utility” or “utility” excludes (a) storm water facilities that provide drainage solely for the Project right of way, and (b) traffic signals, ramp metering systems, flashing beacon systems, and lighting systems for the Project. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. Without limitation, any service line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such service line.

Utility Owner(s) means any private entity or public body (including city, county, state, public corporation, or public district) that owns and/or operates a Utility, including cooperative utilities.

Violation means the use of the CARTA 1-80 Managed Lanes without payment of a Toll through the use of a valid Transponder and account in accordance with CARTA Business Rules, except as otherwise permitted in accordance with the CARTA Business Rules.

Work (or work) means all of the work required to be furnished and provided by TSI under this Agreement, including all D&D Work, O&M Work and any other administrative, design, support services, procurement, professional, manufacturing, supply, design, installation, integration, deployment, testing, commissioning, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by TSI as required by this Agreement, including all efforts necessary or appropriate to meet all requirements specified in the Scope of Work, achieve System Acceptance and to operate and maintain the RTS in accordance with the standards in this Agreement during the Term, except for those efforts which this Agreement expressly specifies will be performed by Persons other than TSI-Related Entities.

Work Breakdown Structure means a deliverable-oriented decomposition of a project into smaller components.

Yolo 80 Corridor means Interstate 80, generally between the Richards Boulevard and US 50 interchanges through the Cities of Davis and West Sacramento.

EXHIBIT 2

PARTY REPRESENTATIVES AND TSI KEY PERSONNEL

CARTA Representative: Kathleen Aziz, Executive Director

1415 L Street, Suite #300

Sacramento, CA 95814

Phone: (916) 926-3806

Email address: kaziz@carta.ca.gov

TSI Representative: _____

Contact Information: _____

Key Personnel:

Juan Luis Merino, Project Principal

Manuel García Fernández, Project Manager

Christopher Kimbrell, Deputy Project Manager

Adam Bretch, System Design Manager

Frank Farrell, Installation Manager

Jesús Ibáñez González, Communications Development Manager

Juan José García Prieto, Software Development Manager

David Van Otterdyk, Project Quality Manager

Alfonso Alvarez, Maintenance Manager

EXHIBIT 3

BOND AMOUNTS

[to be inserted based on successful proposal pricing]

NTP1 Payment Bond: \$15,001,825

NTP1 Performance Bond: \$15,001,825

NTP2 Payment Bond: \$12,274,220

NTP2 Performance Bond: \$12,274,220

NTP3 O&M Payment Bond: \$15,772,362

NTP3 O&M Performance Bond: \$15,772,362

EXHIBIT 4

BOND FORMS

[attached behind this page]

EXHIBIT 4

ATTACHMENT 1

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, _____ (“Agency”) has awarded to _____, (“Toll System Integrator”) a Toll Services Agreement for comprehensive toll integration, installation, operation and maintenance services related to the development of approximately 17 miles of tolled express lanes on Interstate 80 (I-80) between the cities of Davis and West Sacramento otherwise known as the Yolo 80 Managed Lanes Project (hereinafter referred to as the “Project”).

WHEREAS, the work to be performed by the Toll System Integrator is more particularly set forth in the Toll Services Agreement documents for the Project dated _____, (hereinafter referred to as “Agreement”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, Toll System Integrator is required by said Agreement to perform the terms thereof and to furnish a bond for the faithful performance of said Agreement.

NOW, THEREFORE, Toll System Integrator and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto Agency in the sum of _____ dollars, (\$ _____), said sum being not less than the total amount of the Agreement for NTP1 Work, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if Toll System Integrator, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Agreement and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified during NTP1, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless Agency, its officers and agents, as stipulated in said Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney’s fees, incurred by Agency in enforcing such obligation.

The obligations of Surety hereunder shall continue so long as any obligation of Toll System Integrator remains. Nothing herein shall limit Agency’s rights or the Toll System Integrator or Surety’s obligations under the Agreement, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Toll System Integrator shall be, and is declared by Agency to be, in default under the Agreement, the Surety shall remedy the default pursuant to the Agreement, or shall promptly, at Agency's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Agreement.
- (2) Obtain a proposal or proposals for completing the Project in accordance with all terms and conditions in the Agreement and upon determination by Surety and Agency of the proposer providing best value to Agency, arrange for a contract between such proposer, the Surety and Agency, and make available as work progresses sufficient funds to pay the cost of completion of NTP1 Work, less the balance of the Agreement price for such Work, including other costs and damages for which Surety may be liable. The term "balance of the Agreement price" as used in this paragraph shall mean the total amount payable to Toll System Integrator by Agency under the Agreement for NTP1 Work and any modification thereto, less any amount previously paid by Agency to the Toll System Integrator and any other set offs pursuant to the Agreement.
- (3) Permit Agency to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the NTP1 Work, less the balance of the Agreement price for such Work, including other costs and damages for which Surety may be liable. The term "balance of the Agreement price" as used in this paragraph shall mean the total amount payable to Toll System Integrator by Agency under the Agreement and any modification thereto, less any amount previously paid by Agency to the Toll System Integrator and any other set offs pursuant to the Agreement.

Surety expressly agrees that Agency may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Toll System Integrator.

Surety shall not utilize Toll System Integrator in completing the Project nor shall Surety accept a proposal from Toll System Integrator for completion of the Project if Agency, when declaring the Toll System Integrator in default, notifies Surety of Agency's objection to Toll System Integrator's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

Toll System Integrator

By: _____

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

Title(s)

Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

☐ Other:

Date of Document

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

EXHIBIT 4

**ATTACHMENT 2
PAYMENT BOND (LABOR AND MATERIALS)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, _____ (“Agency”), has awarded to _____, hereinafter designated as the “Principal,” an Agreement (“Agreement”) for the work described as follows: for comprehensive toll integration, installation, operation and maintenance services related to the development of approximately 17 miles of tolled express lanes on Interstate 80 (I-80) between the cities of Davis and West Sacramento otherwise known as the Yolo 80 Managed Lanes Project (hereinafter referred to as the “Project”); and

WHEREAS, said Principal is required to furnish a bond in connection with said Agreement; providing that if said Principal or any of its subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto Agency in the penal sum of _____ dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the Toll System Integrator and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by Agency in such suit, including reasonable attorneys’ fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any

terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such Agreement or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of Agreement between the owner or Agency and original Toll System Integrator or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal, if corporation)

Toll System Integrator

By: _____

(Seal of Surety)

Surety

By: _____
Attorney-in-Fact

(Attached Attorney-In-Fact Certificate and Required Acknowledgements)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

Title(s)

Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

☐ Other:

Date of Document

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

EXHIBIT 4

ATTACHMENT 3

OPERATIONS AND MAINTENANCE PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, _____ (“Agency”) has awarded to _____, (“Toll System Integrator”) a Toll Services Agreement for comprehensive toll integration, installation, operation and maintenance services related to the development of approximately 17 miles of tolled express lanes on Interstate 80 (I-80) between the cities of Davis and West Sacramento otherwise known as the Yolo 80 Managed Lanes Project (hereinafter referred to as the “Project”).

WHEREAS, the work to be performed by the Toll System Integrator is more particularly set forth in the Toll Services Agreement documents for the Project dated _____, (hereinafter referred to as “Agreement”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, Toll System Integrator is required by said Agreement to perform the terms thereof and to furnish a bond for the faithful performance of the Operations and Maintenance (O&M) Work under said Agreement, as that term is defined in the Agreement.

NOW, THEREFORE, Toll System Integrator and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto Agency in the sum of _____ dollars, (\$_____), said sum being not less than the total amount of the O&M Period, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if Toll System Integrator, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Agreement and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified during the O&M Period (and any Software Maintenance if Agency exercises the Software Maintenance Option), and shall indemnify and save harmless Agency, its officers and agents, as stipulated in said Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The obligations covered by this Bond specifically include the performance of each and every obligation of Toll Services Integrator under the Agreement with respect to the O&M Work (including the Software Maintenance where Agency exercises the Software Maintenance Option), including its liability for Liquidated Damages and warranties as specified in the Agreement, but not to exceed the bonded sum.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Agency in enforcing such obligation.

The obligations of Surety hereunder shall continue so long as any obligation of Toll System Integrator remains. Nothing herein shall limit Agency's rights or the Toll System Integrator or Surety's obligations under the Agreement, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Toll System Integrator shall be, and is declared by Agency to be, in default under the Agreement, the Surety shall remedy the default pursuant to the Agreement, or shall promptly, at Agency's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Agreement.
- (2) Obtain a proposal or proposals for completing the Project in accordance with all terms and conditions in the Agreement and upon determination by Surety and Agency of the proposer providing best value to Agency, arrange for a contract between such proposer, the Surety and Agency, and make available as work progresses sufficient funds to pay the cost of completion of the O&M Period, less the balance of the Agreement price for such Work, including other costs and damages for which Surety may be liable. The term "balance of the Agreement price" as used in this paragraph shall mean the total amount payable to Toll System Integrator by Agency under the Agreement for the O&M Period and any modification thereto, less any amount previously paid by Agency to the Toll System Integrator and any other set offs pursuant to the Agreement.
- (3) Permit Agency to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the O&M Period, less the balance of the Agreement price for such O&M Work, including other costs and damages for which Surety may be liable. The term "balance of the Agreement price" as used in this paragraph shall mean the total amount payable to Toll System Integrator by Agency under the Agreement and any modification thereto, less any amount previously paid by Agency to the Toll System Integrator and any other set offs pursuant to the Agreement.

Surety expressly agrees that Agency may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Toll System Integrator.

Surety shall not utilize Toll System Integrator in completing the Project nor shall Surety accept a proposal from Toll System Integrator for completion of the Project if Agency, when declaring the Toll System Integrator in default, notifies Surety of Agency's objection to Toll System Integrator's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the Project to be performed

thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

Toll System Integrator

By: _____

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

Title(s)

Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

☐ Other:

Date of Document

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

EXHIBIT 4

ATTACHMENT 4

RIDER TO PERFORMANCE BOND

(INCREASE IN PENAL SUM – NOTICE TO PROCEED NO. 2)

Rider No.: _____

Date: _____

This Rider is attached to and forms part of the following bonds:

- Performance Bond No.: _____
- Original Bond Date: _____

PRINCIPAL (Toll System Integrator):

Name: _____

Address: _____

OBLIGEE (Agency):

Name: _____

Address: _____

SURETY:

Name: _____

Address: _____

PROJECT:

Project: Toll Services Agreement for comprehensive toll integration, installation, operation and maintenance services related to the development of approximately 17 miles of tolled express lanes on Interstate 80 (I-80) between the cities of Davis and West Sacramento otherwise known as the Yolo 80 Managed Lanes Project (hereinafter referred to as the “Project”).

AGREEMENT:

Toll Services Agreement documents for the Project dated _____.

RECITALS

WHEREAS, Toll Systems Integrator entered into the above referenced Agreement with Agency.

WHEREAS, Toll System Integrator furnished the above referenced Performance Bond pursuant to the Agreement requirements in connection with Notice to Proceed No. 1 ("NTP 1"), as that term is defined under the Agreement; and

WHEREAS, as a condition precedent to Agency's issuance of Notice to Proceed No. 2 ("NTP 2"), authorizing additional work under the Agreement, Toll Systems Integrator is required to increase the bond amount to cover the total value of the NTP1 and NPT2 Work, as those terms are defined in the Agreement.

WHEREAS, the parties desire to increase the penal sum of the bond and confirm that the bond covers all work authorized under both NTP 1 and NTP 2.

NOW, THEREFORE, the Surety agrees as follows:

1. Increase of Penal Sum

The penal sum of the Bonds is hereby increased as follows:

Original Bond Amount: \$_____

New Total Bond Amount: \$_____

2. Coverage of NTP 2 Work

The bond, as modified by this Rider, expressly covers and applies to all work performed under the Agreement, including all work authorized by NTP 1 and NTP 2.

3. Aggregate Liability

The Surety's total aggregate liability under the bond is increased to the new penal sum stated above.

4. Continuous Coverage

This Rider shall be deemed a continuation of the original bonds, and not a new or separate bond obligation.

5. No Other Changes

Except as expressly modified herein, all terms and conditions of the Bonds remain unchanged and in full force and effect.

6. Effective Date

This Rider is effective as of: _____

SIGNATURES

IN WITNESS WHEREOF, the Surety has executed this Rider as of the date first written above.

SURETY:

By: _____

Name: _____

Title: _____

TOLL SYSTEM INTEGRATOR

By: _____

Name: _____

Title: _____

(Surety Seal Affixed)

(Power of Attorney Attached)

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

Title(s)

Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

☐ Other:

Date of Document

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

EXHIBIT 4

**ATTACHMENT 5
OPERATIONS AND MAINTENANCE**

PAYMENT BOND (LABOR AND MATERIALS)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, _____ (“Agency”), has awarded to _____, hereinafter designated as the “Principal,” an Agreement (“Agreement”) for the work described as follows: for comprehensive toll integration, installation, operation and maintenance services related to the development of approximately 17 miles of tolled express lanes on Interstate 80 (I-80) between the cities of Davis and West Sacramento otherwise known as the Yolo 80 Managed Lanes Project (hereinafter referred to as the “Project”); and

WHEREAS, said Principal is required to furnish a bond in connection with the Operations and Maintenance (O&M) Period under said Agreement; as that term is defined in the Agreement, providing that if said Principal or any of its subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto Agency in the penal sum of _____ dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the Toll System Integrator and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by Agency in such suit, including reasonable attorneys’ fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such Agreement or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of Agreement between the owner or Agency and original Toll System Integrator or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal, if corporation)

Toll System Integrator

By: _____

(Seal of Surety)

Surety

By: _____

Attorney-in-Fact

(Attached Attorney-In-Fact Certificate and Required Acknowledgements)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

Title(s)

Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

☐ Other:

Date of Document

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

EXHIBIT 5
INSURANCE

TSI shall maintain the following minimum insurance coverages:

1. Workers' Compensation Insurance:

For the duration of the Term, TSI shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain, a policy or policies of insurance providing workers' compensation statutory benefits and employer's liability in conformance with the Governmental Rules of the State. Employer's liability limits shall be no less than \$1 million each accident, each employee, and shall be scheduled under the excess or umbrella liability policies. The workers' compensation policies shall provide the following:

1. A waiver of subrogation in favor of the Indemnified parties;
2. A provision extending coverage to all states operations; and
3. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act by adding a Longshore and Harbor Workers' Compensation Act coverage endorsement (WC 00 01 06) on an "if any" basis or as otherwise appropriate.

2. Commercial General Liability Insurance:

(a) For the duration of the Term, TSI shall obtain and maintain a policy or policies of commercial general liability insurance for bodily injury, property damage, personal injury and advertising injury.

(b) Coverage shall be written on an occurrence form that shall provide coverage at least as broad as and no more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 04 13.

(c) There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability assumed under an insured contract, unless such endorsement or modification is submitted to and approved in advance by CARTA.

(d) Such insurance shall add as insureds, or include as additional insureds, the Indemnified Parties. The commercial general liability insurance coverage shall have limits of not less than \$2,000,000 per occurrence, \$5,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. Completed operations

coverage shall extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute either through continuous maintenance of completed operations coverage in TSI's corporate insurance program, including an endorsement providing completed operations coverage for additional insureds, or by purchase of extended completed operations coverage.

3. Business Automobile Insurance:

(a) For the duration of the Term, TSI shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain a business auto liability policy or policies for those firms with owned or leased autos. Firms that do not own autos must arrange non-owned and hired coverage through a commercial general liability or other liability policy. Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance, or use of all vehicles connected with performance of the Work, including loading and unloading. TSI auto liability policies shall cover "any auto" (symbol 1). Policies shall include as an insured anyone liable for the conduct of an insured as defined in the policy, or shall add as insureds, the Indemnified Parties. For any contractor of any tier, including TSI, who will be involved in any way with the transportation of Hazardous Materials using its own vehicles, pollution liability coverage at least as broad as that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided and the automobile liability insurance policies shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) with a sublimit of no less than \$1,000,000.

(b) TSI's automobile liability coverage shall have a combined single limit per policy period of not less than \$10,000,000 and may be scheduled under the excess or umbrella liability policies to achieve the desired limit. Excess or umbrella policies shall cover "any auto" (symbol 1). The required limits can be satisfied by a combination of a primary policy and an excess or umbrella policy.

4. Umbrella or Excess Liability Insurance:

(a) For the duration of the Term, TSI shall obtain and maintain an umbrella or excess liability insurance policy to provide a total liability limit of not less than \$25,000,000, that will provide bodily injury, personal injury and property damage liability coverage on an occurrence basis at least as broad as the primary coverages set forth above including commercial general liability and employer's liability in excess of the amounts set forth above.

(b) Such policy or policies shall include the following terms and conditions:

1. Policies shall contain a drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted or for occurrences covered by an umbrella policy but not covered in the underlying insurance;
2. Policies shall provide coverage at least as broad as found in the underlying primary policies;
3. Such insurance shall add as insureds, or include as additional insureds, the Indemnified Parties or shall follow form over the underlying policies that include the Indemnified Parties as insureds or additional insureds; and
4. There shall be no additional limiting endorsements that are not in the primary policy or that have not been reviewed and approved by the Indemnified Parties or their representatives.

5. Technology Errors and Omissions Liability Insurance:

For the duration of the Term, TSI shall obtain and maintain and shall require all Subcontractors with access to sensitive information to obtain and maintain a policy or policies of insurance, including technology errors and omissions, network security/privacy coverage, with limits of not less than ten million dollars (\$10,000,000) per incident and in the aggregate. The policy shall cover wrongful acts of the named insured. If written on a "claims made" basis, policy shall include prior acts at least as far in the past as the Effective Date. Coverage shall apply to both electronic and physical breaches and to data. Information in the care, custody, or control of vendors shall be covered, including coverage for "cloud" systems or for data transferred by a third party. Coverage shall apply to accidental losses as well as breaches perpetrated by outsiders or employees. CARTA, the Department and CSC Provider shall be additional insureds on the policy for their vicarious liability arising out of the negligent acts, errors or omissions of TSI or those working directly or indirectly for TSI. There shall be no insured versus insured exclusion applicable to CARTA, the Department or CSC Provider as additional insureds. There shall be no exclusion for liability assumed pursuant to an indemnity or hold harmless provision in a contract for covered services arising from the named insured's wrongful acts. The insurance to be obtained under this Contract shall remain in effect for a period of no less than three (3) years from the expiration or termination of this Contract.

(a) Technology Errors and Omissions Liability Insurance shall include:

1. Software design;
2. System programming;
3. Data processing;
4. Systems integration;
5. Outsourcing, including outsourcing development and design;
6. Systems design, consulting, development, and modification;

7. Management, repair, and maintenance of computer products, networks, and systems
8. Marketing, selling, servicing, distributing, installing, and maintaining computer Hardware or Software; and
9. Data entry, modification, verification, maintenance, storage, retrieval, or preparation of data output.

(b) Network security/privacy coverage shall include:

1. Hostile action or a threat of hostile action with the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access/unauthorized use of a computer system, including exposing or publicizing confidential electronic data or causing electronic data to be inaccessible;
2. Computer viruses, Trojan horses, worms, and any other type of malicious or damaging code;
3. Dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons, to affect, alter, copy, corrupt, delete, disrupt, or destroy a computer system or obtain financial benefit for any party or to steal or take electronic data;
4. Loss of service for which TSI or its Subcontractor or consultant is responsible that results in the inability of a third party, that is authorized to do so, to gain access to a computer system and conduct normal Internet or network activities;
5. Access to a computer system or computer system resources by an unauthorized person or an authorized person in an unauthorized manner; and
6. Loss or disclosure of PII or confidential information no matter how such loss occurs.

6. Professional Liability Insurance (*Required if not covered under requirements of 4 above, Technology Errors and Omissions Liability Insurance):

(a) Unless explicitly covered under the Technology Errors and Omissions Liability Insurance required under Section 16.2.1.5, for the duration of the Term, TSI shall obtain and maintain or cause others, as appropriate, to obtain and maintain liability insurance covering loss in connection with Nonconforming Work in the performance of services in connection with this Contract, with limits not less than \$5,000,000 per claim and in the aggregate.

(b) No self-insured retention for TSI shall exceed \$250,000 without prior written approval from CARTA, in its good faith discretion. Coverage shall apply specifically to professional activities performed under this Contract. The policy(ies) shall have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which the RFP was issued.

(c) TSI agrees to maintain this required coverage for a period of no less than three years after RTS Acceptance or to purchase an extended reporting period for no less than three years after RTS Acceptance. The coverage shall include all TSI-Related Entities that are performing design services with respect to the Toll Services.

(d) CARTA and the other Indemnified Parties shall be added as additional insureds for professional liability or errors and omissions insurance, but only for Losses (i) first made or incurred on or after the Effective Date and (ii) for vicarious or imputed liability of the additional insureds that results from wrongful acts committed solely by the named insured.

7. Crime Insurance

TSI shall obtain and maintain and shall require all Subcontractors with access to sensitive information to obtain and maintain Crime (Blanket Fidelity) insurance with limits of not less than \$5,000,000 covering employee dishonesty, forgery and alteration, and “all risks” of loss or destruction of moneys and securities held by TSI or its Subcontractors in the performance of the O&M Work.

EXHIBIT 6

PAYMENT SCHEDULE AND TERMS

31.2 **1. Payment for NTP1 Work**

31.2.1 1.1 In consideration of performance of the NTP1 Work in compliance with the Agreement, CARTA will pay TSI for the NTP1 Work no more often than once monthly after NTP1 and only based on the following:

(a) The amounts listed in Attachment 1 to this Exhibit 6 no more often than once monthly, up to a maximum of \$15,001,825.

31.2.2 1.2 Payments will be made no more often than monthly and only based on complete submission and CARTA approval of the Deliverables or Work required for completion of the Payment Milestones for which TSI is requesting payment. Invoices for work authorized by NTP1 shall comply with the provisions of the Agreement.

1.3 TSI is authorized to procure the materials, equipment, or hardware identified as “Roadside System Early Procurement Items” on Attachment 1 to this Exhibit 6 and having an aggregate cost not to exceed \$1,317,403 (collectively hereinafter referred to as “Early Procurement Items”).

The Roadside System Early Procurement Items identified in Attachment 1 to this Exhibit 6 shall be divided into the following two (2) categories:

- I. Early BOM Category 1: Critical materials not subject to performance validation as part of Factory Acceptance Testing. Once supplier orders are placed, Early BOM Category 1 items shall be eligible for invoicing and payment under NTP1.
- II. Early BOM Category 2: Critical materials and equipment subject to performance validation as part of the Factory Acceptance Testing. Upon delivery, Early BOM Category 2 items shall be eligible for payment under NTP2.

The authorization of Early Procurement Items shall not constitute issuance of NTP2.

31.2.3

31.2.4 1.4 Except for Early Procurement Items authorized in accordance with this section 1.4, TSI shall not submit an invoice, nor shall TSI be entitled to compensation, for any NTP2 Work performed prior to the issuance of NTP2. The authorization of Early Procurement Items shall not constitute issuance of NTP2, a commitment by CARTA to issue NTP2, or an obligation by CARTA to compensate TSI for such Early Procurement Items unless and until NTP2 is issued. even if a payment milestone for such NTP2 Work has been completed prior to issuance of NTP2, except the items that fall under Early BOM Category 1 and except where the purchase of non-cancellable items has been authorized in writing by CARTA.

Notwithstanding the foregoing, if NTP2 is not issued for reasons other than a TSI Event of Default, CARTA shall reimburse TSI for the documented cost of all approved Early Procurement Items in the Early BOM Category 2 that have been purchased, manufactured, are non-cancellable, non-refundable, or are otherwise committed pursuant to CARTA's authorization under Section 1.3. To the extent any Early Procurement Items are refundable, in whole or in part, or may reasonably be repurposed by TSI for other use, CARTA's liability for such costs shall be limited to those costs attributable to the portion of such Early Procurement Items that is neither refundable nor reasonably capable of being repurposed by TSI.

31.2.5 1.5 Following the issuance of NTP2, the Early Procurement Items in the Early BOM Category 2 shall be eligible for payment as part of the NTP2 Work, subject to the requirements of this Agreement, including documentation requirements, title transfer requirements, acceptance requirements, and the payment milestone allocations set forth in Attachment 1 to this Exhibit 6.

31.2.6 1.6 CARTA is not responsible for the payment of any increases or adjustments in bond or insurance premiums resulting from adverse changes in TSI's financial condition, TSI's risk rating or experience or any TSI Fault.

31.3 2. Total Capital Cost

31.3.1 2.1 The Total Capital Cost is the complete compensation payable to TSI for the performance of the D&D Work. The Total Capital Cost is the sum of the Total D&D Cost and the Total Bonds and Insurance Cost in accordance with Price Sheet ____.

31.3.2 2.2 Subject to the provisions of this Agreement, CARTA shall pay the Total D&D Cost to TSI in accordance with each of the payment milestone actually completed in accordance with this Agreement during the immediately preceding month. NTP1 payments will be based on the allocations set forth in Attachment 1 to this Exhibit 6 for the NTP1 Work. For NTP2 Work, payment for specific payment milestones will be calculated as the percentage of the NTP2 Work allocated to such payment milestone in Attachment 1 to this Exhibit 6. Notwithstanding the foregoing, payment for Early Procurement Items in the Early BOM Category 2 procured by TSI prior to issuance of NTP2 shall be payable only after issuance of NTP2 and shall be credited against applicable NTP2 Work payment milestones and invoiced in accordance with Section 3 below.

31.4 3. Invoices and Payment after issuance of NTP2

31.4.1 3.1 TSI shall prepare a proposed standard form invoice for CARTA's review and approval in accordance with the Submittal Process prior to submitting its first invoice for any component of the Total Capital Cost.

31.4.2 3.2 On or before the 25th day of each month following issuance of NTP2 and during the D&D Phase, TSI shall submit to CARTA a draft invoice in the form approved by CARTA, including:

(a) The portion of the Total Capital Cost allocable to the NTP2 Work actually performed by TSI during the prior month in accordance with this Agreement, based on the percentage of compensation specified for the payment milestones actually completed during such prior month;

(a) The D&D Monthly Progress Report;

(b) Any part of the Total Bonds and Insurance Cost actually paid by TSI during such prior month;

(c) Any amounts otherwise payable in accordance with this Agreement;

(d) A certification by TSI in the in the form provided by CARTA, signed and sealed by TSI's Representative;

(e) The amount payable with respect to any Change Order including:

(i) In the case of amounts to be paid on a Unit Price basis, includes invoices, system generated reports, purchase orders, receipts or other evidence acceptable to CARTA establishing the number of units delivered and the actual payments made by TSI;

(ii) In the case of amounts invoiced for Time and Materials Work, includes all supporting documentation described herein for Time and Materials Work done during the applicable period;

(f) The amounts paid to Subcontractors (including Suppliers and Subcontractors) from the payments made by CARTA to TSI with respect to the prior month's invoice, including actual invoices or purchase orders;

(g) Affidavits of payment and unconditional waivers of Liens and claims executed by TSI and each Subcontractor with respect to all amounts paid in the prior month's invoice;

(h) All materials, reports, KPI reports, certifications, and other submittals identified in the TPs;

(i) Subcontractor payment releases shall be in the form set forth in Civil Code Sections 8132 through 8138;

(j) Any other Deliverables that this Agreement requires to be included with invoice packages;

(k) A summary of Equipment and Hardware acceptance documentation, including way bills and purchase orders, to verify the Equipment and Hardware incorporated in the monthly progress estimate and stored Equipment and Hardware;

(l) In the case of amounts invoiced for Equipment and Hardware, a bill of sale and other appropriate documentation transferring title to such Equipment and Hardware to CARTA free and clear of any Liens; and

(m) Such other supporting documentation reasonably requested by CARTA to enable CARTA to fully and accurately determine (without needing to refer to any other documentation or information) the amounts payable by CARTA to TSI.

31.4.3 3.3 TSI shall not invoice for any amounts that are in dispute solely between TSI and a Subcontractor or Supplier that TSI will not pay to such Subcontractor or Supplier at the time the invoice is submitted, until such time as the dispute is resolved.

Each monthly invoice shall be reviewed at the Monthly Progress meeting. No invoice shall be considered complete unless, at each Progress Meeting, TSI's and CARTA's Representatives shall ascertain the progress of the D&D Work and verify the quantities for any unit priced Work. Each Progress Meeting shall be attended by TSI and CARTA and/or its consultants and may also be attended by Department.

31.5 4. Final Payment for Total Capital Cost

31.5.1 4.1 Final Payment of the Total Capital Cost following RTS Acceptance shall not become due to TSI under this Agreement until TSI submits to CARTA:

(a) TSI's Final Payment invoice and certification in form approved by CARTA and otherwise meeting all requirements for the Total Capital Cost Invoices;

(a) An affidavit that all payrolls, bills for materials, equipment, services and other indebtedness connected with the D&D Work have been paid or otherwise have been satisfied;

(b) Releases and waivers from TSI in favor of CARTA of all Liens, Claims (except those previously made in writing and identified as unsettled or Claims which TSI may be entitled to assert against CARTA with respect to CARTA's material breach of its obligations under this Agreement to be performed after Final Payment), security interests and encumbrances in connection with the D&D Work, whether known or unknown, suspected or unsuspected;

(c) For each Subcontractor or Supplier receiving Subcontracts, purchase agreements or purchase orders in a cumulative amount of \$15,000 or more, written evidence that such Subcontracts, purchase agreements and purchase orders contain the following provision: "The Supplier/Subcontractor agrees that receipt of Final Payment under this

Agreement constitutes full and unconditional release and waiver, in favor of CARTA, and TSI, from all Liens, Claims, security interests or encumbrances, known or unknown, suspected or unsuspected, in connection with this Purchase Contract/Purchase Order/Subcontract for the materials, equipment, services and other work provided under this Contract”;

(d) Materials acceptance certification documents, on CARTA forms or other forms CARTA approves in accordance with the Submittal Process;

(e) A complete set of As-Built Technical Drawings;

(f) All operation and maintenance manuals and other manuals and procedures to be provided by TSI under this Contract;

(g) A consent of the surety under the Payment Bond and Performance Bond to Final Payment;

(h) Bills of sale or other instruments of title transfer or assignment with respect to Work Product, as requested by CARTA, free and clear of liens, claims and encumbrances;

(i) Affidavits of prevailing wages paid, signed and submitted by TSI and each Subcontractor required to submit such an affidavit under California Labor Code § 1775(b)(4) in the form required by state law.

(j) Assignment to CARTA of all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, Equipment, Hardware, Software or materials in accordance with this Agreement or any Subcontract; and

(k) Such other supporting documentation reasonably requested by CARTA to enable CARTA to fully and accurately determine (without needing to refer to any other documentation or information) the amounts payable by CARTA to TSI.

31.5.2 4.2 CARTA will review TSI’s proposed final invoice for the D&D Work, and changes, comments or corrections will be forwarded to TSI for correction within 30 days after receipt of the proposed final invoice.

31.5.3 4.3 Any changes or corrections made under this Section will be reflected in an updated monthly payment schedule showing the net amount owed to TSI by month.

31.6 5. NTP3 and Total O&M Cost

31.6.1 5.1 The Total O&M Cost is the complete compensation to be paid in each of years 1 through 4 of the O&M Term for performance of the O&M Work.

31.6.2 TSI shall not submit an invoice, nor shall TSI be entitled to compensation, for any NTP3 Work prior to the issuance of NTP3, even if a Payment Milestone for such NTP3 Work has been completed prior to issuance of NTP3. If NTP3 is not issued, no Payment Milestone for NTP3 Work shall be compensable.

31.6.3 5.2 Subject to the invoice requirements and procedures as specified in the Agreement, CARTA shall pay TSI:

31.6.3.1 6. The Total O&M Years 1 through 4 Fixed Cost

(a) Beginning in the first month of year 1 of the O&M Term, as complete compensation to TSI for the O&M Work in years 1, 2, 3, and 4 of the O&M Term, CARTA shall pay TSI the sum of the following amounts: The Total O&M Years 1 through 4 Fixed Cost specified on the Price Sheet, which is the total fixed component of compensation to be paid to TSI for the O&M Work in years 1, 2, 3, and 4 of the O&M Term, which shall be paid monthly, in arrears, as follows (Total O&M Years 1 through 4 Fixed Cost):

(i) During O&M Year 1, the amount specified in Price Sheet in Attachment 1 to this Exhibit 6, monthly in 12 equal installments; plus

(ii) During O&M Year 2, the amount specified in Price Sheet in Attachment 1 to this Exhibit 6, monthly in 12 equal installments; plus

(iii) During O&M Year 3, the amount specified in Price Sheet in Attachment 1 to this Exhibit 6, monthly in 12 equal installments; plus

(iv) During O&M Year 4, the amount specified in Price Sheet in Attachment 1 to this Exhibit 6, monthly in 12 equal installments; plus

31.7 7. **NTP3 and Final Payment of O&M Cost**

31.7.1 7.1 Final Payment of the Total O&M Cost shall not become due to TSI under this Agreement until TSI submits to CARTA on or about the expiration or termination date of this Agreement:

(a) TSI's Final Payment invoice for the Total O&M Cost and any other amounts for which TSI is entitled to claim payment under the Agreement in a form approved by CARTA and otherwise meeting the requirements for O&M Cost invoices.

(a) A list of all outstanding Change Order proposals submitted by TSI, stating the amount at issue associated with each such notice;

(b) An affidavit that all payrolls, bills for materials, equipment, services and other indebtedness connected with the O&M Work have been paid or otherwise satisfied;

(c) Releases and waivers from TSI in favor of CARTA of Liens, Claims (except those previously made in writing and identified as unsettled or Claims which TSI may be entitled to assert against CARTA with respect to CARTA's material breach of its obligations under this Agreement to be performed after Final Payment), security interests and encumbrances in connection with the O&M Work, whether known or unknown, suspected or unsuspected;

(d) For each Subcontractor or Supplier receiving Subcontracts, purchase agreements or purchase orders in a cumulative amount of \$15,000 or more, written evidence that such Subcontracts, purchase agreements and purchase orders contain the following provision: "The Supplier/Subcontractor agrees that receipt of Final Payment under this Agreement constitutes full and unconditional release and waiver, in favor of CARTA, and TSI, from all Liens, Claims, security interests or encumbrances, known or unknown, suspected or unsuspected, in connection with this Purchase Contract/Purchase Order/Subcontract or the materials, equipment, services and other work provided under this Agreement";

(e) Materials acceptance certification documents, on CARTA forms or other forms CARTA approves;

(f) Bills of sale or other instruments of title transfer or assignment with respect to O&M Work, as requested by CARTA, free and clear of liens, claims and encumbrances;

(g) Affidavits of prevailing wages paid signed and submitted by TSI and each Subcontractor required to submit such an affidavit under California Labor Code § 1775(b)(4) in the form required under state law and under Toll Services Standards;

(h) Assignment to CARTA of all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services, Equipment, Hardware, Software or materials in accordance with this Agreement or any Subcontract; and

(i) Such other supporting documentation to enable CARTA to fully and accurately determine (without needing to refer to any other documentation or information) the amounts payable by CARTA to TSI, including any information reasonably requested by CARTA.

31.7.2 7.2 Prior applications and payments shall be subject to correction in the final O&M Work invoice. Change Order proposals filed concurrently with a final O&M cost invoice must otherwise be timely and meet all requirements under the Agreement and the Technical Provisions.

31.7.3 7.3 CARTA will review TSI's proposed final O&M Work invoice and changes, comments or corrections will be forwarded to TSI for correction within 30 days after receipt of the proposed final O&M Work invoice.

31.7.3.1 8. Bond and Insurance

TSI's cost for the bonds and insurance policies actually paid, without markup, profit or overhead, not to exceed the Line Items for such premiums set forth on Price Sheet for each year 1-4, in Attachment 1 to Exhibit 6. CARTA is not responsible for the payment of any increases or adjustments in bond or insurance premiums for any reason, including resulting from adverse changes in TSI's financial condition, TSI's risk rating or experience or any TSI Fault.

EXHIBIT 7

SCOPE OF WORK AND ATTACHED APPENDICES

[to be attached]

EXHIBIT 8

FORM OF SOURCE CODE ESCROW AGREEMENT

[attached behind this page]

FORM OF SOURCE CODE ESCROW AGREEMENT

Account Number _____

This Source Code Escrow Agreement ("Escrow Agreement") is effective this ____ day of _____ 202__ amongst _____ ("Escrow Agent"),

_____ a _____ ("Depositor"), and the Capital Area Regional Tolling Authority, a California joint powers authority ("CARTA"), who collectively may be referred to in this Escrow Agreement as the parties ("Parties").

A. Depositor and CARTA have entered into an agreement for Toll Services for the Yolo-80 Managed Lane Project dated _____ (the "AGREEMENT"). Unless otherwise specified, capitalized terms used in this Escrow Agreement and not defined herein have the meanings set forth in the AGREEMENT.

B. Pursuant to the AGREEMENT, Depositor has granted CARTA licenses to use and has agreed to deposit into escrow with Escrow Agent certain Intellectual Property for Pre-Existing Software (the "Software Source Code").

C. The Software Source Code is critical to CARTA's business and CARTA requires access to the Software Source Code in certain limited circumstances.

D. Depositor and CARTA desire to establish an escrow with Escrow Agent to provide for the retention, administration and controlled access of the Software Source Code.

E. Depositor will from time to time change, enhance, fix, improve, refine, substitute, update and/or upgrade such Software Source Code and supporting materials ("Updates") and will submit the same on an ongoing basis as soon as reasonably practicable, but in no event more than 30 calendar days from the date of such Updates.

F. The Software Source Code, Software development documents and Updates are referred to in this Escrow Agreement as "IP Materials". Deposits into Escrow shall be made in accordance with the terms of the AGREEMENT.

G. Escrow Agent has consented to act as Escrow Agent and to receive and hold the IP Materials.

H. The parties desire this Escrow Agreement to be supplementary to the

AGREEMENT pursuant to 11 United States Bankruptcy Code, Section 365(n)(1)(B).

I. NOW, THEREFORE, CARTA and Depositor retain Escrow Agent to serve as Escrow Agent for the Software Source Code, Escrow Agent accepts such engagement, and the Parties hereby agree to the establishment and administration of an escrow for the IP Materials, on the following terms and conditions.

SOURCE CODE ESCROW AGREEMENT

SECTION 1. DEPOSITS

1.1. Obligation to Make Deposits.

- (a) Depositor shall deposit Software Source Code with Escrow Agent.
- (b) Depositor will submit updated Software development documents on an ongoing basis as soon as reasonably practicable, and in accordance with the requirements set forth in the AGREEMENT.
- (c) Depositor will submit Updates on an ongoing basis as soon as reasonably practicable, and in accordance with the requirements set forth in the AGREEMENT, but in no event more than 30 calendar days from the date of such Updates.
- (d) Each deposit with Escrow Agent shall be added to the existing deposit. Each deposit under subsections (b) or (c) above shall be listed on a modified Exhibit A and Depositor shall sign each modified Exhibit A. Exhibit A, and each modified Exhibit A shall be held and maintained separately within the escrow account. Escrow Agent shall create an independent record which documents the activity for Exhibit A and each modified Exhibit A.
- (e) Deposits may be on tangible media or made electronically through Escrow Agent's designated deposit system.

1.2. Identification of Electronic or Tangible Media. Depositor shall clearly label for identification all tangible media upon which the IP Materials are written or stored. Deposits made electronically through Escrow Agent's designated deposit system shall be labelled and identified as required by Escrow Agent. Depositor shall complete and sign Exhibit A to this Escrow Agreement, or a modified Exhibit A listing and identifying deposited IP Materials and the owner of the Intellectual Property. By signing Exhibit A, Depositor represents and warrants that the information provided is

true, accurate and complete. Unless and until Depositor makes the initial deposit with Escrow Agent, Escrow Agent shall have no obligation with respect to this Escrow Agreement, except the obligation to notify the parties regarding the status of the account.

1.3. Deposit Inspection. Within three Business Days after Escrow Agent receives IP Materials and Exhibit A or a modified Exhibit A, Escrow Agent shall visually inspect the deposit by matching the tangible or electronic media to the item descriptions and quantity listed on Exhibit A or modified Exhibit A. In addition to the deposit inspection, CARTA may elect to cause a verification of the IP Materials at any time in accordance with Section 1.6 below.

1.4. Acceptance of Deposit. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling of the tangible or electronic media matches the item descriptions and quantity on Exhibit A or the modified Exhibit A, Escrow Agent shall date and sign Exhibit A or the modified Exhibit A and mail a copy thereof to Depositor and CARTA. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling does not match the item descriptions or quantity on Exhibit A or the modified Exhibit A, Escrow Agent shall (a) note the discrepancies in writing on Exhibit A or the modified Exhibit A; (b) date and sign Exhibit A or the modified Exhibit A with the exceptions noted; and (c) send a copy of Exhibit A or the modified Exhibit A to Depositor and CARTA. Escrow Agent's acceptance of the deposit occurs upon the signing of Exhibit A or the modified Exhibit A by Escrow Agent. Delivery of the signed Exhibit A or modified Exhibit A to CARTA constitutes notice that the Software Source Code has been received and accepted by Escrow Agent.

1.5. Depositor's Representations. Depositor represents and warrants to CARTA as follows:

(a) Depositor lawfully possesses all of the IP Materials and the Intellectual Property contained therein as deposited with Escrow Agent;

(b) With respect to all of the IP Materials and the Intellectual Property contained therein, Depositor has the right and authority to grant to Escrow Agent and CARTA the rights as provided in this Escrow Agreement;

(c) The IP Materials and the Intellectual Property contained therein are not subject to any lien or other encumbrance;

(d) The IP Materials and the Intellectual Property contained therein consist of the proprietary technology and other materials identified either in the AGREEMENT or Exhibit A, as applicable; and

(e) The IP Materials are readable and useable in their current form or, if any portion of the IP Materials and the Intellectual Property contained therein is encrypted, the decryption tools and decryption keys have also been deposited.

(f) The IP Materials are complete, accurate, and sufficient to enable a reasonably skilled software professional, without assistance from Depositor, to compile, install, configure, maintain, support, and operate the Software.

1.6. Verification. CARTA may, at CARTA's expense, perform or cause to be performed a verification of any IP Materials. CARTA shall notify Depositor and Escrow Agent of CARTA's request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the IP Materials. If a verification is elected after the IP Materials have been delivered to Escrow Agent, then only Escrow Agent, or at Escrow Agent's or CARTA's selection an independent person or company selected and supervised by Escrow Agent or CARTA, may perform the verification. If CARTA elects to have an independent person or company perform the verification, its election and selection shall prevail over any such election by Escrow Agent. The verification shall be conducted in accordance with Escrow Agent's standard terms and condition for verification services, provided that such verification shall allow CARTA to determine the relevance, completeness, currency, accuracy and functionality of the IP Materials and the Intellectual Property. If Escrow Agent performs the verification, Escrow Agent shall deliver to CARTA a written report detailing the verification not later than 30 days after CARTA delivers a request for verification, or such longer period as reasonably agreed upon by CARTA and Escrow Agent. Any verification shall take place at either Escrow Agent's location or an agreed upon location during Escrow Agent's regular business hours. If CARTA elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the AGREEMENT. If Escrow Agent or the independent person performing the verification determine that the verification procedures specified in the completed Exhibit A are insufficient to enable verification of the relevant IP Materials and the Intellectual Property contained therein, then upon the request of Escrow Holder or CARTA, Depositor shall cooperate in good faith to supplement and/or modify the verification procedures as necessary and appropriate to facilitate such verification.

1.7. Removal of IP Materials. The IP Materials and the Intellectual Property

contained therein may be removed and/or exchanged only on written instructions signed by both the Depositor and CARTA, or as otherwise provided in this Escrow Agreement.

1.8. Inspection. CARTA and Depositor shall be entitled, during normal business hours, to inspect, under the supervision of an officer of Escrow Agent and at Escrow Agent's facilities, the physical and technical status and condition of the IP Materials and the Intellectual Property contained therein. The party undertaking the inspection shall provide Notice of the pending inspection to the other parties, five Business Days prior to the scheduled date of the inspection. The party receiving the notice shall have the right to be present at the inspection, but such presence is not a condition precedent to the inspecting party's right to proceed with inspection.

1.9. Disclaimer of Ownership. Escrow Agent hereby disclaims and relinquishes any title to or ownership of IP Materials deposited with Escrow Agent under this Escrow Agreement. Title to and ownership of IP Materials as between Depositor and CARTA shall be as set forth in the AGREEMENT.

SECTION 2. CONFIDENTIALITY AND RECORD KEEPING

2.1. Confidentiality. Escrow Agent shall maintain the IP Materials in a secure and safe environment which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall reasonably protect the confidentiality of the Intellectual Property. Except as provided in this Escrow Agreement, Escrow Agent shall not disclose, transfer, make available or use the Intellectual Property or any IP Materials. Escrow Agent shall not disclose the content of this Escrow Agreement to any third party.

2.2. Court Order. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the IP Materials and the Intellectual Property contained therein, Escrow Agent shall immediately notify the other Parties unless prohibited by law. It shall be the responsibility of Depositor and/or CARTA to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal. (See Section 7.5 below for notices of requested orders.)

2.3. Status Reports. Escrow Agent shall issue to Depositor and CARTA a report profiling the account history at least semi-annually. Escrow Agent may provide copies of the account history pertaining to this Escrow Agreement upon the request of any other Party.

2.4. Audit Rights. During the term of this Escrow Agreement, Depositor and CARTA may each inspect the written records of Escrow Agent pertaining to this Escrow Agreement. Any inspection shall be held during normal business hours and following reasonable prior Notice.

SECTION 3. NOTICES

3.1 Notices. All notices, invoices, payments, deposits and other documents and communications under this Escrow Agreement shall be sent to the Parties at the addresses specified in the attached Exhibit B. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of address. The Parties shall have the right to rely on the last known address of the other parties.

SECTION 4. RELEASE OF DEPOSIT

4.1. Condition for Releases. As used in this Escrow Agreement, "Condition for Release" shall mean any of the following:

- (a) The AGREEMENT is terminated or expires;
- (b) A voluntary or involuntary bankruptcy or insolvency of Depositor occurs, or Depositor is dissolved or liquidated;
- (c) Depositor or any third party, (a) fails or ceases to provide services as necessary to permit continued use of any IP Materials or (b) otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the IP Materials pursuant to a license or any sublicense thereof.

4.2. Request For Release. If CARTA has a good faith belief that a Condition for Release has occurred, CARTA may provide to Escrow Agent Notice of the occurrence of the Condition for Release and a request for the release of the IP Materials and incorporated Intellectual Property. If the Condition for Release pertains only to an owner of Third Party Intellectual Property, CARTA's Notice shall so indicate. Upon receipt of such Notice, Escrow Agent shall provide a copy of the Notice to Depositor.

4.3. Alternate Instructions. From the date Escrow Agent mails the Notice requesting release of the IP Materials and incorporated Intellectual Property, Depositor shall have ten days to deliver to Escrow Agent alternate instructions ("Alternate Instructions"). Alternate Instructions shall mean the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Depositor that (a) the person signing for Depositor is an authorized officer or authorized delegate of Depositor and (b) a Condition for Release has not occurred or has been cured. Immediately upon receipt of Alternate Instructions within such ten day period, Escrow Agent shall send a copy to CARTA. In addition, Escrow Agent shall provide Notice to Depositor and CARTA that there is a dispute to be resolved pursuant to the dispute provisions of this Escrow Agreement. Subject to Section 5.2 of this Escrow Agreement, Escrow Agent shall continue to store the IP Materials and Intellectual Property without release pending (i) instructions from Depositor and CARTA; (ii) dispute resolution pursuant; or (iii) order of a court. Alternate Instructions received after such ten day period shall be automatically null and void, shall have no force or effect, and shall be disregarded by Escrow Agent.

4.4. Release of Deposit.

(a) If Escrow Agent does not receive Alternate Instructions from the Depositor within such ten day period, Escrow Agent is authorized to, and shall, immediately release the IP Materials and incorporated Intellectual Property to CARTA. If the Condition for Release pertains only to an owner of Third Party Intellectual Property, then Escrow Agent shall only release the IP Materials that (a) are identified on Exhibit A as owned by such owner of Third Party Intellectual Property or (b) lacks identification of ownership on Exhibit A. Any copying expense will be chargeable to Depositor. This Escrow Agreement shall terminate upon the release of all the IP Materials and incorporated Intellectual Property held by Escrow Agent.

(b) Escrow Agent shall promptly release all or any part of the IP Materials and incorporated Intellectual Property at any time and from time to time upon receipt of Notice signed by both Depositor and CARTA.

(c) Escrow Agent shall also release the IP Materials and incorporated Intellectual Property to CARTA at any time as directed or ordered by an arbitration award, by a final judgment of a court of competent jurisdiction, or by other final dispute resolution under this Escrow Agreement, provided that CARTA provide to Escrow Agent a written opinion of counsel for CARTA to the effect that such award, judgment or resolution is final and not appealable. In such event, Escrow Agent shall proceed with release in accordance with the award, judgment or resolution and may rely on such legal opinion.

4.5. Right to Use Following Release. Upon release of the IP Materials in accordance with this Section 4, CARTA shall have the right and license to use the released Intellectual Property as provided in the AGREEMENT. CARTA shall be obligated to maintain the confidentiality of the released Intellectual Property as provided in the AGREEMENT.

SECTION 5. TERM AND TERMINATION

5.1. Term of Escrow Agreement. The term of this Escrow Agreement shall continue in effect unless and until this Escrow Agreement is terminated in accordance with the terms of this Section 5. This Escrow Agreement shall be terminated in the event (a) Depositor and CARTA jointly instruct Escrow Agent in writing that the Escrow Agreement is terminated; or (b) Escrow Agent provides Notice to Depositor and CARTA that the Escrow Agreement is terminated for nonpayment in accordance with Section 5.2 or by resignation in accordance with Section 5.3.

5.2. Termination for Nonpayment. In the event fees owed to Escrow Agent are not paid when due, Escrow Agent shall provide Notice of delinquency to all Parties. Any Party shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within one month of the date of such Notice, then Escrow Agent shall have the right to terminate this Escrow Agreement at any time thereafter by sending Notice of termination to all Parties. Escrow Agent shall have no obligation to take any action under this Escrow Agreement so long as any undisputed payment due to Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the IP Materials and transfer or dispose of the IP Materials following termination as provided in this Section 5.

5.3. Termination by Resignation. Escrow Agent may terminate this Escrow Agreement, for any reason, by providing Depositor and CARTA with 90-days' Notice of its intent to terminate this Escrow Agreement. Within the 90-day period, the Depositor and CARTA shall use diligent efforts to enter into a substantially similar agreement with another entity willing and able to perform the functions of Escrow Agent under this Escrow Agreement and shall provide Escrow Agent with Notice including instructions authorizing Escrow Agent to forward the IP Materials and incorporated Intellectual Property to another escrow company and/or agent or other designated recipient. Escrow Agent shall transfer and dispose of the IP Materials in accordance with any such Notice. If Escrow Agent does not receive said Notice within 90 days of the date of Escrow Agent's termination Notice, then Escrow Agent shall have no obligation to take any action under this Escrow Agreement, except action to hold and safeguard the Intellectual Property and transfer or dispose of IP Materials following

termination as provided in this Section 5.

5.4. Disposition of IP Materials Upon Termination. Upon termination of this Escrow Agreement, Escrow Agent shall destroy, return, or otherwise deliver the IP Materials in accordance with Depositor's and CARTA's Notice. If there is no such Notice, Escrow Agent may, commence legal action interpleading Depositor and CARTA, deposit the IP Materials with the court in such action and otherwise handle and dispose of the IP Materials in accordance with court order. In no event shall Escrow Agent have the right to destroy the IP Materials or return them to Depositor absent written instructions to such effect or final order of a court of competent jurisdiction.

5.5. Survival of Terms Following Termination. Upon termination of this Escrow Agreement, the following provisions of this Escrow Agreement shall survive:

- (a) Depositor's representations and warranties;
- (b) The obligations of safekeeping and confidentiality with respect to the IP Materials and incorporated Intellectual Property;
- (c) The rights granted in the sections entitled Right to Transfer Upon Release and Right to Use Following Release, if a release of the IP Materials has occurred prior to termination;
- (d) The obligation to pay Escrow Agent any fees and expenses due and payable prior to such termination;
- (e) The obligations of Escrow Agent under Section 5.4;
- (f) The provisions of Section 7;
- (g) Any provisions in this Escrow Agreement which specifically state they survive the termination of this Escrow Agreement; and
- (h) All other provisions which by their inherent character or express terms should survive termination of this Escrow Agreement, the expiration of the AGREEMENT.

SECTION 6. ESCROW AGENT FEES

6.1. Fee Payment and Schedule Escrow Agent is entitled to be paid its standard fees and expenses applicable to the services provided, which shall be the responsibility of CARTA. Escrow Agent shall notify CARTA at least 60 days prior to any increase in fees. For any service not listed on Escrow Agent's standard fee schedule, Escrow Agent shall provide a quote prior to rendering the service, if requested.

6.2. Payment Terms. Fees are due 30 days after receipt of an invoice from Escrow Agent detailing the services performed and setting forth fees therefor consistent with the then applicable fee schedule. Escrow Agent may deliver invoices not more frequently than monthly. Except for action to hold and safeguard the Intellectual Property and transfer or dispose of the IP Materials following termination as provided in this Section, Escrow Agent shall not be required to perform any service whenever any undisputed outstanding balance owed to Escrow Agent is not paid when due.

SECTION 7. LIABILITY AND DISPUTES

7.1. Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Except with respect to an Alternate Instruction that is not timely delivered or lacks the representation set forth in this Escrow Agreement, Escrow Agent may assume that any employee of a party to this Escrow Agreement who gives any Notice, request, or instruction has the authority to do so. Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any Notice, request or instruction. Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Escrow Agent.

7.2. Indemnification. Depositor and CARTA each agree to indemnify, defend and hold harmless Escrow Agent from any and all claims and losses in connection with this escrow arrangement except for any claims or losses caused by the negligence or willful misconduct of Escrow Agent or its breach of this Escrow Agreement.

7.3. Dispute Resolution. Any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Escrow Agreement, its application or interpretation, a breach thereof, or an Alternate Instruction issued hereunder, which cannot be settled amicably by the Parties, shall be resolved in accordance with the dispute resolution provisions of the AGREEMENT. Escrow Agent agrees to be bound by any such final resolution. Notwithstanding the foregoing, any suit in interpleader brought by Escrow Agent under Section 5.4 shall not be by arbitration and may be brought by Escrow Agent in any court having jurisdiction.

7.4. Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct Escrow Agent to take, or refrain from taking, any action, that Party shall:

- (a) Give Escrow Agent at least two Business Days' prior Notice of the hearing; and
- (b) Ensure that Escrow Agent not be required to deliver the original (as opposed to a copy) of the IP Materials if Escrow Agent may need to retain the original in its possession to fulfill any of its other duties under this Escrow Agreement.

7.5. Liability. No member, officer, or employee of CARTA, Depositor or Escrow Agent shall be liable personally hereunder or by reason hereof.

SECTION 8. GENERAL PROVISIONS

8.1. Entire Escrow Agreement. This Escrow Agreement (including all Exhibits to this Escrow Agreement) contain the entire understanding of the parties with respect to the subject matter of this Escrow Agreement and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to their subject matter. Escrow Agent's only obligations to Depositor or CARTA are as set forth in this Escrow Agreement. No amendment or modification of this Escrow Agreement shall be valid or binding unless signed by all the parties, except that Exhibit A need not be signed by CARTA and Exhibit B need not be signed.

8.2. Escrow Agent Representation. Escrow Agent represents and warrants to CARTA and Depositor that to the best knowledge of Escrow Agent neither it nor any of its personnel has been the subject of any investigation or been convicted or indicted for commission of any crime involving misconduct, corruption, bribery or fraud in connection with any public contract in the State of California, or any other jurisdiction, except as has been specifically disclosed in writing to CARTA and Depositor.

8.3. Severability. In the event any provision of this Escrow Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Escrow Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Escrow Agreement nor the

remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.4. Successors. This Escrow Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. However, Escrow Agent shall have no right to assign this Escrow Agreement or delegate its duties hereunder without the prior written consent of Depositor and CARTA; and Escrow Agent shall have no obligation in performing this Escrow Agreement to recognize any successor or assign of Depositor or CARTA unless Escrow Agent receives unambiguous and authoritative written evidence of the change of Parties.

8.5. Regulations. Depositor and CARTA are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Intellectual Property may be delivered in accordance with the provisions of this Escrow Agreement.

8.6. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of California, without regard to conflict of law principles. The venue of any court, judicial or referee proceeding under this AGREEMENT shall be in Sacramento County, California, unless changed by the judicial officer.

8.7. Counterparts. This Escrow Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Escrow Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Source Code Escrow Agreement as of the date first written above.

CARTA

**Capital Area Regional Tolling
Authority, a California joint powers
authority**

By: _____

Name:

Title:

APPROVED AS TO FORM:

By: _____

DEPOSITOR:

ESCROW AGENT:

EXHIBIT A

DESCRIPTION OF ESCROWED MATERIAL

Depositor Company Name: _____

Account Number _____

Product name _____ Version _____

(Product Name will appear as the Exhibit 1 Name on Account History report)

Owner of Product _____

(Name, address, tel. no., e-mail address)

SOURCE CODE DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
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PRODUCT DESCRIPTION:

Environment _____

SOURCE CODE INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

SOURCE CODE VERIFICATION PROCEDURES:

[Insert in space below or provide as separate Exhibit]

Other required information _____

I certify for **Depositor** that the above described **Escrow Agent** has inspected and accepted the IP Materials as described above (any exceptions are noted above):

Signature: _____ Signature: _____

Print Name: _____ Print Name: _____

Date: _____ Date Accepted: _____

Exhibit A#: _____

Send materials to: Escrow Agent, _____ (____) _____

EXHIBIT B

DESIGNATED CONTACT

Account Number _____
Notices, deposit material returns and
communications to Depositor should be
addressed to:

Invoices to Depositor pursuant should be
addressed to:

Company Name: _____

Address: _____

Designated Contact: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____

Verification Contact: _____

Email: _____

Notices and communications to the CARTA
should be addressed to each agency as
follows:

Company Name: CARTA

Address _____

Designated Contact: _____

Telephone: (____) _____

E-mail: _____

E-mail: _____

Requests from Depositor or CARTA to change the designated contact should be given in writing by the designated contact or an authorized employee of Depositor or CARTA.

Contracts, IP Materials and Intellectual
Property, notices, invoice inquiries and fee
remittances to Escrow Agent should be
addressed to:

_____ Date: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____