



AGENDA

Special Finance and Administration Committee Meeting

Committee Members

Andrew Do, Chairman
Steve Jones, Vice Chairman
Michael Hennessey
Richard Murphy
Miguel Pulido
Todd Spitzer
Michelle Steel

Orange County Transportation Authority
Headquarters
550 South Main Street
Board Room – Conf. Room 07
Orange, California

Wednesday, June 21, 2017 at 9:00 a.m.

Any person with a disability who requires a modification or accommodation in order to participate in this meeting should contact the OCTA Clerk of the Board, telephone (714) 560-5676, no less than two (2) business days prior to this meeting to enable OCTA to make reasonable arrangements to assure accessibility to this meeting.

Agenda descriptions are intended to give members of the public a general summary of items of business to be transacted or discussed. The posting of the recommended actions does not indicate what action will be taken. The Committee may take any action which it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

All documents relative to the items referenced in this agenda are available for public inspection at www.octa.net or through the Clerk of the Board's office at the OCTA Headquarters, 600 South Main Street, Orange, California.

Call to Order

Pledge of Allegiance

Director Murphy

1. Public Comments

Special Calendar

There are no Special Calendar matters.



Consent Calendar (Item 2)

All items on the Consent Calendar are to be approved in one motion unless a Committee Member or a member of the public requests separate action or discussion on a specific item.

2. Line of Credit Financing Documents

Kirk Avila/Andrew Oftelie

Overview

On May 22, 2017, the Orange County Transportation Authority Board of Directors selected Bank of America, N.A., to provide a line of credit in the amount of \$900 million for a period of four years. The financing documents for the line of credit are presented for review and approval.

Recommendations

- A. Approve the substantially final form of the 2019 and 2021 Credit and Fee Agreements between the Orange County Local Transportation Authority, Orange County Transportation Authority and Bank of America, N.A., for a total amount of \$900 million, and authorize the Chief Executive Officer to negotiate and execute final 2019 and the 2021 Credit and Fee Agreements.
- B. Authorize the Chairman, Vice-Chair, Chief Executive Officer, Executive Director of Finance and Administration, and the Treasurer to sign on behalf of the Orange County Local Transportation Authority all documents related to the line of credit, including the credit agreement, fee agreement, bank note, supplemental indenture, and any certificates, notices, receipts, or agreements in connection with the foregoing.



Regular Calendar

- 3. Transportation Infrastructure Finance and Innovation Act Loan Approval for the Interstate 405 Improvement Project**
Kirk Avila/Andrew Oftelie

Overview

Over the past year, the Orange County Transportation Authority has been working with its financing team to finalize a funding plan for the Interstate 405 Improvement Project. A large component of this funding plan includes a loan under the Transportation Infrastructure Finance and Innovation Act. Orange County Transportation Authority representatives have been negotiating the loan terms for the project with the Build America Bureau Credit Programs Office. A copy of the substantially final Loan Agreement, Master Indenture, and Supplemental Indenture is presented for Board of Directors review and approval.

Recommendations

- A. Approve the substantially final form of the Transportation Infrastructure Finance and Innovation Act Loan Agreement between the Orange County Transportation Authority and the United States Department of Transportation in the amount of approximately \$627 million, the substantially final form of the Master Trust Indenture and Supplemental Indenture by and between Orange County Transportation Authority and the Trustee, and authorize the Chief Executive Officer to negotiate and execute a final Transportation Infrastructure Finance and Innovation Act Loan Agreement, Master Indenture, and Supplemental Indenture.
- B. Authorize the Chairman, Vice-Chair, Chief Executive Officer, Executive Director of Finance and Administration, and the Treasurer to sign all documents related to the Transportation Infrastructure Finance and Innovation Act loan, including the Transportation Infrastructure Finance and Innovation Act Loan Agreement and Bond, the Master Indenture, Supplemental Indenture, and any certificates, notices, receipts, or agreements in connection with the foregoing.



Discussion Items

- 4. Chief Executive Officer's Report**
- 5. Committee Members' Reports**
- 6. Closed Session**

There are no Closed Session items scheduled.

- 7. Adjournment**

The next regularly scheduled meeting of this Committee will be held at **10:30 a.m. on Wednesday, June 28, 2017**, at the Orange County Transportation Authority Headquarters, 550 South Main Street, Board Room - Conference Room 07, Orange, California.



June 21, 2017

To: Finance and Administration Committee

From: Darrell Johnson, Chief Executive Officer

Subject: Line of Credit Financing Documents

Overview

On May 22, 2017, the Orange County Transportation Authority Board of Directors selected Bank of America, N.A., to provide a line of credit in the amount of \$900 million for a period of four years. The financing documents for the line of credit are presented for review and approval.

Recommendations

- A. Approve the substantially final form of the 2019 and 2021 Credit and Fee Agreements between the Orange County Local Transportation Authority, Orange County Transportation Authority and Bank of America, N.A., for a total amount of \$900 million, and authorize the Chief Executive Officer to negotiate and execute final 2019 and the 2021 Credit and Fee Agreements.
- B. Authorize the Chairman, Vice-Chair, Chief Executive Officer, Executive Director of Finance and Administration, and the Treasurer to sign on behalf of the Orange County Local Transportation Authority all documents related to the line of credit, including the credit agreement, fee agreement, bank note, supplemental indenture, and any certificates, notices, receipts, or agreements in connection with the foregoing.

Background

As a condition to signing the Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan Agreement, the Build America Bureau Credit Programs Office (Bureau) requires that the Orange County Transportation Authority (OCTA) either issues the entire amount (approximately \$900 million) of the Measure M2 (M2) debt issuances, which are planned for 2019 and 2021, or provide another acceptable form of committed funds in this amount. OCTA and its advisors developed an alternative strategy that the Bureau has stated it

will accept, which is the execution of a Line of Credit (Line) for the entire amount of the M2 future debt issuances. Under this approach, OCTA can wait until 2019 and 2021 to issue the M2 debt as included in the preliminary finance plan, or OCTA may issue the debt earlier to eliminate the potential risk of rising interest rates.

On May 1, 2017, OCTA issued a Request for Proposals for letter or line of credit services. On May 8, 2017, the Board of Directors (Board) approved the use of a Line secured by M2 sales tax revenues in the principal amount of approximately \$900 million for the funding of the project, as required by the Bureau.

On May 12, 2017, four proposals were received. An evaluation committee comprised of staff from the Finance and Administration Division, Capital Programs Division, and OCTA's Financial Advisor, Sperry Capital Inc., was formed to review all offers submitted.

On May 15, 2017, OCTA requested best and final offers from Bank of America N. A. (BANA) and JP Morgan Chase Bank. While the proposals from Citibank and Goldman Sachs were considered, neither offered a proposal nor a solution that matched the needs of OCTA.

BANA, as the winning bidder, proposed a \$900 million Line secured by a subordinate pledge of M2 sales tax revenues. The Line meets the Bureau's requirements and qualifications. BANA has extensive transportation, California, and national experience providing all forms of credit, liquidity, and direct purchase bank products. BANA's credit ratings meet the requirements imposed by the Bureau and have improved and been stable over the past three years.

Discussion

The draft Credit Agreement (Attachment A) between the Orange County Local Transportation Authority, OCTA and BANA detailing the structure and terms of the Line along with a Fee Agreement (Attachment B) are provided for Board review and approval. The Line serves as a "backup" of funds if the M2 bonds are not sold in the amounts and on the dates required to fund the Interstate 405 Improvement Project. OCTA does not currently intend to draw upon the Line. A Second Supplemental Indenture (Attachment C) to the 2010 M2 Master Indenture of Trust (Master Indenture) prepared by OCTA's bond counsel to acknowledge the subordinate pledge of M2 sales taxes to secure repayment of any loans by BANA under the Credit Agreement is also provided for review and approval.

The payment obligations owed to BANA under the Credit and Fee Agreements shall be payable and secured by a pledge of, lien on, and security interest in the M2 sales tax revenues, including earnings on such amounts, subject only to the provisions of the Master Indenture. The pledge, lien, and security interest shall be junior and subordinate only to the pledge of M2 sales tax revenues in favor of the Senior Lien Debt pursuant to the express terms of the Master Indenture and the Second Supplemental Indenture.

The Line and the proceeds of drawings under the Line, if any, shall be used to satisfy OCTA's funding requirements under the United States Department of Transportation TIFIA Loan Agreement entered into by OCTA for the Interstate 405 Improvement Project and, in any event, shall be used solely for the purposes set forth in the Master Indenture and the Local Transportation Improvement Act of the State of California.

BANA recommends that OCTA structure the transactions as two separate Credit and Fee Agreements for the 2019 and 2021 tranches. The facility fees for the BANA Line will be 26 basis points per year for the 2019 maturity and 36 basis points per year for the 2021 maturity. This translates into an annual fee of \$2.84 million for the first two years and \$1.8 million for the final two years. The total facility fees are projected to be approximately \$9.28 million. These fees are due whether the Line is drawn upon or not. Legal fees for BANA shall be capped at \$75,000 plus advance fees of \$295 for each draw. OCTA must also pay a termination fee if the Line is terminated prior to July 2018 (one year after execution of the agreements).

In the event of a draw, the interest rate will be due to BANA at an interim rate of four percent plus either the greater of (i) the Prime Rate in effect at such time plus one percent, (ii) the Federal Funds Rate in effect at such time plus two percent, or (iii) the LIBOR Index Rate in effect at such time plus two percent. The interim interest rate will commence on the date of the draw for 60 days. After 60 days and assuming the draw has not been repaid, an Event of Default will occur and the interest rate on the draw would increase to four percent plus the greater of (i) the Prime Rate in effect at such time plus one percent, (ii) the Federal Funds Rate in effect at such time plus two percent, (iii) the LIBOR Index Rate in effect at such time plus two percent, or (iv) seven percent.

Summary

The Build America Bureau Credit Programs Office requires that the Measure M2 debt issuances in 2019 and 2021 be "committed" at the time of closing the proposed Transportation Infrastructure Finance and Innovation Act loan. Attached for review and approval by the Board of Directors are the financing

documents associated with the Line of Credit with Bank of America, N.A. for a total amount of \$900 million.

Attachments

- A. 2019 and 2021 Credit Agreement by and among Orange County Local Transportation Authority, Orange County Transportation Authority, and Bank of America N.A.
- B. 2019 and 2021 Fee Agreement
- C. Second Supplemental Indenture between Orange County Local Transportation Authority and The Bank of New York Mellon Trust Company, N.A.

Prepared by:



Kirk Avila
Treasurer/General Manager
Treasury/Toll Roads
(714) 560-5674

Approved by:



Andrew Oftelie
Executive Director,
Finance and Administration
(714) 560-5649

[2019][2021] CREDIT AGREEMENT

Dated as of _____ 1, 2017

by and among

ORANGE COUNTY LOCAL TRANSPORTATION AUTHORITY,

ORANGE COUNTY TRANSPORTATION AUTHORITY

and

BANK OF AMERICA, N.A.

[2019][2021] CREDIT AGREEMENT

(This Table of Contents is not a part of this
[2019][2021] Credit Agreement and is only
for convenience of reference)

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[2019][2021] CREDIT AGREEMENT

This **[2019][2021]** CREDIT AGREEMENT dated as of _____ 1, 2017 (together with any amendments or supplements hereto, this "*Agreement*"), is by and among the ORANGE COUNTY TRANSPORTATION AUTHORITY ("*OCTA*") and the ORANGE COUNTY LOCAL TRANSPORTATION AUTHORITY, each a local transportation authority duly established and existing under the laws of the State of California (the "*Authority*") and BANK OF AMERICA, N.A., a national banking association and its successors and assigns (the "*Bank*").

WITNESSETH:

WHEREAS, OCTA is a local transportation authority duly organized and existing pursuant to the Local Transportation Authority and Improvement Act, being Division 19 of the Public Utilities Code of the State of California (Section 180000 *et seq.*) (the "*Act*");

WHEREAS, the Authority is a local transportation authority duly organized and existing pursuant to the Local Transportation Authority and Improvement Act, being Division 19 of the Public Utilities Code of the State of California (Section 180000 *et seq.*) (the "*Act*");

WHEREAS, the Authority is authorized pursuant to the Act to, among other things, and with voter approval, levy a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code (the "*Sales Tax Law*") and to incur indebtedness and obligations secured by and payable from the proceeds of such tax;

WHEREAS, the Authority adopted Ordinance No. 3, named the "Renewed Measure M Transportation Ordinance and Investment Plan" (the "*Ordinance*") on July 24, 2006, pursuant to the provisions of the Act, which Ordinance provides for the imposition of a retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of Orange in accordance with the provisions of the Sales Tax Law (as herein defined) at the rate of one-half of one percent (1/2%) for a period of thirty (30) years;

WHEREAS, by its terms, the Ordinance became effective on November 8, 2006, the day after the election at which the proposition imposing the Sales Tax (as herein defined) was approved by more than two-thirds of the electors voting on the measure;

WHEREAS, the Ordinance empowers the Authority to issue, from time to time, on, before or after commencement of the collection of the Sales Tax, bonds or other evidences of indebtedness as permitted by the Ordinance and the hereinafter defined Indenture;

WHEREAS, the Authority is authorized by the Act to issue from time to time limited tax bonds (defined to include indebtedness and securities of any kind or class, including loans and other obligations), secured and payable in whole or in part from revenues of the Sales Tax;

WHEREAS, in order to accomplish the issuance and delivery of the Bank Note (as herein defined) to evidence and secure the Loans (as herein defined) made by the Bank hereunder and the

other Obligations (as herein defined), the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee, and its permitted successors and assigns (the “*Trustee*”) have entered into the Second Supplemental Indenture, dated as of _____ 1, 2017 (as amended, supplemented, modified or restated from time to time in accordance with the terms hereof and thereof, referred to herein as the “*Supplemental Indenture*”), which Supplemental Indenture supplements the Master Indenture of Trust dated as of December 1, 2010 (as amended, supplemented, modified or restated from time to time in accordance with the terms hereof and thereof, the “*Senior Lien Bond Indenture*”), between the Authority and Trustee, relating to the Authority’s Measure M2 Sales Tax Revenue Bonds (Limited Tax Bonds), as the same has been amended, supplemented, modified or restated from time to time in accordance with the terms thereof and as may be further amended, supplemented, modified or restated from time to time in accordance with the terms hereof and thereof;

WHEREAS, the Bank is willing to extend to the Authority the Commitment (as herein defined) and to make Loans upon the terms and conditions provided herein.

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to extend to the Authority the Commitment and to make Loans, the Authority and the Bank agree as follows:

ARTICLE ONE DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

“*Act*” has the meaning set forth in the recitals hereof.

“*Agreement*” means this [2019][2021] Credit Agreement, as amended, supplemented and otherwise modified from time to time in accordance with the terms hereof.

“*Annual Debt Service*” means, for the 12 month period then ended, the aggregate amount of principal and interest on all MADS Debt becoming due and payable during such 12 month period then ended. For purposes of calculating Annual Debt Service, the following assumptions shall be utilized to calculate the principal and interest on MADS Debt becoming due during such 12 month period then ended:

- (i) Assumed Debt Service shall be included in such calculation;
- (ii) in determining the principal amount due in such 12 month period then ended on all MADS Debt other than Bonds, bond anticipation notes and grant anticipation notes which constitute Assumed Debt Service, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such MADS Debt, including any mandatory sinking account payments or any scheduled redemption or payment on the basis of accreted value (as such term is defined in the

document pursuant to which such debt was issued or incurred), and for such purpose, the redemption payment or payment of accreted value shall be deemed a principal payment and interest that is compounded and paid as accreted value shall be deemed due on the scheduled redemption or payment date of such debt;

(iii) if any MADS Debt bears, or if any MADS Debt proposed to be issued will bear interest at a variable interest rate for which an Interest Rate Swap Agreement is not in place and the interest on which is excluded or expected to be excluded from gross income for federal income tax purposes, the interest rate on such MADS Debt for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to (A) with respect to any Senior Lien Debt, the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation and (B) with respect to any MADS Debt other than Senior Lien Debt, the average of the SIFMA Municipal Swap Index for the five years preceding the date of calculation plus two percent (2%);

(iv) if any MADS Debt bears, or if any MADS Debt proposed to be issued will bear, interest at a variable interest rate for which an Interest Rate Swap Agreement is not in place and the interest on which is included or expected to be included in gross income for federal income tax purposes, the interest rate on such MADS Debt shall be calculated at an interest rate equal to 100% of the average Three Month USD LIBOR Rate during the five (5) years preceding such date of calculation;

(v) with respect to any MADS Debt bearing interest, or expected to bear interest, at a variable interest rate for which an Interest Rate Swap Agreement is in place providing for a fixed rate of interest to maturity or for a specific term with respect to such MADS Debt, the interest rate on such MADS Debt shall be assumed to be the synthetic fixed interest rate specified in such Interest Rate Swap Agreement for such term; provided that if, pursuant to a Certificate of the Authority filed with the Trustee, as applicable, the sum of (x) interest payable on such MADS Debt, plus (y) amounts payable by the Authority under such Interest Rate Swap Agreement, less (z) amounts receivable by the Authority under such Interest Rate Swap Agreement, is expected to be greater than the interest payable on the MADS Debt to which such Interest Rate Swap Agreement relates (i.e., if such Interest Rate Swap Agreement is an “off-market” Interest Rate Swap Agreement), then, in such instance, such excess amounts payable by the Authority under such Interest Rate Swap Agreement shall be included in the calculation of Annual Debt Service;

(vi) with respect to any MADS Debt bearing interest, or expected to bear interest, at a fixed interest rate for which an Interest Rate Swap Agreement is in place providing for a net variable interest rate with respect to such MADS Debt for a specific term, the interest rate on such MADS Debt shall be assumed to be equal for such term to the sum of (x) the fixed interest rate or rates to be paid on the MADS Debt, minus (y) the fixed interest rate or rates receivable by the Authority under such Interest Rate Swap Agreement, plus (z) the average interest rate of the index on which the Interest Rate Swap Agreement is based, as identified in a Certificate of the Authority, or, if not based on an identifiable index, then, with respect to MADS Debt the interest on which is tax-exempt, the SIFMA Municipal Swap Index, and, with respect to MADS Debt the interest on which

is taxable, the Three Month USD LIBOR Rate, in each case, over the five (5) years preceding the date of calculation;

(vii) if any debt features an option, on the part of the owners or an obligation under the terms of such debt, to tender all or a portion of such debt to the Authority, the Trustee or other fiduciary or agent, and requires that such debt or portion thereof be purchased if properly presented, then for purposes of determining the principal amount due during the 12 month period then ended, the options or obligations of the owners of such debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored solely for such purposes and not treated as a principal maturity (but shall be included as principal due during such period if a different subsection of this definition applies for purposes of determining principal maturities or amortization); and

(viii) principal and interest payments shall be excluded to the extent such payments are to be paid from amounts then currently on deposit, including Investment Securities and interest the Authority expects to receive thereon, with the Trustee or other fiduciary in escrow specifically and irrevocably pledged therefor and to the extent that such interest payments are to be paid from the proceeds of MADS Debt, including Investment Securities and interest the Authority expects to receive thereon, held by the Trustee or other fiduciary as capitalized interest specifically to pay such interest or from Subsidy Payments the Authority expects to receive.

“Assumed Debt Service” means for the 12 month period then ended the aggregate amount of principal and interest which would be payable on all Bonds, bond anticipation notes and grant anticipation notes which constitute MADS Debt, if principal were amortized on a substantially Level Debt Service basis for a period commencing on the date of issuance of such MADS Debt and ending on the earlier of (i) the date specified by the Authority not exceeding thirty (30) years from the date of calculation, or (ii) the Sales Tax Expiration Date, such Assumed Debt Service to be calculated on a Level Debt Service basis. Interest payable on all Bonds during such 12 month period then ended shall be based on a fixed interest rate equal to the rate at which the Authority could borrow for such period, as set forth in a certificate of a financial advisor or investment banker, delivered to the Trustee, who may rely conclusively on such certificate, such certificate to be delivered within thirty (30) days of the date of calculation. Interest on all bond anticipation notes and grant anticipation notes which constitute MADS Debt, during the 12-month period then ended shall be determined as if such MADS Debt bears interest at a variable interest rate.

“Applicable Law” means (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, rules, regulations and orders of all Governmental Authorities, (ii) governmental approvals and (iii) orders, decisions, judgments, writs, injunctions and decrees of all courts (whether at law or in equity) and arbitrators.

“Authority” has the meaning set forth in the introductory paragraph hereof.

“Authorized Representative” has the meaning set forth in the Indenture.

“Bank” means Bank of America, N.A., a national banking association and its successors and assigns.

“Bank Agreement” has the meaning set forth in Section 6.9 hereof.

“Bank Note” has the meaning set forth in Section 2.3 hereof.

“Base Rate” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent (1.00%), (ii) the Federal Funds Rate in effect at such time *plus* two percent (2.00%), (iii) the LIBOR Index Rate as in effect at such time *plus* two percent (2.00%), and (iv) seven percent (7.00%). Each determination of the Base Rate by the Bank shall be conclusive absent manifest error.

“BOE” has the meaning set forth in the Indenture.

“BOE Agreement” means that certain Agreement for State Administration of Authority Transactions and Use Taxes between the Authority and the BOE, adopted by the Authority on October 25, 2010 and approved by the Department of General Services of the State on December 16, 2010, as supplemented and amended from time to time in accordance with the terms hereof and thereof.

“Bond Counsel” means Nossaman LLP (or another nationally recognized bond counsel selected by the Authority).

“Bonds” has the meaning set forth in the Senior Lien Bond Indenture.

“Business Day” means a day other than: (i) a Saturday, Sunday or day upon which banking institutions in the State or the State of New York are authorized or obligated by law or executive order to be closed; (ii) a day on which the New York Stock Exchange or the Federal Reserve Bank is authorized or obligated by law or executive order to be closed; (iii) a day upon which commercial banks are authorized or obligated by law or executive order to be closed in the city in which demands for payment are to be presented hereunder or (iv) a day on which the principal office of the Bank is closed.

“Certificate” has the meaning set forth in the Indenture.

“Change of Law” means the adoption or implementation, after the Closing Date, of, or any change, after the Closing Date, in, any law, rule, treaty, regulation, statute, policy, guideline, directive or Risk-Based Capital Guidelines, or any change, after the Closing Date, in the enforcement, interpretation, implementation or administration thereof, as the case may be, by any court, central bank or other administrative or Governmental Authority or comparable agency charged with the interpretation or administration thereof (in each case whether or not having the force of law), or compliance by the Bank, its Parent or any Participant with any request or directive of any such court, central bank or other administrative or Governmental Authority or comparable agency charged with the interpretation or administration thereof (in each case whether or not having the force of law) or the occurrence of the effective date of any of the foregoing if adopted

prior to the Closing Date or any change after the Closing Date in the application, interpretation or enforcement of any of the foregoing.

“*Closing Date*” means _____, 2017, subject to the satisfaction or waiver of all of the conditions precedent set forth in Section 4.1 hereof.

“*Commitment*” means the Bank’s obligation to make Loans to the Authority on or after the Closing Date and on or prior to the Commitment Expiration Date in an aggregate principal amount not to exceed \$_____.

“*Commitment Fee*” has the meaning set forth in the Fee Agreement.

“*Commitment Termination Date*” means the earlier of:

(a) _____, [2019][2021], or such later date as may be established pursuant to Section 2.13 hereof; and

(b) the date the Commitment is reduced to zero pursuant to Section 2.7 or Section 7.2 hereof.

“*Debt*” of any Person means, at any date and without duplication, (i) all obligations of such Person for borrowed money, including without limitation, all obligations secured by any of the revenues or assets of such Person and all obligations of such Person evidenced by bonds (including revenue bonds), debentures, notes or other similar instruments, (ii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business (including, without limitation, accounts payable to construction contractors and other professionals for services rendered), (iii) all obligations of such Person as lessee under capital leases, (iv) all indebtedness of others secured by a Lien on any asset of such Person, whether or not such indebtedness is assumed by such Person, (v) all indebtedness of others guaranteed by, or secured by any of the revenues or assets of, such Person, (vi) payment obligations of such Person under any Swap Contract and (vii) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), credit agreements, bankers’ acceptances, bank guaranties, surety bonds and similar instruments.

“*Debt Service Coverage Ratio*” means the ratio determined by dividing (i) Sales Tax Revenues for the 12-month period then ended by (ii) the Maximum Annual Debt Service on all MADS Debt then outstanding, including any such additional MADS Debt then proposed to be issued.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” means a per annum interest rate equal to the Base Rate from time to time in effect plus 4.0%.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“Event of Default” has the meaning set forth in Section 7.1 hereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

“Fee Agreement” means the [2019][2021] Fee Agreement dated _____, 2017, between the Bank and the Authority, as amended, supplemented, modified or restated from time to time in accordance with its terms.

“Fiscal Year” means the period of time beginning on July 1 of each given year and ending on June 30 of the immediately subsequent year, or such other period designated by the Authority as its fiscal year.

“Generally Accepted Accounting Principles” or *“GAAP”* means generally accepted accounting principles consistently applied and maintained throughout the period indicated and consistent with the prior financial practice of the Authority, except for changes permitted by the Governmental Accounting Standards Board or any similar accounting authority of comparable standing.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government.

“Indenture” means, collectively, the Senior Lien Bond Indenture and the Supplemental Indenture.

“Interest Payment Date” means the first Business Day of each month, commencing on the first Business Day of the month following the making Loans and the date on which any Loan is repaid in full.

“Interest Rate Swap Agreement” means: (i) with respect to an interest rate swap agreement relating to any MADS Debt other than Senior Lien Debt, an interest rate swap agreement in which the counterparty with which the Authority or the Trustee may contract is limited to entities the debt securities of which are rated in the highest short-term or one of the two highest long-term debt Rating Categories by Moody’s and S&P; and (ii) with respect to an interest rate swap agreement relating to any Senior Lien Debt or a portion thereof, (a) the term of which is not less than the term of the Senior Lien Debt to which such interest rate swap agreement relates, and (b) in which the counterparty with which the Authority or the Trustee may contract is limited to (x) entities the debt securities of which are rated in one of the two highest long-term debt Rating Categories by Moody’s and S&P or (y) entities the obligations of which under such Interest Rate Swap Agreement are either guaranteed or insured by an entity the debt securities or insurance policies of which are so rated or (z) entities the debt securities of which are rated in the third highest long-term debt rating categories by Moody’s and S&P or whose obligations are guaranteed or insured by an entity so rated, and, in each case, the obligations of which under such Interest Rate Swap Agreement are continuously and fully secured by Investment Securities described in clauses (2) of the definition thereof) which shall have a market value determined, by the party designated in such Interest Rate Swap Agreement, at least monthly (exclusive of accrued interest), at least equal to the termination value, if any, that would be payable by such counterparty under the Interest Rate Swap Agreement and which shall be deposited with a custodian acceptable to the Authority. The ratings of the counterparties in the above definition are determined as of the date of execution of the interest rate swap agreement.

“Investment Securities” has the meaning set forth in the Indenture.

“IRS” means the United States Internal Revenue Service, or any Governmental Authority succeeding to any of its principal functions.

“Level Debt Service” means a debt service schedule in which the combined annual amount of principal and interest payments remain approximately constant over the life of such debt service.

“LIBOR Index Rate” means a fluctuating rate of interest which can change on each Business Day. The rate will be adjusted on each Business Day to equal the London Interbank Offered Rate (or a comparable or successor rate which is approved by the Bank) for U.S. Dollar deposits for delivery on the date in question for a one month term beginning on that date. The Bank will use the London Interbank Offered Rate as published by Bloomberg (or other commercially available source providing quotations of such rate as selected by the Bank from time to time) as determined at approximately 11:00 a.m. London time on such day, as adjusted from time to time in the Bank’s sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the

rate will be determined by such alternate method as reasonably selected by the Bank. If the LIBOR Index Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” or *“Loans”* has the meaning set forth in Section 2.1 hereof.

“Loan Notice” means a request for a Loan, pursuant to Section 2.2(a) hereof, which shall be substantially in the form of Exhibit A attached hereto or such other form as may be approved by the Bank (including any form on an electronic platform or electronic transmission system as shall be approved by the Bank), appropriately completed and signed by an Authorized Representative.

“MADS Debt” means collectively, the Loans, the Obligations, any Parity Debt, any Senior Lien Debt and any Subordinate Obligations.

“Margin Stock” has the meaning ascribed to such term in Regulation U promulgated by the FRB, as now and hereafter from time to time in effect.

“Material Adverse Change” or *“Material Adverse Effect”* means any event or occurrence (including, without limitation, a change in Applicable Law) that causes a material adverse change in or a material adverse effect on (A) the validity or enforceability of, and the ability of the Authority to perform any of its obligations under, this Agreement, any of the other the Program Documents, the Act, the Sales Tax Law or the Ordinance, (B) the Authority’s ability or obligation to make payments of principal or interest on any Senior Lien Debt, any Parity Debt, the Bank Note, the Loans or the payment of any of the Obligations, (C) the validity, enforceability or perfection of the pledge of and lien on Revenues securing the payments of principal or interest on the Bank Note, the Loans, the Obligations, the [2019][2021] Loans, the [2019][2021] Bank Note or the [2019][2021] Obligations or (D) the rights, interests, security or remedies of the Bank under this Agreement or any of the other Program Documents; *provided however*, that a reduction in Sales Tax Revenues collected or received by the Authority, shall not, in and of itself, constitute a “Material Adverse Change” or “Material Adverse Effect” if as of the date of determination of whether a “Material Adverse Change” or “Material Adverse Effect” has occurred as required in this Agreement, the Debt Service Coverage Ratio has been equal to or greater than 2.50:1.0 at the end of each fiscal quarter of the Authority for the 12-month period then ended immediately preceding the date of determination.

“Maximum Annual Debt Service” means the greatest amount of principal and interest becoming due and payable on all Senior Lien Debt, the Loans, the Obligations, all Parity Debt and all Subordinate Obligations for the then current or any future Fiscal Year, calculated using the principles and assumptions set forth under the definition of Annual Debt Service.

“Maximum Rate” means the maximum non-usurious lawful rate of interest permitted by Applicable Law.

“Moody’s” means Moody’s Investors Service, Inc. and any successor rating agency.

“More Favorable Term” has the meaning set forth in Section 6.9 hereof.

“Obligations” means any and all obligations of the Authority to repay the Bank the Loans and the Bank Note, including, all interest accrued thereon, the Commitment Fees, all fees and charges due and payable hereunder, under the Fee Agreement and under the Bank Note, and including interest and fees that accrue after the commencement by or against the Authority of any proceeding under any Debtor Relief Laws naming the Authority as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, the fees set forth in the Fee Agreement, and all other payment obligations of the Authority owed to the Bank under the terms of this Agreement, the Fee Agreement or the Bank Note.

“OCTA” means the Orange County Transportation Authority, a public entity duly organized and existing under the laws of the State.

“OFAC” means the United States Department of Treasury Office of Foreign Assets Control.

“Ordinance” has the meaning set forth in the recitals hereof.

“Outstanding” has the meaning set forth in the Indenture.

“Parent” means, with respect to the Bank, any Person controlling the Bank.

“Parity Debt” means all Debt of the Authority for borrowed money or any interest rate swap agreement having an equal lien upon the Sales Tax Revenues and therefore payable on a parity with the Bank Note, the Loans (whether or not any Loans are outstanding) and the other Obligations including, without limitation, the [2019][2021] Loans, the [2019][2021] Bank Note and the [2019][2021] Obligations; *provided, however*, that any payments with respect to an interest rate swap agreement which represent termination payments or unwinding payments shall be Subordinate Obligations.

“Participant” has the meaning set forth in Section 9.3(b) hereof.

“Participation” has the meaning set forth in Section 9.3(b) hereof.

“Payment Office” means Bank of America, N.A., ABA #: _____, A/C # _____,
Ref: _____ Attn: _____ or such other office as the Bank may designate from time to time.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“Prime Rate” means on any day, the rate of interest per annum then most recently established by the Bank as its *“prime rate.”* The *“prime rate”* is a rate set by the Bank based upon various factors including the Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

“Program Documents” means this Agreement, the Bank Note, the Indenture, the BOE Agreement, the Ordinance and any other documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder.

“Project” has the meaning set forth in the TIFIA Loan Agreement.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“Rating Agencies” means any of Fitch, Moody’s or S&P, as applicable.

“Reduction Fee” has the meaning set forth in the Fee Agreement.

“Revenues” has the meaning set forth in the Indenture.

“Risk-Based Capital Guidelines” means (i) the risk-based capital guidelines in effect in the United States, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations.

“S&P” means S&P Global Ratings, and any successor rating agency.

“Sales Tax” has the meaning set forth in the Indenture.

“Sales Tax Expiration Date” has the meaning set forth in the Indenture.

“Sales Tax Law” has the meaning set forth in the recitals hereof.

“Sales Tax Revenues” has the meaning set forth in the Indenture.

“*Sanction(s)*” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*SEC*” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“*Senior Lien Bond Indenture*” has the meaning set forth in the recitals hereof.

“*Senior Lien Debt*” means all Debt of the Authority having a lien upon the Sales Tax Revenues that is senior to that of the Loans and the other Obligations and any Parity Debt and Subordinate Obligations.

“*SIFMA Municipal Swap Index*” has the meaning set forth in the Indenture.

“*Special Event of Default*” means the Events of Default described in Section 7.1(a)(i), (d), (e), (f), (g), (h), (i), (k), (l) or (m) hereof.

“*State*” means the State of California.

“*Subordinate Obligations*” means any obligations of the Authority secured by and payable from Sales Tax Revenues on a basis which is subordinate to the Senior Lien Debt, the Loans, the other Obligations and the Parity Debt.

“*Subordinate Obligations Fund*” has the meaning set forth in the Indenture.

“*Supplemental Indenture*” has the meaning set forth in the recitals hereof

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, total return swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Termination Fee*” has the meaning set forth in the Fee Agreement.

“*TIFIA Loan Agreement*” means the TIFIA Loan Agreement dated as of _____, 2017, by and between the OCTA and the United State Department of Transportation, relating to the Project, as the same may be amended, modified, supplemented or restated in accordance with the terms thereof.

“*Trustee*” has the meaning set forth in the recitals hereof.

“*[2019][2021] Bank Note*” means the promissory note issued by the Authority to the Bank pursuant to the *[2019][2021] Credit Agreement*, to evidence and secure the *[2019][2021] Loans* and the *[2019][2021] Obligations* under the *[2019][2021] Credit Agreement*.

“*[2019][2021] Credit Agreement*” means the *[2019][2021] Fee Agreement* dated as of _____ 1, 2017, relating to the *[2019][2021] Loans*, between the Authority and the Bank, as amended, supplemented, modified or restated from time to time in accordance with its terms.

“*[2019][2021] Fee Agreement*” means the *[2019][2021] Credit Agreement* dated as of _____ 1, 2017, relating to the *[2019][2021] Credit Agreement* and the *[2019][2021] Loan*, between the Authority and the Bank, as amended, supplemented, modified or restated from time to time in accordance with its terms.

“*[2019][2021] Loans*” means the Loans in the amount of \$ _____ by the Bank to the Authority pursuant to the *[2019][2021] Credit Agreement*.

“*[2019][2021] Obligations*” means all payment obligations under the *[2019][2021] Credit Agreement* (other than the *[2019][2021] Loans*).

“*Unreimbursed Loan Rate*” means solely with respect to a failure to repay a Loan on the date such Loan is made (and so long as no other Event of Default has occurred and is continuing), (i) for any day commencing on the date such Loan is made up to and including the earlier of the sixtieth (60th) day next succeeding the date such Loan is made, equal to the Base Rate from time to time in effect plus 4.0% (without regard to clause (iv) of the definition of Base Rate), and (ii) for any day commencing on the sixty-first (61st) day next succeeding the date Loan is made to and thereafter, equal to the Default Rate.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein shall have the same meanings herein as in the Indenture. All references in this Agreement to times of day shall be references to New York time (daylight or standard, as applicable) unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Program Document, and either the Authority or the Bank shall so request, the Bank and the Authority shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; *provided that*, until so amended, (A) such ratio or requirement shall continue to be computed in

accordance with GAAP prior to such change therein and (B) the Authority shall provide to the Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

ARTICLE TWO THE LOAN FACILITY

Section 2.1. Loans. Subject to the terms and conditions hereof, the Bank agrees to make one or more term loans (each a “*Loan*” and collectively, “*Loans*”) to the Authority in an amount not to exceed the Commitment. Loans shall be advanced on or after the Closing Date and, in any event, on or prior to the Commitment Expiration Date (the “*Borrowing*”) subject to the terms of Section 4.2 hereof and, on the Commitment Expiration Date, the Commitment shall terminate. The Bank shall not be required to make more than three (3) Loans in any calendar year. No amount of a Loan may be reborrowed once any portion of such Loan is repaid and the Commitment shall not be reinstated for any amount of any Loan repaid.

Section 2.2. Borrowing of Loans. (a) Each Loan shall be made upon OCTA’s irrevocable notice to the Bank, which may be given by a Loan Notice. The Loan Notice must be received by the Bank not later than 11:00 a.m. five (5) Business Days prior to the requested date of the Loan. The Loan Notice (whether telephonic or written) shall specify (i) the requested date of the Loan (which shall be a Business Day), (ii) the principal amount of the Loan to be borrowed and (iii) a certification from OCTA that the conditions precedent set forth in Section 4.2 hereof have been satisfied.

(b) Following receipt of a Loan Notice, upon satisfaction of the applicable conditions set forth in Section 4.2, the Bank shall make the requested funds available to OCTA or to such party as directed by OCTA by wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Bank by OCTA.

(c) Upon honoring the Loan Notice, the Bank shall be deemed to have made a loan to the Authority at the direction and on behalf of the Authority and OCTA and the Loan shall be deemed made to the Authority on the date the Loan Notice is honored hereunder, the proceeds of which Loan shall be used to pay the costs of the non-tolled portion of the Project and to satisfy the condition set forth in Section 13(a)(i) of the TIFIA Loan Agreement.

Section 2.3. Bank Note. The Loans and all other Obligations shall be made against and evidenced by the Authority’s promissory note payable to the order of the Bank in the principal amount equal to the Commitment, such note to be executed and delivered to the Bank on the Closing Date in the form of Exhibit B attached hereto with appropriate insertions (the “*Bank Note*”). The Loans and all other Obligations due and owing the Bank and all payments and prepayments on the account of the principal of and interest on the Loans and each other Obligation shall be recorded by the Bank on its books and records, which books and records shall, absent manifest error, be conclusive as to amounts due and owing by the Authority hereunder and under the Bank Note. Any failure to so record or any error in doing so shall not, however, limit, extinguish or in any way modify or otherwise affect the obligation of the Authority hereunder to

pay any amount owing with respect to the Loans and the other Obligations. The Authority shall pay principal and interest on the Bank Note on the dates and at the rates provided for in Sections 2.3 and 2.4 hereof.

Section 2.4. Repayment of Loans. The Authority agrees to reimburse the Bank for the full amount of each Loan immediately upon payment by the Bank of the Loan. If the Authority does not make such reimbursement to the Bank with respect to the Loan on such date, the Loan shall bear interest at the Unreimbursed Loan Rate. Interest on the Loan shall be due and payable by the Authority in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest on the Loan and the other Obligations shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.5. Fees. The Authority hereby agrees to perform the obligations provided for in the Fee Agreement, including, without limitation, the payment any and all fees and expenses provided for therein, on the dates, at the times and in the amounts set forth therein. The terms and provisions of the Fee Agreement are hereby incorporated herein by reference as if fully set forth herein. The Fee Agreement and this Agreement shall be construed as one agreement between the Authority and the Bank and any reference to this Agreement shall be deemed to include a reference to the Fee Agreement. All references to amounts or obligations due hereunder or in this Agreement shall be deemed to include all amounts and obligations (including without limitation fees and expenses) under the Fee Agreement and all obligations under the Fee Agreement shall be construed as obligations hereunder. All fees paid under this Agreement and the Fee Agreement shall be fully earned when due and nonrefundable when paid.

Section 2.6. Method of Payment; Etc. All payments to be made by the Authority under this Agreement shall be made in lawful money of the United States and in immediately available funds at the Payment Office of the Bank not later than 4:00 p.m. on the date when due and shall be made by wire transfer in lawful money of the United States of America in freely transferable and immediately available funds. All payments to be made by the Authority shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. All payments received by the Bank after 4:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

Section 2.7. Termination of Commitment; Reduction of Commitment. (a) Notwithstanding any provisions of this Agreement or any Program Document to the contrary, upon five (5) days prior written notice to the Bank and the payment of the Reduction Fee, if any, in the amount set forth in the Fee Agreement, the Authority may permanently reduce the Commitment in accordance with the terms hereof.

(b) Notwithstanding any provisions of this Agreement or any Program Document to the contrary, the Authority agrees not to terminate the Commitment except upon (i) the payment by the Authority to the Bank of the Termination Fee, if any, in the amount set forth in the Fee Agreement, (ii) the payment to the Bank of all Obligations payable hereunder and under the Fee Agreement, including, without limitation, all principal and accrued interest due and owing on the

Loan or the Bank Note and (iii) the Authority providing the Bank with thirty (30) days prior written notice of its intent to terminate Commitment.

(c) All payments to the Bank referred to in this Section 2.7 hereof shall be made in immediately available funds on or prior to the date of termination or reduction of the Commitment.

Section 2.8. Computation of Interest and Fees. Fees payable hereunder and under the Fee Agreement shall be calculated on the basis of a year of 360 days and the actual number of days elapsed. All computations of interest payable by the Authority under this Agreement shall be made on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof.

Section 2.9. Payment Due on Non-Business Day to Be Made on Next Business Day. If any sum becomes payable pursuant to this Agreement or the Fee Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

Section 2.10. Default Rate. Subject to Section 2.4, if the principal amount of a Loan and any other Obligation is not paid when due or upon the occurrence of any other Event of Default, the Loans and such other Obligations shall bear interest until paid in full at a rate per annum equal to the Default Rate, payable upon demand.

Section 2.11. Source of Funds. All payments made by the Bank hereunder shall be made from funds of the Bank, and not from the funds of any other Person.

Section 2.12. Extension of Commitment Termination Date. If the Authority on any date which is not more than ninety (90) days prior to, but not less than sixty (60) days prior to, the then current Commitment Termination Date, submits to the Bank a written request for an extension of the Commitment Termination Date for a period as specified in such written request, the Bank will respond to such request (by providing prior written notice to the Authority) within thirty (30) days after receipt of all information necessary, in the Bank's reasonable judgment, to permit the Bank to make an informed credit decision. In the event the Bank fails to definitively respond to such request within such period of time, the Bank shall be deemed to have refused to grant the extension requested. The Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension and no extension shall become effective unless the Bank shall have consented thereto in writing. The consent of the Bank, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance reasonably satisfactory to the Bank and consistent with this Agreement. If such an extension request is accepted by the Bank in its sole and absolute discretion, the then current Commitment Termination Date shall be extended to the date agreed by the Authority and the Bank.

Section 2.13. Net of Taxes, Etc.

(a) *Taxes.* To the extent permitted by law, any and all payments to the Bank by the Authority hereunder and under the Fee Agreement shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges, withholdings or liabilities imposed thereon, excluding, however, taxes imposed on or measured by the net income or capital of the Bank (and foreclosure taxes imposed in lieu of net income taxes) by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Bank and such jurisdiction or political subdivision (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “*Taxes*”). To the best knowledge of the undersigned officers of the Bank, there are no such taxes currently imposed or required to be withheld or deducted by the Bank. If the Authority shall be required by law to withhold or deduct any Taxes imposed by the United States or any political subdivision thereof from or in respect of any sum payable hereunder or under the Fee Agreement to the Bank, to the extent permitted by law, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.13), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Authority shall make such deductions and (iii) the Authority shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with Applicable Law. If the Authority shall make any payment under this Section 2.13 to or for the benefit of the Bank with respect to Taxes and if the Bank shall claim any credit or deduction for such Taxes against any other taxes payable by the Bank to any taxing jurisdiction in the United States then the Bank shall pay to the Authority an amount equal to the amount by which such other taxes are actually reduced; *provided* that the aggregate amount payable by the Bank pursuant to this sentence shall not exceed the aggregate amount previously paid by the Authority with respect to such Taxes. In addition, to the extent permitted by law, the Authority agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America or the State of New York or any other taxing jurisdiction from any payment made hereunder or under the Fee Agreement or from the execution or delivery or otherwise with respect to this Agreement (hereinafter referred to as “*Other Taxes*”). The Bank shall provide to the Authority within a reasonable time a copy of any written notification it receives with respect to Taxes or Other Taxes owing by the Authority to the Bank hereunder *provided* that the Bank’s failure to send such notice shall not relieve the Authority of its obligation to pay such amounts hereunder.

(b) *Indemnity.* The Authority shall, to the fullest extent permitted by law and subject to the provisions hereof, indemnify the Bank for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.13 paid by the Bank or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; *provided* that the Authority shall not be obligated to indemnify the Bank for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the Bank’s gross negligence or willful misconduct. The Bank agrees to give notice to the Authority of the assertion of any claim against the Bank relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; *provided* that the Bank’s failure to notify the Authority promptly of such

assertion shall not relieve the Authority of its obligation under this Section 2.13. Payments by the Authority pursuant to this indemnification shall be made within thirty (30) days from the date the Bank makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Bank agrees to repay to the Authority any refund (including that portion of any interest that was included as part of such refund) with respect to Taxes or Other Taxes paid by the Authority pursuant to this Section 2.13 received by the Bank for Taxes or Other Taxes that were paid by the Authority pursuant to this Section 2.13 and to contest, with the cooperation and at the expense of the Authority, any such Taxes or Other Taxes which the Bank or the Authority reasonably believes not to have been properly assessed.

(c) *Notice.* Within thirty (30) days after the date of any payment of Taxes or Other Taxes by the Authority, the Authority shall furnish to the Bank, the original or a certified copy of a receipt evidencing payment thereof.

(d) *Survival of Obligations.* The obligations of the Authority under this Section 2.13 shall survive the termination of this Agreement.

Section 2.14. Increased Costs. (a) If the Bank, its Parent or any Participant (each an “Increased Cost Party”) shall have determined that a Change of Law shall (A) change the basis of taxation of payments to such Increased Cost Party of any amounts payable hereunder or under the Fee Agreement (except for taxes on the overall net income of such Increased Cost Party), (B) impose, modify or deem applicable any reserve, special deposit or similar requirement against making or maintaining its obligations under this Agreement or assets held by, or deposit with or for the account of, such Increased Cost Party or (C) impose on such Increased Cost Party any other condition regarding this Agreement or under the Fee Agreement, and the result of any event referred to in clause (A), (B) or (C) above shall be to increase the cost to such Increased Cost Party of making or maintaining its obligations hereunder or under the Fee Agreement, or to reduce the amount of any sum received or receivable by such Increased Cost Party hereunder, then, the Authority shall pay to the Bank, its Parent or any Participant, as applicable, at such time and in such amount as is set forth in paragraph (d) of this Section 2.14, such additional amount or amounts as will compensate such Increased Cost Party for such increased costs or reductions in amount.

(b) If the Bank, its Parent or any Participant shall have determined that a Change of Law shall impose, modify or deem applicable any capital or liquidity adequacy or similar requirement (including, without limitation, a request or requirement that affects the manner in which such Increased Cost Party, allocates capital resources to its commitments, including its obligations under liquidity facilities) that either (A) affects or would affect the amount of capital to be maintained by such Increased Cost Party or (B) reduces or would reduce the rate of return on such Increased Cost Party’s capital to a level below that which such Increased Cost Party could have achieved but for such circumstances (taking into consideration such Increased Cost Party’s policies with respect to capital adequacy), then, the Authority shall pay to such Increased Cost Party, at such time and in such amount as is set forth in paragraph (d) of this Section 2.14, such additional amount or amounts as will compensate such Increased Cost Party for such cost of maintaining such increased capital or such reduction in the rate of return on such Increased Cost Party’s capital.

(c) Notwithstanding the foregoing, for purposes of this Section 2.14, (i) all requests, rules, guidelines or directives in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act shall be deemed to be a Change of Law, as of the date enacted, adopted or issued, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or any Governmental Authority shall be deemed a Change of Law as of the date enacted, adopted or issued.

(d) All payments of amounts referred to in paragraph (a) and (b) of this Section 2.14 shall be due thirty (30) calendar days following the Authority's receipt of notice thereof. Interest on the sums due as described in paragraph (a) and (b) of this Section 2.14, and in the preceding sentence, shall begin to accrue from the date when the payments were first due and shall otherwise be payable in accordance with Section 2.14 hereof; *provided*, that from and after the required date of payment, interest shall begin to accrue on such obligations at a rate per annum equal to the Default Rate until such delinquent payments have been paid in full. A certificate as to such increased cost, increased capital or reduction in return incurred by the Bank, its Parent or any Participant as a result of any event mentioned in paragraph (a) or (b) of this Section 2.14 setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by such Increased Cost Party to the Authority and shall be conclusive (absent manifest error) as to the amount thereof. In making the determinations contemplated by the above referenced certificate, such Increased Cost Party may make such reasonable estimates, assumptions, allocations and the like that such Increased Cost Party in good faith determines to be appropriate. Any such increased costs due under paragraph (a) or (b) above shall be reduced or eliminated if the event causing such increase is modified or ceases to exist.

(e) The obligations of the Authority under this Section 2.14 shall survive the termination of this Agreement.

Section 2.15. Margin Regulations. No portion of the proceeds of any Loan shall be used by the Authority (or any Person on behalf of the Authority) for the purpose of "purchasing" or "carrying" any margin stock or used in any manner which might cause the borrowing or the application of such proceeds to violate Regulation G, Regulation U or X of the Board of Governors of the Federal Reserve System or any other regulation of the Authority or to violate the Securities Exchange Act of 1934, as amended, in each case as in effect on the date or dates of each Loan and such use of proceeds.

Section 2.16. Maximum Rate; Payment of Fee. If the rate of interest payable hereunder or under the Fee Agreement shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof without regard to the Maximum Rate and (B) the Maximum Rate (the "*Excess Interest*"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof or the Fee Agreement, if applicable, ceases to exceed the Maximum Rate, at which time the Authority shall pay to the Bank with respect to amounts then payable to the Bank that are required to accrue interest hereunder or the Fee Agreement, if applicable, such portion of the deferred Excess Interest as will cause the rate of

interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder and the Fee Agreement, if applicable, until all Excess Interest is fully paid to the Bank. Upon the termination of the Commitment and this Agreement, in consideration for the limitation of the rate of interest otherwise payable hereunder and under the Fee Agreement, the Authority shall pay to the Bank a fee equal to the amount of all unpaid Excess Interest.

ARTICLE THREE SECURITY

Section 3.1. Security. The Loans and the other Obligations are special limited obligations of the Authority and shall constitute Subordinate Obligations (in this case only as defined in the Indenture) under the Indenture. The Loans and the other Obligations shall be limited obligations of the Authority, shall be payable as to both principal and interest from, and shall be secured by a pledge of, lien on and security interest in the Sales Tax Revenues (including Revenues) deposited to the Subordinate Obligations Fund, including earnings on such amounts, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, which pledge, lien and security interest shall be junior and subordinate only to the pledge of Sales Tax Revenues (including Revenues) in favor of the Senior Lien Debt and the obligation to fund the reserves relating thereto pursuant to the express terms of the Indenture. Subject to the provisions of the Indenture, the Authority hereby secures the payment of the Loans and the other Obligations and grants a pledge of and lien on the Sales Tax Revenues (including Revenues) deposited into the Subordinate Obligations Fund and the Subordinate Obligations Fund. The Obligations hereunder shall be deemed Subordinate Obligations (in this case only as defined in the Indenture) for all purposes of the Indenture. Such Revenues and the other moneys hereby pledged to the payment of the Authority's Obligations hereunder shall immediately be subject to the Lien of this pledge without any physical delivery thereof or further act, and the Lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The Authority will take all actions and do all things necessary to maintain the pledge of and the lien on the Sales Tax Revenues (including Revenues) deposited into the Subordinate Obligations Fund and the Subordinate Obligations Fund as provided in the Indenture and herein.

ARTICLE FOUR CONDITIONS PRECEDENT

Section 4.1. Conditions Precedent to Effectiveness of the Agreement. As conditions precedent to the effectiveness of this Agreement, (a) the Authority shall provide to the Bank on the Closing Date, each in form and substance satisfactory to the Bank and the Bank's counsel, Chapman and Cutler LLP (hereinafter, "*Bank's counsel*"):

- (i) *Approvals.* The Bank shall have received (A) a certified copy of the Ordinance, (B) executed originals of this Agreement and the Fee Agreement, (C) executed or certified copies, as applicable, of each of the other Program Documents and (D) copies

of a resolution adopted by the Authority approving the execution and delivery by the Authority of this Agreement, the Fee Agreement, the Bank Note and the other Program Documents, in each case, certified by an Authorized Representative of the Authority as complete and correct as of the date hereof (together with a certificate of an Authorized Representative of the Authority, dated the Closing Date, stating that such Program Documents and approvals are in full force and effect on the Closing Date and have not been amended, repealed, rescinded, or supplemented in any manner, except for such amendments made in accordance with the express terms of such Program Documents).

(ii) *Certificate and Incumbency of Authority Officials.* The Bank shall have received an incumbency certificate of the Authority in respect of each of the officials who is authorized to (A) execute this Agreement, the Fee Agreement, the Bank Note and the other Program Documents on behalf of the Authority and (B) take actions for the Authority under this Agreement, the Fee Agreement, the Bank Note and the other Program Documents and a certificate of an Authorized Representative of the Authority, dated the Closing Date, certifying that (A) each of the Authority's representations and warranties contained herein and the other Program Documents is true and correct on and as of the Closing Date as though made on and as of such date, (B) no Default or Event of Default has occurred and is continuing or will result from the execution and delivery by the Authority of this Agreement, the Fee Agreement and the issuance of the Bank Note, (C) since June 30, 2016, except as disclosed to the Bank in writing, there has been no Material Adverse Change and there has been no material adverse change in the laws, rules or regulations (or their interpretation or administration) has occurred that, in any case, may adversely affect the consummation of the transactions contemplated hereby or by any Program Document, (D) all conditions precedent set forth in this Article IV have been satisfied and (E) all conditions precedent set forth in the Indenture with respect to incurrence of each Loan and other Obligations hereunder shall have been satisfied;

(iii) *Opinion of Bond Counsel.* An opinion of Nossaman LLP, Bond Counsel for the Authority, dated the Closing Date, together with a reliance letter addressed to the Bank with respect thereto, including, without limitation, (1) this Agreement, the Fee Agreement, the Bank Note and the other Program Documents are legal, valid and binding agreements of the Authority, subject to standard exceptions and (2) the pledge in favor of the Bank contained in Section 3.1 hereof and the Supplemental Indenture is a valid and binding and legal pledge of the Sales Tax Revenues (including Revenues), including earnings on such amounts.

(iv) *Opinion of Authority Counsel.* The Bank shall have received a written opinion of the counsel to the Authority, addressed to the Bank, dated the Closing Date in the form and substance satisfactory to the Bank and the Bank's counsel.

(v) *Bank Note.* The Bank shall have received the executed Bank Note payable to the Bank.

(vi) *Trustee.* The Trustee shall have been appointed.

(vii) *Indenture.* The Bank shall have received the fully executed copy of the Indenture, including any amendments or supplements thereto, if any, which have been adopted as of the Closing Date, and a certified copy of the resolution of the Authority approving and authorizing this Agreement and the Bank Note in form and substance satisfactory to the Bank and of the Ordinance, each certified by an Authorized Representative of the Authority as being in full force and effect.

(viii) *Financial Information.* The Bank shall have received copies of (i) the Authority's audited financial statements for the Fiscal Year ended June 30, 2016, including the balance sheet as of such date of said period, all examined and reported on by Vavrinek, Trine, Day & Co., LLP, as heretofore delivered to the Bank correctly and fairly present the financial condition of the Authority as of said dates and the results of the operations of the Authority for such period, have been prepared in accordance with Generally Accepted Accounting Principles consistently applied except as stated in the notes thereto, and (ii) the investment policy, guidelines and permitted investments of the Authority, which shall be satisfactory to the Bank.

(ix) *Fees, Etc.* The Bank shall have received payment of the fees, costs and expenses to be paid on or prior the Closing Date referred to in Section 9.6 hereof and pursuant to the Fee Agreement.

(x) *Ratings.* The Bank shall have received written confirmation that Senior Lien Debt has been rated "Aa2" (or its equivalent) by Moody's and "AA" (or its equivalent) by S&P (which may be in the form of recent long-term rating letters or screenshots with respect to any Senior Lien Debt).

(xi) *Investment Policy.* The Bank shall have received copies of the Authority's investment policy, guidelines and permitted investments, which shall be satisfactory to the Bank.

(xii) *Other Documents.* The Bank shall have received such other documents, certificates, and opinions as the Bank and its counsel shall have reasonably requested. There shall have been delivered to the Bank such information and copies of documents, approvals (if any) and records (certified, where appropriate) of corporate and legal proceedings as the Bank may have requested relating to the entering into and performance by each of the parties (other than the Bank) thereto, of each of the Program Documents or the transactions contemplated thereby satisfactory to the Bank. The Bank shall have received such financial information, budgets, projections, and other documents, instruments, approvals, opinions, investment policies and guidelines for permitted investments of the Authority (and, if requested by the Bank, certified duplicates or executed copies thereof) as the Bank may reasonably request. All proceedings in connection with this Agreement, and all documents incidental thereto, shall be satisfactory to the Bank and its counsel.

(b) *No Default, Material Adverse Change, Etc.* (i) No Default or Event of Default shall have occurred and be continuing as of the date hereof or will result from the execution and delivery

by the Authority of this Agreement and the issuance of the Bank Note, (ii) the representations and warranties and covenants made by the Authority in Articles Five and Six hereof shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date, and (iii) the Bank in its sole discretion shall have determined that no Material Adverse Change or material adverse change in the ratings, financial condition, business, assets, liabilities or prospects of the Authority shall have occurred since June 30, 2016, and there has been no material adverse change in the laws, rules, regulations or guidelines (or their interpretation or administration) has occurred that, in any case, may adversely affect the consummation of the transactions contemplated hereby or by any Program Document.

(c) Prior to the Closing Date, the Bank shall have received a written description of all actions, suits or proceedings pending or, to the Authority's knowledge, threatened against the Authority in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body which could reasonably be expected to result in a Material Adverse Effect, if any, and such other statements, certificates, agreements, documents and information with respect thereto as the Bank may reasonably request.

Section 4.2. Conditions Precedent to Loans. The obligation of the Bank to make a Loan is subject to the satisfaction of each condition in Section 4.1 hereof on or prior to the Closing Date, receipt by the Bank of a properly presented and conforming Loan Notice in accordance with Section 2.2(a) hereof and the satisfaction of the further condition that (i) no Special Event of Default shall have occurred and be continuing and (ii) the Authority shall have not failed to reimburse the Bank for the full amount of a Loan immediately upon payment by the Bank of a Loan.

Unless the Authority shall have previously advised the Bank in writing that (i) any or all of the representations and warranties contained in Article Five of this Agreement (other than those representations and warranties that expressly relate to an earlier date) are not true and correct in all material respects as of such date or (ii) any event has occurred and is continuing, or would result from the Loan, which constitutes a Default or Event of Default, then the Authority shall be deemed to have represented and warranted on the date of the Loan that (i) the representations and warranties contained in Article Five of this Agreement (other than those representations and warranties that expressly relate to an earlier date) are true and correct in all material respects as of such date and (ii) no event has occurred and is continuing, or would result from such payment, which constitutes a Default or Event of Default.

ARTICLE FIVE

REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to enter into this Agreement, the Authority represents and warrants to the Bank as follows:

Section 5.1. Organization; Existence. The Authority is duly organized and validly existing as a local transportation authority pursuant to the Act.

Section 5.2. Power and Authority. The Authority has and had at the time of adoption, execution, delivery, issuance, sale or performance full power, right and authority to (i) execute, deliver and perform its obligations under the Indenture, each of the other Program Documents to which it is a party, the Act and the Sales Tax Law, any and all instruments and documents required to be executed, adopted or delivered pursuant to or in connection herewith or therewith, (ii) issue the Bank Note as provided in the Program Documents and make payment of principal and interest, if any, on the Bank Note and to pay the Obligations and the Bank Note at the times and in the manner set forth herein, and (iii) perform each and all of the matters and things herein and therein provided for and the Authority has complied in all material respects with the laws of the State of California in all matters relating to such execution, delivery and performance.

Section 5.3. Due Authorization, Etc. The Ordinance has been duly adopted and each of the Program Documents to which the Authority is a party have been duly authorized, executed, issued and delivered. This Agreement and each of the other Program Documents to which the Authority is a party constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, except as such enforceability may be limited by the valid exercise of judicial discretion and the constitutional powers of the United States of America and to valid bankruptcy, insolvency, reorganization, moratorium, or other similar laws and equitable principles relating to or affecting creditors' rights generally from time to time in effect.

Section 5.4. Necessary Actions Taken. The Authority has taken all actions necessary to be taken by it (i) for the issuance of the Bank Note upon the terms set forth in the Program Documents, (ii) for the execution, adoption and delivery by the Authority of any and all such other instruments and the taking of all such other actions on the part of the Authority as may be necessary or appropriate for the effectuation and consummation of the transactions on the part of the Authority contemplated by the Program Documents, the Act, the Sales Tax Law and the Ordinance or in connection herewith or therewith and (iii) to authorize or approve, as appropriate, the execution or adoption, issuance and delivery of, and the performance of its obligations under and the transactions contemplated by each of the Program Documents to which it is a party and the payment of the Obligations and the Bank Note at the times and in the manner set forth.

Section 5.5. No Contravention. The execution and delivery of each of the Program Documents and compliance with the provisions hereof and thereof, will not conflict with or result in a violation of the Constitution of the State of California or the laws of the State of California, including any debt limitations or other restrictions or conditions on the debt-issuing power of the Authority, and will not conflict with or result in a violation of, or breach of, or constitute a default under, any law (including, without limitation, Regulations T, U or X of the FRB, or any successor regulations), judgment, order, decree or administrative regulation or any of the terms, conditions or provisions of the Act or the Ordinance or any ordinance, judgment, decree, contract, loan agreement, note, bond, resolution, indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which it or any property of the Authority is bound and will not, except as expressly provided herein, result in the imposition or creation of any lien, charge, or encumbrance upon or invalidate in any way the Sales Tax Revenues or otherwise reasonably be expected to result in a Material Adverse Effect. The Authority has not received any notice, not subsequently withdrawn, given in accordance with the remedy provisions of any bond

resolution or ordinance, trust indenture, guarantee or agreement or State law pertaining to bonds notes or other obligations secured by the Sales Tax Revenues, of any default or event of default of the Authority which has not been cured, remedied or waived.

Section 5.6. Compliance. The current collection of Sales Tax Revenues and the accounting and recordkeeping therefor are in material compliance with all applicable state and federal laws and all applicable resolutions, ordinances and rules of the Authority. The Authority is in compliance with the terms and conditions of the Indenture and each of the Program Documents to which it is a party, and no breach of the terms hereof or thereof has occurred and is continuing, and no Default or Event of Default has occurred and is continuing. The Authority is in compliance with all laws, ordinances, orders, writs, injunctions, decrees rules and regulations applicable to it (including, without limitation, ERISA and all applicable federal, state or local environmental, health and safety statutes and regulations, and the Authority's investment policy guidelines), and any contract to which the Authority is a party or by which it or any of its property may be bound, except to the extent noncompliance could not reasonably be expected to have a Material Adverse Effect, and all cash and other assets of the Authority are invested in accordance with established investment policy guidelines, a true and correct copy of which guidelines in effect as of the Closing Date having been provided to the Bank in writing.

Section 5.7. No Default. No default by the Authority has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any bond, note or other evidence of indebtedness issued by the Authority and secured by the Sales Tax Revenues. No bankruptcy, insolvency or other similar proceedings pertaining to the Authority or any agency or instrumentality of the Authority are pending or presently contemplated.

Section 5.8. Swap Termination Payments. The Authority is not a party to any Swap Contract (a) that provides that any termination payment thereunder is payable from or secured by Revenues on a basis that is senior to or on a parity with the lien securing the Bank Note, the Loans and the Obligations or (b) which requires the Authority to post cash collateral to secure its obligations thereunder.

Section 5.9. No Immunity. Under existing law, the Authority is not entitled to any immunity (including, without limitation, on the grounds of sovereignty, governmental immunity or other similar grounds) from liability or suit in connection with any legal proceedings (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) to enforce or collect any obligation under this Agreement, any other Program Document, the Act and the Sales Tax Law, or the transactions contemplated hereby and thereby, including without limitation the payment of the Obligations.

Section 5.10. Litigation. There is no action, suit or proceeding pending in any court, any other governmental authority with jurisdiction over the Authority or any arbitration in which service of process has been completed against the Authority or, to the knowledge of the Authority, any other action, suit or proceeding pending or threatened in any court, any other governmental authority with jurisdiction over the Authority or any arbitrator, in either case against the Authority or any of its properties or revenues, or the Indenture or any of the Program Documents or with respect to the Act, the Sales Tax Law or the Ordinance, which if determined adversely to the

Authority would adversely affect the legality, validity or enforceability of the Ordinance, the Indenture or any of the Program Documents or the rights and remedies of the Bank under any of the Program Documents or which could be reasonably expected to have a Material Adverse Effect, except any action, suit or proceeding which has been brought prior to the Closing Date as to which the Bank has received an opinion of counsel satisfactory to the Bank in form and substance satisfactory to the Bank and the Bank's counsel, to the effect that such action, suit or proceeding is without substantial merit.

Section 5.11. Disclosure and Information Provided to the Bank. All information, documents, statements and certificates provided in writing to the Bank, by or on behalf of the Authority in connection with the transactions contemplated by the Program Documents are true and correct as of the date thereof and were provided in expectation of the Bank's reliance thereon in making available the Commitment. Any financial, budget and other projections furnished to the Bank were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections.

Section 5.12. Financial Information. The Authority has delivered to the Bank a copy of the audited financial statements for the Authority for the fiscal year ended June 30, 2016. These together with related notes, fairly present the financial position and results of operation of the Authority as of the date and for the periods therein set forth. All such financial statements have been prepared in accordance with generally accepted accounting principles for government entities consistently applied. There has been no material adverse change in the financial position, results of operations or projections of revenues of the Authority since June 30, 2016, which could be reasonably expected to result in a Material Adverse Effect. The Authority has no material contingent liabilities or other material contracts or commitments payable from Sales Tax Revenues which are not reflected in such financial statements previously delivered to the Bank or in the notes thereto.

Section 5.13. Official Signatures. Each Authorized Representative, on behalf of the Authority, has full power and authority to execute, deliver and perform under each of the Program Documents. Any agreement, certificate or request signed by or on behalf of any Authorized Representative of the Authority and delivered to the Bank shall be deemed a representation and warranty by the Authority to the Bank as to the truth, accuracy and completeness of the statements made by the Authority therein.

Section 5.14. Incorporation of Representations and Warranties by Reference. Each of the Program Documents, the Act, the Sales Tax Law and the Ordinance is in full force and effect. Except as previously disclosed in writing to the Bank, no event of default and no event which, with the giving of notice, the passage of time or both, would constitute an event of default, presently exists under any of the Program Documents. Except as previously disclosed in writing to the Bank, neither the Authority nor any other party thereto has waived or deferred performance of any material obligation under any Program Document. The Authority hereby makes to the Bank the same representations and warranties made by the Authority in each Program Document, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Bank with the same effect as if each and every such

representation and warranty and defined term were set forth herein in its entirety. Except as permitted by Section 6.15(a) hereof, no amendment, modification, termination or replacement of any such representations, warranties and definitions contained in the Program Documents to which it is a party shall be effective to amend, modify, terminate or replace the representations, warranties and definitions incorporated herein by this reference, without the prior written consent of the Bank.

Section 5.15. No Maximum Rate. There is no limitation under California law on the rate of interest payable by the Authority with respect to the Obligations, the Bank Note or any other obligations payable to the Bank hereunder, under the Fee Agreement or under any Program Document.

Section 5.16. Security. The Loans and all other Obligations of the Authority hereunder are special obligations payable from and secured by a pledge of the Sales Tax Revenues deposited into the Subordinate Obligations Fund and the Subordinate Obligations Fund, as set forth in the Ordinance and the Indenture. This Agreement and the Indenture create, for the benefit of the Bank Note, the Loans and the other Obligations, the legally valid, binding and irrevocable lien on and pledge of the Sales Tax Revenues deposited into the Subordinate Obligations Fund and the Subordinate Obligations Fund. There is no lien on the Sales Tax Revenues other than the lien created by the Indenture and Section 6.12 of this Agreement. There is no lien on or pledge of the Sales Tax Revenues (including Revenues) other than the liens and/or pledges created or permitted by or with respect to the Indenture, the Senior Lien Indenture, Parity Debt and the pledge set forth in Section 6.12 of this Agreement. The payment of the Obligations ranks on a parity with the payment of the principal of and interest on the Parity Debt and is not subordinate to any payment secured by a lien on the Sales Tax Revenues or any other claim other than payments with respect to the principal of and interest on the Senior Lien Debt and the funding of reserves therefor as set forth in the Indenture, and is prior as against all other Persons having claims of any kind in tort, contract or otherwise, whether or not such Persons have notice of such lien. No filing, registration, recording or publication of the Indenture or any other instrument is required to establish the pledge provided for thereunder or to perfect, protect or maintain the lien created thereby on the Sales Tax Revenues to secure the the Loans and the other Obligations.

Section 5.17. Environmental. Except as disclosed in writing to the Bank, the Authority has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action, when taken as a whole, would have a Material Adverse Effect.

Section 5.18. No Proposed Legal Changes. (a) To the best knowledge of the Authority, there is no proposed amendment to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any public vote or proposition or referendum (or proposed public vote or proposition or referendum) or other ballot initiative or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

(b) There is no amendment to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any proposition or referendum (or proposed proposition or referendum) or other ballot initiative or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

Section 5.19. OFAC. Neither the Authority, nor, to the knowledge of the Authority, any Related Party, (a) is currently the subject of any Sanctions, (b) is located, organized or residing in any Designated Jurisdiction, or (c) is or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. To the best knowledge of the Authority, after due inquiry, the proceeds from any Loan or the transaction contemplated by this Agreement will not be, and have not been, used, directly or indirectly, to lend, contribute, provide or otherwise be made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including the Bank) of Sanctions.

Section 5.20. Margin Stock. The Authority is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds from any Loan will be used to purchase or carry any such Margin Stock or extend credit to others for the purpose of purchasing or carrying any such Margin Stock.

Section 5.21. Trustee. The Bank of New York Mellon Trust Company, N.A. is the duly appointed and acting Trustee under the Indenture.

ARTICLE SIX COVENANTS

The Authority will do the following so long as any amounts may be drawn under the Commitment or any Obligations remain outstanding under this Agreement and the Fee Agreement, unless the Bank shall otherwise consent in writing:

Section 6.1. Maintenance of Existence. The Authority (a) shall maintain its existence pursuant to the Act and the laws of the State of California and (b) shall not liquidate or dissolve, or sell or lease or otherwise transfer or dispose of all or any substantial part of its property, assets or business, or combine, merge or consolidate with or into any other entity. The Authority shall, in all material respects, maintain, preserve and keep its Property in good repair, working order and condition (ordinary wear and tear excepted), except to the extent that the failure to do so could reasonably be expected to result in a Material Adverse Effect.

Section 6.2. Reports, Certificates and Other Information. The Authority shall furnish or cause to be furnished to the Bank copies of:

(a) *Annual Report.* As soon as available, and in any event within two hundred and ten (210) days after the end of each fiscal year of the Authority, audited financial statements consisting of a balance sheet and a statement of revenues, expenditures and changes in fund balances of the Authority, including the Sales Tax Revenues for such fiscal year, setting forth in comparative form the corresponding figures (if any) for the preceding fiscal year, all in reasonable detail, and (A) accompanied by an unqualified opinion of a nationally recognized independent certified public accounting firm stating that (x) they have been prepared in accordance with GAAP consistently applied and (z) nothing has come to the attention of the auditors which would indicate that a Default or Event of Default has occurred under this Agreement, and (B) accompanied by a certification from the Executive Director of the Authority addressed to the Bank stating that neither a Default or Event of Default has occurred which was continuing at the end of such fiscal year or on the date of his certification, or, if such an event has occurred and was continuing at the end of such fiscal year or on the date of his certification, indicating the nature of such event and the action which the Authority proposes to take with respect thereto.

(b) *Budget.* As soon as available, but in any event within 30 days following the approval thereof, a copy of the final budget of the Authority for each fiscal year during the term of the Agreement.

(c) *Reserved.*

(d) *Trustee Notices.* As soon as available, all notices, certificates, instruments, letters and written commitments in connection with Bonds other than those notices, certificates, instruments, letters and written commitments that relate solely to the routine issuance and payment of the Bonds.

(e) *Notice of Default, Event of Default or Adverse Change.* (1) Promptly upon obtaining knowledge of any Default or Event of Default, or notice thereof, and within five Business Days thereafter, a certificate signed by an Authorized Representative specifying in reasonable detail the nature and period of existence thereof and what action the Authority has taken or proposes to take with respect thereto, (2) promptly following a written request of the Bank, a certificate of an Authorized Representative of the Authority as to the existence or absence, as the case may be, of a Default or an Event of Default under this Agreement and (3) notification as soon as possible after an Authorized Representative of the Authority acquires knowledge of the occurrence of (i) the filing of a complaint against the Authority in any court or administrative agency, where the amount claimed is in excess of Ten Million Dollars (\$10,000,000), (ii) the filing of any action which could lead to an initiative or referendum of which the Authority has actual knowledge which could annul, amend, modify or replace the Act, the Sales Tax Law or the Ordinance and which could reasonably be expected to result in a Material Adverse Change, (iii) any Material Adverse Change or any other event which, in the reasonable judgment of the Authority, is likely to

have a material adverse effect on the financial condition or operations of the Authority and (iv) any IRS or SEC inquiry.

(f) *Litigation and Amendments.* As promptly as practicable, (i) written notice to the Bank of all litigation served against the Authority and all proceedings before any court or governmental authority which could reasonably be expected to have a Material Adverse Effect (including without limitation any decrease in Sales Tax Revenues that could reasonably be expected to adversely affect the ability of the Authority to perform any of its obligations under, this Agreement or any of the other the Program Documents), (ii) written notice to the Bank of all material litigation filed against the Authority and all proceedings before any court or governmental authority which relate to the Sales Tax Revenues, the Act, the Sales Tax Law, the Ordinance or any of the Program Documents or the Senior Lien Indenture, and (iii) copies of any amendments or modifications to the Act, the Sales Tax Law, Ordinance or any other legislation of which the Authority has actual knowledge which may materially adversely impact upon the Sales Tax Revenues or the Authority's ability to perform its obligations under the Bank Note or the other Program Documents.

(g) *Material Event Notices.* During any period of time the Authority is subject to continuing disclosure requirements under Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240-15c2-12), or any successor or similar legal requirement, immediately following any dissemination, distribution or provision thereof to any Person, (1) provide the Bank with a copy of any reportable event notice disseminated, distributed or provided in satisfaction of or as may be required pursuant to such requirements or (2) provide the Bank with notice that such information has been filed with EMMA and is publicly available.

(h) *Other Information.* Such other information regarding the business, affairs and financial condition of the Authority as the Bank may from time to time reasonably request, including without limitation other information respecting the business affairs, financial condition and/or operations of the Authority, as the Bank may from time to time reasonably request.

The Authority will permit the Bank to disclose the information described in this Section 6.2 to any Participants of the Bank, if any, in this Agreement.

Section 6.3. Maintenance of Books and Records. The Authority will keep proper books of record and account in which full, true and correct entries in accordance with the Authority's budget basis accounting principles and reporting practices will be made of all dealings or transactions in relation to its activities.

Section 6.4. Access to Books and Records. To the extent permitted by law, the Authority will permit any Person designated by the Bank to visit any of the offices of the Authority to examine the books and financial records, including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Authority with their principal officials, all at such

reasonable times and upon reasonable notice and as often as the Bank or any such Bank may reasonably request. The Bank agrees to maintain the confidentiality of all such books, records and information regarding the Authority; *provided, however*, that the Bank shall not be precluded from disclosing such information or the contents of such books and records to the extent required by statute, rule, regulation or judicial process or upon the lawful demand of any court or agency having jurisdiction over the Bank or any Participant, if any.

Section 6.5. Compliance with Documents. The Authority agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in each of the Program Documents with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Bank and shall be enforceable against the Authority. To the extent that any such provision permits the Authority or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the Authority or any other party, for purposes of this Agreement, such provision shall be complied with unless it is specifically waived by the Bank in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank which shall only be evidenced by the written approval by the Bank of the same, *provided, however*, that such waiver or determination of acceptance by the Bank shall be required only if the granting of such waiver or the determination that a document, opinion or other instrument or any event or conditions be acceptable or satisfactory relates to a covenant or agreement which affects the ability or obligation of the Authority to pay the principal or interest on the Bank Note or the Loans or the security therefor or which is material to the rights of the Bank. Except as permitted by Section 6.15(a) hereof, no termination or amendment to such covenants and agreements or defined terms or release of the Authority with respect thereto made pursuant to any of the Program Documents, shall be effective to terminate or amend such covenants and agreements and defined terms or release the Authority with respect thereto in each case as incorporated by reference herein without the prior written consent of the Bank. Notwithstanding any termination or expiration of any such Program Document, the Authority shall, unless such Program Document has terminated in accordance with its terms and has been replaced by a new Program Document, continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

Section 6.6. Compliance with Law. The Authority shall comply with and observe all Applicable Law, obligations and requirements set forth in the Constitution of the State of California and in all applicable statutes and regulations binding upon it relating to the Indenture and the other Program Documents.

Section 6.7. Further Assurances. From time to time hereafter, the Authority will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of the Program Documents, the Act, and the Sales Tax Law or for the purpose of more fully perfecting or renewing the rights of the Bank with respect to the rights, properties or assets

subject to such documents (or with respect to any additions thereto or replacements or proceeds thereof). Upon the exercise by the Bank of any power, right, privilege or remedy pursuant to the Program Documents, the Act and the Sales Tax Law which requires any consent, approval, registration, qualification or authorization of any governmental authority or instrumentality, the Authority will, to the extent permitted by law, execute and deliver all necessary applications, certifications, instruments and other documents and papers that the Bank may be required to obtain for such governmental consent, approval, registration, qualification or authorization.

Section 6.8. Budget and Appropriation. To the fullest extent permitted by California law, the Act, the Sales Tax Law and the Ordinance, the Authority shall cause the appropriate Authority official to take any and all ministerial actions that may be necessary to facilitate the payment of all obligations under this Agreement and the Fee Agreement and to include such obligations in the budget to be submitted to the Authority for consideration and included in an appropriations request.

Section 6.9. Most Favored Nations. In the event that the Authority has or shall, directly or indirectly, enter into or otherwise consent to any credit agreement, standby bond purchase agreement, credit facility, reimbursement agreement, direct purchase agreement (such as a continuing covenant agreement or supplemental bondholder's agreement), bond purchase agreement, liquidity agreement, or other agreement or instrument (or, in each case, any amendment, supplement or other modification thereof) (each such agreement referred to herein as a "*Bank Agreement*") under which, directly or indirectly, any Person or Persons (each a "*Provider*") undertake(s) to make or provide funds to make payment of, or to purchase or provide liquidity support or credit enhancement for any Parity Debt, any commercial paper notes or any bonds or notes or other securities of the Authority secured by or payable on a parity with the Bank Note, which such Bank Agreement provides such Provider with additional or more restrictive covenants, additional or different events of default and/or greater rights and remedies than are provided to the Bank in this Agreement (excluding negotiated business terms such as pricing or interest rate increases or shorter term out provisions or expiration date of such Bank Agreement) (each such term or provision referred to herein as a "*More Favorable Term*"), the Authority shall provide the Bank with a copy of each such Bank Agreement and such More Favorable Term shall automatically be deemed to be incorporated into this Agreement for so long as any Provider has the benefit of such More Favorable Term and the Bank shall have the benefits of such More Favorable Term as if specifically set forth herein for so long as any Provider has the benefit of such More Favorable Term. Upon the request of the Bank, the Authority shall promptly enter into an amendment to this Agreement to include such More Favorable Term for so long as any Provider has the benefit of such More Favorable Term (provided that the Bank shall maintain the benefit of such More Favorable Term even if the Authority fails to enter into such amendment).

Section 6.10. Trustee. The Authority shall at all times maintain a Trustee.

Section 6.11. Ratings. The Authority covenants and agrees that it shall at all times maintain at least two unenhanced long-term ratings on any one or more series of the Senior Lien Debt from any two of Moody's, Fitch or S&P. The Authority shall give written notice to the Bank as soon as practicable of the increase, decrease, withdrawal or suspension of any rating maintained by Moody's, Fitch or S&P, to the extent such Rating Agency is then maintaining a rating on Senior Lien Debt. The Authority covenants and agrees that it shall not at any time withdraw any long-term

unenanced rating on its Senior Lien Debt from any of Fitch, Moody's or S&P if the effect of such withdrawal would be to cure a Default or an Event of Default under this Agreement or reduce the Commitment Fee.

Section 6.12. Pledge of Sales Tax Revenue. The Bank Note and the Obligations shall be limited obligations of the Authority, shall be payable as to both principal and interest from, and shall be secured by a pledge of, lien on and security interest in the Sales Tax Revenues (including Revenues), including earnings on such amounts, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, which pledge, lien and security interest shall be junior and subordinate only to the pledge of Sales Tax Revenues (including Revenues) in favor of the Senior Lien Debt and the funding of the reserves with respect thereto pursuant to the express terms of the Indenture. Subject to the provisions of the Indenture, the Sales Tax Revenues (including Revenues) deposited into the Subordinate Obligations Fund and the Subordinate Obligations Fund are hereby pledged to the payment of the Bank Note and all Obligations of the Authority hereunder. The Obligations hereunder shall be deemed Parity Debt for all purposes of the Indenture. Such proceeds from the Loans, Revenues and the other moneys hereby pledged to the payment of the Authority's Obligations hereunder shall immediately be subject to the Lien of this pledge without any physical delivery thereof or further act, and the Lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The Authority will take all actions and do all things necessary to maintain the pledge of and the lien on the Sales Tax Revenues (including Revenues) deposited into the Subordinate Obligations Fund and the Subordinate Obligations Fund as provided in the Indenture and herein.

Section 6.13. Taxes, Other Governmental Authority Charges and Liabilities. The Authority shall pay, or cause to be paid, as and when due and prior to delinquency, all its indebtedness and obligations promptly and in accordance with their terms and pay and discharge or cause to be paid all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to the Authority or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default, which default could have a Material Adverse Effect on the ability of the Authority to perform its obligations under this Agreement, the Fee Agreement, the Bank Note or any other Program Documents. However, the Authority may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when the Authority is in good faith contesting the same, so long as (i) reserves have been established in an amount sufficient to pay any such taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for the payment thereof shall have been made, (ii) enforcement of the contested tax, assessment or other charge is effectively stayed for the entire duration of such contest, and (iii) any tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is immediately paid after resolution of such contest.

Section 6.14. Sovereign Immunity. To the extent that the Authority has or hereafter may acquire under any Applicable Law any right to immunity from set-off or legal proceedings, on the

grounds of sovereign immunity, governmental immunity or any other similar doctrine, the Authority hereby irrevocably waives, to the full extent permitted by law, such rights to immunity for itself in respect of any contract claims arising under or related to this Agreement or any other Program Document.

Section 6.15. Negative Covenants of the Authority. Until the termination of this Agreement and the payment in full to the Bank of all amounts payable to the Bank hereunder, under the Fee Agreement and under the Bank Note, the Authority hereby covenants and agrees that it shall not:

(a) *Amendments.* Without the prior written consent of the Bank, (i) consent or agree to or permit any rescission of or amendment to the Indenture, the Ordinance or any Program Document which would reduce the amount of the Sales Tax Revenues (including Revenues) or materially adversely affect the obligations of the Authority hereunder, under the Fee Agreement or any other Program Document or which would in any manner materially impair or materially adversely affect the rights of the Authority to the Revenues or the security of the Indenture or the ability of the Authority to repay indebtedness (including commercial paper) that is secured by the Sales Tax Revenues or which adversely affects the security for the Bank Note, the Loans or the other Obligations; or (ii) agree to the amendment of the Indenture, the Ordinance or any other Program Documents such that payments to pay the Bank Note are impaired or reduced or the priority of the obligations of the Authority under the Indenture or to the Bank hereunder or under the Fee Agreement is adversely affected in any way; or (iii) agree to any amendment of the Indenture, the Ordinance or any other Program Document whatsoever which could reasonably be expected to materially and adversely affect any right, interest, security or remedy of the Bank or be reasonably expected to result in a Material Adverse Effect (including without limitation any decrease in Sales Tax Revenues that could reasonably be expected to adversely affect the ability of the Authority to perform any of its obligations under, this Agreement or any of the other the Program Documents). Notwithstanding the foregoing, the Authority shall be entitled to enter into one or more supplements to the Indenture in order to issue or incur additional debt so long as the Authority complies with the provisions of Section 3.06 of the Indenture and the issuance of such indebtedness would not otherwise result in a Default or an Event of Default and the proceeds of the issuance or incurrence of such additional debt is used in accordance with Section 6.16 hereof.

(b) *Swap Termination Payments.* Subsequent to the Closing Date, the Authority shall not enter into any Swap Contract unless any and all termination payments that may become owing by the Authority thereunder shall be subordinate to all amounts payable to the Bank hereunder and under the Fee Agreement. The Authority shall not permit any Lien on any portion of the Revenues securing any swap termination payments to be *pari passu* with or senior to the Lien on the Revenues created pursuant to the Indenture or the Supplemental Indenture to secure the payment of the principal of and interest on the Bank Note, the Loans and the other Obligations.

(c) *Liens.* The Authority shall not create or suffer to be created any pledge of or lien on the Sales Tax Revenues (including Revenues), other than the pledge provided for in the Indenture and in Section 6.12 of this Agreement, and with respect to the Senior

Lien Debt, as expressly provided for in or permitted by the Bond Indentures. The Authority shall not create or suffer to be created any pledge of or lien on the Sales Tax Revenues (including Revenues) that would affect the priority of Liens in existence on the Closing Date.

(d) *Sovereign Immunity.* With respect to its obligations arising under this Agreement and the other Program Documents, the Authority irrevocably agrees, to the extent permitted by law, that it will not claim any immunity on the grounds of sovereignty, governmental immunity or other similar grounds from any action, suit or proceeding by the Bank to enforce the obligations of the Authority under this Agreement or any other Program Document.

(e) *Trustee.* The Authority shall not, without the prior written consent of the Bank, which consent shall not be unreasonably withheld, (i) remove, or seek to remove, the Trustee; or (ii) appoint or consent to the appointment of any successor thereto.

(f) *Offering Memorandum Disclosure.* The Authority shall not refer to any financial information or ratings with respect to the Bank in any official statement or any similar offering document or make any changes in reference to any financial information or ratings with respect to the Bank in any official statement or any similar offering document without the prior written consent of the Bank (which consent shall not be unreasonably withheld).

(g) *Accounting Standards.* All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein. Except as provided in the immediately preceding sentence, in preparing any financial data or statements contemplated or referred to in this Agreement, the Authority shall not vary or modify the accounting methods or principles from the accounting standards employed in the preparation of its audited financial statements as of June 30, 2016, as examined and reported on by Vavrinek, Trine, Day & Co., LLP.

(h) *Application of Proceeds.* The Authority shall not, and shall not permit OCTA to, take or omit to take any action, which action or omission will in any way result in the proceeds of the Loans being applied in a manner other than to pay the costs of the Project and to satisfy the condition set forth in Section 13(a)(i) of the TIFIA Loan Agreement.

(i) *No Impairment.* To the fullest extent permitted by law, the Authority will neither take any action, nor cause or permit the Trustee or OCTA to take any action, under the Indenture or any Program Document which, in and of itself, would materially adversely affect the interests, rights, remedies or security of the Bank under this Agreement or any other Program Document or which could result in a Material Adverse Effect (including without limitation any decrease in Sales Tax Revenues that could reasonably be expected

to adversely affect the ability of the Authority to perform any of its obligations under, this Agreement or any of the other the Program Documents).

Section 6.16. Additional Debt Proceeds. The Authority shall use the proceeds of any indebtedness which is to be secured by Sales Tax Revenues issued or incurred after the Closing Date (a) first, to pay on a dollar for dollar basis the outstanding amount of the Loans, if any, and (b) second, to reduce on a dollar for dollar basis the Commitment.

Section 6.17. Disclosure to Participants. The Authority shall permit the Bank to disclose the financial information received by it pursuant to this Agreement to each Participant of the Bank, if any, subject to confidentiality restrictions and use restrictions customary for financial institutions.

ARTICLE SEVEN DEFAULTS

Section 7.1. Events of Default and Remedies. If any of the following events shall occur, each such event shall be an “Event of Default”:

(a) The Authority fails to pay, or cause to be paid, (i) when due any principal of or interest on any Loan within sixty (60) calendar days of the date such principal or interest was due, (ii) any Commitment Fee within ten (10) calendar days following receipt of an invoice therefor or (iii) any other Obligation (other than the Obligations described in clause (i) or (ii) of this Section 7.1(a)) within ten (10) calendar days of the date such Obligation was due; or

(b) Any representation, warranty or statement made by or on behalf of the Authority herein or in any other Program Document or in any certificate delivered pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or the documents, certificates or financial statements of the Authority (including unaudited financial reports, budgets, projections and cash flows of the Authority) furnished to the Bank by or on behalf of the Authority in connection with the transactions contemplated hereby, when taken as a whole, are materially inaccurate in light of the circumstances under which they were made and as of the date on which they were made; or

(c) (i) The Authority fails to perform or observe any term, covenant or agreement contained in Section 6.1, 6.5, 6.11, 6.12, 6.14 or 6.15 hereof (other than Section 6.15(c), (g) or (h) hereof) or (ii) the Authority fails to perform or observe any other term, covenant or agreement contained in this Agreement hereof, but otherwise excluding those referred to in Section 7.1(a) and 7.1(c)(i) hereof and any such failure cannot be cured or, if curable, remains uncured for thirty (30) days after the earlier of (A) the Bank providing written notice thereof to the Authority, or (B) an Authorized Representative having actual knowledge thereof; *provided that*, actual knowledge shall not be imputed to any Authorized Representative with respect to any such failure or breach for which a determination is required that a Material Adverse Effect or Material Adverse Change has

occurred, unless the Authority has received written notice from the Bank with respect to such failure or breach; or

(d) The Authority shall (i) default in any payment of any Debt payable from or secured by a lien on Sales Tax Revenues, including, without limitation, Senior Lien Debt, Parity Debt and Subordinate Obligations (“*Secured Debt*”), beyond the period of grace, if any, provided in the instrument or agreement under which such Secured Debt was created, or (ii) default in the observance or performance of any agreement or condition relating to any Secured Debt in an amount greater than \$500,000 or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Secured Debt (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Secured Debt to become due prior to its stated maturity (whether by acceleration, redemption, tender or otherwise); or

(e) (i) A court or other Governmental Authority with jurisdiction to rule on the validity of this Agreement, the Indenture, any other Program Document, the Act or the Sales Tax Law shall find, announce or rule that (x) any material provision of this Agreement or any other Program Document or (y) any provision of the Indenture relating to the security for the Bank Note, the Loans or the other Obligations, the Authority’s ability to pay the Obligations or perform its obligations hereunder or the rights and remedies of the Bank, is not a valid and binding agreement of the Authority or (ii) the Authority shall contest the validity or enforceability of this Agreement, any other Program Document, the Act or the Sales Tax Law or any provision of the Indenture relating to the security for the Bank Note, the Loans or the other Obligations, the Authority’s ability to pay the other Obligations or perform its obligations hereunder or the rights and remedies of the Bank, or shall seek an adjudication that this Agreement, any other Program Document, the Act or the Sales Tax Law or any provision of the Indenture relating to the security for the Bank Note, the Loans or the other Obligations, the Authority’s ability to pay the Obligations or perform its obligations hereunder or the rights and remedies of the Bank, is not valid and binding on the Authority or the Authority shall repudiate its obligations under this Agreement or any other Program Document; or

(f) (i) (A) Any provision of the Indenture relating to the security for the Bank Note, the Loans or the other Obligations, the Authority’s ability to pay the Bank Note, the Loans or the other Obligations or perform its obligations hereunder or the rights and remedies of the Bank shall at any time for any reason cease to be in full force or effect, (B) the Act, the Sales Tax Act, the Ordinance, or any other Program Document, or any material provision of any of the foregoing documents, shall at any time for any reason cease to be in full force or effect, or (C) the Authority or any Person acting by or on behalf of the Authority shall deny or disaffirm the Authority’s obligations under the Indenture or any other Program Document; or (ii) (A) the validity or enforceability of any provision of the Act, the Sales Tax Law or the Ordinance that impacts the Authority’s ability or obligation to levy the Sales Tax in the incorporated and unincorporated territory of the County of Orange or to collect Revenues or to pay the Revenues directly to the Trustee or the BOE’s

ability or obligation to collect the Sales Tax or to pay the Sales Tax Revenues to the Trustee is contested by duly authorized action of the Authority or is determined by a court or the State or any instrumentality of the State with appropriate jurisdiction in a proceeding subject to further appeals to be invalid or unenforceable, or (B) the Act, the Sales Tax Law or the Ordinance is repealed, (C) a Federal court or any other court with appropriate jurisdiction or the State or any instrumentality of the State or any other Governmental Authority with appropriate jurisdiction determines in a final non-appealable order or judgment, as the case may be, that any provision or provisions of the Act, the Sales Tax Law or the Ordinance regarding (1) the Authority's ability or obligation to levy or impose the Sales Tax in the incorporated and unincorporated territory of the County of Orange or collect Revenues or to pay the Revenues directly to the Trustee or (2) the BOE's obligation to collect the Sales Tax or the BOE's ability or obligation to make payment of the Sales Tax directly to the Trustee, or the pledge of and lien on Revenues securing the payment of the principal of or interest on the Bank Note, the Loans and the other Obligations, is null and void, or (D) the Act, the Sales Tax Law or the Ordinance is ruled to be null and void by a Federal court or any court with appropriate jurisdiction or the State or any instrumentality of the State or any other Governmental Authority with appropriate jurisdiction; or (iii) the validity or enforceability of any provision of the Act, the Sales Tax Law or the Ordinance that impacts the Authority's ability or obligation to levy the Sales Tax in the incorporated and unincorporated territory of the County of Orange or to collect Revenues or to pay the Revenues directly to the Trustee or the BOE's ability or obligation to collect the Sales Tax or to pay the Sales Tax Revenues to the Trustee is contested by duly authorized action of the State or any instrumentality of the State with appropriate jurisdiction; or

(g) A final judgment or order for the payment of money in excess of \$20,000,000 (in excess of the coverage limits of any applicable insurance therefor) shall have been rendered against the Authority and such judgment or order shall not have been satisfied, stayed, vacated, discharged or bonded pending appeal within a period of thirty (30) days from the date on which it was first so rendered; or

(h) (i) A debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any obligation secured by a lien, charge or encumbrance upon the Sales Tax Revenues, or (ii) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, the Authority seeks to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts payable from or secured by the Sales Tax Revenues, or (iii) the Authority seeks appointment of a receiver, trustee, custodian or other similar official for itself or for the Sales Tax Revenues, or the Authority shall make a general assignment for the benefit of its creditors, or (iv) there shall be commenced against the Authority any case, proceeding or other action of a nature referred to in clause (ii) and the same shall remain undismissed, or (v) there shall be commenced against the Authority any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all of the Authority's property or

the Sales Tax Revenues which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof, or (vi) the Authority takes action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), (iii), (iv) or (v) above, or (vii) the Authority shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts payable from or secured by the Sales Tax Revenues as they become due; or

(i) Any of Fitch, Moody's or S&P (in each case to the extent such Rating Agency is then providing a rating) shall have downgraded its rating of any Senior Lien Debt to below "BBB-" (or its equivalent), "Baa3" (or its equivalent) or "BBB-" (or its equivalent), respectively, or suspended or withdrawn its rating of the same; or

(j) An "event of default" shall have occurred and be continuing under any Program Document and the expiration of any applicable grace period shall have occurred; or

(k) (i) The Authority shall fail to preserve a valid and enforceable lien on the Sales Tax Revenues described in Section 6.12 hereof in favor of the Bank or (ii) any legislation is enacted, repealed, reenacted, amended or otherwise modified, and such repeal, reenactment, amendment, modification or enactment, in the sole opinion of the Bank has a material adverse affect on the validity or enforceability of the lien on Sales Tax Revenues in favor of the Bank as described in Section 6.12 hereof;

(l) Any rescission of or amendment to or any other action under or in connection with the Sales Tax Revenues (including, without limitation, any modification of the Act) which would or could materially reduce the amount of the Sales Tax Revenues or the allocation of the Sales Tax Revenues to the payment of the Bank Note, the Loans or the other Obligations or which would or could in any manner materially impair or adversely affect the rights of the Authority to any or all of the Sales Tax Revenues or to the security of the Bank; or

(m) Dissolution or termination of the existence of the Authority.

Section 7.2. Remedies. Upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) by notice to the Authority, declare all Obligations to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Authority; *provided* that upon the occurrence of an Event of Default described under Section 7.1(h) hereof such acceleration shall automatically occur (unless such automatic acceleration is waived by the Bank in writing);

(b) in the case of a Special Event of Default, the Commitment and the obligation of the Bank to make Loans hereunder shall immediately terminate without prior notice or demand, and thereafter the Bank shall be under no obligation to make the Loans. Promptly after the Bank receives notice or otherwise becomes aware of the occurrence of a Special Event of Default, the Bank shall give written notice of the same to the Authority; *provided*, that the Bank shall incur no liability or responsibility whatsoever by reason of its failure to receive or give such notice and such failure shall in no way affect the termination of the Commitment and of its obligation to make the Loans pursuant to this Agreement;

(c) pursue any rights and remedies it may have under any Program Document, the Act, the Sales Tax Act or the Ordinance; or

(d) pursue any other action available at law or in equity.

Section 7.3. Solely for the Benefit of Bank. The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to the Authority or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder or under any of the other Program Documents.

Section 7.4. Discontinuance of Proceedings. In case the Bank shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Program Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the Authority and the Bank shall be restored to their former positions with respect to the Obligations, the Program Documents and otherwise, and the rights, remedies, recourse and powers of the Bank hereunder shall continue as if the same had never been invoked.

ARTICLE EIGHT RESERVED

ARTICLE NINE MISCELLANEOUS

Section 9.1. Amendments, Waivers, Etc. No modification, amendment or waiver of any provision of this Agreement or the Bank Note, or consent to any departure by the Authority therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.2. Notices. All notices and other communications provided for hereunder shall be in writing (including required copies) and sent by receipted hand delivery (including Federal Express or other receipted courier service), telex, telecopy, facsimile transmission, or regular mail, as follows:

If to the Authority:	Orange County Local Transportation Authority 550 South Main Street Orange, California 92863 Attention: Executive Director Finance and Administration Telephone: (714) 560-5649 Telecopy: (714) 560-5800
If to OCTA:	Orange County Transportation Authority [550 South Main Street Orange, California 92863 Attention: Executive Director Finance and Administration Telephone: (714) 560-5649 Telecopy: (714) 560-5800]
If to the Trustee	[Trustee] _____ _____ Attention: _____ Telephone: _____ Facsimile: _____

If to the Bank: Bank of America, N.A.
333 S. Hope St., 23rd Floor
Mailcode CA9-193-23-04
Los Angeles, CA 90071-1406
Attention: Greg S. Bailey
Telephone: (213) 621-7131
Email: greg.s.bailey@baml.com

With a copy to: Bank of America, N.A.
201 E Washington St.
Mailcode AZ1-200-22-32
Phoenix, AZ 85004-2428
Attention: Susan Mobley
Telephone: (602) 523-2168
Email: susan.e.mobley@baml.com

And Bank of America, N.A.
555 California St., Suite 1160
Mailcode CA5-705-11
San Francisco, CA 94104
Attention: Grace Barvin
Telephone: (415) 913-2325
Email: grace.barvin@baml.com

or, as to each Person named above, at such other address as shall be designated by such Person in a written notice to the parties hereto. All such notices and other communications shall, when delivered or telexed, telecopied, sent by facsimile transmission or mailed, be effective when deposited with the courier, telexed, telecopied, sent by facsimile transmission or mailed respectively, addressed as aforesaid.

Section 9.3. Survival of Covenants; Successors and Assigns. (a) All covenants, agreements, representations, and warranties made herein and in the certificates delivered pursuant hereto shall survive the making of any Loan hereunder and shall continue in full force and effect so long as the Commitment is in effect and until all obligations of the Authority hereunder and under the Bank Note shall have been paid in full. Such representations and warranties have been or will be relied upon by the Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank may have had notice or knowledge of any Default or Event of Default at the time of the making of any Loan. Whenever in this Agreement any of the parties hereto is referred to, such reference shall, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Authority which are contained in this Agreement and the Bank Note shall inure to the benefit of the successors and assigns of the Bank. The Authority may not transfer its rights or obligations under this Agreement and the Bank Note without the prior written consent of the Bank. The Bank may transfer some or all of its rights and obligations under this

Agreement with the prior written consent of the Authority (which consent shall not be withheld unreasonably). This Agreement and the Bank Note are made solely for the benefit of the Authority, the Bank, and no other Person shall have any right, benefit or interest under or because of the existence of this Agreement and the Bank Note; *provided further* that the Authority's liability to any Participant (as such term is defined below) shall not in any event exceed that liability which the Authority would owe to the Bank but for such participation.

(b) Notwithstanding the foregoing, the Bank shall be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of the Bank's rights and benefits under this Agreement and the Bank Note on a participating basis but not as a party to this Agreement and the Bank Note (a "*Participation*") without the consent of the Authority. In the event of any such grant by the Bank of a Participation to a Participant, the Bank shall remain responsible for the performance of its obligations hereunder, and the Authority shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement and the Bank Note. The Authority agrees that each Participant shall, to the extent of its Participation, be entitled to the benefits of this Agreement and the Bank Note as if such Participant were the Bank, *provided* that no Participant shall have the right to declare, or to take actions in response to, an Event of Default under Section 7.1 hereof; and *provided further* that no such Participant shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Bank which entered into such Participation with the related Participant not granted a Participation to such Participant.

(c) *Certain Pledges.* In addition to the rights of the Bank set forth above, the Bank may at any time pledge or assign a security interest in all or any portion of its rights or interests under this Agreement, the Bank Note and the other Program Documents to secure obligations of the Bank or an Affiliate of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

Section 9.4. Unconditional Obligations. The obligations of the Authority under this Agreement, the Fee Agreement and the Bank Note shall be absolute, unconditional, irrevocable and performed and payable strictly in accordance with the terms of the Indenture and this Agreement, the Fee Agreement and the Bank Note, under all circumstances whatsoever, including, without limitation, the following:

(a) any lack of validity or enforceability of this Agreement, the Fee Agreement, the Bank Note or, to the extent permitted by law, the Indenture, the Ordinance, the Act, the Sales Tax Law or any other Program Document;

(b) any amendment or waiver of or any consent to departure from the terms of the Indenture or all or any of the Program Documents to which the Bank has not consented in writing;

(c) the existence of any claim, counterclaim, set-off, recoupment, defense, or other right which any Person may have at any time against the Bank, the Authority or any other Person, whether in connection with this Agreement, the Fee Agreement, the Bank Note, the Indenture, the

Ordinance, the Sales Tax Law, the Act, the other Program Documents, or any other transaction related thereto;

(d) any statement or any other document presented pursuant hereto which the Bank in good faith determines to be valid, sufficient or genuine and which subsequently proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(e) payment by the Bank of the Loan against presentation of a request which the Bank in good faith determines to be valid, sufficient or genuine and which subsequently is found not to comply with the terms of this Agreement; and

(f) any other circumstances or happening whatsoever whether or not similar to any of the foregoing.

Section 9.5. Liability of Bank: Indemnification. (a) To the extent permitted by law, the Authority assumes all risks of the acts or omissions of any Person with respect to the use of the Commitment and the use of proceeds thereunder; *provided* that this assumption with respect to the Bank is not intended to and shall not preclude the Authority from pursuing such rights and remedies as it may have against such other Person under any other agreements. Neither the Bank nor any of its respective employees, officers or directors shall be liable or responsible for (i) the use of the Commitment, the proceeds of the Loans or the transactions contemplated hereby and by the Program Documents or for any acts or omissions of Trustee, (ii) the validity, sufficiency, or genuineness of any documents determined in good faith by the Bank to be valid, sufficient or genuine, even if such documents shall, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Bank against presentation of Loan Notices for which the Bank in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement, or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; *provided* that the Authority shall not be required to indemnify the Bank for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent, directly caused by the gross negligence or willful misconduct of the Bank.

(b) To the extent permitted by law, the Authority hereby indemnifies and holds harmless the Bank and any of its officers, directors, employees or agents (each an "Indemnitee") from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs or expenses (including specifically reasonable attorney's fees) which the Bank may incur (or which may be claimed against the Bank by any Person whatsoever) by reason of or in connection with the execution and delivery of this Agreement and the Bank Note and the transactions contemplated hereby or thereby and; *provided* that the Authority shall not be required to indemnify the Bank, and the Authority shall have a cause of action against the Bank, for any direct, as opposed to consequential, claims, damages, losses, liabilities, costs, or expenses to the extent, but only to the extent, caused by (i) the Bank's willful misconduct or gross negligence in determining whether documents presented hereunder comply with the terms hereof or (ii) the Bank's willful or grossly negligent failure to make lawful payment hereunder after the presentation to the Bank by the Authority of the Loan Notice strictly complying with the terms and conditions hereof (it being understood that in making such payment the Bank's exclusive reliance on the documents presented

to the Bank in accordance with the terms hereof as to any and all matters set forth therein, whether or not any statement or any document presented pursuant hereto proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein proves to be untrue or inaccurate in any respect whatsoever, shall not be deemed willful misconduct or gross negligence of the Bank). The Bank is hereby expressly authorized and directed to honor any demand for payment which is made hereunder without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Authority or any other person or the respective rights, duties or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented hereunder are true and correct.

(c) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by Applicable Law, the Authority shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Program Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Loans or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Program Documents or the transactions contemplated hereby or thereby.

(d) *Payments.* All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(e) *Survival.* The agreements in this Section and the indemnity provisions of Section 8.02(d) shall survive the termination of the Commitment and the repayment, satisfaction or discharge of all the other Obligations.

Section 9.6. Expenses and Taxes. The Authority will promptly pay (i) the reasonable fees and expenses (in an amount not to exceed \$75,000 plus disbursements) and disbursements of counsel to the Bank incurred in connection with the preparation, execution and delivery of this Agreement and the other Program Documents, (ii) the reasonable fees and disbursements of counsel to the Bank with respect to advising the Bank as to the rights and responsibilities under this Agreement after the occurrence of an Event of Default, (iii) all reasonable costs and expenses, if any, in connection with any amendment to this Agreement, the Bank Note or any other Program Document, including in each case the fees and disbursements of counsel to the Bank and (iv) all reasonable costs and expenses, if any, in connection with the enforcement of this Agreement and any other documents which may be delivered in connection herewith or therewith, including in each case the fees and disbursements of counsel to the Bank. In addition, the Authority shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of this Agreement and the security contemplated by the Program Documents and any related documents and agrees to hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. In addition, the Authority agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred

by the Bank in enforcing any obligations or in collecting any payments due from the Authority hereunder by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a “workout” or of any insolvency or bankruptcy proceedings.

Section 9.7. No Waiver; Conflict. Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, shall operate as a waiver thereof, preclude any other or further exercise thereof nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The remedies herein provided are cumulative, and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement, the Indenture and any other Program Documents, this Agreement and the Fee Agreement shall control solely as between the Authority and the Bank.

Section 9.8. Further Assurances. From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement, and the other Program Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder. At any time, and from time to time, upon request by the Bank, the Authority will, at the Authority’s expense, correct any defect, error or omission which may be discovered in the form or content of any of the Program Documents. Upon any failure by the Authority to do so, the Bank or the Trustee may make, execute and record any and all such instruments, certificates and other documents for and in the name of the Authority, all at the sole expense of the Authority, and the Authority hereby appoints the Bank and the Trustee the agent and attorney-in-fact of the Authority to do so, this appointment being coupled with an interest and being irrevocable. In addition, at any time, and from time to time, upon request by the Bank or the Trustee, the Authority will, at the Authority’s expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Bank or the Trustee, be necessary or desirable in order to verify the Authority’s identity and background in a manner satisfactory to the Bank or the Trustee, as the case may be.

Section 9.9. Dealing with the Authority and/or the Trustee. The Bank and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Authority and/or the Trustee regardless of the capacity of the Bank hereunder.

Section 9.10. Severability. Any provision of this Agreement or the other Program Documents which is prohibited or illegal, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties hereto shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions.

Section 9.11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but when taken together shall constitute but one agreement and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement, the other Program Documents, and any separate letter agreements with respect to fees payable to the Bank, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Bank and when the Bank shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Program Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Program Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Program Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

Section 9.12. Table of Contents; Headings. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

SECTION 9.13. ENTIRE AGREEMENT. THIS AGREEMENT TOGETHER WITH THE BANK NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES HERETO.

SECTION 9.14. GOVERNING LAW. (a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

(b) Each party hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or any other Program Document or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). If and to the extent the foregoing waiver of the right to a jury trial is unenforceable for any reason, the parties hereto hereby consent to the adjudication of any and all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to determine any and all issues in such reference whether fact or law. Each party hereto (a) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges and represents that it and the other parties hereto have been induced to enter into this Agreement and the other Program Documents by, among other things, the mutual waivers and certifications in this Section, and that it has reviewed this waiver and consent, and knowingly, voluntarily and intentionally waives its jury trial rights and consents to judicial reference following the opportunity to consult with legal counsel of its choice on such matters. In the event of litigation, a copy of this Agreement may be filed as a

written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 678 as provided herein.

IF ANY ACTION OR PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT, (A) THE COURT SHALL, AND IS HEREBY DIRECTED TO, MAKE A GENERAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 TO A REFEREE (WHO SHALL BE A SINGLE ACTIVE OR RETIRED JUDGE) TO HEAR AND DETERMINE ALL OF THE ISSUES IN SUCH ACTION OR PROCEEDING (WHETHER OF FACT OR OF LAW) AND TO REPORT A STATEMENT OF DECISION, *PROVIDED* THAT AT THE OPTION OF ANY PARTY TO SUCH PROCEEDING, ANY SUCH ISSUES PERTAINING TO A “PROVISIONAL REMEDY” AS DEFINED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1281.8 SHALL BE HEARD AND DETERMINED BY THE COURT, AND (B) WITHOUT LIMITING THE GENERALITY OF THIS SECTION 9.14, THE AUTHORITY SHALL BE SOLELY RESPONSIBLE TO PAY ALL FEES AND EXPENSES OF ANY REFEREE APPOINTED IN SUCH ACTION OR PROCEEDING.

(c) The waivers made pursuant to this Section 9.14 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court sitting without a jury.

(d) *Submission to Jurisdiction.* THE AUTHORITY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE BANK OR ANY RELATED PARTY OF THE BANK IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK AND THE COURTS OF THE STATE OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK OR CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER PROGRAM DOCUMENT SHALL AFFECT ANY RIGHT THAT THE BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT AGAINST THE AUTHORITY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *Waiver of Venue.* THE AUTHORITY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES,

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *Service of Process.* EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 9.15. USA Patriot Act; Government Regulations. The Bank hereby notifies the Authority that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Patriot Act*”), the Bank is required to obtain, verify and record information that identifies the Authority, which information includes the name and address of the Authority and other information that will allow the Bank to identify the Authority in accordance with the Patriot Act. The Authority shall, promptly following a request by the Bank, provide all documentation and other information that the Bank reasonably requests in order to comply with its ongoing obligations under Applicable Law or regulation, including, without limitation, “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, and shall comply with all applicable Bank Secrecy Act (“*BSA*”) laws and regulations, as amended.

The Authority hereby represents and warrants and covenants and agrees (a) that it is not and shall not be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Orders, that prohibits or limits the Bank from making any advance or extension of credit to the Authority or from otherwise conducting business with the Authority and (b) to ensure that the proceeds of the Loans shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

Section 9.16. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof, the Bank Note or the other Program Documents), the Authority acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm’s-length commercial transactions between the Authority, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the Authority has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Authority is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the Bank Note and the other Program Documents; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (municipal, financial or otherwise), agent or fiduciary, for the Authority, or any other Person the Bank is not recommending that the Authority take an action with respect to the transaction described in this Agreement and the other Program Document and (ii) neither the Bank nor any of its Affiliates has any obligation to the Authority with respect to the transactions contemplated hereby except those obligations expressly set forth herein; (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Authority, and neither the Bank nor

any of its Affiliates has any obligation to disclose any of such interests to the Authority; (d) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Department with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank or any of its affiliates has provided other services or is currently providing other services to the Authority on other matters). To the fullest extent permitted by law, the Authority, hereby waives and releases any claims that it may have against the Bank or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

Section 9.17. Time of the Essence. Time is of the essence of the Program Documents.

Section 9.18. Entire Agreement. THIS AGREEMENT AND THE OTHER PROGRAM DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Authority and the Bank have duly executed this **[2019][2021]**
Credit Agreement as of the date first above written.

ORANGE COUNTY LOCAL TRANSPORTATION
AUTHORITY

By: _____
Name: _____
Title: _____

ORANGE COUNTY TRANSPORTATION
AUTHORITY, a party solely in its capacity as
the party to request Loans in accordance with
Section 2.2 of this Agreement

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A.

By: _____

Name: _____

Title: _____

EXHIBIT A

FORM OF LOAN NOTICE

Date: _____, 201__

To: Bank of America, N.A.
201 E Washington St.
Mailcode AZ1-200-22-32
Phoenix, AZ 85004-2428
Attention: Susan Mobley
Telephone: (602) 523-2168

Ladies and Gentlemen:

Reference is made to the [2019][2021] Credit Agreement dated as of _____ 1, 2017 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "*Agreement*;" the terms defined therein being used herein as therein defined), by and among Orange County Transportation Authority ("*OCTA*"), Orange County Local Transportation Authority (the "*Authority*"), and Bank of America, N.A. (the "*Bank*").

The undersigned hereby requests a borrowing of a Loan:

1. On _____ (a Business Day).
2. In the amount of \$_____.
3. To the account provided by OCTA to the Bank in accordance with Section 2.2 of the Agreement.
4. OCTA and the Authority hereby certify that the conditions precedent to the Loan set forth in Section 4.2 of the Agreement have been satisfied.

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this notice.

[SIGNATURE PAGE FOLLOWS]

OCTA hereby represents and warrants that the conditions specified in Section 4.02 of the Agreement shall be satisfied on and as of the date of the Initial Borrowing.

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Name: _____
Title: _____

ORANGE COUNTY LOCAL TRANSPORTATION
AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT B
FORM OF BANK NOTE

[2019][2021] FEE AGREEMENT
DATED JULY __, 2017

Reference is hereby made to the [2019][2021] Credit Agreement dated as of July 1, 2017 (as amended, supplemented, modified or restated from time to time, the “*Agreement*”), between the Orange County Local Transportation Authority (the “*Authority*”) and Bank of America, N.A. (the “*Bank*”). Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

The purpose of this Fee Agreement is to confirm the agreement between the Bank and the Authority with respect to certain fees payable by the Authority to the Bank pursuant to the Agreement. This Fee Agreement is the Fee Agreement referenced in the Agreement, and the terms hereof are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between the Authority and the Bank, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

ARTICLE I. FEES.

Section 1.1. Commitment Fees. (a) The Authority hereby agrees to pay to the Bank on October 2, 2017 (for the period commencing on the Closing Date and ending on September 30, 2017), and on the first Business Day of each January, April, July and October to occur thereafter (each, a “*Quarterly Payment Date*”) to the Commitment Termination Date, and on the Commitment Termination Date, for each day during the immediately preceding fee period, a non-refundable facility fee (the “*Commitment Fee*”), computed in arrears (on the basis of a 360 day year for the actual number of days elapsed per the applicable fee period) in an amount equal to the product of (i) the positive difference between (A) the Commitment from time to time in effect for each day during the related fee period and (B) the principal amount of the Loan outstanding for each day during the related fee period and (ii) the rate per annum corresponding to the Rating set forth in the applicable Level in the pricing matrix below (the “*Commitment Fee Rate*”) from time to time in effect for each day during each related fee period:

LEVEL	MOODY'S RATING	FITCH RATING	S&P RATING	COMMITMENT FEE RATE
Level 1:	Aa2 or above	AA or above	AA or above	[0.26%][0.36%]
Level 2:	Aa3	AA-	AA-	[0.41%][0.51%]
Level 3:	A1	A+	A+	[0.56%][0.66%]
Level 4:	A2	A	A	[0.71%][0.81%]
Level 5:	A3	A-	A-	[0.86%][0.96%]
Level 6:	Baa1	BBB+	BBB+	[1.06%][1.16%]
Level 7:	Baa2	BBB	BBB	[1.26%][1.36%]
Level 8:	Baa3 or Below	BBB- or Below	BBB- or Below	[1.56%][1.66%]

The term “*Rating*” as used herein shall mean the lowest long-term unenhanced debt rating assigned by each of S&P, Fitch or Moody’s (in each case to the extent such Rating Agency is then providing such a rating) to any Senior Lien Debt or any Debt of the Authority secured by a first lien on the Sales Tax Revenues (without regard to bond insurance or any other form of credit enhancement). In the event that a Rating is withdrawn, suspended or otherwise unavailable from any of S&P, Fitch or Moody’s or upon the occurrence and during the continuance of any Event of Default (whether or not the Bank declares an Event of Default in connection therewith), in each such case, the Commitment Fee Rate shall increase automatically, immediately and without notice by 1.50% per annum above the Commitment Fee Rate otherwise in effect. In the event of a split rating (*i.e.*, one of the foregoing Rating Agencies’ ratings is at a different level than the rating of either of the other Rating Agencies), the Commitment Fee Rate shall be based upon the Level in which the lowest Rating appears (for the avoidance of doubt, Level 8 is the lowest Level, and Level 1 is the highest Level for purposes of the above pricing grid). Any change in the Commitment Fee Rate resulting from a change in a rating shall be and become effective as of and on the date of the announcement of the change in such rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system or the adoption of a “global” rating scale by any such Rating Agency, the Ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system or, in the event of the adoption of a “global” rating scale by any Rating Agency, the recalibrated or realigned rating category under such “global” rating scale, which most closely approximates the applicable rating category as currently in effect. The Authority acknowledges that as of the Effective Date the Commitment Fee Rate is that specified above for Level 1. The Commitment Fees shall be payable quarterly in arrears on each Quarterly Payment Date, together with interest on the Commitment Fees from the date payment is due until payment in full at the Default Rate, such interest to be payable on demand. Such Commitment Fee shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

(b) *Payment of Commitment Fees.* In connection with the Commitment Fees payable hereunder, the Bank shall provide the Authority with a written invoice ten (10) calendar days in advance of the date on which such Commitment Fees are due and payable; provided, however, that the failure by the Bank to provide a written invoice twelve (10) calendar days in advance of a Quarterly Payment Date shall not relieve the Authority of its obligation to pay such Commitment Fees within twelve (10) calendar days following receipt by the Authority of an invoice with respect to such Quarterly Payment Date. To the extent additional or other amounts are due and owing the Bank with respect to Commitment Fees for any fee period in accordance with Section 1.1(a) hereof, the foregoing shall not preclude the Bank from providing the Authority with a supplemental invoice with respect to such additional or other amounts with respect to such Commitment Fees and, in any event, shall not relieve the Authority of its obligation to pay such additional or other amounts due and owing the Bank with respect to such Commitment Fees within twelve (10) calendar days following receipt by the Authority of such supplemental invoice. Each invoice for Commitment Fees shall be sent by the Bank to the Authority via email to _____ or by facsimile to (____) _____, or both, or to such other email address or addresses or facsimile numbers as may be provided to the Bank by the Authority in writing.

Section 1.2. Loan Fee. The Authority hereby agrees to pay to the Bank in connection with the Loan under the Agreement, a non-refundable loan fee of \$295 for each Loan made by the Bank pursuant to the Agreement, payable without any requirement of notice or demand by the Bank on the date of the related Loan.

Section 1.3. Amendment, Transfer, Waiver Fees and Other Fees and Expenses. The Authority agrees to pay to the Bank on the date of each amendment, modification, or supplement of the Agreement or any amendment, modification, or supplement to any Program Document which requires the waiver or consent of the Bank, an amendment, modification, supplement, waiver or consent fee, as applicable, of \$2,500 plus the reasonable fees of any legal counsel retained by the Bank in connection therewith. The Authority agrees to pay to the Bank all of the Bank's out-of-pocket expenses arising in connection with the administration and enforcement of, preservation of rights in connection with a workout, restructuring or default under or with respect to, the Agreement, this Fee Agreement or the other Program Documents, plus the reasonable fees of any legal counsel retained by the Bank in connection therewith.

Section 1.4. Termination Fee; Reduction Fee. (a) Notwithstanding the foregoing or any other provision of the Agreement or this Fee Agreement to the contrary, the Authority agrees not to terminate, permanently reduce or replace the Agreement or the Commitment prior to July 1, 2018, except upon (i) the payment by the Authority to the Bank of the Termination Fee or a Reduction Fee, as described below, (ii) with respect to the termination or replacement, payment by the Authority to the Bank of all Obligations payable under the Agreement and this Fee Agreement and (iii) the Authority providing the Bank with thirty (30) days prior written notice of its intent to terminate the Agreement and the Commitment; *provided*, that any such termination of the Agreement or the Commitment shall be in compliance with the terms and conditions of the Indenture; *provided, further*, that no Termination Fee or Reduction Fee shall become payable if the Commitment is terminated or replaced as a result of a reduction of the Bank's senior unsecured long-term ratings below "A2" (or its equivalent) by Moody's, "A" (or its equivalent) by Fitch or "A" (or its equivalent) by S&P (*provided*, that for the avoidance of doubt, the ratings referenced in this clause shall mean those ratings assigned to Bank of America, N.A. and not ratings assigned to Bank of America, N.A.'s parent or holding company or any other affiliate of Bank of America, N.A.).

The Authority agrees that all payments to the Bank referred to in the preceding paragraph shall be made in immediately available funds.

(b) The Authority hereby agrees to pay to the Bank a Termination Fee in connection with the termination or replacement of the Agreement or the Commitment by the Authority as set forth in Section 1.4(a) hereof in an amount equal to the product of (A) the Commitment Fee Rate in effect pursuant to Section 1.1 hereof on the date of termination, (B) Commitment, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to and including July 1, 2018, and the denominator of which is 360 (the "*Termination Fee*"), payable on the date the Commitment is terminated or replaced.

(c) The Authority hereby agrees to pay to the Bank a reduction fee in connection with each and every permanent reduction of the Commitment by the Authority as set forth in

Section 1.4(a) hereof in an amount equal to the product of (A) the Commitment Fee Rate in effect pursuant to Section 1.1 hereof on the date of such permanent reduction, (B) the difference between the Commitment prior to such permanent reduction and the Commitment after such permanent reduction, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such permanent reduction to and including July 1, 2018, and the denominator of which is 360 (the “*Reduction Fee*”), payable on the date the Commitment is permanently reduced.

ARTICLE II. MISCELLANEOUS.

Section 2.1. Expenses. The Authority shall pay to the Bank promptly upon receipt of invoice any and all reasonable fees and expenses of the Bank (including the out-of-pocket expenses of the Bank), all payable in accordance with this Fee Agreement. The Authority shall pay the reasonable legal fees and expenses, plus disbursements, of the Bank incurred in connection with the preparation and negotiation of the Agreement, this Fee Agreement and certain other Program Documents in an amount not to exceed \$75,000. Legal fees must be paid directly to the Bank’s counsel, Chapman and Cutler LLP, in accordance with the instructions provided by Chapman and Cutler LLP.

Section 2.2. Amendments. No amendment to this Fee Agreement shall become effective without the prior written consent of the Authority and the Bank.

Section 2.3. Governing Law. This Fee Agreement shall be governed by and construed in accordance with the internal laws of the State of California.

Section 2.4. Counterparts. This Fee Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument. This Fee Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

Section 2.5. Severability. Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 2.6. No Disclosure. Unless required by law, the Authority shall not deliver or permit, authorize or consent to the delivery of this Fee Agreement to any Person for delivery to the Municipal Securities Rulemaking Board unless the Bank provides its prior written consent.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

ORANGE COUNTY LOCAL TRANSPORTATION
AUTHORITY

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A.

By: _____
Name: _____
Title: _____

SECOND SUPPLEMENTAL INDENTURE

between

ORANGE COUNTY LOCAL TRANSPORTATION AUTHORITY

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

Dated as of _____ 1, 2017

Relating to

ORANGE COUNTY LOCAL TRANSPORTATION AUTHORITY
BANK OF AMERICA, N.A. CREDIT AGREEMENTS

(Supplementing the Indenture
Dated as of December 1, 2010)

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SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE, dated as of _____ 1, 2017 (this “Second Supplemental Indenture”), between the ORANGE COUNTY LOCAL TRANSPORTATION AUTHORITY, a public entity duly established and existing under the laws of the State of California (the “Authority”) and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the “Trustee”):

WITNESSETH:

WHEREAS, this Second Supplemental Indenture is supplemental to the Indenture, dated as of December 1, 2010 (as supplemented and amended from time to time pursuant to its terms, the “Indenture”), between the Authority and the Trustee;

WHEREAS, the Indenture provides that the Authority may from time to time incur obligations payable from and secured by a pledge of Revenues subordinate to the pledge of Revenues in favor of the Authority’s senior sales tax revenue bonds; and

WHEREAS, Section 5.02 of the Indenture establishes a Subordinate Obligations Fund to be applied as provided in Section 5.06 of the Indenture to the payment of principal and interest and other obligations with respect to obligations payable from and secured by a pledge of Revenues subordinate to the Authority’s senior sales tax revenue bonds; and

WHEREAS, the Authority desires to enter into a 2019 Credit Agreement and a 2021 Credit Agreement, each dated as of _____ 1, 2017 (collectively, the “Credit Agreement”), by and between the Authority and Bank of America, N.A. (“Credit Bank”); and

WHEREAS, pursuant to the Credit Agreement, the Authority is obligated to repay advances, including interest thereon, as well as other obligations owed to the Credit Bank from Revenues deposited to the Subordinate Obligations Fund;

WHEREAS, the Authority has determined that entering into the Credit Agreement will require certain amendments be made to the Indenture pursuant hereto;

WHEREAS, the Authority has determined that, pursuant to Section 9.01(B)(15) of the Indenture, the Authority and the Trustee are authorized to modify and amend the Indenture by this Second Supplemental Indenture to facilitate the execution and delivery of the Credit Agreement, provided that no such provision shall materially and adversely affect the interests of the Owners of the Bonds;

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE XVII
DEFINITIONS; AMENDMENT TO INDENTURE

Section 17.01. Definitions; Amendments to Definitions.

Definitions. Unless the context otherwise requires, or as otherwise provided in the recitals above, all terms that are defined in Section 1.02 of the Indenture shall have the same meanings in this Second Supplemental Indenture.

ARTICLE XVIII
FINDINGS, DETERMINATIONS AND DIRECTIONS

Section 18.01 Findings and Determinations. The Authority hereby finds and determines that the Credit Agreement, and each of them, constitute Subordinate Obligations, that payment of advances, including interest thereon, and other amounts owed by the Authority under the Credit Agreement are payable from the Subordinate Obligations Fund, and upon the execution and delivery of the Credit Agreement, any and all acts, conditions and things required to exist, to happen and to be performed, precedent to the execution and delivery thereof, will exist, will have happened and will have been performed, in due time, form and manner, as required by the Constitution and statutes of the State.

ARTICLE XIX
APPLICATION OF REVENUES DEPOSITED IN THE SUBORDINATE
OBLIGATIONS FUND; SECURITY

Section 19.01. Subordinate Obligations Fund. Revenues deposited in the Subordinate Obligations Fund will be used by the Trustee to repay amounts advanced to the Authority under and pursuant to the Credit Agreement, including interest thereon and other amounts owed to the Credit Bank as provided in the Credit Agreement. The Trustee will pay such amounts upon the receipt of an invoice therefor from the Credit Bank identifying the amounts then due and owing, including instructions for making a wire transfer of funds from the Subordinate Obligations Fund to the Credit Bank.

Section 19.02. Security. Amounts advanced to the Authority under and pursuant to the Credit Agreement, including interest thereon and other amounts owed to the Credit Bank as provided in the Credit Agreement, are special limited obligations of the Authority, shall be payable as to both principal and interest from, and shall be secured by a pledge of, lien on and security interest in the Sales Tax Revenues (including Revenues) deposited to the Subordinate Obligations Fund, including earnings on such amounts, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, which pledge, lien and security interest shall be junior and subordinate only to the pledge of Sales Tax Revenues (including Revenues) in favor of the Bonds and the obligation to fund the reserves relating thereto pursuant to the express terms of the Indenture. Subject to the provisions of the Indenture, the Authority hereby secures the payment of the amounts owed by the Authority to the Credit Bank under and pursuant to the Credit Agreement and grants a pledge of and lien on the Sales Tax Revenues (including Revenues) deposited into the Subordinate Obligations Fund and the Subordinate Obligations Fund. Such Revenues and the other moneys

hereby pledged to the payment of the Authority's obligations under the Credit Agreement shall immediately be subject to the Lien of this pledge without any physical delivery thereof or further act, and the Lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

ARTICLE XX MISCELLANEOUS

Section 20.01 Severability. If any covenant, agreement or provision, or any portion thereof, contained in this First Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this First Supplemental Indenture, and the application of any such covenant, agreement or provision, or portion thereof, to other Persons or circumstances, shall be deemed severable and shall not be affected thereby, and this First Supplemental Indenture and the 2010 Bonds issued pursuant hereto shall remain valid, and the Holders of the 2010 Bonds shall retain all valid rights and benefits accorded to them under this Indenture, the Act, and the Constitution and statutes of the State.

Section 20.02 Parties Interested Herein. Nothing in this First Supplemental Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Authority, the Trustee and the Holders of the 2010 Bonds, any right, remedy or claim under or by reason of this First Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this First Supplemental Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Authority, the Trustee and the Holders of the 2010 Bonds.

Section 20.03 Headings Not Binding. The headings in this Second Supplemental Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Second Supplemental Indenture.

Section 20.04 Indenture to Remain in Effect. Save and except as amended and supplemented by this Second Supplemental Indenture, the Indenture shall remain in full force and effect.

Section 20.05 Effective Date of Second Supplemental Indenture. This Second Supplemental Indenture shall take effect upon its execution and delivery.

Section 20.06 Execution in Counterparts. This Second Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Second Supplemental Indenture by their officers thereunto duly authorized as of the day and year first written above.

ORANGE COUNTY LOCAL
TRANSPORTATION AUTHORITY

By: _____
Executive Director of Finance and
Administration

(Seal)

ATTEST:

Secretary

APPROVED AS TO FORM:

By: _____
General Counsel

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee

By: _____
Authorized Officer



June 21, 2017

To: Finance and Administration Committee

From: Darrell Johnson, Chief Executive Officer

Subject: Transportation Infrastructure Finance and Innovation Act Loan Approval for the Interstate 405 Improvement Project

Overview

Over the past year, the Orange County Transportation Authority has been working with its financing team to finalize a funding plan for the Interstate 405 Improvement Project. A large component of this funding plan includes a loan under the Transportation Infrastructure Finance and Innovation Act. Orange County Transportation Authority representatives have been negotiating the loan terms for the project with the Build America Bureau Credit Programs Office. A copy of the substantially final Loan Agreement, Master Indenture, and Supplemental Indenture is presented for Board of Directors review and approval.

Recommendations

- A. Approve the substantially final form of the Transportation Infrastructure Finance and Innovation Act Loan Agreement between the Orange County Transportation Authority and the United States Department of Transportation in the amount of approximately \$627 million, the substantially final form of the Master Trust Indenture and Supplemental Indenture by and between Orange County Transportation Authority and the Trustee, and authorize the Chief Executive Officer to negotiate and execute a final Transportation Infrastructure Finance and Innovation Act Loan Agreement, Master Indenture, and Supplemental Indenture.
- B. Authorize the Chairman, Vice-Chair, Chief Executive Officer, Executive Director of Finance and Administration, and the Treasurer to sign all documents related to the Transportation Infrastructure Finance and Innovation Act loan, including the Transportation Infrastructure Finance and Innovation Act Loan Agreement and Bond, the Master Indenture, Supplemental Indenture, and any certificates, notices, receipts, or agreements in connection with the foregoing.

Background

The Orange County Transportation Authority (OCTA), in cooperation with the California Department of Transportation (Caltrans), is implementing the Interstate 405 (I-405) Improvement Project between State Route 73 (SR-73) and Interstate 605 (I-605) (Project). The Project will add one general purpose lane from Euclid Street to I-605, consistent with Measure M2 (M2) Project K, and will add an additional lane in each direction that would combine with the existing high-occupancy vehicle lane to provide dual express lanes in each direction on I-405 from SR-73 to I-605, otherwise known as the 405 Express Lanes.

In April 2015, the OCTA Board of Directors (Board) approved the terms and conditions negotiated with Caltrans that established the roles and responsibilities related to project delivery, funding and financing, and operations for the Project. The Board also authorized staff to pursue financing opportunities through the Transportation Infrastructure Finance and Innovation Act (TIFIA).

In February 2016, OCTA submitted a Letter of Interest (LOI) to the Build America Bureau (Bureau) Credit Programs Office (formerly known as the TIFIA Joint Program Office) requesting a loan for the Project. In March 2016, the United States Department of Transportation (USDOT) notified OCTA that the LOI met the requirements for TIFIA participation and was ready to advance to the next phase.

The next phase involved receiving an indicative investment grade rating opinion letter on the Project's plan of finance and the feasibility of the anticipated pledged revenue stream. In June 2016, OCTA presented an overview of the Project and the preliminary financial model in San Francisco to Standard & Poor's Global. In July 2016, OCTA received notification that their Credit Committee assigned the Project an indicative investment grade rating of "BBB-."

In July 2016, OCTA submitted a copy of the Standard & Poor's indicative rating letter, a detailed preliminary financial model, and the application fee to the Bureau's Credit Programs Office. OCTA also provided an oral presentation on the Project to Bureau representatives in Washington, D.C. in August 2016.

From the end of August 2016 through the beginning of October 2016, the Bureau assembled their team of consultants, which included outside legal counsel, a financial advisor, and a traffic and revenue advisor. Once their team was hired, OCTA began biweekly conference calls in October 2016, with the Bureau to monitor the progress of the TIFIA loan. The calls included OCTA staff from the Capital Projects division, Finance and Administration division, OCTA's Project team including Sperry Capital Inc., Nossaman, Bank of America Merrill Lynch,

Stantec, Woodruff, Spradlin & Smart, and representatives from the Bureau. The initial discussions revolved around the traffic and revenue study and the financial model.

In November 2016, OCTA's Board awarded a design-build (DB) contract to the joint venture team, OC 405 Partners, for the Project. OC 405 Partners is a team of firms led by OHL USA, Inc. and Astaldi Construction Corporation. The contract award for Project design and construction totaled \$1.2 billion. The total Project cost is \$1.9 billion and will be funded with a combination of local, state, and federal funds.

In early December 2016, Bureau staff requested 15 separate sensitivity scenarios of the Project's traffic and revenue model. These were extensive scenarios requiring weeks to complete. Stantec, OCTA's traffic and revenue consultant, ran those scenarios and completed the analysis in mid-January 2017. The results of these 15 scenarios were each entered into OCTA's financial model and were provided to the Bureau.

In order to close on the TIFIA loan, OCTA will need to provide at least two investment grade ratings to the Bureau. In December 2016, OCTA's Chair and Vice-Chair, along with OCTA staff and consultants met with five credit rating agencies in New York to discuss the Project and TIFIA loan. OCTA met with Standard and Poor's Global, Moody's Investment Service, Fitch Ratings, Kroll Bond Rating Agency, and DBRS. During the meetings, OCTA representatives discussed the background and importance of the Project, TIFIA loan, and the current schedule for Project funding.

On January 31, 2017, OCTA's Chief Executive Officer executed the DB contract with OC 405 Partners, and OCTA issued Notice to Proceed (NTP) No. 1 on that same date. Under the terms of the DB contract, OCTA will compensate the DB team for documented Project expenses during the NTP No. 1 period for mobilization, administrative, and design efforts.

In February 2017, OCTA representatives traveled to Washington, D.C. to meet face-to-face with Bureau representatives and negotiated commercial terms for the draft loan agreement. These negotiations focused on various topics, including rate covenants, events of default and remedies, timing of the repayment of principal and interest, the flow of funds, distribution of excess funds, and other areas.

In March 2017, OCTA elected to utilize the services of Standard and Poor's Global, Moody's Investment Service, and Kroll Bond Rating Agency for the investment grade ratings for the TIFIA loan associated with the Project. OCTA

provided the credit rating agencies detailed Project information, risk mitigations, right-of-way acquisition, utility relocation, design-build selection process, toll operating agreement, and a detailed review of the traffic and revenue study.

In April and May 2017, OCTA and Bureau staff spent time finalizing the key terms and conditions of the TIFIA loan. A negotiating point that required separate OCTA Board action was the selection of a line of credit provider. The Bureau insisted that approximately \$900 million in future M2 debt issuances be committed funds at the time of closing the TIFIA loan. Therefore, because of this requirement, OCTA issued a Request for Proposal for letter or line of credit services. On May 22, 2017, the Board selected Bank of America N.A. to provide a \$900 million line of credit to meet the Bureau's requirement.

The sources of funds for the \$1.9 billion Project include: M2 funds in the amount of \$1.138 billion, federal funds of \$45.648 million, state funds of \$89.771 million, and a TIFIA loan secured by 405 Express Lanes toll revenues totaling \$627 million. The M2 funds are comprised of pay-as-you-go funds (approximately \$245 million) and future M2 debt issuances (approximately \$893 million). It was anticipated that M2 cash on hand could fund Project expenditures for a few years while M2 debt issuances in 2019 and 2021 would fund the remaining Project expenditures.

Also in May 2017, the Bureau received approval from their Credit Review Team for the Project. During the meeting, the Credit Review Team invited OCTA to submit a formal TIFIA application, and the application was submitted in mid-May. After reviewing the application, Bureau staff prepared a final Project report and made a second presentation to the Credit Review Team on June 14, 2017. The Credit Review Team approved the application and made a recommendation to move forward with the loan to the Council on Credit and Finance.

Discussion

In June 2017, the Bureau and OCTA agreed on the remaining key terms on the draft loan agreement for the TIFIA loan. The Bureau submitted the latest version of the agreement (Attachment A) to OCTA. The Master Indenture (Attachment B) and Supplemental Indenture (Attachment C) prepared by OCTA's bond counsel are also provided for Board review and approval.

The financing documents below incorporate the loan structure. In order to proceed with the TIFIA loan, OCTA is required to execute several financing documents with related parties. A listing of the documents is provided below with an accompanying description:

TIFIA Loan Agreement – agreement between the USDOT and OCTA that describes the terms, conditions, repayment provisions, events of default, and reporting requirements for the approximate \$627 million loan.

Master and Supplemental Indenture - The Master Indenture and Supplemental Indenture are the written agreements that specify the terms and conditions for issuing any potential future 405 Express Lanes completion bond obligations on a senior lien parity with the TIFIA loan. The Indentures describe the maturity of the program and the protective covenants and other terms. The Indentures also describe the legal obligation of OCTA and the powers of the trustee. The Indentures are an agreement between OCTA and the trustee for the benefit of the bondholders, including TIFIA.

The TIFIA loan includes the following key provisions:

- The loan is sized at no more than 33 percent of the Project's eligible costs as defined by the Bureau;
- The loan interest rate is one basis point (0.01 percent) above the prevailing 30-year U.S. Treasury bond yield at the closing date;
- The loan is payable solely from the net revenues resulting from OCTA's approved Toll Policy from congestion management pricing from the 405 Express Lanes;
- The loan will have a senior lien on 405 Express Lanes net revenues;
- Interest during construction accrues until five years after substantial completion;
- Full payment of principal and interest is payable 10 years after substantial completion;
- The TIFIA loan agreement requires a beginning and an annual minimum projection of 1.35 times debt service coverage ratio;
- Completion bond obligations, on a senior lien parity with the TIFIA loan, may be issued up to 15 percent of the loan amount should additional funding be required due to unexpected circumstances;
- The TIFIA loan repayment is structured with a two percent growth factor;
- During the ramp-up period from 2023 to 2028, net revenues will fund the Debt Service Reserve Account. Due to the 2% increase in TIFIA debt service each year, the Debt Service Reserve Account will increase slightly each year and be increased to meet the higher requirement with net revenues;
- The Operations and Maintenance Reserve Fund and the Major Maintenance Reserve Fund will be funded with net revenues during the initial ramp up period. The Operations and Maintenance Reserve Fund Requirements and the Major Maintenance Reserve Fund Requirements

are based on future requirements and will be funded with net revenues pursuant to formulas in the TIFIA loan agreement;

- The 405 Express Lanes Pledged Revenues will be applied in the following order:
 - Operations and Maintenance Fund,
 - Rebate Fund established with respect to any future tax-exempt borrowing under the Master Indenture,
 - Senior Obligations Interest Account with respect to Outstanding Senior Obligations,
 - Senior Obligations Principal Account,
 - Senior Obligations Reserve Fund,
 - Senior Obligations Interest Account with respect to TIFIA Scheduled Debt Service,
 - Subordinate Obligations Interest Amount,
 - Subordinate Obligations Principal Account,
 - Subordinate Obligations Reserve Account,
 - Operations and Maintenance Reserve Fund,
 - Major Maintenance Reserve Fund, and
 - Distribution Lock-Up Fund
- Annual net revenues are deposited into a Distribution Lock-Up Fund that will keep excess net revenues until seven years after substantial completion. After seven years, 50 percent of the funds in the Distribution Lock-Up Fund will be used to repay the TIFIA loan and the balance will be released to OCTA for future projects pursuant to AB 194.

Next Steps

In order to close the TIFIA loan and lock in the TIFIA interest rate, the Bureau will need to get approval from the Council on Credit and Finance which is scheduled to meet on June 28, 2017. If approved at that meeting, the Council on Credit and Finance will make a recommendation to the Secretary of Transportation (Secretary). The Secretary makes the final determination on awarding the loan. OCTA is targeting a financial close for the TIFIA loan in July 2017 and awarding NTP No.2 to OC 405 Partners which will allow them to begin major construction of the Project.

Summary

The form of the financing documents for the Transportation Infrastructure Finance and Innovation Act loan for the Interstate 405 Improvement Project is

presented for approval to the Finance and Administration Committee and the Board of Directors.

Attachments

- A. United States Department of Transportation TIFIA Loan Agreement with Orange County Transportation Authority for the I-405 Improvement Project
- B. Master Indenture between Orange County Transportation Authority and US Bank Trust Company, National Association as Trustee, dated June 1, 2017
- C. First Supplemental Indenture between Orange County Transportation Authority and US Bank Trust Company, National Association as Trustee, dated June 1, 2017

Prepared by:



Kirk Avila
Treasurer/General Manager
Treasury/Toll Roads
714-560-5674

Approved by:



Andrew Oftelie
Executive Director,
Finance and Administration
714-560-5649

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

For Up to [\$627,000,000]

With

ORANGE COUNTY TRANSPORTATION AUTHORITY

For the

**I-405 IMPROVEMENT PROJECT
(TIFIA – 2017_____)**

Dated as of [_____, 2017]

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TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between **ORANGE COUNTY TRANSPORTATION AUTHORITY**, a public entity duly organized and existing under the laws of the State of California (the “**State**”), with an address of 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 (“**TIFIA**”), § 1501 *et seq.* of Public Law 105-178 (as amended by Public Law 105-206, Public Law 109-59, Public Law 112-141, and Public Law 114-94) (the “**Act**”), codified as 23 U.S.C. §§ 601-609; and

WHEREAS, § 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$[627,000,000] (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated [____], 2017 (the “**Application**”); and

WHEREAS, on [____], the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, the TIFIA Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the TIFIA Bond (as defined herein) in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the Traffic and Revenue Study (as defined herein) and the Base Case Projections (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and

intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

Section 1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (*Definitions*) or as otherwise defined in this Agreement or in the Master Indenture. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“Account” means each account established in accordance with the terms of the Master Indenture.

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a Qualified Hedge, a Credit Facility, or a repurchase obligation to fund any Reserve Account, ‘A+’, ‘A1’ or the equivalent rating from any Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

“Acceptable Letter of Credit” means a letter of credit, in form and substance satisfactory to the TIFIA Lender, issued by a Qualified Issuer.

“Accreted Value” means, with respect to any Capital Appreciation Bonds or Convertible Capital Appreciation Obligations, as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Capital Appreciation Bonds.

“Act” means the Act as defined in the recitals hereto.

“Additional Financing Documents” means any documents and/or instruments evidencing, documenting, securing or otherwise relating to any or all of the Secured Obligations or the security therefor, as the same may from time to time be amended, modified, extended, renewed and/or restated.

“Additional Funding Sources” means an aggregate amount of (a) \$229,900,000 pay-as-you-go funds pursuant to the Sales Tax Act, (b) \$915,500,000 aggregate principal amount of one or more series of bonds issued pursuant to the Sales Tax Revenue Bond Indenture and payable from Sales Tax Act revenues, (c) approximately \$82,000,000 in SHOPP Funds, and (d) approximately \$45,000,000 of federal grants.

“Additional Project” means any addition, acquisition, improvement, betterment, extension or equipping of or relating to either the Project or any other project of the Borrower that has become part of the Toll Road in accordance with the provisions of this Agreement.

“Additional Project Contracts” means (a) the Operating Agreement, (b) the System Integration Agreement, (c) the Police Services Agreement and (d) any other contract, agreement, letter of intent, understanding or instrument (other than a Principal Project Contract) entered into by (or on behalf of) the Borrower after the Effective Date, providing for the design, construction, testing, start-up, safety, financial services, operation or maintenance of the Toll Road, or otherwise relating to the Toll Road, including any master contract providing goods or services for multiple projects or assets relating to the Toll Road.

“Additional Senior Obligations” means any borrowings or indebtedness permitted under Section 17(a) (*Indebtedness*) and under the Master Indenture, which Additional Senior Obligations are issued or incurred after the Effective Date (but excluding the TIFIA Bond) and shall also satisfy the following requirements, as applicable:

(a) if the proceeds thereof will be used to complete the construction of the Project or to comply with obligations under the Principal Project Contracts, the Borrower’s Authorized Representative shall have certified to the Trustee and the TIFIA Lender in writing, and the Independent Engineer shall have confirmed, that such Additional Senior Obligations are necessary for such completion or compliance, as applicable, and that the proceeds from such Additional Senior Obligations, together with other funds available to complete the Project, are expected to be sufficient to achieve Substantial Completion; provided that the aggregate amount of Additional Senior Obligations incurred pursuant to this paragraph (a) may not, without the prior written consent of the TIFIA Lender, (i) exceed fifteen percent (15%) of the maximum principal amount of the TIFIA Loan and (ii) have a weighted average life that is shorter than the weighted average life of the TIFIA Bond as shown in the Base Case Financial Model.

(b) if the Additional Senior Obligations will be used to refinance Senior Obligations, (i) such Additional Senior Obligations must receive an Investment Grade Rating at the time of issuance and (ii) Annual Debt Service on Outstanding Senior Obligations for each Borrower Fiscal Year after the issuance of such Additional Senior Obligations shall not exceed Annual Debt Service on Outstanding Senior Obligations for each Borrower Fiscal Year prior to the issuance of such Additional Obligations; and

(c) if the proceeds of the Senior Obligations will be used for any purpose other than the completion bonds as described in paragraph (a) above or the refinancing of Senior Obligations as described in paragraph (b) above, then prior written approval of the TIFIA Lender to such issuance or incurrence shall be required; and

provided, that for each of clauses (a) through (c) above, (x) no Event of Default under any Indenture Document or this Agreement has occurred and is continuing, (y) the Nationally Recognized Rating Agency that provided the most recent public ratings of the Senior Obligations, including the TIFIA Loan, in accordance with Section 16(k) (*Annual Rating*) shall have provided a confirmation or affirmation (or the equivalent) that the incurrence of such Additional Senior Obligations shall not result in a downgrade of the lower of (A) the then-existing credit ratings of the Senior Obligations, and (B) the credit ratings of the Senior Obligations, as of the Effective Date, and (z) repayment of the principal amount of such

Additional Senior Obligations does not commence before the Debt Service Payment Commencement Date.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Annual Debt Service**” (a) with respect to the TIFIA Bond, means the TIFIA Debt Service, except for that for purposes of the Rate Coverage Test, which shall only include TIFIA Mandatory Debt Service and (b) with respect to any other Secured Obligation, means the amount of payments due on the applicable Outstanding Secured Obligations for any Calculation Period, as calculated by the Borrower, utilizing the following assumptions about payments on such Secured Obligations (and if more than one such assumption may apply, using the relevant assumptions selected by the Borrower):

(i) in determining the principal amount of a Secured Obligation due in each year, payment shall be assumed to be made in accordance with the amortization schedule established for such principal, including any minimum sinking fund or account payments;

(ii) if an Outstanding Secured Obligation bears a variable interest rate, the interest rate shall be assumed to be the greater of (A) the daily average interest rate during the 12 months ending with the month preceding the date of calculation, or during such shorter period that the Secured Obligation has been Outstanding, or (B) the rate of interest on that Secured Obligation on the date of calculation;

(iii) if Secured Obligations proposed to be issued will be Variable Interest Rate Obligations the interest on which is excluded from gross income for federal income tax purposes, then such obligations shall be assumed to bear interest at an interest rate equal to the average SIFMA Index during the three months preceding the month of calculation, or if SIFMA Index is no longer published, at an interest rate equal to 75% of the average one month LIBOR rate (in U.S. dollars) during that three month period, or if the one month LIBOR rate (in U.S. dollars) is not available for such period, another similar rate or index selected by the Borrower and, for so long as the TIFIA Lender is the holder of an Outstanding Secured Obligation, acceptable to the TIFIA Lender;

(iv) if Secured Obligations proposed to be issued will be Variable Interest Rate Obligations the interest on which is included in gross income for federal income tax purposes, then such obligations shall be assumed to bear interest at an interest rate equal to the average one month LIBOR rate (in U.S. dollars) during the three months preceding the month of calculation, or if the one month LIBOR rate (in U.S. dollars) is not available for such period, another similar rate or index selected by the Borrower and, for so long as the TIFIA Lender is the holder of an Outstanding Secured Obligation, acceptable to the TIFIA Lender;

(v) if the variable interest on any Secured Obligation plus the variable payments due to the Borrower and scheduled payments due from the Borrower under a Hedging Agreement designated by the Borrower are treated by the Borrower as synthetic fixed rate debt, the Variable Interest Rate Obligation may be treated as bearing such synthetic fixed rate for the duration of the synthetic fixed rate;

(vi) if the fixed interest on any Secured Obligation plus the fixed payments due to the Borrower and variable payments due from the Borrower under a Hedging Agreement designated by the Borrower are treated by the Borrower as synthetic variable rate debt, the fixed interest rate Secured Obligation may be treated as bearing such synthetic variable rate for the duration of the synthetic variable rate and such synthetic variable rate shall be calculated using the principles of clauses (d), (e) or (f) hereof;

(vii) principal and interest payments on Secured Obligations may be excluded to the extent such payments are to be paid from amounts then currently on deposit with the Trustee or another fiduciary in escrow specifically and irrevocably therefor and interest payments on any Secured Obligations may be excluded to the extent that such interest payments are to be paid from capitalized interest held by the Trustee or another fiduciary specifically to pay such interest, including amounts held on deposit to pay capitalized interest on one or more series of Secured Obligations;

(viii) any payment obligation under a Secured Obligation that was or is optional or contingent (such as the obligation to make a termination payment under a Hedging Agreement), whether or not the option is exercised or the contingency occurs, and any payments that are not scheduled payments, may be excluded; and

(ix) if any of the Secured Obligations are, or upon issuance will be, obligations payable in a currency other than lawful currency of the United States of America, then such obligations shall be assumed to be payable in lawful currency of the United States of America at the rate payable by the Borrower pursuant to the Borrower's related currency swap or contract entered into in connection with such obligations or, in the absence of such swap or contract, at the rate determined by the Borrower using a currency market conversion factor selected by the Borrower.

"Annual Operating Budget" means the annual budget required by Section [6.04] of the Master Indenture provided to the TIFIA Lender in accordance with Section 23(b)(ii) (*Annual Operating Budget*) of this Agreement.

"Anticipated TIFIA Loan Disbursement Schedule" means the schedule set forth in **Exhibit B**, reflecting the anticipated disbursement of proceeds of the TIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

"Application" has the meaning provided in the recitals hereto.

"Bank Lending Margin" means, in respect of any Variable Interest Rate Obligations, the "Applicable Margin" as defined in the applicable Additional Financing Documents.

"Bank Secrecy Act" means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

"Bankruptcy Related Event" means, with respect to any Person,

(a) (i) except with respect to the Borrower, an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (A) liquidation, reorganization or

other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (B) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (A) and (B), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (ii) such Person shall (A) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (B) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (C) make a general assignment for the benefit of creditors, (D) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a)(i) of this definition, (E) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (F) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (A) through (E), inclusive, of this clause (ii), or (G) take any action for the purpose of effecting any of the foregoing;

(b) (i) with respect to the Borrower, an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (A) liquidation, reorganization or other relief in respect to the Borrower or any of its debts secured by Pledged Revenues, or of all or a substantial part of the express lanes portion of the Toll Road, under any Insolvency Laws, or (B) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or assets thereof or for all or a substantial part of the express lanes portion of the Toll Road and, in any case referred to in the foregoing subclauses (A) and (B), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (ii) the Borrower shall (A) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or assets thereof or for all or a substantial part of the express lanes of the Toll Road, (B) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (C) fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*), (D) make a general assignment for the benefit of creditors, (E) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (b) of this definition, (F) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (G) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (A) through (F), inclusive, of this clause (b)(ii), or (H) take any action for the purpose of effecting any of the foregoing;

(c) solely with respect to the Borrower, (i) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) the Trustee shall commence a process pursuant to

which all or a substantial part of the Trust Estate may be sold or otherwise disposed of pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure; or

(d) solely with respect to the Borrower, the Trustee shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in any of the Project Accounts upon the occurrence and during the continuation of an Event of Default under the Indenture Documents for application to the prepayment or repayment of any principal amount of the Senior Obligations other than in accordance with the provisions of the Master Indenture.

“Base Case Financial Model” means a financial model prepared by the Borrower forecasting the revenues and expenditures of the Project for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of the Effective Date, which model shall be provided to the TIFIA Lender as a fully functional Microsoft Excel – based financial model or such other format requested by the TIFIA Lender.

“Base Case Projections” means the initial forecast for the Project prepared as of the Effective Date using the Base Case Financial Model.

“Bond” means any bonds (including the TIFIA Bond) or any other evidences of indebtedness for borrowed money issued by the Borrower from time to time pursuant to Section [] of the Master Indenture and the terms of the applicable Supplemental Indenture.

“Bondholder” means, when used with respect to the TIFIA Bond, the TIFIA Lender and, when used with respect to any other Bond, the registered owner of such Bond.

“Borrower” has the meaning provided in the preamble hereto.

“Borrower Act” means County Transportation Commissions Act, being Division 12 of the Public Utilities Code of the State of California (Section 130000 *et seq.*).

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1st of any calendar year and ending on June 30th of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the TIFIA Lender, as provided in Section 17(h) (*Organizational Documents; Fiscal Year*).

“Borrower Related Party” means, individually or collectively, the Borrower and Caltrans.

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 26 (*Borrower’s Authorized Representative*).

“Business Day” means any day other than a Saturday, a Sunday or other day on which the Government or banks are authorized or obligated by law or executive order to be closed in the State or the State of New York or in any city in which the principal office of the Trustee is located.

“Calculation Date” means each June 1 and December 1 occurring after the Effective Date.

“Calculation Period” means a twelve (12) month period ending on the day prior to a Calculation Date.

“Caltrans” means the California Department of Transportation.

“Caltrans DB Cooperative Agreement” means that certain cooperative agreement (District Agreement No. 12-697) for the Design-Build of the Project, dated June 30, 2015, by and between the Borrower and Caltrans, setting forth, among other things, the manner in which the initial phase of the Project will be constructed using the design-build method of procurement.

“Capital Appreciation Bonds” means any Secured Obligation hereafter incurred as to which interest is payable only at the maturity or prior redemption of such Permitted Debt.

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.

“Congress” has the meaning provided in the recitals hereto.

“Construction Agreements” means the Agreement No. C-5-3843, for the Project, dated January 31, 2017, between the Borrower and the Construction Contractor and any replacement contracts entered into by the Borrower following any termination of such agreement, each in a form approved by the FHWA Division Office and the TIFIA Lender.

“Construction Contractor” means OC 405 Partners, a Joint Venture, a joint venture comprised of OHL USA Incorporated and Astaldi Construction Company, and any successor thereto. [PLEASE CONFIRM NAMES AND THE STATE IN WHICH EACH OF THE MEMBERS ARE INCORPORATED].

“Construction Period” means the period from the Effective Date through the Substantial Completion Date.

“Construction Schedule” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II**, and (b) any updates thereto included in the Financial Plan most recently approved by the TIFIA Lender pursuant to Section 22(a)(iii)(B) (*Financial Plan*).

“Control” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms **“Controlling”** and **“Controlled by”** have meanings correlative to the foregoing.

“Convertible Capital Appreciation Obligations” means Secured Obligations that initially are issued as Capital Appreciation Obligations, but later convert to Secured Obligations on which interest is paid on a periodic basis. Convertible Capital Appreciation Obligations shall be Capital Appreciation Obligations until the conversion date and from and after such conversion date shall no longer be Capital Appreciation Obligations, but shall be treated as Current Interest Obligations having a principal amount equal to their Accreted Value on the conversion date.

“Cooperative Agreements” means the Costa Mesa Cooperative Agreement, Fountain Valley Cooperative Agreement, Huntington Beach Cooperative Agreement, Seal Beach Cooperative Agreement, Westminster Cooperative Agreement, OCTA Cooperative Agreement-OCFCD, and OCTA Cooperative Agreement-OCSD.

“Costa Mesa Cooperative Agreement” means that certain Cooperative Agreement for I-405 Improvement Project, dated May 13, 2016, by and between the Borrower and City of Costa Mesa, California.

“Coverage Certificate” has the meaning provided in Section 16(o) (*Coverage Certificate*).

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2017 as the base period.

“Credit Facility” means any letter of credit, standby bond purchase agreement, line of credit, policy of bond insurance, surety bond, guarantee or similar instrument, or any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), which is obtained by the Borrower and is issued by a financial institution, insurance provider or other Person and which provides security or liquidity in respect of any Permitted Debt.

“Current Interest Obligations” means Secured Obligations designated as Current Interest Obligations in the Supplemental Indenture providing for the issuance of such Secured Obligations and that pay interest to the Bondholders thereof on a periodic basis prior to maturity. Current Interest Obligations also include Convertible Capital Appreciation Obligations after their conversion date.

“Debt Service Payment Commencement Date” means the [fifth (5th)] anniversary of the Substantial Completion Date or, if such date does not fall on a Semi-Annual Payment Date, then the Debt Service Payment Commencement Date shall be the Semi-Annual Payment Date immediately preceding the [fifth (5th)] anniversary of the Substantial Completion Date. [UNDER REVIEW]

“Default Rate” means an interest rate equal to the sum of (a) the TIFIA Interest Rate plus (b) 200 basis points.

“Development Default” means (a) the Borrower fails to diligently prosecute the work related to the Project or (b) the Borrower fails to complete the Project by the Projected Substantial Completion Date.

“Distribution Lock-up Fund” means the Fund by that name created pursuant to Section 4.02 of the Master Indenture.

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including prior Project expenditures for the five-year period preceding [the date of the Application], all of which shall arise from the following:

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or

(c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction;

provided, however, that the TIFIA Lender confirms to the extent consistent with Federal law that costs affirmatively indicated as “Eligible Project Costs” in **Schedule I** to this Agreement fall within this definition of “Eligible Project Costs”.

“Environmental Laws” has the meaning provided in Section 14(s) (*Environmental Matters*).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and the regulations thereunder, in each case as in effect from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“Event of Default” has the meaning provided in Section 20(a) (*Events of Default and Remedies*).

“Event of Loss” means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“Executive Director” has the meaning provided in the preamble hereto.

“Extendible Maturity Bonds” means bonds the maturity of which may be extended in accordance with the applicable Indenture Documents.

“Federal Fiscal Year” or **“FFY”** means the fiscal year of the Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“FHWA” means the Federal Highway Administration, an agency of the USDOT.

“FHWA Division Office” means the California Division Office of the FHWA headquartered in Sacramento, California.

“FHWA Oversight Agreement” means that certain (a) Project Oversight Agreement, dated as of August 23, 2016, by and between the Borrower, Caltrans and the FHWA Division Office attached hereto as **Exhibit F-1** and (b) Project Management Plan, San Diego Freeway (I-405) Improvement Project SR-73 to I-605, July 2016. *[Do we have an executed copy of the Project Oversight Agreement?]*

“Final Maturity Date” means December 1, 2057, as the same may be adjusted in connection with an update to the Financial Plan pursuant to Section 22(a)(iii)(B) (*Financial Plan*); provided that the Final Maturity Date shall be no later than the date that is thirty-five (35) years following the Substantial Completion Date.

“Financial Plan” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 22(a) (*Financial Plan*) and (b) any updates thereto required pursuant to Section 22(a) (*Financial Plan*).

“Financial Statements” has the meaning provided in Section 14(z) (*Financial Statements*).

“First Supplemental Indenture” means the First Supplemental Indenture, by and between the Borrower and the Trustee, dated as of [], 2017, relating to the TIFIA Bond.

“Fixed Payment” has the meaning set forth in Section 9(d) (*Fixed Payment*).

“Fixed Payment Commencement Date” means the eleventh consecutive Semi-Annual Payment Date after the Debt Service Payment Commencement Date.

“Fixed Payment Period” means the period commencing on the Fixed Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash).

“Fountain Valley Cooperative Agreement” means that certain Cooperative Agreement for I-405 Improvement Project, dated April 19, 2016, by and between the Borrower and City of Fountain Valley, California.

“Fund” means each fund established in accordance with the terms of the Master Indenture.

“GAAP” means generally accepted accounting principles for state and local governments as defined by the Governmental Accounting Standards Board or such other nationally recognized professional body, in effect from time to time in the United States of America.

“Government” means the United States of America and its departments and agencies.

“Government Obligations” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person controlled or supervised by and acting as an instrumentality of the Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Guarantors” means Obrascon Huarte Lain, S.A. and Astaldi S.P.A. [PLEASE CONFIRM NAMES AND WHERE EACH IS ORGANIZED]

[**“Hedging Agreement”** means (a) the ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, to be entered into by the Borrower and a Hedging Bank, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, and (c) any other documentation directly relating to the foregoing.

“Hedging Banks” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors (to the extent such successors are also Qualified Hedge Providers).

“Hedging Obligations” means, collectively, the payment of (a) all scheduled amounts payable to the Hedging Banks by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedging Banks to the Borrower under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Termination Obligations” means the aggregate amount payable to the Hedging Banks by the Borrower upon the early termination of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap”, “collar” or “floor” transaction, interest rate future, interest rate option or other hedging arrangement entered into by, or at the direction of, the Borrower and secured by or payable from Pledged Revenues.]

“Huntington Beach Cooperative Agreement” means that certain Cooperative Agreement for I-405 Improvement Project, dated May 13, 2016, by and between the Borrower and City of Huntington Beach, California.

“Indemnitee” has the meaning provided in Section 18 (*Indemnification*).

“Indenture Documents” means the Master Indenture, each Supplemental Indenture, each Hedging Agreement, each Credit Facility, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“Independent Engineer” means [_____], or any replacement engineering firm selected by the Borrower and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving written notice from the Borrower of the name of the proposed replacement engineering firm and supporting information regarding the qualifications of the proposed replacement engineering firm.

“Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“Insurance and Condemnation Proceeds Account” means the Account by that name created pursuant to Section 4.02 of the Master Indenture.

“Interim Payment Date” means any day occurring during a Payment Period that (a) is a date on which interest on or principal of Secured Obligations is scheduled to be paid and (b) is not a Semi-Annual Payment Date.

“Interim Payment Period” means, at any time that interest on or principal of any Secured Obligations is scheduled to be paid on an Interim Payment Date, any period from (and including) the immediately preceding Payment Date to (but excluding) such Interim Payment Date.

“Investment Grade Rating” means a public rating no lower than ‘BBB-’, ‘Baa3’ or the equivalent public rating from a Nationally Recognized Rating Agency.

“LIBOR” means, for any day, the 1-month London Interbank Offered Rate for deposits in the applicable currency as set by the British Banks Association (or the successor thereto if the British Bankers Association is no longer making a London Interbank Offered Rate available) (“BBA”) and published by the BBA at approximately 11:00 a.m. London time on such day. For any day that is not a Business Day, the LIBOR for such day shall be the rate published by the BBA on the immediately preceding Business Day.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law, relating to the Toll Road or the Project Revenues.

“Loan Amortization Schedule” means the Loan Amortization Schedule reflected in the applicable column of **Exhibit G**, as amended from time to time in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“Loss Proceeds” means any proceeds of insurance resulting from any Event of Loss.

“Major Maintenance Expenditures” means capital expenditures reasonably necessary for the periodic overhaul and repair (excluding any maintenance or repair of a routine or ordinary course nature) of the Toll Road, including the equipment and systems thereof.

“Major Maintenance Reserve Fund” means the Fund by that name created pursuant to Section 4.02 of the Master Indenture.

“Major Maintenance Reserve Requirement” means, commencing on the first day of the Borrower Fiscal Year following Substantial Completion and, as set forth in a certificate of the Borrower filed with the Trustee on or before the beginning of each Borrower Fiscal Year thereafter the sum of (a) the amount equal to one hundred percent (100%) of the Major Maintenance Expenditures projected as of the date of calculation to be incurred in the current Borrower Fiscal Year and to be paid from Pledged Revenues or any other moneys of the Borrower as set forth in the Annual Operating Budget; (b) the amount equal to eighty percent (80%) of the Major Maintenance Expenditures projected to be incurred from the date of

calculation in the next Borrower Fiscal Year and to be paid from Pledged Revenues or any other moneys of the Borrower as set forth in the Annual Operating Budget; (c) the amount equal to sixty percent (60%) of the Major Maintenance Expenditures projected to be incurred from the date of calculation in the second Borrower Fiscal Year following the Substantial Completion and to be paid from Pledged Revenues or any other moneys of the Borrower as set forth in the Annual Operating Budget; (d) the amount equal to forty percent (40%) of the Major Maintenance Expenditures projected to be incurred from the date of calculation in the third Borrower Fiscal Year following the Substantial Completion and to be paid from Pledged Revenues or any other moneys of the Borrower as set forth in the Annual Operating Budget; and (e) the amount equal to twenty percent (20%) of the Major Maintenance Expenditures projected to be incurred from the date of calculation in the fourth Borrower Fiscal Year and to be paid from Pledged Revenues or any other moneys of the Borrower as set forth in the Annual Operating Budget.

“Master Indenture” means the Master Indenture between the Borrower and the Trustee, dated as of [May 1], 2017, as supplemented or amended by any Supplemental Indenture as defined in the Master Indenture, including without limitation the First Supplemental Indenture.

“Material Adverse Effect” means a material adverse effect on (a) the Project or the Project Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower or any other Borrower Related Party, (c) the legality, validity or enforceability of any material provision of any Indenture Document, TIFIA Loan Document or Principal Project Contract, (d) the ability of the Borrower, or any other Borrower Related Party or any other Principal Project Party to enter into, perform or comply with any of its material obligations under any Indenture Document, TIFIA Loan Document or Principal Project Contract to which it is a party, (e) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Trust Estate in favor of the Secured Parties or (f) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“Monthly Funding Date” means the last day of each calendar month or, if such day is not a Business Day, the next preceding Business Day.

“Nationally Recognized Rating Agency” means any nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“NEPA” means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means the [Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by [*insert name of appropriate USDOT modal agency field office*] on [____], 20[____] in accordance with NEPA.

“Net Loss Proceeds” means remaining Loss Proceeds after excluding any proceeds of business interruption insurance, delay-in-start-up insurance, proceeds covering liability of the Borrower to third parties and Loss Proceeds used or to be used by the Borrower to repair or restore the Project in accordance with Section [_____] of the Master Indenture.

“Net Revenue” means, for any Borrower Fiscal Year, calculated in accordance with GAAP, (a) Project Revenues plus any earnings derived in such period from the investment of moneys on deposit in the Funds and Accounts that are part of the Trust Estate less (b) Operation and Maintenance Expenses for that Borrower Fiscal Year paid from Project Revenues (excluding, in such calculations, (i) any extraordinary or one-time revenues from Pledged Revenue for such Borrower Fiscal Year, and (ii) any extraordinary or one-time expenses from Operation and Maintenance Expenses for such Borrower Fiscal Year, but only if and to the extent such extraordinary or one-time expenses are paid or payable from extraordinary or one-time revenues being excluded from Pledged Revenue for such Borrower Fiscal Year).

“OCTA Cooperative Agreement- OCFCD” means that certain Cooperative Agreement for Interstate 405 Improvement Project, made and entered into on August 3, 2016, by and between the Borrower and the Orange County Flood Control District.

“OCTA Cooperative Agreement- OCSD” means that certain Cooperative Agreement for Interstate 405 Improvement Project, made and entered into on [], by and between the Borrower and the Orange County Sanitation District.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Operating Agreement” means the Toll Operating Agreement to be entered into by the Borrower and the Toll Operator or any other operating agreement entered into by the Borrower and one or more entities in accordance with the terms of the Master Indenture.

“Operation and Maintenance Expenses” means, calculated in accordance with GAAP, all actual maintenance and operation costs incurred and paid or payable by the Borrower for the operation and maintenance of the Toll Road payable from Pledged Revenues, including, without limitation, payments with respect to financing leases and installment purchase agreements, all amounts paid or payable under the Operating Agreement, the Police Services Agreement and similar agreements, costs for operation, maintenance and repair, consumables, payments under any lease or rental payments properly considered to be operating expenses, payments pursuant to agreements for the management of the Toll Road, taxes, premiums paid or payable on any insurance, payments for oversight services, all administrative, engineering and policing costs, costs for any security, toll collection and enforcement expenses, fees and expenses of the Traffic Consultant, the Trustee, each trustee for or holder of Subordinate Obligations, any rating agency, credit, liquidity or remarketing fees relating to Secured Obligations, and any other Secured Creditor (for the avoidance of doubt, such fees, administrative costs and expenses do not include any commitment fees, termination fees, fines or other penalties or any payments to be made to Hedging Banks including Hedging Obligations and Hedging Termination Obligations), any insurance consultant, legal and accounting expenses, and any other reasonable and necessary expense paid or payable for the operation and maintenance of the Toll Road, but excluding expenses paid or scheduled to be paid from proceeds of Secured Obligations, capital expenditures, expenditures for rehabilitation and operational improvement projects on the Toll Road, depreciation or obsolescence charges or reserves therefore, debt service for Secured Obligations and any non-cash charges, such as depreciation, amortization of intangibles and other bookkeeping entries of a similar nature.

“Operation and Maintenance Fund” means the Fund created pursuant to and designated as such in Section 4.02 of the Master Indenture and held by the Borrower.

“Operation and Maintenance Reserve Fund” means the Fund created pursuant to and designated as such in Section 4.02 of the Master Indenture and held by the Trustee.

“Operation and Maintenance Reserve Fund Requirement” means, beginning four (4) months after the Substantial Completion Date, one-fourth (1/4) of the total budgeted Operation and Maintenance Expenses of the Toll Road for the current Borrower Fiscal Year, as set forth in the Annual Operating Budget.

“Organizational Documents” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“Other Indebtedness Covenant Default” has the meaning provided in Section 20(a)(vi) (*Cross Default*).

“Other Indebtedness Misrepresentation Default” has the meaning provided in Section 20(a)(vi) (*Cross Default*).

“Other Loan Documents” has the meaning provided in Section 20(a)(vi) (*Cross Default*).

“Outstanding,” when used with reference to Secured Obligations hereunder and under the Master Indenture means all Secured Obligations that have been issued by the Borrower under the Master Indenture or pursuant thereto, except such Secured Obligations: (i) canceled or delivered for cancellation; (ii) deemed to be paid in accordance with the Master Indenture or any similar provisions in the constituent instruments defining the rights of the holders of such Secured Obligations; (iii) in lieu of which other Secured Obligations have been authenticated under the Master Indenture or any similar provisions in the constituent instruments defining the

rights of the holders of such Secured Obligations; and (iv) to the extent described in the Master Indenture, Secured Obligations held by or for the account of the Borrower.

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the TIFIA Loan, as determined in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Payment Date” means each Semi-Annual Payment Date or Interim Payment Date.

“Payment Default” has the meaning provided in Section 20(a)(i) (*Payment Default*).

“Payment Period” means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date; provided, however, that in the event principal or interest on the TIFIA Loan is being paid on Interim Payment Dates, Payment Period means the period that starts on the day after an Interim Payment Date and ends on the next succeeding Interim Payment Date.

“Permitted Debt” means:

- (a) the TIFIA Loan;
- (b) the Additional Senior Obligations that satisfy each of the requirements in the definition thereof;
- (c) any bond, note, certificate, warrant, lease, contract or other financial obligation or security of the Borrower that is not, in whole or in part, secured by a Lien on, or payable from, the Trust Estate;
- (d) Subordinate Obligations; and
- (e) indebtedness incurred in respect of Qualified Hedges.

“Permitted Investments” means (with respect to the investment of the proceeds of the TIFIA Loan or any construction or reserve account established and maintained pursuant to the Master Indenture):

- (a) Government Obligations;
- (b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates

of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Government;

(c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Nationally Recognized Rating Agency; and

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Nationally Recognized Rating Agency equal to the then applicable rating of the United States of America by such Nationally Recognized Rating Agency.

“Permitted Liens” means:

(a) Liens imposed pursuant to the TIFIA Loan Documents;

(b) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 16(q) (*Material Obligations; Liens*);

(c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 16(q) (*Material Obligations; Liens*);

(d) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 20(a)(vii) (*Judgments*);

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower;

(h) any Lien on any property or asset of the Borrower existing on the Effective Date; provided that (i) such Lien shall not apply to any other property or asset of the Borrower and (ii) such Lien shall secure only those obligations which it secures on the Effective Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(i) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall apply solely to the acquired asset and not to any other property or assets of the Borrower, and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(j) purchase money security interests in equipment hereafter acquired by the Borrower; provided that (i) such security interests secure indebtedness for borrowed money permitted by Section 17(a) (*Indebtedness*), (ii) such security interests are incurred, and the indebtedness secured thereby is created, within ninety (90) days after such acquisition, (iii) the indebtedness secured thereby does not exceed the fair market value of such equipment at the time of such acquisition, and (iv) such security interests do not apply to any other property or assets (other than accessions to such equipment) of the Borrower.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Pledged Account” means the Account by that name created pursuant to Section [] of the Master Indenture.

“Pledged Revenues” means (a) Project Revenues, (b) all interest or other income from investment of money in the Funds and Accounts established under the Master Indenture (excluding the Rebate Fund, the Operation and Maintenance Fund, the Operation and Maintenance Reserve Fund, the Major Maintenance Reserve Fund, the Unpledged Account and any Fund or Account established to hold the proceeds of a drawing on any Credit Facility), (c) Swap Revenues and (d) such other sources of funds identified as Revenues in the Master Indenture, without duplication of the above.

“Police Services Agreement” means the Police Services Agreement to be entered into by and between the State, acting by and through the California Highway Patrol, and the Borrower, as amended, modified and supplemented in accordance with its terms.

“Principal Project Contracts” means (a) the Construction Agreement and any contract entered into by the Borrower required under the Construction Agreement, requiring payments by the Borrower in excess of \$[2,500,000] (inflated annually by CPI) per annum, (b) the Project Oversight Agreement, (c) the Caltrans DB Cooperative Agreement, (d) the Toll Facility Agreement, and (e) any other contract entered into by the Borrower relating to the Project

designated as a Principal Project Contract by the TIFIA Lender and the Borrower, and (f) any document that replaces or supplements any of the foregoing agreements.

“Principal Project Party” means any Person (other than the Borrower) party to a Principal Project Contract.

“Project” means the financing of the planning, design, development, financing, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance, or any combination of these, with respect to tolled and nontolled facilities, structures, onramps, connector roads, bridges, utilities, equipment and roadways that are on, necessary for, or related to the construction or operation of the portion of Interstate 405 between the SR71 north to Interstate 605.

“Project Accounts” means the Project Fund, Operation and Maintenance Fund, Senior Obligation Fund, Subordinate Obligations Fund, Senior Obligations Reserve Fund, the Subordinate Obligations Reserve Fund, the Operation and Maintenance Reserve Fund, the Major Maintenance Reserve Fund, the Distribution Lock-up Fund and the Pledged Account.

“Project Budget” means the budget for the Project in the aggregate amount of \$[*insert Project budget amount*] attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time with the approval of the TIFIA Lender.

“Project Fund” means the Fund by that name established pursuant to Section 4.02 of the Master Indenture.

“Projected Substantial Completion Date” means [December 31, 2022], as such date may be adjusted in accordance with Section 22(a)(iii)(B) (*Financial Plan*).

“Project Oversight Agreement” means the Project Oversight Agreement for the I-405 Corridor Improvement Project, dated as of [August 23, 2016], by and among the Borrower, Caltrans and the FHWA Division Office.

“Project Revenues” means, calculated in accordance with GAAP, (a) all income, tolls, revenues, rates, fees, charges, rentals, fares, or other receipts, in each case derived by or related to the operation or ownership of the Toll Road and (b) the net proceeds of delay liquidated damages, from business interruption and delay in start-up insurance policies maintained by or for the benefit of the Borrower and relating to the Toll Road but only to the extent such proceeds replace amounts described in clause (a) and provided that in no event shall any one time payments or revenue items be included in the calculation of Project Revenues for purposes of this Agreement.¹

¹ The following is the definition that appears in the Indenture: “means (a) toll revenues, user fees, fines, rents or other similar charges payable for use of the Toll Road, as well as fines and penalties and interest thereon collected as a result of a failure to pay any such amounts, (b) proceeds of insurance payable to or received by the Authority with respect to the Toll Road (whether by way of claims, return of premiums, ex gratia settlements or otherwise), including proceeds from business interruption insurance and loss of advance profits insurance, except for proceeds of fire and other casualty insurance that are deposited to the Insurance and Condemnation Proceeds Account of

“Qualified Hedge” means, to the extent from time-to-time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 17(n) (*Hedging and Variable Interest Rate Obligations*).

“Qualified Hedge Provider” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“Qualified Issuer” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“Rate Coverage Test” has the meaning provided in Section 16(n)(i) (*Rate Coverage*).

“Rating Category” means one of the generic rating categories of a Nationally Recognized Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“Rebate Fund” means the Fund by that name created pursuant to Section 4.02 of the Master Indenture.

“Related Documents” means the Indenture Documents, the TIFIA Loan Documents, the Hedging Agreements (if any) and the Principal Project Contracts.

“Requisition” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“Reserve Accounts” means the Senior Obligations Reserve Fund, the TIFIA Debt Service Reserve Account, the Subordinate Obligations Reserve Fund, the Major Maintenance Reserve Fund, and the Operation and Maintenance Reserve Fund.

“Restricted Payments” has the meaning provided in Section 17(d) (*Distributions from the Distribution Lock-up Fund*).

“Restricted Payment Conditions” has the meaning provided in Section 17(d) (*Distributions from the Distribution Lock-up Fund*).

“Revised Financial Model” means the Base Case Financial Model, as it may be updated from time to time pursuant to Section 22(a)(ii)(C) (*Financial Plan*).

the Project Fund and actually applied or reserved for application to the repair, restoration or replacement of the Toll Road, (c) proceeds of any condemnation awards with respect to the Toll Road, except to the extent deposited to the Insurance and Condemnation Proceeds Account of the Project Fund and actually applied or reserved for application to the replacement of the Toll Road, (d) liquidated damages for delayed completion of a Project payable to the Authority under a construction contract relating to the Toll Road or a portion thereof, (e) proceeds of credit support provided by the Toll Operator pursuant to the Operating Agreement, and (f) any other incidental or related fees or charges; but excluding therefrom any cash advances representing deposits against future toll payments from users or potential users of the Toll Road.” Borrower would like to use the definition in the Indenture.

“Sales Tax Act” means the Local Transportation Authority and Improvement Act, being Division 19 of the Public Utilities Code of the State of California (Section 180000 *et seq.*).

“Sales Tax Revenue Bond Indenture” means that certain Indenture, dated as of December 1, 2010, as amended and supplemented, by and between the Borrower and The Bank of New York Mellon Trust Company, N.A., as trustee.

“Seal Beach Cooperative Agreement” means that certain Cooperative Agreement for I-405 Improvement Project, dated July 29, 2016, by and between the Borrower and City of Seal Beach, California.

“Secretary” means the United States Secretary of Transportation.

“Secured Obligations” means all indebtedness of the Borrower payable from all or any portion of the Trust Estate incurred or assumed by the Borrower for borrowed money (including indebtedness arising under Credit Facility) and all other financing obligations of the Borrower relating to the Toll Road that, in accordance with GAAP, are included as a liability on a balance sheet for the Toll Road books and records, including any bonds, notes, certificates or other obligations, as the case may be, authenticated and delivered under and pursuant to the Master Indenture as Senior Obligations or Subordinate Obligations. For the purpose of determining the “Secured Obligations” payable from all or any portion of the Trust Estate, Secured Obligations that are no longer Outstanding shall be excluded.

“Secured Parties” means the Trustee, the TIFIA Lender, any other Bondholders, and the Hedging Banks.

“Semi-Annual Payment Date” means each June 1 and December 1 or if such day is not a Business Day, then the Business Day immediately following such June 1 or December 1.

“Senior Debt Service” means, with respect to (a) the TIFIA Bond, TIFIA Debt Service, which shall include TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service, except for that for purposes of the Rate Coverage Test, which shall only include TIFIA Mandatory Debt Service and (b) all other Senior Obligations, Annual Debt Service on such Senior Obligations.

“Senior Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of (a) Net Revenue for such Calculation Period to (b) Senior Debt Service for such Calculation Period.

“Senior Loan Life Coverage Ratio” means, as of each applicable Calculation Date, the ratio of (a) the present value of all projected Net Revenue for each Calculation Date from and including such Calculation Date to the Final Maturity Date, in each case discounted at the Weighted Average Interest Cost, using the most recent Revised Financial Model (or in the Base Case Financial Model to the extent that no Revised Financial Model has been approved by the TIFIA Lender), adjusted to take into account (i) actual results and updated revenue and traffic projections, plus (ii) additional projected Net Revenue to the extent not reflected in the updated revenue and traffic projections; to (b) the aggregate outstanding principal amount of all Senior Obligations, less amounts held in the TIFIA Debt Service Reserve Account and in the debt service reserve account of Additional Senior Obligations on such Calculation Date.

“Senior Obligations” means (a) the TIFIA Bond and (b) any Additional Senior Obligations.

“Senior Obligations Fund” means the Fund created pursuant to and designated as such in Section 4.02 of the Master Indenture.

“Senior Obligations Interest Account” means the Account by that name created within the Senior Obligations Fund pursuant to Section 4.02 of the Master Indenture.

“Senior Obligations Principal Account” means the Account by that name created within the Senior Obligations Fund pursuant to Section 4.02 of the Master Indenture.

“Senior Obligations Reserve Fund” means the Fund created pursuant to and designated as such in Section 4.02 of the Master Indenture.

“Senior Obligations Reserve Requirement” for any Senior Obligations other than the TIFIA Bond, means the amount specified by a Supplemental Indenture as the amount required to be held in the Senior Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on those Senior Obligations.

“Servicer” means such entity or entities as the TIFIA Lender shall designate from time-to-time to perform, or assist the TIFIA Lender in performing certain duties hereunder.

“SHOPP Funds” means the State funds in an amount of \$82,000,000, which are all sourced from Caltrans’ State Highway Operation and Protection Programs, which such program includes projects based on design to maintain the safety and operational integrity of the state highway system.

“SIFMA Index” means Securities Industry and Financial Markets Association Municipal Swap Index as of the most recent date such index was published by the Securities Industry and Financial Markets Association or any successor thereto, or in the event such index is no longer published by the Securities Industry and Financial Markets Association or any successor thereto, such comparable replacement index as shall be published by the Securities Industry and Financial Markets Association or any successor thereto. In the event that such comparable replacement index is no longer published by the Securities Industry and Financial Markets Association or any successor thereto, an alternative index shall be selected by the Commission.

“State” has the meaning provided in the preamble hereto.

“Subordinate Debt Service” means with respect to the Subordinate Obligations Annual Debt Service on such Subordinate Obligations.

“Subordinate Obligations” means any fully subordinated debt that is issued pursuant to Section 3.04 of the Master Indenture and satisfies the conditions in Section 17(a) (*Indebtedness*), payable solely from monies released from the Subordinate Obligations Account, and issued on terms and conditions acceptable to the TIFIA Lender.

“Subordinate Obligations Account” means the Account by that name created within the Project Fund pursuant to Section 4.02 of the Master Indenture.

“Subordinate Obligations Fund” means the Fund by that name created pursuant to Section 4.02 of the Master Indenture.

“Subordinate Obligations Interest Account” means the Account by that name created within the Subordinate Obligations Fund pursuant to Section 4.02 of the Master Indenture.

“Subordinate Obligations Principal Account” means the Account by that name created within the Subordinate Obligations Fund pursuant to Section 4.02 of the Master Indenture.

“Subordinate Obligations Reserve Fund” means the Fund by that name created pursuant to Section 4.02 of the Master Indenture.

“Subordinate Obligations Reserve Requirement” for any Subordinate Obligations means the amount specified by a Supplemental Indenture as the amount required to be held in the Subordinate Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Subordinate Obligations secured by such Fund or Account.

“Subsidy Payments” means, (a) with respect to a series of Secured Obligations issued under Section 54AA of the Code, the amounts relating to such series of Secured Obligations which are payable by the Federal government under Section 6431 of the Code, which the Borrower has elected to receive under Section 54AA(g)(1) of the Code, and (b) with respect to a series of Secured Obligations issued under any other provision of the Code that creates a substantially similar direct-pay subsidy program, the amounts relating to such series of Secured Obligations which are payable by the Federal government under the applicable provision of the Code which the Borrower has elected to receive under the applicable provisions of the Code.

“Substantial Completion” means the opening of the Toll Road portion of the Project to vehicular traffic.

“Substantial Completion Date” means the date on which Substantial Completion occurs.

“Supplemental Indenture” means an indenture supplementing or modifying the provisions of the Master Indenture entered into by the Borrower and the Trustee in accordance with Section 8.04 of the Master Indenture.

“Swap Revenues” means any amount paid by a Hedging Bank to the Borrower pursuant to any Hedging Agreement, after any netting of payments required by such Hedging Agreement and any payments paid to the Borrower by a Hedging Bank as consideration for termination or amendment of a Hedging Agreement.

“System Integration Agreement” means the System Integration Agreement to be entered into by and between the Borrower and an entity to be selected following the receipt of proposals or any other system integration agreement entered into by the Borrower or one or more entities in accordance with the terms of the Master Indenture.

“**TIFIA**” has the meaning provided in the recitals hereto.

“**TIFIA Bond**” means the Senior Obligation delivered by the Borrower in substantially the form of **Exhibit A**, issued by the Borrower to the TIFIA Lender [pursuant to the First Supplemental Indenture] to evidence the payment obligations of the Borrower on the TIFIA Loan.

“**TIFIA Debt Service**” means, collectively, TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service.

“**TIFIA Debt Service Account**” has the meaning provided [in the First Supplemental Indenture].

“**TIFIA Debt Service Reserve Account**” has the meaning provided in [the First Supplemental Indenture]; the TIFIA Debt Service Reserve Account is an account within the Senior Obligations Reserve Fund.

“**TIFIA Debt Service Reserve Requirement**” means for each Borrower Fiscal Year, (i) an amount equal to one hundred percent (100%) of TIFIA Mandatory Debt Service due and payable in the current Borrower Fiscal Year (n), (ii) an amount equal to seventy-five percent (75%) of the difference between the TIFIA Mandatory Debt Service due and payable in the next Borrower Fiscal Year (n+1) and the TIFIA Mandatory Debt Service due and payable in the current Borrower Fiscal Year (n), (iii) fifty percent (50%) of the difference between the TIFIA Mandatory Debt Service due and payable in the second Borrower Fiscal Year (n+2) and the TIFIA Debt Service due and payable in the next Borrower Fiscal Year (n+1), and (iv) twenty-five percent (25%) of the difference between the TIFIA Mandatory Debt Service in the third Borrower Fiscal Year (n+3) and the TIFIA Mandatory Debt Service in the second Borrower Fiscal Year (n+2).

“**TIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**TIFIA Lender**” has the meaning provided in the preamble hereto.

“**TIFIA Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 27 (*TIFIA Lender’s Authorized Representative*).

“**TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$[627,000,000] (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Bond, the TIFIA Supplemental Indenture, and the other Indenture Documents.

“**TIFIA Loan Prepayment Account**” has the meaning provided in the First Supplemental Indenture.

“TIFIA Mandatory Debt Service” means with respect to any Payment Date occurring (a) on or after the Debt Service Payment Commencement Date and prior to the Fixed Payment Commencement Date, the principal and/or interest required to be paid on the TIFIA Loan on such Payment Date as shown on Exhibits G and H in accordance with the provisions of Section 9(c) (*Payment of TIFIA Mandatory Debt Service*) and (b) on and after the Fixed Payment Commencement Date, the Fixed Payments required to be paid on the TIFIA Loan on such Payment Date as shown on Exhibits G and H in accordance with the provisions of Section 9(d) (*Fixed Payment*).

“TIFIA Scheduled Debt Service” means with respect to any Payment Date occurring after the Debt Service Payment Commencement Date and prior to the Fixed Payment Commencement Date, the principal and interest scheduled to be paid on the TIFIA Loan on such Payment Date as showing on Exhibits G and H in accordance with the provisions of Section 9(e) (*Payment of TIFIA Scheduled Debt Service*).

“Toll Facility Agreement” means that certain Toll Facility Agreement, entered into by the Borrower and Caltrans, relating to the Borrower’s leasehold rights to Caltrans I-405 right of way in Orange County and Caltrans’ role in oversight of the Project.

“Toll Operator” means the entity entering into the Operating Agreement to be selected by the Borrower following receipt of proposals, or any successor, as operator of the Toll Road responsible for the collection of tolls and fees and the establishment and maintenance of customer accounts and records, pursuant to the Operating Agreement.

“Toll Policy” means the 405 Express Lanes Toll Policy, adopted by the Board of the Borrower on May 23, 2016, that sets forth the Borrower’s policies and goals on setting tolls.

“Toll Revenue Fund” means the Fund by that name established pursuant to Section 4.01 of the Master Indenture.

“Toll Road” means lanes of a street, road or highway upon which the Borrower has all right, power and authority pursuant to law to impose tolls, and upon which tolls are imposed by the Borrower using any of the following tolling strategies: (a) general purpose or generally-applicable tolls, (b) tolls that may be levied and may vary according to levels of congestion anticipated or experienced or according to the occupancy of the vehicle, (c) any combination of (a) and (b), and (d) any other tolling strategy the Borrower may determine appropriate on a facility-by-facility basis. “Toll Road” initially means the express lanes portion of the Project and, if there are any Additional Projects, shall mean, collectively, the Project and all Additional Projects.

“Total Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Net Revenue for such Calculation Period to the sum of (a) Senior Debt Service plus amounts, if any, required to be deposited in the Senior Obligations Reserve Fund for such Calculation Period and (b) Subordinate Debt Service plus amounts, if any, required to be deposited in the Subordinate Obligations Reserve Fund for such Calculation Period.

“Total Project Costs” means (a) the costs paid or incurred or to be paid or incurred by the Borrower or any other Borrower Related Party in connection with or incidental to the

acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance, and costs of issuance; (b) amounts, if any, required by the Indenture Documents or the TIFIA Loan Documents to be paid into any fund or account upon the incurrence of the TIFIA Loan or any Senior Obligations; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any indebtedness of the Borrower or any Credit Facility maintained by the Borrower, in each case in connection with the Project (other than the TIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“Traffic and Revenue Study” means the Final Traffic and Revenue Study for the Project, dated [June 24, 2016], prepared by the Traffic Consultant, and any amendments, supplements or updates thereto.

“Traffic Consultant” means initially Stantec Consulting Services Inc., and any replacement traffic consultant firm selected by the Borrower and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving notice from the Borrower of the name of the proposed traffic consultant, together with supporting information regarding the qualifications of the proposed traffic consultant.

“True Interest Cost” means the rate necessary to discount the cumulative amounts payable on the respective Payment Dates in respect of Senior Debt Service to the original purchase price of the Senior Obligations (taking into account discounts, premiums and transaction costs) on the basis of semi-annual compounding of interest.

“Trustee” means [_____].

“Trust Estate” means all rights, title, interest and privileges of the Borrower in, to and under (a) the Pledged Revenues, (b) all interest or other income from investment of money in the Funds and Accounts established under the Master Indenture (excluding the Unpledged Account within the Distribution Lock-up Fund, and any Fund or Account established to hold the proceeds of a drawing on any Credit Facility), and (c) all amounts (including the proceeds of Secured Obligations) held in each Fund and Account established under the Master Indenture (except for amounts on deposit in the Unpledged Account within the Distribution Lock-up Fund, and amounts on deposit in any Fund or Account established to hold the proceeds of a drawing on any Credit Facility).

“Uncontrollable Force” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental

officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“Uniform Commercial Code” or **“UCC”** means the Uniform Commercial Code, as in effect from time to time in the State.

“Unpledged Account” means the Account by that name created pursuant to Section [] of the Master Indenture.

“USDOT” means the United States Department of Transportation.

“Valuation Date” means the date or dates set forth in the Supplemental Indenture authorizing Capital Appreciation Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds.

“Variable Interest Rate” means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Supplemental Indenture pursuant to which such Permitted Debt is incurred. Such Supplemental Indenture shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect, or (b) the time or times upon which any change in such variable interest rate shall become effective.

“Variable Interest Rate Obligations” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Obligations if the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect; provided, further, that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Obligations to the extent that the Borrower has entered into a Qualified Hedge pursuant to which the Borrower is obligated to pay a floating rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the lesser of the rate determined pursuant to clause (i) of the definition of the term Senior Debt Service or the maximum interest rate, if any, payable pursuant to such Qualified Hedge.

“Weighted Average Interest Cost” means, for each Semi-Annual Payment Date, a rate calculated as follows: the sum of each of the applicable True Interest Cost for each Senior Obligation multiplied by the ratio of (i) the principal amount of the applicable Senior Obligations then Outstanding to (ii) the aggregate of the Outstanding Senior Obligations, as such Semi-Annual Payment Date.

“Westminster Cooperative Agreement” means that certain Cooperative Agreement for I-405 Improvement Project, dated June 6, 2016, by and between the Borrower and City of Westminster, California.

“Written Engineer’s Certificate” means an instrument in writing signed by an Independent Engineer confirming the amount of Major Maintenance Expenditures for a Borrower Fiscal Year as determined by the Borrower.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 37 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

Section 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$[627,000,000]. TIFIA Loan proceeds shall be disbursed from time-to-time in accordance with Section 4 (*Disbursement Conditions*) and Section 13(b) (*Conditions Precedent to All Disbursements*).

Section 4. Disbursement Conditions.

(a) TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project. If the Borrower intends to utilize the TIFIA Loan proceeds to make progress payments for the Project construction work performed under the Construction Agreements, the Borrower shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** to **Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the TIFIA Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (*Disbursement Conditions*) and the conditions set forth in Section 13(b) (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of

TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender, the Servicer (if any) and the FHWA Division Office on or before the first (1st) Business Day of each month for which a disbursement is requested. If the TIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express TIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Three** to **Exhibit D**. In no event shall disbursements be made more than once each month. At the time of any disbursement, the sum of all prior disbursements of TIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current calendar year set forth in the Anticipated TIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Any scheduled disbursement (as reflected in the Anticipated TIFIA Loan Disbursement Schedule) that remains undrawn at the end of any year shall be available for disbursement in subsequent years, subject to Section 4(a) (*Disbursement Conditions*) above.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated TIFIA Loan Disbursement Schedule shall become effective upon the TIFIA Lender's approval thereof, which approval shall be granted in the TIFIA Lender's sole discretion.

Section 5. Term. The term of the TIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate with respect to the Outstanding TIFIA Loan Balance (the "**TIFIA Interest Rate**") shall be [____] percent ([____]%) per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi-annually; provided, however, in the event of a Payment Default, the Borrower shall pay interest on any overdue amount from (and including) its due date to (but excluding) the date of actual payment at the Default Rate. Upon the occurrence of an Event of Default described in Section 20(a)(iii) (*Development Default*) or Section 20(a)(x) (*Project Abandonment*), the interest rate on the Outstanding TIFIA Loan Balance shall be the Default Rate and shall continue to bear interest at such rate until, (a) with respect to an Event of Default described in Section 20(a)(iii) (*Development Default*), such Development Default has been cured, or (b) with respect to an Event of Default described in Section 20(a)(x) (*Project Abandonment*), the Outstanding TIFIA Loan Balance has been irrevocably paid in full in cash.

Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time-to-time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** from time-to-time, in accordance with the principles set forth below in this clause (b), to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any partial prepayments of the Outstanding TIFIA Loan Balance pursuant to Section 10 (*Prepayment*) shall be applied in accordance with Section 10(c) (*General Prepayment Instructions*). Any adjustments or revisions to the Loan Amortization Schedule as a result of changes in the Outstanding TIFIA Loan Balance other than prepayments shall be applied to reduce future payments due on the TIFIA Bond in inverse order of maturity. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit G** as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

Section 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The TIFIA Loan shall be secured by the Liens on the Trust Estate and shall be secured by a first priority security interest in the Trust Estate on a parity with the other Senior Obligations, the Hedging Obligations and the Hedging Termination Obligations in respect of such Senior Obligations.

(b) Except (i) for Permitted Liens, or (ii) to the extent otherwise provided in clause (a) of this Section 8 (*Security and Priority; Flow of Funds*), the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to,

or of equal rank with, the pledge of the Borrower created under the Indenture Documents, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Indenture Documents and shall not apply any portion of the Trust Estate in contravention of this Agreement or Indenture Documents.

(d) The Master Indenture provides that all Pledged Revenues in the Toll Revenue Fund shall be applied substantially in the following order of priority, as more fully described, and in accordance with the requirements specified, in Article IV of the Master Indenture and at the times and only for the purposes specified below (it being agreed that no amount shall be transferred on any date pursuant to any clause below until amounts sufficient as of the Monthly Funding Date (and to the extent applicable) for all purposes specified under the prior clauses shall have been transferred or set aside). For purposes of this flow of funds, Accreted Value shall be treated as “principal”.²

(i) First, to the Operation and Maintenance Fund, the amount necessary to increase the balance of the Operation and Maintenance Fund to an amount equal to the Operation and Maintenance Expenses then due and payable;

(ii) Second, any payments then due and payable by the Borrower to the Rebate Fund or any similar rebate fund established with respect to any future tax-exempt borrowing transaction under the Master Indenture;

(iii) Third, (x) to the Senior Obligations Interest Account, the sum of (A)(1) in the case of Outstanding Senior Obligations with semiannual interest payment dates, one-sixth (1/6) of the amount of the interest payable on such Senior Obligations on the next interest payment date; (2) in the case of Outstanding Senior Obligations with quarterly interest payment dates, one-third (1/3) of the amount of the interest payable on such Senior Obligations on the next interest payment date; and (3) in the case of Outstanding Senior Obligations with monthly interest payment dates, the amount of interest payable on such Senior Obligations on the next interest payment date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Senior Obligations Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an interest payment date or the last Monthly Funding Date before an interest payment date on any Senior Obligations, any other amount required to make the amount credited to the Senior Obligations Interest Account equal to the amount payable on such Senior Obligations on such interest payment date; and (y) on each Monthly Funding Date, to the applicable Hedging Banks, scheduled Hedging Obligations due under any Hedging Agreements, if any, net of any scheduled amounts payable to the Borrower with respect to such scheduled Hedging Obligations; provided, however, that with respect to TIFIA Bond, only the interest portion of TIFIA Mandatory Debt Service shall be set aside pursuant to this Third clause;

² Section will be updated to reflect the agreed upon flow of funds.

(iv) Fourth, commencing twelve months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Senior Obligations Principal Account, the sum of (A)(1) in the case of Outstanding Senior Obligations with annual principal or mandatory sinking fund payment dates, one-twelfth (1/12) of the principal and mandatory sinking fund redemptions due on such Senior Obligations; and (2) in the case of Outstanding Senior Obligations with semi-annual principal or mandatory sinking fund payment dates, one-sixth (1/6) of the principal and mandatory sinking fund redemptions due on such Senior Obligations; and (B) the sum of any shortfall in transfers required to have been made to the Senior Obligations Principal Account on any previous Monthly Funding Date; and (C) if the Monthly Funding Date is also a principal payment date (or mandatory sinking fund redemption date) or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Senior Obligations, any other amount required to make the amount credited to the Senior Obligations Principal Account equal to the amount of principal due on such Senior Obligations on such principal payment date or mandatory sinking fund redemption date; provided, however, that with respect to the TIFIA Bond, only the principal portion of TIFIA Mandatory Debt Service shall be set aside pursuant to this Fourth clause;

(v) Fifth, to the Senior Obligations Reserve Fund (or the applicable Account therein) the amount necessary so that the balance therein equals the applicable Senior Obligations Reserve Requirement; provided, however, that in the event that the Trustee shall have withdrawn moneys in the Senior Obligations Reserve Fund or any Account therein for the purpose of paying principal of or interest on the applicable Senior Obligations when due as provided in the Master Indenture, the Trustee shall limit such deposit to the Senior Obligations Reserve Fund or the applicable Account therein, on each of the next twelve Monthly Funding Dates after such withdrawal, to an amount equal to one-twelfth (1/12th) of the aggregate amount of each such withdrawal until the amount on deposit in the Senior Obligations Reserve Fund (or the applicable Account therein) is equal to the applicable Senior Obligations Reserve Requirement; provided further however, that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Senior Obligations Reserve Fund ratably in accordance with its respective shortfall;

(vi) Sixth, to the Senior Obligations Interest Account, an amount which equals one-sixth (1/6) of the TIFIA Scheduled Debt Service (excluding any amounts to be applied to TIFIA Mandatory Debt Service in accordance with the Third and Fourth clauses above) due and payable on the immediately succeeding payment date for such TIFIA Loan;

(vii) Seventh, to the Subordinate Obligations Interest Account the sum of (A)(1) in the case of Outstanding Subordinate Obligations with semi-annual interest payment dates, one-sixth (1/6) of the interest payable on such Subordinate Obligations on the next interest payment date; (2) in the case of Outstanding Subordinate Obligations with quarterly interest payment dates, one-third (1/3) of the amount of the interest payable on such Subordinate Obligations on the next interest payment date; and (3) in the

case of Outstanding Subordinate Obligations with monthly interest payment dates, the interest payable on such Subordinate Obligations on the next interest payment date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Subordinate Obligations Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an interest payment date or the last Monthly Funding Date before an interest payment date on any Subordinate Obligations, any other amount required to make the amount credited to the Subordinate Obligations Interest Account equal to the interest payable on such Subordinate Obligations on such interest payment date;

(viii) Eighth, commencing twelve months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Subordinate Obligations Principal Account the sum of (A)(1) in the case of Outstanding Subordinate Obligations with annual principal payment dates, one-twelfth ($1/12$) of the principal due on such Subordinate Obligations on the next principal payment date; and (2) in the case of Outstanding Subordinate Obligations with semi-annual principal payment dates, one-sixth ($1/6$) of the principal redemptions due on such Subordinate Obligations on the next principal payment date; plus (B) the sum of any shortfall in transfers required to have been made to the Subordinate Obligations Principal Account on any previous Monthly Funding Date; plus (C) if the Monthly Funding Date is also a principal payment date or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Subordinate Obligations, any other amount required to make the amount credited to the Subordinate Obligations Principal Account equal to the amount of principal due on such Subordinate Obligations on such principal payment date or mandatory sinking fund redemption date;

(ix) Ninth, to the Subordinate Obligations Reserve Fund (or the applicable Account therein), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Subordinate Obligations Reserve Requirement;

(x) Tenth, to the extent sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 8(d), to the Operation and Maintenance Reserve Fund, an amount necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Operation and Maintenance Reserve Requirement. If sufficient funds are not then available on a particular Monthly Funding Date, after application of funds for the purposes specified in the prior clauses, to fund the Operation and Maintenance Reserve Fund in an amount equal to the Operation and Maintenance Reserve Requirement, the Authority may use funds on each subsequent Monthly Funding Date to satisfy the cumulative shortfall in the Operation and Maintenance Reserve Requirement from previous Monthly Funding Dates;

(xi) Eleventh, to the extent sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 8(d), to the Major Maintenance Reserve Fund, an amount necessary to increase the balance

therein (taking into account amounts then on deposit therein) to the Major Maintenance Reserve Requirement. If sufficient funds are not then available on a particular Monthly Funding Date, after application of funds for the purposes specified in the prior clauses, to fund the Major Maintenance Reserve Fund in an amount equal to the Major Maintenance Reserve Requirement, the Authority may use funds on each subsequent Monthly Funding Date to satisfy the cumulative shortfall in the Major Maintenance Reserve Requirement from previous Monthly Funding Dates; and

(xii) Twelfth, to the Distribution Lock-Up Fund, all remaining amounts, if any.

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Indenture Documents on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the acceleration of the maturity of the TIFIA Loan or otherwise); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be treated as a payment of the TIFIA Loan and any prepayment of principal of the TIFIA Loan shall be treated as redemption of the TIFIA Bond.

(b) Capitalized Interest Period. No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each Calculation Date occurring during the Capitalized Interest Period, interest accrued on the TIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding TIFIA Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(c) Payment of TIFIA Mandatory Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Fixed Payment Commencement Date, the Borrower shall pay TIFIA Mandatory Debt Service in the amount of principal of and interest on the TIFIA Loan due and payable as of such date as set forth on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(g) (*Manner of Payment*), provided that if such Payment Date is an Interim Payment Date, the amount payable shall be as calculated in Section 9(f)(ii) (*Accrual of Amounts on Interim Payment Dates*).

(d) Fixed Payments. On each Payment Date occurring on or after the Fixed Payment Commencement Date, the Borrower shall pay TIFIA Mandatory Debt Service in the amount of 100% of the amount of principal of and interest on the TIFIA Loan due and payable as of such date as set forth on Exhibits G, which payments shall be made in accordance with Section 9(f) (*Accrual of Amounts on Interim Payment Dates*) (each such payment after the Fixed Payment Commencement Date being a “**Fixed Payment**”); provided that if such Payment Date is an Interim Payment Date, the amount payable shall be as calculated in accordance with Section 9(f)(ii) (*Accrual of Amounts on Interim Payment Dates*). The Fixed Payments shall be calculated as of the first day of the final Payment Period prior to the Fixed Payment Commencement Date such that during the Fixed Payment Period there shall be payable annual payments of principal and semiannual payments of interest (i) in such amounts as to maintain the weighted average life of the TIFIA Bond as show in the Base Case Financial Model, (ii) in order for the Outstanding TIFIA Loan Balance of the TIFIA Loan to be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the Outstanding TIFIA Loan Balance at the rate per annum set forth in Section 6 (*Interest Rate*) in the absence of an Event of Default, (iii) that all Fixed Payments are made in a timely manner during such period, and (iv) that no additional payments of principal of or interest on the TIFIA Loan are made during such period); provided that all amounts of principal and interest not otherwise paid pursuant to the provisions of this Agreement shall be due and payable on the Final Maturity Date of the TIFIA Loan. On or before the first day of the final Payment Period prior to the Fixed Payment Commencement Date, the TIFIA Lender shall give written notice to the Borrower and the Trustee of the amount of the Fixed Payments for each Semi-Annual Payment Date occurring during the Fixed Payment Period, which amount shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents. To the extent that any prepayments of the TIFIA Loan shall be made during the Fixed Payment Period in addition to the Fixed Payments, such prepayments shall be applied to the remaining principal portion of the Fixed Payments in the inverse order of the maturity thereof.

(e) Payment of TIFIA Scheduled Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Fixed Payment Commencement Date, the Borrower shall pay TIFIA Scheduled Debt Service on the TIFIA Loan for each Payment Period in the amount set forth on Exhibits G and H hereto, which payments shall be made in accordance with Section 9(f) (*Accrual of Amounts on Interim Payment Dates*); provided that if such Payment Date is an Interim Payment Date, the amount payable shall be calculated in accordance with Section 9(f)(ii) (*Accrual of Amounts on Interim*

Payment Dates); and provided further, however, that the Borrower's obligation to pay TIFIA Scheduled Debt Service on any Payment Date shall be applicable only if and solely to the extent that funds shall be available for payment thereof on such date in accordance with the provisions of Section 8(d) (*Security and Priority; Flow of Funds*). To the extent that the aggregate TIFIA Scheduled Debt Service actually paid during any Payment Period in accordance with the provisions hereof is less than the aggregate TIFIA Scheduled Debt Service for such period determined as provided above, then the unpaid portion of such TIFIA Scheduled Debt Service shall be added to the TIFIA Scheduled Debt Service due on the immediately succeeding Semi-Annual Payment Date. Following any such deferral, **Exhibit G** shall be revised on each such Payment Date to take into account such deferral and any adjustment for TIFIA Scheduled Debt Service, provided that TIFIA Mandatory Debt Service prior to the Fixed Payment Commencement Date shall not be revised or altered as a result thereof.

(f) Accrual of Amounts on Interim Payment Dates.

(i) If any Senior Obligations or Subordinate Obligations require the payment of principal or interest on any Interim Payment Date after the Debt Service Payment Commencement Date, the Borrower shall promptly notify the Servicer (if any) and the TIFIA Lender thereof in writing, identifying the period covered by such Interim Payment Period and the Interim Payment Date.

(ii) On any such Interim Payment Date during the period on and after the Debt Service Payment Commencement Date, the Borrower shall transfer or otherwise deposit, or cause to be transferred or otherwise deposited, into the TIFIA Debt Service Account an amount equal to the amount of TIFIA Debt Service due and payable on the next succeeding Semi-Annual Payment Date (as shown on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*)) multiplied by a fraction, the numerator of which is equal to the number of months contained in the Interim Payment Period ending on such Interim Payment Date and the denominator of which is equal to six (6).

(iii) If an Interim Payment Date is other than the first Business Day of a calendar month, the method for calculating any amount required to be transferred or deposited into the TIFIA Debt Service Account pursuant to this Section 9(f) (*Accrual of Amounts on Interim Payment Dates*) shall be determined at such time by the parties hereto.

(g) Manner of Payment. Payments under this Agreement and the TIFIA Bond shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender pursuant to Section 37 (*Notices; Payment Instructions*), as modified in writing from time-to-time by the TIFIA Lender. The Borrower may make any such payment or portion thereof (or direct the Trustee to make such payment) with funds then on deposit in the TIFIA Debt Service Account.

(h) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 20 (*Events of Default and Remedies*)).

(i) TIFIA Bond; Adjustments to Loan Amortization Schedule. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of \$[627,000,000] (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6 (*Interest Rate*). The TIFIA Lender is hereby authorized to enter on the grid attached to such TIFIA Bond as Appendix One, attached hereto and incorporated herein by reference, the amount of each disbursement made under this Agreement, and to amend the Loan Amortization Schedule from time to time in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*) hereof. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on Appendix One to the TIFIA Bond and the Loan Amortization Schedule shall be conclusive evidence thereof.

Section 10. Prepayment.

(a) Mandatory Prepayments. The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium:

(i) in an amount equal to the amount transferred from the Distribution Lock-up Fund to the Unpledged Account as described in Section 17(d)(vii);

(ii) upon any voluntary prepayment of other obligations under the Master Indenture, pro rata with such voluntary prepayment (based upon the relative Outstanding principal amounts of the TIFIA Loan and such other Secured Obligations);

(iii) in an amount equal to fifty percent (50%) of the difference in Annual Debt Service prior to the issuance of Additional Senior Obligations described in clause (b) of the definition of Additional Senior Obligations and the Annual Debt Service after the issuance of such Additional Senior Obligations;

(iv) following the determination thereof in accordance with the Master Indenture, in the amount of any Net Loss Proceeds; and

(v) if the Borrower fails to satisfy the Rate Coverage Test provided in Section 16(n)(i) (*Rate Coverage*) for twelve consecutive months, from any funds in the Distribution Lock-up Fund, until the Borrower delivers evidence that it is in compliance with the Rate Coverage Test.

The Borrower shall provide written notice to the TIFIA Lender at least two (2) Business Days prior to the date on which it makes any mandatory prepayment; provided that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's

obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred. Each prepayment pursuant to this Section 10(a) (*Mandatory Prepayments*) shall be effected pursuant to Sections [_____] of the Master Indenture (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional Prepayments. The Borrower may prepay the TIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time-to-time, without penalty or premium, by paying to the TIFIA Lender such principal amount of the TIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender. In the case of any optional prepayment, such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender. Anything in this Section 10(b) (*Optional Prepayments*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) General Prepayment Instructions. Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its representative at the principal office of the TIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of such TIFIA Bond, the TIFIA Lender may make a notation on **Exhibit G** indicating the amount of principal of and interest on such TIFIA Bond then being prepaid. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. All such partial prepayments of principal shall be applied to the remaining Outstanding TIFIA Loan Balance in the inverse order of the maturity thereof and the remaining Fixed Payments will be recalculated to be an amount sufficient to amortize the remaining Outstanding TIFIA Loan Balance at the TIFIA Interest Rate over the period ending on the Final Maturity Date and the resulting Fixed Payments will be reflected in revised Exhibits G and H. The TIFIA Lender shall, and is hereby authorized by the Borrower, to make the appropriate notations thereof on Appendix One to such TIFIA Bond and to revise the Loan Amortization Schedule for each Fixed Payment Period and Exhibits G and H in accordance herewith and provide a copy thereof to the Trustee. Absent manifest error such TIFIA Lender notations and revisions shall be conclusive, provided, however, that neither the failure to make any such notations or revisions nor any error therein shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. If said moneys shall not have been so paid on the

prepayment date, such principal amount of such TIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 11. [Reserved].

Section 12. Compliance with Laws. The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Toll Road to, comply in all material respects with all applicable federal and state laws. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. Pursuant to the FHWA Oversight Agreement, the Borrower may be responsible for certain Project oversight activities. The Borrower acknowledges receipt of the FHWA Oversight Agreement and hereby agrees to cooperate with Caltrans and the FHWA Division Office in carrying out their duties under the FHWA Oversight Agreement. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof.

Section 13. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have provided evidence satisfactory to the TIFIA Lender of the issuance of one or more series of bonds or notes pursuant to the Sales Tax Revenue Bond Indenture that generate net proceeds in an amount of [at least] \$893,000,000, or that the Borrower shall have obtained a letter of credit, line of credit, state or federal grant funds, qualifying bank loan or other form of security in an aggregate amount of [at least] \$893,000,000;

(ii) The Borrower shall have duly executed and delivered to the TIFIA Lender this Agreement and the TIFIA Bond, each in form and substance satisfactory to the TIFIA Lender.

(iii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Indenture Document and the Cooperative Agreements, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of this Section 13(a)(iii) (*Conditions Precedent to Effectiveness*), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(iv) Counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit I**).

(v) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995).

(vi) The Borrower shall have provided to the TIFIA Lender satisfactory evidence that the Project has been included in (A) the metropolitan transportation improvement program adopted by the [*insert name of federally designated metropolitan planning organization for the region*], (B) the State transportation plan, and (C) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the amount of the TIFIA Loan and all other federal funds to be used for the Project as sources of funding for the Project.

(vii) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public Investment Grade Rating on the TIFIA Loan and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(viii) The Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit L** (A) as to the satisfaction of certain conditions precedent set forth in this Section 13(a) (*Conditions Precedent to Effectiveness*) as required by the TIFIA Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(ix) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and that such funds shall be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(x) The Borrower shall have delivered to the TIFIA Lender an original fully executed counterpart (or a certified copy) of the Traffic and Revenue Study in form and substance acceptable to the TIFIA Lender and the Traffic Consultant, accompanied by a letter from the preparer of such study, dated as of [*Insert date that is not more than fifteen (15) Business Days prior to the Effective Date*], and certifying that the assumptions and projections contained in the Traffic and Revenue Study are reasonable and may be relied upon by the TIFIA Lender.

(xi) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(xii) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that it has obtained all Governmental Approvals necessary to commence construction of the Project and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(xiii) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Project Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate a Senior Debt Service Coverage Ratio for each Calculation Date through the Final Maturity Date that is not less than [one hundred and thirty-five percent (135%)]; (C) demonstrate a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [one hundred and twenty-five percent (125%)], (D) demonstrate a Senior Loan Life Coverage Ratio for each Calculation Date through the Final Maturity Date that is not less than [one hundred and thirty-five percent (135%)], (E) not reflect (1) the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (2) the payment of any interest on any Subordinate Obligations before the Debt Service Payment Commencement Date, or (3) the commencement of amortization of the principal amount of any Subordinate Obligations before the commencement of the amortization of the principal amount of the TIFIA Loan, and (F) otherwise be in form and substance acceptable to the TIFIA Lender.

(xiv) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant to California Streets and Highways Code Section 149.7(i), to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xv) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender to the Borrower as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisors and any auditors or other

consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xvi) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender of compliance with NEPA, and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the TIFIA Lender of such compliance upon request by the TIFIA Lender.

(xvii) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(xviii) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System number, and (C) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov).

(xix) The Borrower shall have delivered to the TIFIA Lender (A) certificates of insurance evidencing (1) that the Borrower and each applicable Principal Project Party has obtained insurance with respect to the Project and the Borrower, as applicable, that meets the requirements of Section 16(f) (*Insurance*) and (2) that each liability policy (other than workers' compensation insurance) reflects the TIFIA Lender as an additional insured and (B) at the TIFIA Lender's request, copies of such insurance policies.

(xx) The Borrower shall have provided to the TIFIA Lender evidence that the Borrower and each other Borrower Related Party is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified by the Borrower's Authorized Representative (or, with respect to a Borrower Related Party, such Borrower Related Party's authorized representative): (A) a copy of its Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of the State or the state of its formation, to the extent applicable), which Organizational Documents shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing each Borrower Related Party to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower Related Parties relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents.

(xxi) The Borrower shall have provided the TIFIA Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and the FHWA Division Office to review such costs.

(xxii) The Borrower shall have provided to the TIFIA Lender certified, complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the Effective Date, each of which shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

(xxiii) The representations and warranties of the Borrower set forth in this Agreement (including Section 14 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxiv) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (B) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs.

(xxv) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as **Exhibit K**.

(xxvi) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit N** in accordance with 49 C.F.R. §20.100(b).

(xxvii) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments and evidence of the closing of the TIFIA Loan).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 22(a) (*Financial Plan*), which Financial Plan (or update thereto) reflects that amortization of the principal amount of any Senior Obligations does not commence before the Debt Service Payment Commencement Date.

(ii) The Borrower shall provide evidence satisfactory to the TIFIA Lender that all Additional Funding Sources are fully committed and have been applied or will be applied to pay Total Project Costs in accordance with, and to the extent required by, the Base Case Financial Model.

(iii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have delivered to the TIFIA Lender certified, complete and fully executed copies of the Indenture Documents entered into after the Effective Date.

(iv) To the extent not previously delivered to the TIFIA Lender as required by this Agreement, the Borrower shall have provided certified copies of all Principal Project Contracts and all Additional Project Contracts requested by the TIFIA Lender pursuant to Section 16(b) (*Copies of Documents*) or required to be delivered to the TIFIA Lender pursuant to Section 17(e) (*Additional Projects Contracts*) (including, in each case, any amendment, modification or supplement thereto) entered into after the Effective Date which in the case of the Additional Project Contracts, shall be a condition to the next disbursement following the date when such Additional Project Contract is required to be delivered to the TIFIA Lender.

(v) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(vi) Each of the insurance policies obtained by the Borrower and by any applicable Principal Project Party in satisfaction of the conditions in Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vii) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Event of Default hereunder or event of default under any other Related Document and (B) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default hereunder or event of default under any Related Document, in each case, shall have occurred and be continuing.

(viii) To the extent necessary to make the corresponding representations and warranties true, correct and complete as of the date of any disbursement of loan proceeds hereunder, the Borrower shall have delivered an updated version of **Schedule 14(u)**, in form and substance satisfactory to the TIFIA Lender in its sole discretion.

(ix) The representations and warranties of the Borrower set forth in this Agreement (including Section 14 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(x) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(xi) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and the TIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition.

(xii) The Borrower shall have paid in full all invoices received from the TIFIA Lender as of the date of disbursement of the TIFIA Loan, for the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xiii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided to the TIFIA Lender certified, complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the date of disbursement of the TIFIA Loan, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

Section 14. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 14(b) (*Officer's Authorization*) and Section 14(l) (*Credit Ratings*), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a public entity duly organized, validly existing and in good standing under the laws of the State, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any

certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, except as set forth in **Schedule 14(f)**, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge,

there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Pledged Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Revised Financial Model, to the extent any Revised Financial Model has been approved by the TIFIA Lender). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and Borrower Act establishes, in favor of the Trustee for the benefit of the TIFIA Lender, the valid and binding Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Trust Estate except for the Permitted Liens associated with Senior Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 16(a) (*Securing Liens*) or in the Indenture Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Document or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 13(a)(v) (*Conditions Precedent to Effectiveness*).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Federal Requirements. The Borrower has complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(k) Transportation Improvement Program. The Project has been included in (i) the metropolitan transportation improvement program adopted by the Southern California Association of Governments, (ii) the State transportation plan, and (iii) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3), as applicable. The financial plan for each such program or plan reflects the amount of the TIFIA Loan and all other federal funds to be used for the Project as sources of funding for the Project.

(l) Credit Ratings. The TIFIA Loan has received a public rating from at least two (2) Nationally Recognized Rating Agencies, and written evidence of such ratings has been provided to the TIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(m) No Defaults. The Borrower is not in default under the terms of any Related Document, and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute an Event of Default.

(n) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(o) Principal Project Contracts. Each Principal Project Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Principal Project Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Principal Project Contract and each Additional Project Contract required to be delivered to, or requested by, the TIFIA Lender pursuant to Section 16(b) (*Copies of Documents*) (including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any Principal Project Contract. The Borrower is not in breach of any material term in or in default under any such Principal Project Contracts, and to the knowledge of the Borrower, no party to any Principal Project Contract is in breach of any material term therein or in default thereunder.

(p) Information. The information furnished by the Borrower to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as

of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(q) OFAC; Anti-Corruption Laws. None of the Borrower, any other Borrower Related Party, nor, to the knowledge of the Borrower, any Principal Project Party:

(i) is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act; (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or

(ii) is a Person (A) that is charged with, or has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws; (B) that has been, since the date that is five (5) years prior to the Effective Date, convicted of any violation of, has been subject to criminal or civil penalties pursuant to, had any of its property seized or forfeited under, or has entered into any agreement with the Government or a state or local government related to violations of any such laws; (C) that is named on the list of “Special Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list); (D) with whom any U.S. Person (as defined by the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law; or (E) with respect to a Principal Project Party, that is owned (other than any Person beneficially owning or holding five percent (5%) or less of the equity interests of such Principal Project Party), Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this clause (ii).

(r) Compliance with Law. Each of the Borrower and each other Borrower Related Party is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 14(s) (*Environmental Matters*)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower’s knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower, any other Borrower Related Party, or, to the Borrower’s knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(s) Environmental Matters. Each of the Borrower, each other Borrower Related Party and, to the Borrower's knowledge, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Neither the Borrower nor any other Borrower Related Party has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower or such other Borrower Related Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower or any other Borrower Related Party with any such Environmental Law or Governmental Approval. The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower or any other Borrower Related Party regarding the Borrower's or the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(t) Sufficient Rights and Utilities. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Project. As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to [own,] construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(u) Insurance. **Schedule 14(u)** lists all insurance policies of any nature maintained by the Borrower with respect to the Project, as well as a summary of the terms of each such policy. The Borrower is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound and the Borrower has received an opinion from an

accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower's self-insurance program is actuarially sound.

(v) Title. The Borrower has valid legal and beneficial title to, or a valid leasehold interest in, the personal property and other assets and revenues thereof (including the Project Revenues and the Trust Estate) on which it purports to grant Liens pursuant to the Indenture Documents, in each case free and clear of any Lien of any kind, except for Permitted Liens.

(w) No Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the Project Revenues, or the properties or assets in relation to the Project.

(x) Intellectual Property. The Borrower owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(y) Investment Company Act. The Borrower is not, and after applying the proceeds of the TIFIA Loan will not be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(z) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the TIFIA Lender pursuant to Section 22(c) (*Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(aa) Taxes. Except for 8038 forms required in connection with the issuance of tax-exempt bond, the Borrower is not required to file tax returns with any Governmental Authority. *[Please confirm that all 8038s have been filed]*

(bb) ERISA. Neither the Borrower nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Code.

(cc) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under the Indenture Documents, and this Agreement, (ii) all delay payments and insurance proceeds in respect of any casualty loss (other than any proceeds of business interruption insurance, delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) received by the Borrower or to which the Borrower is entitled in accordance with the applicable insurance policies and Principal Project Contracts, and (iii) all funds available under any other unused funding that is committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(dd) Sovereign Immunity. The Borrower and, to the Borrower's knowledge, each other Borrower Related Party, either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower or such other Borrower Related Party under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder, or, to the extent that the Borrower and, to the Borrower's knowledge, any other Borrower Related Party, has such immunity, the Borrower and, to the Borrower's knowledge, each such Borrower Related Party, has waived such immunity pursuant to Section 16(t) (*Immunity*).

(ee) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

Section 15. Representations and Warranties of TIFIA Lender. The TIFIA Lender represents and warrants that:

(a) Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

Section 16. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(b) Copies of Documents. The Borrower shall furnish to the TIFIA Lender a copy of any draft documents and final offering documents (including any Indenture Documents) and cash flow projections prepared in connection with the incurrence of any Permitted Debt or other indebtedness subject to approval by the TIFIA Lender pursuant to Section 17(a) (*Indebtedness*), in each case prior to the incurrence of any such Permitted Debt or such other indebtedness, as well as copies of any continuing disclosure documents, prepared by or on behalf of the Borrower in connection with the incurrence of such Permitted Debt or such other indebtedness, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (i) copies of any draft documents relating to the incurrence of Permitted Debt (other than equipment leases and trade accounts included in such definition) at least thirty (30) days prior to the effective date thereof and (ii) copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof. The Borrower shall provide written notice to the TIFIA Lender of the Borrower's intent to enter into an Additional Project Contract and, if such Additional Project Contract is subject to approval by the TIFIA Lender pursuant to Section 17(e) (*Additional Projects Contracts*), shall provide drafts of any such Additional Project Contracts at least thirty (30) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. If the TIFIA Lender requests a copy of any Additional Project Contract that is not subject to approval by the TIFIA Lender, the Borrower shall provide a copy of the final or near final draft of such Additional Project Contract, together with any related contracts, side letters or other understandings, prior to the execution thereof and, if requested by the TIFIA Lender, shall provide to the TIFIA Lender an executed version of such Additional Project Contract, together with any related contracts, side letters or other understandings, promptly following the full execution thereof.

(c) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of the Borrower's industry.

(ii) The Borrower shall ensure that each Construction Contractor complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Construction Contractor to the Borrower or any other Borrower Related Party and shall ensure that any letter of credit provided pursuant to any Construction Agreement meets the requirements therefor set forth in such Construction Agreement.

(iii) The Borrower shall comply with the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320.

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the Toll Road (A) in a reasonable and prudent manner and (B) substantially in accordance with the Financial Plan most recently approved by the TIFIA Lender (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Toll Road), and (ii) maintain the Toll Road in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance.

(i) The Borrower shall at all times maintain or cause to be maintained insurance for the construction of the Toll Road, with responsible insurers, as required by the Principal Project Contracts and as is customarily maintained in the United States of America with respect to works and properties of like character, against accident to, loss of or damage to such works or properties, which shall include liability coverage and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Principal Project Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

(ii) The Borrower shall at all times maintain with responsible insurers or through a program of self-insurance all such insurance on the Toll Road as is customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties.

(iii) To the extent the Borrower elects to self-insure, the Borrower shall deliver to the TIFIA Lender annually a written opinion of an accredited actuary that confirms that the Borrower's self-insurance program is actuarially sound.

(iv) The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium, from any Net Loss Proceeds available for prepayment of the TIFIA Loan in accordance with Section 10(a) (*Mandatory Prepayments*).

(v) The Borrower shall (by self-insuring or maintaining with responsible insurers or by a combination thereof) provide for workers' compensation insurance for Borrower's workers and insurance against public liability and property damage to the Toll Road to the extent reasonably necessary to protect the Borrower and the TIFIA Lender.

(vi) The Borrower shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any Construction Contractor), other than workers' compensation insurance, to reflect the TIFIA Lender as an additional insured to the extent of its insurable interest.

(vii) The Borrower shall deliver to the TIFIA Lender all (A) insurance brokers' letters, and (B) certificates of insurance, in each case promptly after Borrower's receipt thereof and in any event no later than when required to be delivered pursuant to the Master Indenture. Promptly upon request by the TIFIA Lender, the Borrower shall deliver to the TIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower in respect of the Toll Road. All such policies shall be available at all reasonable times for inspection by the TIFIA Lender, its agents and representatives.

(viii) The Borrower shall comply with the insurance requirements of the Indenture Documents and shall deliver to the TIFIA Lender within five (5) Business Days after receipt thereof any certifications or opinions provided to the Borrower pursuant to Section [] of the Master Indenture with respect to the Borrower's program of insurance or self-insurance.

(g) Notice.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit M**;

(B) Events of Default: any Event of Default or any event that, with the giving of notice or the passage of time or both, would constitute an Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in

each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of \$[____], either individually or in the aggregate, and (3) any material notices or filings in respect of any action, petition, suit or proceeding listed in Schedule 14(f);

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any material notice of violation under any Environmental Law related to the Toll Road or any material changes to the NEPA Determination;

(F) Insurance Claim: any insurance claims made by the Borrower or a Construction Contractor in respect of the Toll Road in excess of \$[____] either individually or in the aggregate, to the extent related to the Toll Road or to the extent the proceeds from such insurance claim would be deposited into a Project Account;

(G) Amendments: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any Principal Project Contract or other Related Document at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(H) Principal Project Contract Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Principal Project Contract;

(I) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(J) Project Changes: any (A) change to the Total Project Costs forecasts in excess of [____] percent ([____]%) of total forecasted Total Project Costs or (B) material change to the Construction Schedule;

(K) Ratings Changes: any change in the rating assigned to the Senior Obligations or any Subordinate Obligations by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, the Borrower, or the Project Revenues;

(L) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335; and

(M) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in Section 16(g)(i) (*Notice*).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 16(g)(i) (*Notice*) (other than in Section 16(g)(i)(A) (*Substantial Completion*), Section 16(g)(i)(G) (*Amendments*), or Section 16(g)(i)(K) (*Ratings Changes*) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) No Lien Extinguishment or Adverse Amendments. Borrower shall not, without the prior written consent of the TIFIA Lender, either (i) extinguish the lien on the Trust Estate, except as provided under the Master Indenture, (ii) amend, modify, supplement or grant or receive any waiver with respect to any Related Document in a manner that could adversely affect the TIFIA Lender in connection with the TIFIA Loan or (iii) terminate, assign, amend or modify, or waive timely performance by the Borrower or any other party of material covenants under, the Construction Agreement or any other Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender copies of any proposed amendments to any Related Document at least 30 days prior to the effective date thereof.

(j) Maintain Legal Structure. The Borrower shall maintain its existence as a public entity organized under the laws of the State.

(k) Annual Rating. The Borrower shall, [commencing in 20[___]], no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the Senior Obligations, including the TIFIA Bond, by a Nationally Recognized Rating Agency, together with the rating report or letter delivered by such Nationally Recognized Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.

(l) Project Accounts; Permitted Investments.

(i) The Borrower shall maintain the accounts within the Senior Obligations Reserve Fund in an amount equal to the applicable Senior Obligations Reserve Requirement in accordance with the provisions of this Agreement and the

applicable Indenture Documents. Amounts in the Senior Obligations Reserve Fund shall be made available to ensure the timely payment of Senior Debt Service on the Senior Obligations.

The Borrower agrees that the TIFIA Debt Service Reserve Requirement will be funded from Pledged Revenues, and if such Pledged Revenues are insufficient therefor, from a Borrower's loan. The Borrower shall maintain the TIFIA Debt Service Reserve Account in an amount equal to the TIFIA Debt Service Reserve Requirement in accordance with the provisions of this Agreement and Indenture Documents.

(ii) To the extent not provided in Section 16(l)(i) (*Project Accounts; Permitted Investments*), the Borrower shall cause the other Reserve Accounts to be funded in such amounts and under such conditions as are required by this Agreement and the Indenture Documents.

(iii) Amounts on deposit in the Project Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Debt Service Reserve Account, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the TIFIA Debt Service Account (or any other debt service account with respect to a Senior Obligation) or in any debt service account in respect of Senior Obligations corresponding to amounts needed for the payment of interest, not later than the next Semi-Annual Payment Date, (C) with respect to Permitted Investments maintained in the TIFIA Debt Service Account (or any other debt service account with respect to a Senior Obligation) or in any debt service account for Senior Obligations corresponding to amounts needed for the repayment of principal, the next Payment Date for repayment of principal in respect of such debt, and (D) with respect to any other Project Accounts, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from the applicable Project Account.

(iv) The Borrower may replace all or a portion of the required balance of any Reserve Account, in accordance with the terms of the applicable Indenture Documents, with a Credit Facility provided by a financial institution with an Acceptable Credit Rating and consented to by the TIFIA Lender, but such Credit Facility cannot be secured by the Project Revenues or Trust Estate. If at any time an issuer of an Acceptable Letter of Credit securing a Reserve Account ceases to be a Qualified Issuer, the Borrower shall cause such letter of credit to be replaced by a new Acceptable Letter of Credit within thirty (30) Business Days of the date on which the current issuer ceased to be a Qualified Issuer, or the Trustee shall be permitted to immediately draw the full amount of such letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account. Any new Acceptable Letter of Credit shall have the same terms and conditions (including expiration date and face amount) as the letter of credit being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit securing a Reserve Account is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit with a new Acceptable Letter of Credit at least ten (10) Business Days prior to the stated expiry date

of the existing letter of credit and such new Acceptable Letter of Credit shall be in an amount equal to at least the amount of expiring letter of credit. If the Borrower fails to provide such new Acceptable Letter of Credit by the date required above, the Trustee shall be permitted to immediately draw the full undrawn amount of the existing letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account.

(m) Deposits to the Distribution Lock-up Fund. Commencing on the Substantial Completion Date and thereafter [on the last Business Day of each month], the Borrower shall cause to be deposited in the Distribution Lock-up Fund, all Pledged Revenues remaining after the deposits required by Section 8(d)(i) through and including (xi) (*Security and Priority; Flow of Funds*) have been made in full. [In accordance with Section [] of the Master Indenture, upon the later of (a) the [Final Completion Date] (as defined in the Construction Agreement) and (b) the date of the final disbursement of the TIFIA Loan, the Borrower shall cause any amounts remaining in the Project Fund to be transferred to the Reserve Accounts, in the following order of priority, (i) Senior Obligations Reserve Fund up to the Senior Obligations Reserve Requirement, (ii) Subordinate Obligations Reserve Fund up to the Subordinate Obligations Reserve Requirement, (iii) Operation and Maintenance Reserve Fund up to the Operation and Maintenance Reserve Fund Requirement and (iv) Major Maintenance Reserve Fund up to the Major Maintenance Reserve Requirement.]

(n) Rate Coverage. (i) The Borrower shall, subject to the remainder of this paragraph, fix, charge and collect rates and charges for use of the Toll Road such that Net Revenues in the first Calculation Period after the Substantial Completion Date and for each Calculation Period through the Final Maturity Date are sufficient to produce, subject to Section 16(n)(iii) (*Rate Coverage*):

(A) a Senior Debt Service Coverage Ratio of at least one hundred thirty-five percent (135%) in each such Calculation Period;

(B) a Total Debt Service Coverage Ratio of at least one hundred twenty-five percent (125%) in each such Calculation Period;

(C) a Senior Loan Life Coverage Ratio of at least one hundred thirty-five percent (135%); and

(D) an amount equal to one hundred percent (100%) of the deposits required to be made in Section 8(d)(i) through and including (xiii) (*Security and Priority; Flow of Funds*).

Section 16(n)(i)(A), (B), (C) and (D) are collectively referred to herein as the “**Rate Coverage Test**”.

(ii) Commencing on the third Calculation Date after the Substantial Completion Date and on each Calculation Date thereafter, the Borrower shall calculate each of the ratios contained in the Rate Coverage Test (a) as of such Calculation Date and for each of the two (2) immediately preceding Calculation Dates and (b) for each Calculation Date or Calculation Period, as applicable, through the Final Maturity Date.

(iii) For purposes of the Rate Coverage Test calculations set forth in clause (ii) above, the Borrower shall be credited with amounts available in the Distribution Lock-up Fund, notwithstanding the fact that such amounts are not included within the definition of Net Revenues. The Borrower shall be credited with amounts available in the Distribution Lock-up Fund but not released from the Distribution Lock-up Fund solely to the extent necessary to comply with each of the ratios within the Rate Coverage Test until the fifth anniversary of the Substantial Completion Date. Each such credit against the Distribution Lock-up Fund shall be deemed a release therefrom for purposes of the Rate Coverage Test during such period, such that the amount credited will not be available for any future credit under the Rate Coverage Test. In no event shall the Borrower be credited with amounts available in the Distribution Lock-up Fund for any calculation related to the Restricted Payment Conditions.

(iv) If in any (A) Coverage Certificate delivered pursuant to Section 16(o) (*Coverage Certificate*) or (B) Financial Plan delivered to the TIFIA Lender pursuant to Section 22(a)(iv) (*Financial Plan*), the Borrower determines, as of any such Calculation Date that (1) the Senior Debt Service Coverage Ratio or the Total Debt Service Coverage Ratio portions of the Rate Coverage Test was not satisfied for each of the two (2) previous Calculation Periods, or (2) projected Net Revenues may be inadequate to satisfy the Rate Coverage Test for any Calculation Period until the Final Maturity Date, the Borrower shall:

- (I) within thirty (30) days after the end of the Calculation Period during which the Rate Coverage Test was not satisfied, in the case of clause (ii)(a) above, or within thirty (30) days after the calculation (or, if applicable, the submission of the Financial Plan) demonstrating a prospective shortfall in satisfying the Rate Coverage Test, engage the Traffic Consultant to review and analyze the operations of the Toll Road and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Revenues so as to satisfy the Rate Coverage Test for future Calculation Periods,
- (II) cause the Traffic Consultant to issue its report, including any such recommended actions, no later than one hundred eighty (180) days from the date the Rate Coverage Test was not satisfied, and
- (III) either implement the Traffic Consultant's recommendations or undertake an alternative course of action after demonstrating to the TIFIA Lender's satisfaction the manifest errors contained in the Traffic Consultant's recommended actions, or to the extent agreed upon by the TIFIA Lender, undertake an alternative course of action that will ensure the Borrower's ability to meet its payment obligations under this Agreement.

(v) Subject to the following clause (vi), failure to comply with the Rate Coverage Test shall not constitute an Event of Default if either (A) the Borrower

complies with the covenant described in clause (vii) of this Section 16(n) (*Rate Coverage*) or (B) the Traffic Consultant provides a written opinion stating that the actions required in order to produce the required Net Revenues are impracticable at that time. For purposes of this subsection, “impracticable” means (x) such actions would not result in an increase in Net Revenues that is sufficient to comply with the Rate Coverage Test, (y) the economic cost of taking such actions exceeds the economic benefit resulting from such actions or (z) the Borrower does not have sufficient available funds to pay the cost of taking such actions.

(vi) Notwithstanding clause (v) above, a failure to comply with the Rate Coverage Test (excluding Section 16(n)(i)(D) (*Rate Coverage*)), for a period of eighteen (18) consecutive months shall require prepayment of the TIFIA Loan in accordance with Section 10(a)(v) (*Mandatory Prepayments*).

(vii) If any study conducted pursuant to clause (iv) of this Section 16(n) (*Rate Coverage*) concludes that actions with respect to the operation of the Toll Road and tolls, fees and charges for using the Toll Road will not provide sufficient Net Revenues in each subsequent Fiscal Year to comply with the Rate Coverage Test, the Borrower shall use its best efforts to collect revenues from other legally available sources or to reduce debt service expenses such that the Borrower will be able to comply with the Rate Coverage Test.

(viii) Beginning on the Substantial Completion Date, the Borrower shall fix, charge and collect tolls, fees, rentals and other charges for the use of, and for services furnished by, the Toll Road (including revising such tolls, fees, rentals and other charges as may be necessary or appropriate), in accordance with the Toll Policy to (i) generate sufficient revenues to sustain the financial viability of the Toll Road and (ii) ensure all covenants in the financing documents are satisfied. Notwithstanding the preceding sentence, the Borrower shall not amend or otherwise change the Toll Policy in a manner that could potentially reduce Project Revenues unless the Borrower delivers to the Trustee and the TIFIA Lender a report from the Traffic Consultant stating that Project Revenues in each Calculation Date through the Final Maturity Date are projected to produce (x) Senior Debt Service Coverage Ratios that are not less than one hundred fifty percent (150%), (y) Total Debt Service Coverage Ratios that are not less than one hundred thirty-five percent (135%) and (z) Senior Loan Life Coverage Ratios that are not less than one hundred fifty percent (150%).

(o) Coverage Certificate. No later than ten (10) Business Days after each Calculation Date, the Borrower shall furnish to the TIFIA Lender a certificate signed by the Borrower’s Authorized Representative certifying as to (i) the Senior Debt Service Coverage Ratio, the Total Debt Service Coverage Ratio and the Senior Loan Life Coverage Ratio as of such Calculation Date and for each of the two (2) immediately preceding Calculation Dates and (ii) the projected Senior Debt Service Coverage Ratio, the projected Total Debt Service Coverage Ratio and the projected Senior Loan Life Coverage Ratio for each of the Calculation Dates immediately succeeding such Calculation Date through the Final Maturity Date (a “**Coverage Certificate**”). Each Coverage Certificate shall be in form and substance

satisfactory to the TIFIA Lender and shall include the Borrower's calculation of each such coverage ratio in reasonable detail.

(p) Application of Certain Reserves to Pay Debt Service; Replenishment of Reserves. If there are deficiencies with the deposits described in Section 8(d)(iii) through (ix) (*Security and Priority; Flow of Funds*), pursuant to Section [] of the Master Indenture, the Trustee shall transfer funds (i) first, with respect to the Senior Obligations, in the following order of priority, from the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund to the Senior Obligations Fund and Senior Obligations Reserve Fund; provided, however, that if there are insufficient funds in the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund to fully replenish all such deficiencies, the amounts on deposit in the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund shall be applied *pro rata* based on the Outstanding principal amount of Senior Obligations, and (ii) second, with respect to the Subordinate Obligations, in the following order of priority, from the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund to the Subordinate Obligations Fund and Subordinate Obligations Reserve Fund; provided that if there are insufficient funds in the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund to fully replenish all such deficiencies, the amounts on deposit in the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund shall be applied *pro rata* based on the Outstanding principal amount of Subordinate Obligations.

(q) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Pledged Revenues or the Borrower's other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the Pledged Revenues or the Trust Estate; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(r) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(s) Events of Loss; Loss Proceeds.

(i) If an Event of Loss shall occur with respect to the Toll Road or any part thereof, the Borrower shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all Loss Proceeds stemming from such event in accordance with Section 16(s)(ii) (*Event of Loss; Loss Proceeds*) and, to the extent applicable, Section 10(a)(ii) (*Mandatory Prepayments*).

(ii) The Borrower shall apply all Loss Proceeds as provided in Section [] of the Master Indenture. The Borrower shall cause the relevant insurers, reinsurers and Governmental Authorities, as applicable, to pay all Loss Proceeds directly to the Trustee as loss payee and, if paid to the Borrower, shall be received in trust and for the benefit of the Trustee segregated from other funds of the Borrower, and shall be paid over to the Trustee in the same form as received (with any necessary endorsement).

(t) Immunity. To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

(u) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the TIFIA Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(v) Major Maintenance Reserve Fund Requirements. The Borrower shall comply with applicable requirements of the Master Indenture relating to the funding of, and application of amounts on deposit in the Major Maintenance Reserve Fund.

(w) Operating Agreement. The Borrower shall seek to extend the term of the Operating Agreement if necessary in order to ensure that the Operating Agreement remains valid throughout the term of the Secured Obligations.

(x) Cargo Preference Act. Pursuant to 46 C.F.R. Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Toll Road:

At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial

ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(y) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 C.F.R. Part 20.

Section 17. Negative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Except for Additional Senior Obligations described in paragraph (a) and (b) of the definition “Additional Senior Obligations”, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness of any kind payable from or secured by the Trust Estate or Project Revenues; provided, that the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur any Variable Interest Rate Obligations.

(ii) Prior to the incurrence of Permitted Debt described in clauses (b) or (e) of the definition thereof, the Borrower shall provide to the TIFIA Lender a certificate signed by the Borrower’s Authorized Representative, demonstrating to the TIFIA Lender’s satisfaction that such proposed indebtedness is authorized pursuant to this Section 17(a) (*Indebtedness*) and satisfies the applicable requirements under the definitions of “Permitted Debt” and “Additional Senior Obligations,” as applicable.

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, either (i) extinguish or impair the Liens on the Trust Estate granted pursuant to the Master Indenture, (ii) amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender’s determination) in connection with the TIFIA Loan, (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender’s determination) in connection with the TIFIA Loan, or (iv) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender’s determination). Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification or supplement to any Related Document within five (5) Business Days after execution thereof.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Toll Road, the Trust Estate, the Project Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Principal Project Contract, unless pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) Distributions from the Distribution Lock-up Fund.

(i) Except as expressly set forth in this Section 17(d) (*Distributions from the Distribution Lock-up Fund*), the Borrower shall not at any time release, transfer or make payments, or permit the Trustee to release, transfer or make payments from amounts on deposit in the Distribution Lock-up Fund or any account therein.

(ii) Prior to the first Calculation Date immediately succeeding the fifth anniversary of the Substantial Completion Date, amounts on deposit in the Distribution Lock-up Fund shall only be used to replenish a deficiency first in the Senior Obligations Reserve Fund and second in the Subordinate Obligations Reserve Fund.

(iii) Commencing on the first Calculation Date immediately succeeding the fifth anniversary of the Substantial Completion Date and on each Calculation Date thereafter, amounts on deposit in the Distribution Lock-up Fund may be applied at the direction of the Borrower:

(A) (I) to replenish a deficiency first in the Senior Obligations Reserve Fund and second in the Subordinate Obligations Reserve Fund to the extent that amounts on deposit in the Pledged Account are insufficient therefor in accordance with Section 16(p) (*Application of Certain Reserves to Pay Debt Service; Replenishment of Reserves*), (II) to any other Project Accounts (other than the Pledged Account or the Unpledged Account) to satisfy any deficiency in any such Project Account, or (III) for the redemption or prepayment of Senior Obligations and the TIFIA Bond, provided that such prepayment or redemption shall be made pro rata among the Senior Obligations and the TIFIA Bond on the basis of the respective Outstanding principal amounts thereof which may be currently prepaid or redeemed and

(B) after any deposits required pursuant to subclause (A) and upon satisfaction by the Borrower of the Restricted Payment Conditions set forth below, to the Pledged Account and the Unpledged Account (collectively, the transfers referred to in this Section 17(d)(iii)(B) (*Distributions from the Lock up Account*) are referred to herein as the "**Restricted Payments**"); provided, however that transfers to the Unpledged Account are further subject to the provisions of clause (vii) of this Section 17(d) (*Distributions from the Distribution Lock-up Fund*) below.

(iv) The Borrower shall not make, nor permit to be made, any Restricted Payments prior to the fifth anniversary of the Substantial Completion Date. On and after the fifth anniversary of the Substantial Completion Date, Restricted Payments can only be made if the Borrower shall have delivered to the TIFIA Lender a certificate of the Borrower's Authorized Representative (including calculations in reasonable detail of the applicable coverage ratios) certifying as of the two recent Calculation Dates that the following conditions have been satisfied (the "**Restricted Payment Conditions**"):

(A) no Event of Default, or any event that with the giving of notice or the passage of time, or both, would constitute an event of default, has occurred and is continuing under the TIFIA Loan Documents, any other Related Document or documentation for other Secured Obligations (if any), or, in each case, would occur as a direct result of the applicable transfer;

(B) the Reserve Accounts are each fully funded at their respective requirements;

(C) no default under the Principal Project Contracts;

(D) the Borrower is not insolvent and would not be rendered insolvent by the making of such proposed Restricted Payment;

(E) (I) the Senior Debt Service Coverage Ratio as of such Calculation Dates is equal to at least one hundred thirty-five percent (135%), (II) the Total Debt Service Coverage Ratio as of such Calculation Date is equal to at least one hundred twenty-five percent (125%), and (III) the Senior Loan Life Coverage Ratio as of such Calculation Date is equal to at least one hundred thirty-five percent (135%);

(F) (I) the Senior Debt Service Coverage Ratio projected for each of such Calculation Date through the Final Maturity Date is equal to at least one hundred forty percent (140%), (II) the Total Debt Service Coverage Ratio projected for each of such Calculation Date through Final Maturity is equal to at least one hundred thirty percent (130%), and (III) the Senior Loan Life Coverage Ratio projected for each of such Calculation Date through the Final Maturity Date is equal to at least one hundred forty percent (140%);

(G) the TIFIA Debt Service is being paid on a current basis and no due and payable amounts of TIFIA Debt Service from any prior periods remain unpaid; and

(H) Second anniversary of TIFIA Debt Service Payment Commencement Date has occurred.

Any calculation of the Senior Debt Service Coverage Ratio, Total Debt Service Coverage Ratio or Senior Loan Life Coverage Ratio for purposes of Section 17(d)(iv) (*Distributions from the Distribution Lock-up Fund*) shall be based solely on Net Revenues and shall disregard

amounts available under any amounts available under any liquidity support arrangement or in any Reserve Account.

(v) Any time there is a deficiency in the Senior Obligations Reserve Fund or the Subordinate Obligations Fund, such deficiency shall be replenished first from the Pledged Account and second from the Distribution Lock-up Fund in accordance with Section 16(p) (*Application of Certain Reserves to Pay Debt Service; Replenishment of Reserves*).

(vi) In addition, at the direction of the Borrower, amounts on deposit in the Pledged Account may be upon satisfaction of the requirements in the following sentence, transferred at any time to a new account within the Project Accounts to pay costs of improvements to the Project or any Additional Project (which Additional Project satisfies the requirements of Section 17(f) (*Additional Projects*)). Prior to transferring any amounts from the Pledged Account to the Project Accounts, the Borrower shall deliver to the TIFIA Lender, no earlier than ten (10) Business Days and no later than three (3) Business Days prior to the proposed transfer, a certificate signed by the Borrower's Authorized Representative certifying as to the matters contemplated in clauses (i) through (iv) above, including a Coverage Certificate providing calculations in reasonable detail of the applicable coverage ratios. The Borrower shall only apply amounts on deposit in the Pledged Account for costs of an Additional Project in accordance with the provisions hereof and of the Master Indenture.

(vii) Fifty percent (50%) of the amounts to be deposited in the Unpledged Account shall be transferred to the TIFIA Loan Prepayment Account so that in accordance with Section 10(a)(i) (*Mandatory Prepayments*), the Borrower shall prepay a portion of the TIFIA Bond. Amounts in the Unpledged Account can be used for any lawful purpose of the Borrower.

(e) Additional Project Contracts. The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) that commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower of, amounts that either: (i) exceed \$2,500,000 in any Borrower Fiscal Year, or (ii), alone or when aggregated with the other Total Project Costs or Operation and Maintenance Expenses, as applicable, in the same line item of the applicable budget set forth in the Financial Plan most recently approved by the TIFIA Lender, would cause aggregate Total Project Costs or Operation and Maintenance Expenses, as applicable, for such line item in any Borrower Fiscal Year to exceed the amounts for such line item for any Borrower Fiscal Year reflected in the budget in the Financial Plan most recently approved by the TIFIA Lender.

(f) Additional Projects. The prior written approval of the TIFIA Lender shall be required for any Additional Project.

(g) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the Toll Road, a substantial portion of the assets included in the Toll Road, or its rights and obligations under any Related Document, in each case unless

such sale, lease or assignment (i) could not reasonably be expected to result in a Material Adverse Effect, and (ii) is made by the Borrower in the ordinary course of business.

(h) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Master Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

(i) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, the Borrower shall not (i) sell or transfer any property or assets constituting part of the Toll Road to, or purchase or acquire any property or assets of, any other Governmental Authority for inclusion as part of the Toll Road except in accordance with Section 17(f) (*Additional Projects*), or (ii) otherwise engage in any other transactions in connection with the Toll Road with, any other Governmental Authority (including any other Governmental Authority of or in the State) the terms and provisions of which are materially adverse to the Borrower or the Toll Road or that could reasonably be expected to result in a Material Adverse Effect.

(j) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or the Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Government.

(k) Change in Legal Structure; Mergers and Acquisitions. The Borrower shall not, and shall not agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person, other than purchases or other acquisitions of inventory or materials or spare parts or Major Maintenance Expenditures, each in the ordinary course of business in compliance with the annual budget set forth in the Financial Plan most recently approved by the TIFIA Lender; or

(ii) reorganize, consolidate with, or merge into another Person unless (A) such merger or consolidation is with or into another entity established and Controlled by Caltrans, and, in each case, including reorganization, does not adversely affect or impair to any extent or in any manner (1) the Pledged Revenues or other elements of the Trust Estate, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such

reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender.

(l) No Defeasance of TIFIA Bond. The Borrower shall not defease the TIFIA Bond pursuant to the Master Indenture without the prior written consent of the TIFIA Lender.

(m) OFAC Compliance. The Borrower shall not (and shall cause each other Borrower Related Party not to):

(i) violate (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act, (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State, or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or

(ii) be a Person (A) that is charged with, or that has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws, (B) that is convicted of any violation of, is subject to civil or criminal penalties pursuant to, has any of its property seized or forfeited under, or enters into any agreement with the Government or a state or local government related to violations of, any such laws, (C) that is named on the list of “Special Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list), (D) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law, (E) that is owned, Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this Section 17(m)(ii) (*OFAC Compliance*), or (F) 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, anti-money laundering and anti-corruption laws of the United States of America and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

The Borrower shall not knowingly make a payment, directly or indirectly, to any Principal Project Party that has violated any of the laws referenced in Section 17(m)(i) (*OFAC Compliance*) or that is a Person described in Section 17(m)(ii) (*OFAC Compliance*).

(n) Hedging and Variable Interest Rate Obligations. The Borrower shall not enter into any Hedging Transaction or Variable Interest Rate Obligation without the prior written approval of the TIFIA Lender.

(o) Operations and Maintenance Expenses. The Borrower shall not increase in any year the aggregate amount of Operation and Maintenance Expenses by more than 10% over the amount shown for such expenditures in the prior year as shown in the Base Case Financial Model, without the TIFIA Lender's prior written consent. No consent shall be required for the following purposes, provided that the Borrower submits a written explanation for the increase over 10% together with a Written Engineer's Certificate stating that such expenditures were necessary and permitted hereunder: (i) reasonably unforeseen expenditures to the extent necessary to pay for compliance with emergency expenses; (ii) reasonably unforeseen expenditures to the extent necessary to be made to cause the Project to be in compliance with any applicable mandatory requirement imposed by a Governmental Authority; (iii) expenses and reasonably incurred as a result of increased vehicular traffic greater than that shown in the Traffic and Revenue Study, (iv) expenses related to collection of unpaid Toll Revenues; or (v) expenditures necessary to be in compliance with Section [5.05] of the Master Indenture.

(p) No Prohibited Business. The Borrower shall not at any time engage in any business or activity other than as authorized the laws of the State.

(q) Distributions from the Operation and Maintenance Reserve Fund and the Major Maintenance Reserve Fund. The Borrower shall not at any time release, transfer or make payments, or permit the Trustee to release, transfer or make payments from amounts on deposit in Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund if Pledged Revenues are insufficient to pay Senior Debt Service or Subordinate Debt Service. If the Borrower fails to make any of the deposits described in clauses (iii) through (ix) of Section 8(d) (*Security and Priority; Flow of Funds*), the Borrower, or the Trustee upon instruction by the Borrower, shall transfer any funds available, (i) first, with respect to the Senior Obligations, in the following order of priority: the Pledged Account, Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund, and (ii) second, with respect to the Subordinate Obligations, in the following order of priority: the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund, in each case in the order of priority provided in Section 8(d)(iii) through (ix) (*Security and Priority; Flow of Funds*).

Section 18. Indemnification. To the extent permitted by law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Toll Road; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines,

penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnatee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 18 (*Indemnification*) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 18 (*Indemnification*). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnatee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 18 (*Indemnification*) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 18 (*Indemnification*) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 18 (*Indemnification*)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 19. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. After such date, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 19 (*Sale of TIFIA Loan*). Such sale or reoffering shall be on such terms as the TIFIA Lender shall deem advisable. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 30 (*Amendments and Waivers*). The TIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 19 (*Sale of TIFIA Loan*) shall not (x) obligate the TIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

Section 20. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any of the principal amount of or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*), and any mandatory prepayment required pursuant to the provisions of Section 10(a) (*Mandatory Prepayments*)), when and as the payment thereof shall be required under this Agreement or the TIFIA Bond or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, or (B) the Borrower’s knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(ii) (*Covenant Default*), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided further, that if such failure is due to there being an insufficient amount in any of the Reserve Accounts, then no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(ii) (*Covenant Default*) for a period of twelve (12) months.

(iii) Development Default. A Development Default shall occur and such Development Default shall not be cured within thirty (30) days thereafter; provided that no Event of Default shall be deemed to have occurred and be continuing by reason of a Development Default pursuant to clause (a) of the definition thereof, if and so long as within such thirty (30) day period, the Borrower demonstrates to the TIFIA Lender’s reasonable satisfaction (which demonstration shall include certification by the Independent Engineer) that (A) the Borrower is proceeding with the construction of the Project with due diligence and will achieve Substantial Completion by the projected Substantial Completion Date and (B) the Borrower has sufficient funds to pay all construction costs under the Development Agreement. If a Development Default shall occur and is not cured, to the extent provided in the preceding sentence, the TIFIA Lender may (1) suspend the disbursement of TIFIA Loan proceeds under this Agreement and (2) pursue such other remedies as provided in this Section 20 (*Events of Default and Remedies*). If so requested by the TIFIA Lender in connection with a Development Default, the Borrower shall immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 20(a)(iv) (*Misrepresentation Default*) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 14(h) (*No Debarment*), Section 14(j) (*Compliance with Federal Requirements*), Section 14(k) (*Transportation Improvement Program*), Section 14(q) (*OFAC; Anti-Corruption Laws*), or Section 14(dd) (*Patriot Act*);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Senior Obligations. Any acceleration shall occur of the maturity of any Senior Obligation, or any such Senior Obligation shall not be paid in full upon the final maturity thereof.

(vi) Cross Default. (A) Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the Indenture Documents, or made in or delivered pursuant to the documents (the “**Other Loan Documents**”) under which any Senior Obligation is created or incurred, shall prove to be false or misleading in any material respect (each an “**Other Indebtedness Misrepresentation Default**”), or any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Indenture Documents or the Other Loan Documents, and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Indenture Documents or the Other Loan Documents (as the case may be) with respect to such default (each an “**Other Indebtedness Covenant Default**”), if the effect of such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default shall be to permit the immediate acceleration of the maturity of any or all of the Senior Obligations, and, in the

case of any such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default, the Borrower shall have failed to cure such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of such Senior Obligations.

(B) The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Related Document or any Related Document shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Related Document, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(vi)(B) (*Cross Default*) if, in the case of any termination of a Principal Project Contract, the Borrower replaces such Principal Project Contract with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness and experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the TIFIA Lender) and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender) and (3) effective as of the date of termination of the Principal Project Contract being replaced.

(vii) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$[1,000,000] (inflated annually by CPI) that are payable from Project Revenues and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(viii) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a public entity unless at or prior to the time the Borrower ceases to exist in such form a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of the Borrower and has assumed all of the obligations of the Borrower under the TIFIA Loan Documents and the Indenture Documents, including the payment of all Secured Obligations.

(ix) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to any Borrower Related Party (other than the Borrower)

or any Principal Project Party, excluding (1) a Construction Contractor or a Guarantor to the extent the Bankruptcy Related Event does not constitute a default under Section 16.1.1(n) and (o) of the Construction Agreement, and (2) in the case of a Bankruptcy Related Event occurring with respect to such Construction Contractor or such Guarantor that constitutes a default under Sections 16.1.1(n) or (o) of the Construction Agreement, the Borrower provides the TIFIA Lender with a plan acceptable to the TIFIA Lender in its sole discretion within thirty (30) days immediately following the occurrence of such Bankruptcy Related Event to (I) replace the relevant Construction Contractor or Guarantor, (II) in the case of a Bankruptcy Related Event with respect to a Construction Contractor, to complete the Project with the non-defaulting Construction Contractors, or (III) in the case of a Bankruptcy Related Event with respect to any Guarantor, cause a letter of credit to be provided by a Qualified Issuer for the benefit of the Borrower, which letter of credit shall not be secured by, or payable from, Pledged Revenues and which secures the obligations guaranteed by such Guarantor, and in each case the Borrower executes such plan in accordance with its terms.

(x) Project Abandonment. The Borrower shall abandon the Toll Road.

(xi) Invalidity of TIFIA Loan Documents. (A) Any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable; or any Borrower Related Party contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby.

(xii) Cessation of Operations. Operation of all or a portion of the Toll Road shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated) and the Borrower shall either be self-insured in an amount sufficient to cover, or shall have in force an insurance policy or policies under which the Borrower is entitled to recover amounts sufficient to pay (and may use such amounts to pay) all Senior Debt Service, TIFIA Debt Service and costs and expenses of the Borrower during such cessation of operations.

(b) Upon the occurrence of an Event of Default described in Section 20(a)(iii) (*Development Default*), all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall immediately be deemed terminated.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement

of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (A) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (B) declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the TIFIA Bond or the other TIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 20 (*Events of Default and Remedies*) shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all of which shall survive any such action.

Section 21. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Toll Road-related transactions (including collection of Pledged Revenues, and any other revenues attributable to the Toll Road, and TIFIA Loan requisitions received and disbursements made with regard to the Toll Road), so that audits may be performed to ensure compliance with and

enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 21(b) (*Accounting and Audit Procedures; Inspections; Reports and Records*) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 21(b) (*Accounting and Audit Procedures; Inspections; Reports and Records*) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. Unless otherwise required pursuant to 49 C.F.R. § 18.42, the Borrower shall maintain and retain all files relating to the Toll Road, the Project Revenues and the TIFIA Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Toll Road, the Project Revenues, the TIFIA Loan or this Agreement is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and the Borrower. The Borrower shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Toll Road or the Project Revenues that the TIFIA Lender may reasonably request from time to time.

(d) Copies of Secured Obligation Related Notices. The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Nationally Recognized Rating Agency that has provided, or is being requested to provide, a rating with respect to the Toll Road or any indebtedness of the Borrower that is or will be secured by or paid from the Project Revenues, (ii) all notices and other written communications, other than those that are non-substantive or ministerial in nature, received by it from the Trustee or any Bondholder, and (iii) all reports, notices and other written materials, other than those that are non-substantive or ministerial in nature, required to be sent to the Trustee or any Bondholder under the Indenture Documents, including all such notices, other than those that are non-substantive or ministerial in nature, relating to any of the Principal Project Contracts; unless, in each case, the TIFIA Lender notifies the Borrower that any such reports, notices and/or other written materials no longer need to be provided.

(e) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in 2017 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 C.F.R. § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Toll Road or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 22. Financial Plan, Statements, and Reports.

(a) Financial Plan. The Borrower shall provide to the TIFIA Lender and the FHWA Division Office, within sixty (60) days after the Effective Date and annually thereafter not later than ninety (90) days after the beginning of each Borrower Fiscal Year, a Financial Plan. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model. The Financial Plan shall not reflect amortization of Senior Obligations until such time as all currently accruing interest on the TIFIA Loan is being paid in full. The initial and each subsequent Financial Plan delivered hereunder shall be subject to approval by the TIFIA Lender.

(i) The Financial Plan shall be prepared in accordance with recognized financial reporting standards, such as those in the “Guide for Prospective Financial Information” of the American Institute of Certified Public Accountants, as amended from time to time, and shall be in form and substance satisfactory to the TIFIA Lender.

(ii) The Financial Plan shall include: (A) a certificate signed by the Borrower’s Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower’s knowledge and belief; (B) a certificate signed by the Borrower’s Authorized Representative demonstrating that annual projected Net Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Rate Coverage Test established pursuant to Section 16(n) (*Rate Coverage*); and (C) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, in substantially the form of the Base Case Financial Model, based upon assumptions and projections with respect to the Pledged Revenues, expenses and other financial aspects of the Toll Road that shall reflect the prior experience and current status of the Toll Road, and the expectations of the Borrower with respect to the Toll Road, as of the most recent practicable date prior to the delivery of such Revised Financial Model.

(iii) For the period through the Substantial Completion Date, the Financial Plan shall:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since

the previous Financial Plan, discuss reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the preceding Financial Plan;

(B) provide updates to the Construction Schedule, including (1) an update, if any, to the Projected Substantial Completion Date and an explanation of any such adjustment and (2) an update, if any, to the Final Maturity Date (but in no event shall the Final Maturity Date be later than the date that is thirty-five (35) years following the Substantial Completion Date;

(C) identify major milestones for each phase of the Project and compare current milestone dates with the milestone dates in the Construction Schedule and in the preceding Financial Plan, and discuss reasons for changes in Project milestones;

(D) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss reasons for and implications of the funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(E) provide an updated cash flow schedule showing annual cash needs versus available revenue and funding to meet those needs and identify any potential revenue and funding shortfalls, and addressing contingency measures that will or may be taken to address any shortfalls;

(F) based on the updated cash flow schedule, provide projected Senior Debt Service Coverage Ratios and Total Debt Service Coverage Ratios through the Final Maturity Date;

(G) provide cost containment strategies and risk mitigation plans that have been or may be implemented to address factors that are affecting or could affect the scheduled completion or financial viability of the Project;

(H) provide the total value of approved changes in Project design or scope, and provide a listing of each individual change valued at \$[5,000,000] or more, setting forth the rationale or need for the proposed change and describing the impact of such change on the Project;

(I) to the extent that any Hedging Transactions are then in effect, report on the notional amounts covered by such Hedging Transactions; and

(J) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative executive summary of the topics described in clauses (A) through (I) above since the Effective Date and since the preceding Financial Plan, describing in reasonable detail all material matters that may affect the future

performance of the Borrower's obligations under this Agreement, including any adjustment to the Projected Substantial Completion Date, and the causes thereof.

(iv) For the period following the Substantial Completion Date until repayment of the TIFIA Loan in full, the Financial Plan shall:

(A) provide an updated cash flow schedule showing annual cash inflows (Project Revenues, interest and other income) and outflows (Operation and Maintenance Expenses, Major Maintenance Expenditures, Senior Debt Service, TIFIA Debt Service, replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls;

(B) report on variances during the prior Borrower Fiscal Year between the actual Operation and Maintenance Expenses and Major Maintenance Expenditures incurred and the budgeted Operation and Maintenance Expenses and Major Maintenance Expenditures as shown in the Financial Plan for such prior Borrower Fiscal Year, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more;

(C) provide current and estimated amounts of Pledged Revenues received and the amounts deposited into each of the accounts and subaccounts established under the Indenture Documents and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts;

(D) provide an updated budget for Operation and Maintenance Expenses and Major Maintenance Expenditures for the current Borrower Fiscal Year;

(E) provide an updated schedule of actual and projected Net Revenues, showing actual and projected Senior Debt Service Coverage Ratios and Total Debt Service Coverage Ratios, and report on variances during the prior Borrower Fiscal Year between the Pledged Revenues actually received and the budgeted Pledged Revenues as shown in the Financial Plan for such prior Borrower Fiscal Year, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more;

(F) provide a schedule of then current toll rates, receipts, and charges and all returns, fees or moneys constituting Project Revenues and planned increases thereto;

(G) to the extent that any Hedging Transactions are then in effect, report on the notional amounts and mark to market values under such Hedging Transactions; and

(H) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative executive summary of the topics described in clauses (A) through (G) above since the Effective Date and since the preceding Financial

Plan, including in reasonable detail (i) an explanation of any variances in costs or revenues in comparison to the Base Case Financial Model and the preceding Financial Plan, and (ii) a description of any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof, including traffic and revenue reports, operational contracts, and third-party transactions.

(b) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the TIFIA Lender with written notification at least [thirty (30)] days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than [\$10,000,000], which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the TIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(c) Financial Statements. The Borrower shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(B) as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the TIFIA Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP (or in the case of non-U.S. Persons, substantially equivalent principles) applied

consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(d) Officer's Certificate. The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 22(c) (*Financial Statements*), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event that, with the giving of notice or the passage of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

Section 23. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with the FHWA Oversight Agreement. The Borrower's oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the FHWA Oversight Agreement, which may be amended from time to time upon mutual agreement of the Borrower and the FHWA Division Office, or when so required by federal statute or otherwise required by the Congress. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation or other information as shall be requested by the TIFIA Lender, or its agents, including any independent engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender the documentation described below.

(i) Monthly Construction Progress Report. On or before the last Business Day of any calendar month during the Construction Period, a report executed by a Borrower's Authorized Representative that:

(A) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar month and the amount of Total Project Costs estimated to be required to complete the Project;

(B) provides a demonstration that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project;

(C) provides an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule;

(D) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently approved by the TIFIA Lender;

(E) provides a detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems;

(F) specifies the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule;

(G) specifies any proposed or pending change orders;

(H) specifies any material changes or deviations from the Borrower's land procurement plans or schedule;

(I) includes a copy of each report delivered by a Construction Contractor to the Borrower that has not previously been delivered to the TIFIA Lender in a prior report delivered pursuant to this Section 23(b)(i) (*Monthly Construction Progress Report*); and

(J) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause the Construction Contractor to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any Construction Contractor's performance of its obligations under the Construction Agreement to which such Construction Contractor is a party.

(ii) Annual Operating Budget. The Borrower shall submit (A) no later than 30 days prior to the commencement of each Borrower Fiscal Year, an operating plan and a preliminary budget and (B) not later than the first day of each Borrower Fiscal Year, a final budget, in each case, on a cash flow basis of projected traffic, Pledged Revenues, Operation and Maintenance Expenses, Major Maintenance Expenditures, interest, and other costs for the next Borrower Fiscal Year (collectively, an "**Annual Operating Budget**"), each prepared by the Borrower in good faith and accompanied by a certificate of the Borrower's Authorized Representative to the effect that such officer has no reason to believe that it is incorrect or misleading in any material respect, based upon information then known by such Authorized Representative.

(iii) Quarterly Traffic and Operating Report. For the period commencing after the Substantial Completion Date, deliver to the TIFIA Lender, not later than ninety (90) days after the end of each financial quarter, a traffic and operating report showing (A) the operating data for the Toll Road for the previous financial quarter, including total Pledged Revenues received and total Operation and Maintenance Expenses and Major Maintenance Expenditures incurred, (B) the variances for such period between the Pledged Revenues actually received and the budgeted Pledged Revenues as shown in the Financial Plan most recently approved by the TIFIA Lender, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more, and (C) the variances for such period between the actual Operation and Maintenance Expenses incurred and the budgeted Operation and Maintenance Expenses as shown in the Financial Plan, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more.

(iv) Requested Information. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver to the TIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Toll Road or the Project Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements related to the acquisition or control of any Toll Road right-of-way.

(c) Toll Road Operations. For the period following the Substantial Completion Date, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Toll Road's operations and, as the TIFIA Lender may request from time to time, to receive reporting on the operation and management of the Toll Road, and copies of any contracts relating to the operation, maintenance, and safety services for the Toll Road. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation, or other information requested by the TIFIA Lender. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender, to carry out the provisions of this Section 23(c) (*Toll Road Operations*), and the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring, including the costs of any financial oversight advisor, shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

(d) Independent Engineer. The Borrower shall retain an Independent Engineer throughout the term of this Agreement. The Independent Engineer shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower of its obligations under this Agreement and the Related Documents. The Borrower may replace the Independent Engineer, subject to the TIFIA Lender's right to object to any replacement Independent Engineer in accordance with this Section 23(d) (*Independent Engineer*). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days advance written notice of any proposed replacement of the Independent Engineer, together with supporting information concerning the qualifications of the proposed replacement Independent Engineer. The proposed replacement Independent Engineer shall become the Independent Engineer thirty (30) Business Days following the date

of the notice provided by the Borrower under this Section 23(d) (*Independent Engineer*), unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Borrower's notice. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed replacement Independent Engineer. The Borrower shall pay for all services performed by the Independent Engineer.

Section 24. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 25. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the TIFIA Lender, the Servicer (if any), the Executive Director, and the Government harmless, to the extent permitted by law and in accordance with Section 18 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

Section 26. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 27. TIFIA Lender's Authorized Representative.

(a) The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, and the further delegation of authority, dated August 31, 2016 (the "**Delegation**"), the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 28. Servicer. The TIFIA Lender may from time to time designate another entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 29. Fees and Expenses.

(a) Commencing in Federal Fiscal Year 2017 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the fifteenth (15th) of November. The TIFIA Lender shall establish the amount of this annual fee, and the TIFIA Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the fee, the TIFIA Lender will adjust the previous year's base amount in proportion to the percentage change in CPI. For the FFY 2017 calculation, the TIFIA Lender will use the FFY 2017 base amount of \$13,000, which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time-to-time, within thirty (30) days after receipt of any invoice from the TIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys' and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under, this Agreement, any other Related Document, or the Trust Estate, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder; and

(iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 29 (*Fees and Expenses*) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 30. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 31. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 32. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 33. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender.

Section 34. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 35. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 36. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 37 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 37. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to TIFIA Lender:

Build America Bureau
United States Department of
Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of
Credit Programs
Email: BureauOversight@dot.gov

with copies to:

Federal Highway Administration
California Division Office
650 Capitol Mall, Suite 4-100
Sacramento, California 95814
Attention: []

Servicer (at address provided
below)

If to Borrower:

Orange County Transportation
Authority
550 South Main Street
P.O. Box 14184
Orange, California 92863
Attention: []
Email: []

If to Servicer:

[Name]
[Address]
Attention: [_____]
Email: [_____]

With copies to:

[Insert relevant parties]

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(g) (*Manner of Payment*) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time-to-time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 37 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 37 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 38. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 39. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 18 (*Indemnification*), the reporting and record keeping requirements of Section 21(b) (*Inspections*) and Section 21(c) (*Reports and Records*), and the payment requirements of Section 29 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 40. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
Name: _____
Title: _____

UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and
through the Executive Director of the Build
America Bureau

By: _____
Name: _____
Title: _____

SCHEDULE I

PROJECT BUDGET

[To be provided by Borrower]

SCHEDULE II
CONSTRUCTION SCHEDULE

[To be provided by Borrower]

SCHEDULE 14(f)
LITIGATION

SCHEDULE 14(u)

INSURANCE

[To be provided by Borrower]

EXHIBIT A
FORM OF TIFIA BOND
ORANGE COUNTY TRANSPORTATION AUTHORITY
I-405 IMPROVEMENT PROJECT

(TIFIA – 2017[])
TIFIA BOND

Maximum Principal Amount: \$ [627,000,000]
(excluding capitalized interest)

Effective Date: _____

Due: _____

ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity duly organized under the laws of the State of California (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(g) (*Manner of Payment*) and Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. [If the Final Maturity Date is amended in connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 22(a)(iii)(B) (*Financial Plan*) of the TIFIA Loan Agreement,

Exhibit A-1

the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.]³

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “**TIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Loan Agreement.

Payment of the obligations of the Borrower under this TIFIA Bond is secured pursuant to the Master Indenture referred to in the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

³ To be included when the TIFIA Lender has agreed to a Final Maturity Date that is a defined anniversary of the Substantial Completion Date. Pursuant to the Act, the Final Maturity Date cannot be later than the 35th anniversary of the Substantial Completion Date. The actual number of years will be determined as part of the TIFIA Lender’s underwriting process.

IN WITNESS WHEREOF, [BORROWER] has caused this TIFIA Bond to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

(SEAL)

By: _____

Name: _____

Title: _____

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Master Indenture.

[NAME OF TRUSTEE]

By: _____
(Authorized Signer)

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns
and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B
ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

<u>Borrower Fiscal Year</u>	<u>Amount</u>
	\$

EXHIBIT C

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS— PRIMARY COVERED TRANSACTIONS

The undersigned, on behalf of ORANGE COUNTY TRANSPORTATION AUTHORITY, hereby certifies that the ORANGE COUNTY TRANSPORTATION AUTHORITY has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement, dated as of [Dated Date], between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____

Name:

Title:

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as Appendix One to this **Exhibit D**. Supporting documentation should be submitted with the requisition.

The TIFIA Lender agrees to promptly send to the Borrower in accordance with Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as Appendix Two to this **Exhibit D** setting forth the date of receipt by the TIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the TIFIA Lender. All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the TIFIA Lender, the TIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid

and the most recent certificate of or report prepared by the Independent Engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

The TIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or with good engineering practices, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or

(iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 13(b) (*Conditions Precedent to All Disbursements*) of the TIFIA Loan Agreement; or

(v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request

in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

United States Department of Transportation
c/o Director, TIFIA Joint Program Office (HITJ)
Federal Highway Administration
Room E64-426
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
California Division Office
[Address]
Attention: Division Administrator

[Loan Servicer]
[Address]
[Attention]

Re: [] PROJECT (TIFIA # [])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [Dated Date] (the “**TIFIA Loan Agreement**”), by and between ORANGE COUNTY TRANSPORTATION AUTHORITY (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [].
2. The requested date of disbursement is [] 15, 20[] (the “**Disbursement Date**”), which is the first Business Day following [] 15, 20[].
3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, \$[]. The amounts previously disbursed and to be disbursed under the Senior Loan Agreements as of the date of the requested disbursement equal, in the aggregate, \$[]. The amounts previously disbursed and to be disbursed under the [applicable funding document] as of the date of the requested disbursement equal, in the aggregate, \$[]. [Prior to or simultaneously herewith the undersigned has requisitioned a pro rata amount of proceeds from [Senior Obligations] [other funding sources] (in the amount of \$[]) under [the Master Indenture].]

4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan, and the amount of this Requisition together with the sum of all disbursements of TIFIA Loan proceeds made and to be made for the current year will not exceed the cumulative disbursements through the end of the current year as set forth in the Anticipated TIFIA Loan Disbursement Schedule.
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
7. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
8. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 13(a)(xix) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the TIFIA Lender [and [the FHWA Division Office][*insert other USDOT modal agency office, if applicable*]] and with good engineering practices.
10. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [_____, 20__] and is continuing.⁴

⁴ Insert the date on which the Borrower submitted the Application to the TIFIA Lender.

13. A copy of the most recent certificate or report of the Independent Engineer delivered pursuant to Section [____] of the Master Indenture has been delivered to each of the above named addressees.
14. A copy of the monthly construction progress report pursuant to Section 23(b)(i) (*Monthly Construction Progress Report*) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Government deems appropriate.
16. A copy of this requisition has been delivered to each of the above named addressees.
17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Trustee.]

Date: _____

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____

Name: _____

Title: _____

APPENDIX TWO TO EXHIBIT D

FORM OF ACKNOWLEDGMENT OF RECEIPT OF

REQUISITION FOR DISBURSEMENT OF TIFIA LOAN PROCEEDS

[Borrower name and address]

Re: Receipt of Requisition for Disbursement of TIFIA Loan Proceeds

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [Dated Date], by and between Orange County Transportation Authority (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), the undersigned authorized representative of the TIFIA Lender hereby acknowledges receipt of the attached Requisition for Disbursement of TIFIA Loan proceeds (the “**Requisition**”) from the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection therewith, we hereby represent and certify the following:

1. The date of receipt of the Requisition is [_____].
2. Unless this Requisition is denied, disbursement shall be made on or before [_____].

Date: [__]

On behalf of the TIFIA Lender's Authorized Representative

Name:

Title:

APPENDIX THREE TO EXHIBIT D
[APPROVAL/DISAPPROVAL] OF THE TIFIA LENDER
(To be delivered to the Borrower)

Requisition Number [●] is [approved in the amount of \$[●]] [approved in part in the amount of \$[●]] [not approved]⁵ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [Dated Date], by and between Orange County Transportation Authority (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and
through the Executive Director of the Build
America Bureau

By: _____
TIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

⁵ Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX THREE TO EXHIBIT D

[Insert reasons for any partial or full denial of approval.]

EXHIBIT E

COMPLIANCE WITH LAWS

The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 C.F.R. § 35; 29 C.F.R. § 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*) and 49 C.F.R. § 21;
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*);
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*, as amended by Pub. L. 92-500);
- (ix) The environmental mitigation requirements and commitments made by the Borrower that result in TIFIA Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. § 4332(2)(C)) and issuance of the Record of Decision for the Project;
- (x) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (xi) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xii) The health and safety requirements set forth in 23 C.F.R. § 635.108;
- (xiii) The prevailing wage requirements set forth in 40 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. § 5, 23 C.F.R. §§ 635.117(f) and 635.118, and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- (xiv) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 C.F.R. § 635.410);

- (xv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 C.F.R.;
- (xvi) The Cargo Preference Act of 1954, as amended (46 U.S.C. §1241(b)), and implementing regulations (46 C.F.R. Part 381); and
- (xvii) The applicable requirements of 49 C.F.R. § 26 relating to the Disadvantaged Business Enterprise program.

EXHIBIT F-1

FHWA OVERSIGHT AGREEMENT

EXHIBIT F-2

PROJECT MANAGEMENT PLAN

EXHIBIT G
TIFIA DEBT SERVICE

EXHIBIT H
TIFIA DEBT STRUCTURE

EXHIBIT I

OPINIONS REQUIRED OF COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that: (a) the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization; (b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action, in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) the TIFIA Bond is secured by the Trust Estate and is a Bond entitled to the benefits of a Bond under the Master Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person, (f) the Master Indenture creates the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act, (g) all actions by the Borrower that are required for the use of Pledged Revenues as required under the Indenture and under the TIFIA Loan Agreement have been duly and lawfully made; (h) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Pledged Revenues as required by the terms of the Indenture and the TIFIA Loan Agreement, (i) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower; (j) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; (k) none of the Borrower is an investment company required to register under the Investment Company Act of 1940, as amended; (l) the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; (m) [the Borrower is not entitled to claim governmental immunity in any breach of contract action under the TIFIA Loan Agreement or the TIFIA Bond or by the Trustee under the Indenture Documents] and (n) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against

the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.⁶

⁶ Other opinions to be added as appropriate for the specific project or transaction.

EXHIBIT J
FORECAST OF NET REVENUE

EXHIBIT K

FORM OF CERTIFICATE OF TRUSTEE

ORANGE COUNTY TRANSPORTATION AUTHORITY

**TIFIA Bond,
I-405 Improvement Project
(TIFIA Project Number)**

The undersigned, [_____] (the “**Trustee**”), by its duly appointed, qualified and acting [_____] , certifies with respect to the above referenced bond (the “**TIFIA Bond**”) dated as of [_____] , 20[___], as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Master Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of [_____].
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained and are in full force and effect.
3. That the documents pertaining to the issuance of the TIFIA Bond to which the Trustee is a party were executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Master Indenture (“**Trusts**”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section [____] of that certain Master Indenture (the “**Indenture**”), dated as of [May 1], 2017, between Orange County Transportation Authority (the “**Borrower**”) and the Trustee.
7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [____], 2017 (the “**TIFIA Loan Agreement**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Bondholder**”).
8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee [and of Bond Registrar and Paying Agent] for and in respect of the TIFIA Bond as set forth in the Master Indenture and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Section [____] of the Master Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Section [____] of the Master Indenture.
9. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Master Indenture (including, but not limited to, [*insert name of account designated for TIFIA Debt Service*]) have been established as provided in the Master Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [____], 20[__]

[TRUSTEE]

By: _____

Its:

ANNEX ONE TO EXHIBIT K
OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT K
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT L
FORM OF BORROWER'S OFFICER'S CERTIFICATE

[TO BE UPDATED CLOSER TO CLOSING OF THE LOAN]

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 20[____] (the "TIFIA Loan Agreement"), by and among the Orange County Transportation Authority (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

The undersigned, [____], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 13(a)(iii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit A are complete and fully executed copies of each Indenture Document[, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date,] and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the TIFIA Lender in its sole discretion;
- (b) pursuant to Section 13(a)(viii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (c) [pursuant to Section 13(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit C is a true, correct and complete copy of the Borrower's Traffic and Revenue Study, accompanied by a letter from the preparer of such study, certifying that the assumptions and projections contained in the Traffic and Revenue Study are reasonable and may be relied upon by the TIFIA Lender;]
- (d) pursuant to Section 13(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit D are true, correct and complete copies of each Principal Project Contract that has been executed on or prior to the Effective Date (as listed below), and each such Principal Project Contract is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Exhibit D:

- 1. [Construction Agreement]; and
- 2. [Others];

- (e) the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (f) pursuant to Section 13(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit E is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [____], (iii) demonstrates a Senior Loan Life Coverage Ratio for each Calculation Date through the Final Maturity Date that is not less than [____], [(iv) *other coverage ratios as applicable*], [(i)v] does not reflect (1) the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (2) the payment of any interest on any Subordinate Obligations before the Debt Service Payment Commencement Date, or (3) the commencement of amortization of the principal amount of any Subordinate Obligations before the commencement of amortization of the principal amount of the TIFIA Loan;
- (g) pursuant to Section 13(a)(xvi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit F is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;
- (h) pursuant to Section 13(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is [_____] and attached hereto as Exhibit G-1 is evidence thereof, (ii) the Borrower's Data Universal Numbering System number is [____], and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as Exhibit G-2 is evidence of each of (ii) and (iii);
- (i) [pursuant to Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit H are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of Section 13(a)(xviii) of the TIFIA Loan Agreement;]⁷
- (j) pursuant to Section 13(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as (i) Exhibit I-1 is a copy of each Borrower Related Party Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the [certificate], (ii) Exhibit I-2 is a copy of all resolutions authorizing each Borrower Related Party to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such

⁷ Subject to modification to the extent that the Borrower utilizes a self-insurance program.

resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower Related Parties relating to the matters described therein, and (iii) as Exhibit I-3 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents;

- (k) pursuant to Section 13(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit J are complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instruments is in compliance with the requirements for such performance security instrument pursuant to the applicable Principal Project Contract and is in full force and effect;
- (l) the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;
- (m) (i) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs; and
- (n) [*other attachments and provisions, as may apply to the specific TIFIA Loan Agreement*].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____

Name:

Title: Authorized Person

EXHIBIT B TO EXHIBIT L

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of [____], a [____], (the “Borrower”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the [TIFIA Loan Documents] and/or the [Indenture Documents] as the Borrower’s Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this ____ day of [____], 20[____].

[_____]

By: _____
Name:
Title:

EXHIBIT M
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

TIFIA Joint Program Office (HITJ)
Federal Highway Administration
Room E64-426
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director

Project: *[Project Name]* *[TIFIA Project Reference Number]*

Dear Director:

This Notice is provided pursuant to Section 16(g)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “TIFIA Loan Agreement”), dated as of *[Dated Date]*, by and between Orange County Transportation Authority (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the TIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the TIFIA Lender that:

- (a) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[Insert reference to the concession agreement, design-build or similar agreement for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

[Borrower’s Authorized Representative]

By: _____
Name:
Title:

EXHIBIT N
CERTIFICATION REGARDING LOBBYING

**CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF
APPROPRIATED FUNDS FOR LOBBYING**

The undersigned, on behalf of the ORANGE COUNTY TRANSPORTATION AUTHORITY, hereby certifies, to the best of his or her knowledge and belief, that ORANGE COUNTY TRANSPORTATION AUTHORITY:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the TIFIA Loan.

(b) If any funds other than proceeds of the TIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the TIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including the Additional Principal Project Contracts, subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Terms not otherwise defined herein shall have the meaning ascribed thereto in the TIFIA Loan Agreement, dated _____, 2017, between the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau and the Orange County Transportation Authority.

Dated: _____

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
Name:
Title:

MASTER INDENTURE

between

ORANGE COUNTY TRANSPORTATION AUTHORITY

and

US BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

Dated as of June 1, 2017

Orange County Transportation Authority
I-405 Improvement Project Toll Revenue Obligations

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This MASTER INDENTURE, dated as of June 1, 2017 (this "Master Indenture"), between the ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity duly existing under the laws of the State of California (as further defined herein, the "Authority"), and US BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (together with any successor thereto the "Trustee");

WITNESSETH:

WHEREAS, the Authority has been designated to act as a local transportation authority duly organized and existing pursuant to the Local Transportation Authority and Improvement Act, being Division 19 of the Public Utilities Code of the State of California (Section 180000 *et seq.*), as amended (the "Act");

WHEREAS, the Authority is authorized pursuant to the Act to, among other things, and with voter approval, levy a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code (the "Sales Tax Act") and to issue limited tax bonds payable from the proceeds of such tax;

WHEREAS, the Authority adopted Ordinance No. 3, named the "Renewed Measure M Transportation Ordinance and Investment Plan" (the "Ordinance") on July 24, 2006, pursuant to the provisions of the Act, which Ordinance provides for the imposition of a retail transactions and use tax (the "Sales Tax") applicable in the incorporated and unincorporated territory of the County in accordance with the provisions of the Sales Tax Law at the rate of one-half of one percent (1/2%) for a period of thirty (30) years;

WHEREAS, by its terms, the Ordinance became effective on November 8, 2006, the day after the election at which the proposition imposing the Sales Tax was approved by more than two-thirds of the electors voting on the measure;

WHEREAS, collection of the Sales Tax by the State Board of Equalization of the State of California commenced on April 1, 2011;

WHEREAS, the Ordinance empowers the Authority to issue, from time to time, on or before commencement of the collection of the Sales Tax, bonds or other evidences of indebtedness in order to finance and refinance improvements authorized by the Ordinance;

WHEREAS, the Authority is authorized by the Act to issue from time to time limited tax bonds (defined to include indebtedness and securities of any kind or class, including commercial paper notes), secured and payable in whole or in part from revenues of the Sales Tax ("Sales Tax Revenues");

WHEREAS, the execution and delivery of this Indenture has in all respects been duly and validly authorized by resolutions duly passed and approved by the Authority; and

WHEREAS, the Authority has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Indenture do exist, have happened and have been

performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Indenture;

WHEREAS, Streets and Highways Code Section 149.7 of the State of California (the “Tolling Act”) authorizes the Authority to set, levy and collect tolls, user fees, or other similar charges, payable for use of the toll lanes and other facilities on the tolled portion of the I-405 Improvement Project (as further defined herein, the “Toll Road”) following approval therefor by the California Transportation Commission, which approval was given on May 18, 2016, and to issue one or more series of bonds or other obligations (as further defined herein, the “Obligations”) pursuant to the terms and conditions of a resolution adopted by the Board of the Authority, which Obligations may be payable from the proceeds of such tolls (as further defined herein, the “Toll Revenues”) and any other Revenue pledged hereunder;

WHEREAS, the Tolling Act authorizes the Obligations to be issued for the purpose of financing the planning, design, development, financing, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance, or any combination of these, with respect to tolled and nontolled facilities, structures, onramps, connector roads, bridges, utilities, equipment and roadways that are on, necessary for, or related to the construction or operation of the portion of Interstate 405 between the SR71 north to Interstate 605 (as more fully defined herein, the “I-405 Improvement Project”);

WHEREAS, Caltrans and the Authority have negotiated and entered into a cooperative agreement for Design-Build of the I-405 Improvement Project, by and between the Authority and Caltrans (as further defined herein, the “Caltrans DB Cooperative Agreement”);

WHEREAS, the Authority will set, levy, and collect tolls, user fees and similar charges for the use of the Toll Road pursuant to the toll policy adopted by the Authority on May 23, 2016 (the “Toll Policy”), and apply the Toll Revenues to the financing or payment of the I-405 Improvement Project’s design, construction, operation and maintenance, including the funding of reserves;

WHEREAS, the Authority determined that it is necessary to issue Obligations, including the TIFIA Loan (as defined herein), to (i) pay or reimburse the Authority for the payment of a portion of the Project Costs (as hereinafter defined), and (ii) apply for or otherwise obtain available federal, state and local matching funds, loans and grants to make additional funds available for the I-405 Improvement Project, including Sales Tax Revenues and the proceeds of limited tax bonds secured by and payable from Sales Tax Revenues;

WHEREAS, the Authority has determined to enter into this Master Indenture and one or more Supplemental Indentures (collectively, the “Indenture”) to provide for (i) the authentication and delivery of Senior Lien Bonds, entitled “Orange County Transportation Authority Toll Revenue Senior Lien Bonds,” to establish and declare the terms and conditions upon which the Senior Lien Bonds and other obligations secured by toll revenues and other sources of funds, shall be issued and secured and to secure the payment of the principal, premium (if any), and interest on the Senior Lien Bonds, secured by toll revenues on a parity with the Senior Lien Bonds (collectively, the “Senior Lien Bonds”); and (ii) the authentication and delivery of Subordinate Obligations, entitled “Orange County Transportation Authority Toll Revenue Subordinate Obligations,” to establish and declare the terms and conditions upon which the Subordinate Obligations and other obligations secured by toll revenues and other sources of funds shall be issued and secured and to secure the payment of the

principal, premium (if any), and interest on the Subordinate Obligations, secured by toll revenues on a parity basis with the Subordinate Obligation, all on a subordinate basis with the Senior Lien Bonds (collectively, the "Subordinate Lien Obligations");

WHEREAS, the execution and delivery of this Master Indenture has in all respects been duly and validly authorized by resolution duly passed and approved by the Authority; and

WHEREAS, the Authority certifies that all acts that are necessary to make the Obligations, when executed by the Authority and authenticated and delivered by the Trustee, duly issued and the valid, legal and binding obligations of the Authority payable in accordance with their terms, and to constitute this Master Indenture a valid and binding agreement of the parties hereto, have been done and taken, and the execution and delivery of this Master Indenture have been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

The Authority, to secure the payment of the Obligations as the same become due and payable, whether at maturity or by prior redemption, and the performance and observance of all of the covenants and conditions herein contained, and in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Obligations by the Holders thereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority does hereby grant, mortgage, grant a security interest in, assign, transfer in trust, and pledge to the Trustee, and to its successors in trust hereunder, and to them and their assigns forever, all rights, title, interest and privileges of the Authority in, to and under (i) the Toll Revenues, (ii) all interest or other income from investment of money in the Funds and Accounts established hereunder (excluding the Rebate Fund, the Unpledged Account and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument), and (iii) all amounts (including the proceeds of Obligations) held in each Fund and Account established under this Indenture (except for amounts on deposit in the Rebate Fund, the Unpledged Account and amounts on deposit in any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument);

TO HAVE AND TO HOLD all the same (herein called the "Trust Estate") with all privileges and appurtenances hereby granted and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth,

FIRST: for the equal and proportionate benefit and security of all Senior Lien Bonds, including the TIFIA Bond, all of which, regardless of the time or times of their delivery, maturity or other due date, shall be of equal rank without preference, priority or distinction as to lien or otherwise of any Senior Lien Obligation over any other Senior Lien Obligation, except as otherwise permitted by or provided for in this Indenture or in a Supplemental Indenture; provided, that any funds held by the Trustee for the payment of specific Senior Lien Bonds which are deemed to have been paid pursuant to the provisions of Article X and any funds deposited with the Trustee hereunder specifically to be held in escrow or otherwise to provide additional security or an additional source of payment for specified Senior Lien Bonds shall be held and used only to pay or provide security for the Senior Lien Bonds for which such deposit was made and shall not be held as security on a parity

for any other Senior Lien Bonds; and provided further, that the Trustee shall apply the Trust Estate hereunder to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to the Senior Lien Bonds and for the purposes and uses and in the order of priority set forth herein prior to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to Subordinate Obligations or other Obligations; and

SECOND: subject to the security interest in the Trust Estate pledged for the security and payment of the Senior Lien Bonds, for the equal and proportionate benefit and security of all Subordinate Obligations, all of which, regardless of the time or times of their delivery, maturity or other due date, shall be of equal rank without preference, priority or distinction as to lien or otherwise of any Subordinate Lien Obligation over any other Subordinate Lien Obligation, except as otherwise permitted by or provided for in this Indenture or in a Supplemental Indenture; provided, that any funds held by the Trustee for the payment of specific Subordinate Obligations which are deemed to have been paid pursuant to the provisions hereof and any funds deposited with the Trustee hereunder specifically to be held in escrow or otherwise to provide additional security or an additional source of payment for specified Subordinate Obligations shall be held and used only to pay or provide security for the Subordinate Obligations for which such deposit was made and shall not be held as security on a parity for any other Subordinate Obligations; and provided further, that the Trustee shall apply the Trust Estate hereunder to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to the Subordinate Obligations and for the purposes and uses and in the order of priority set forth herein subordinate to the payment of the Senior Lien Bonds but prior to the payment of the principal of and interest on, or Maturity Value of, and other payments with respect to other Obligations;

PROVIDED, HOWEVER, that if the Authority, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Obligations and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Obligations according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient for payment of the entire amount due or to become due thereon as herein provided, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, terminate and be void except as otherwise provided herein.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Obligations issued and secured hereunder are to be issued, authenticated and delivered and all payments, revenues, income and funds hereby pledged and assigned, and are subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Authority has agreed and covenanted, and does hereby covenant and agree with the Trustee, for the benefit of the owners from time to time of the Obligations issued hereunder and the Secured Creditors, as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. In addition to terms elsewhere defined in this Indenture, the following terms shall have the following meanings unless the context or use clearly indicates another meaning. These definitions shall apply to the singular and plural forms of these defined terms.

“Account” means each account established in accordance with the terms of this Indenture.

“Accreted Value” means, with respect to any Capital Appreciation Obligations or Convertible Capital Appreciation Obligations, the principal amount thereof plus the interest accrued thereon at and prior to the maturity or earlier redemption thereof, in the case of a Capital Appreciation Obligation, or at and prior to the date of conversion of such Obligation to a Current Interest Obligation, in the case of a Convertible Capital Appreciation Obligation, compounded on the basis of a 360-day year of twelve 30-day months at the approximate interest rate thereon on each compounding date specified therein. The Accreted Value of an Obligation at any date of computation shall be an amount equal to the principal amount of such Obligation plus interest accrued thereon from the date of issuance, such interest to accrue at the rate per annum established as provided in a Supplemental Indenture and be compounded periodically, plus, if such date of computation shall not be a compounding date, the ratable portion of the difference between the Accreted Value computed as of the immediately preceding compounding date (or the date of issuance thereof if the date of computation is prior to the first compounding date succeeding the date of issuance) and the Accreted Value computed as of the immediately succeeding compounding date, calculated based on the assumption that the Accreted Value increases during any period in equal daily amounts (with straight-line interpolation between compounding dates).

“Act” means Division 19 of the Public Utilities Code of the State of California (Section 180000 *et seq.*), as amended.

“Additional Project” shall mean any addition, acquisition, improvement, betterment, extension or equipping of or relating to either the Project or any other project of the Authority that has become part of the Toll Road and which is so designated by the Authority in a resolution of the Board a copy of which is delivered to the Trustee and consented to by the TIFIA Lender as provided in the TIFIA Loan Agreement.

“Annual Debt Service” means the amount of payments due on the applicable Outstanding Obligations for any Calculation Period, as calculated by the Authority, utilizing the following assumptions about payments on such Obligations (and if more than one such assumption may apply, using the relevant assumptions selected by the Authority):

(i) in determining the principal amount of an Obligation due in each year, payment shall be assumed to be made in accordance with the amortization schedule established for such principal, including any minimum sinking fund or account payments;

[(ii) if 40 percent or more of the principal of a Series of Obligations is not due until the final stated maturity of that Series of Obligations, the principal of and interest on such Obligations may be treated as if such principal and interest were due based upon a level amortization of such principal and interest over the term of that Series of Obligations;]

(iii) if an Outstanding Obligation bears a variable interest rate, the interest rate shall be assumed to be the greater of (a) the daily average interest rate during the 12 months ending with the month preceding the date of calculation, or during such shorter period that the Obligation has been Outstanding, or (b) the rate of interest on that Obligation on the date of calculation;

(iv) if Obligations proposed to be issued will be variable interest rate obligations, the interest on which is excluded from gross income for federal income tax purposes, then such obligations shall be assumed to bear interest at an interest rate equal to the average SIFMA Index during the three months preceding the month of calculation, or if SIFMA Index is no longer published, at an interest rate equal to 75% of the average One Month USD LIBOR Rate during that three month period, or if the One Month USD LIBOR Rate is not available for such period, another similar rate or index selected by the Authority and, for so long as the TIFIA Lender is the holder of an Outstanding Obligation, acceptable to the TIFIA Lender;

(v) if Obligations proposed to be issued will be variable interest rate obligations the interest on which is included in gross income for federal income tax purposes, then such obligations shall be assumed to bear interest at an interest rate equal to the average One Month USD LIBOR Rate during the three months preceding the month of calculation, or if the One Month USD LIBOR Rate is not available for such period, another similar rate or index selected by the Authority and, for so long as the TIFIA Lender is the holder of an Outstanding Obligation, acceptable to the TIFIA Lender;

[(vi) if any of the Obligations are Short-Term Put Obligations, the principal of such obligations may be treated as if such principal were due based upon a 30-year level amortization of principal from the date of calculation and the interest on such obligations may be calculated as if such obligations were variable interest rate Obligations;]

(vii) principal and interest payments on Obligations may be excluded to the extent such payments are to be paid from amounts then currently on deposit with the Trustee or another fiduciary in escrow specifically and irrevocably therefor and interest payments on any Obligations may be excluded to the extent that such interest payments are to be paid from capitalized interest held by the Trustee or another fiduciary specifically to pay such interest, including amounts held on deposit to pay capitalized interest on one or more Series of Obligations;

(viii) any payment obligation under an Obligation that was or is optional or contingent, whether or not the option is exercised or the contingency occurs, and any payments that are not scheduled payments, may be excluded;

(ix) if any of the Obligations are, or upon issuance will be, obligations payable in a currency other than lawful currency of the United States of America, then such obligations shall be assumed to be payable in lawful currency of the United States at the rate payable by the Authority pursuant to the Authority's related currency swap or contract entered into in connection with such obligations or, in the absence of such swap or contract, at the rate determined by the Authority using a currency market conversion factor selected by the Authority; and

(x) in the case of the TIFIA Bond, Annual Debt Service thereon shall include only annual TIFIA Mandatory Debt Service.

“Annual Operating Budget” means the annual budget required by Section 6.04 hereof.

“Authority” means the Orange County Transportation Authority, a public entity duly established and existing under the laws of the State of California, and any successor thereto.

“Authorized Denominations” means, with respect to a Series of Obligations, the denomination or denominations designated as such in a Supplemental Indenture providing for the issuance of such Obligations.

“Authorized Representative” means the Chief Executive Officer of the Authority, the Executive Director of Finance and Administration, the Treasurer or any other person designated by the Chief Executive Officer of the Authority and who has been identified in a Certificate of the Authority delivered to the Credit Provider (if any) and the Trustee by the Chief Executive Officer of the Authority and whose signature has likewise been certified to the Credit Provider and the Trustee.

“Beneficial Owner” means, with respect to any Book-Entry Obligation, the beneficial owner of such Book-Entry Obligation as determined in accordance with the applicable rules of the Securities Depository for such Book-Entry Obligations.

“Board” means the Board of Directors of the Authority.

“Bond Counsel” means a firm of nationally-recognized attorneys-at-law experienced in legal work relating to the issuance of municipal bonds selected by the Authority.

“Bond Obligation” means, as of any given date of calculation, (a) with respect to any Outstanding Current Interest Obligation, the principal amount of such Obligation, and (b) with respect to any Outstanding Capital Appreciation Obligation or Convertible Capital Appreciation Obligation, the Accreted Value thereof.

“Bond Register” means the registration books for the ownership of Obligations maintained by the Trustee pursuant to Section 2.08.

“Bondholder” or **“Holder”** or **“Owner”** means the record owner of any Obligation shown on the books of registration kept by the Trustee, which, during any period when such Obligation is a Book-Entry Obligation, shall be the Securities Depository or its Nominee.

“Book-Entry Obligations” means Obligations issued under a book-entry only depository system as provided in Section 2.13.

“Business Day” means any day, other than a Saturday, Sunday or other day on which the Government or banks are authorized or obligated by law or executive order to be closed in the State of California or the State of New York or in any city in which the Principal Office of the Trustee is located, or, with respect to any Obligations secured by a Credit Support Instrument, the office where draws are to be made on a Credit Provider is located.

“Calculation Date” means each June 30 and December 31, or, if such day is not a Business Day, the next succeeding Business Day, commencing with such date following the Substantial Completion Date.

“Calculation Period” means a period of consecutive twelve (12) months.

“Caltrans” means the California Department of Transportation.

“Caltrans DB Cooperative Agreement” means that certain cooperative agreement (District Agreement No. 12-697) for Design-Build of the I-405 Improvement Project, dated as of June 30, 2015, by and between the Authority and Caltrans, setting forth, among other things, the manner in which the initial phase of the I-405 Improvement Project will be constructed using the design-build method of procurement.

“Capital Appreciation Obligations” means the Obligations designated as Capital Appreciation Obligations in the Supplemental Indenture providing for the issuance of such Obligations and on which interest is compounded and paid at maturity or on prior redemption.

“Certificate of the Authority” means an instrument in writing signed by an Authorized Representative of the Authority.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.

Senior Lien Bonds **“Completion Obligations”** means any Obligations incurred for the purpose of financing the completion of the I-405 Improvement Project for which Obligations theretofore shall have been incurred in accordance with the provisions hereof, to the extent necessary to complete the I-405 Improvement Project, in the manner and scope contemplated at the time that such Obligations theretofore incurred were originally incurred, and, to the extent the same shall be applicable, in accordance with the general plans and specifications for the applicable Project, as originally prepared with only such changes as have been made in conformance with the Financing Documents pursuant to which such Obligations theretofore incurred were originally incurred.

“Consulting Engineer” means an independent engineer or engineering firm, or an affiliate thereof, nationally recognized as being experienced with determining the costs of construction, operation, maintenance, repair, and/or replacement of facilities similar to the Project.

“Continuing Disclosure Agreement” means, with respect to each Series of Obligations requiring an undertaking regarding disclosure under Rule 15c2-12, the continuing disclosure undertaking entered into by the Authority and, if applicable, the Trustee or a Dissemination Agent or both, as the same may be supplemented, modified or amended in accordance with its terms.

“Convertible Capital Appreciation Obligations” means Obligations that initially are issued as Capital Appreciation Obligations, but later convert to Obligations on which interest is paid periodically. Convertible Capital Appreciation Obligations shall be Capital Appreciation Obligations until the conversion date and from and after such conversion date shall no longer be Capital Appreciation Obligations, but shall be treated as Current Interest Obligations having a principal amount equal to their Accreted Value on the conversion date.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the Authority and related to the authorization, execution, sale and delivery of Obligations, including, but not limited to, advertising and printing costs, costs of preparation and

reproduction of documents, filing and recording fees, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees and expenses, underwriting fees and discounts, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of such Obligations, surety, insurance, liquidity and credit enhancements costs, and any other cost, charge or fee incurred in connection with the issuance of Obligations.

“Coverage Calculation Date” has the meaning assigned in Section 5.03(b).

“Coverage Ratio” has the meaning assigned in Section 5.03(b).

“Credit Provider” means any municipal bond insurance company, bank or other financial institution or organization or group of financial institutions or organizations providing a Credit Support Instrument for a Series of Obligations.

“Credit Support Instrument” means a policy of insurance, letter of credit, line of credit, standby purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a Credit Provider provides credit or liquidity support with respect to, or available for, the payment of interest, principal or Purchase Price of any Series of Obligations, as the same may be amended from time to time pursuant to its terms, and any replacement therefor.

“CTC” means the California Transportation Commission.

“Current Interest Obligations” means Obligations designated as Current Interest Obligations in the Supplemental Indenture providing for the issuance of such Obligations and that pay interest to the Holders thereof on a periodic basis prior to maturity. Current Interest Obligations also include Convertible Capital Appreciation Obligations after their conversion date.

“Defeasance Securities” means noncallable: (i) U.S. Treasury certificates, notes, bills and bonds, including State and Local Government Series securities; (ii) direct obligations of the U.S. Treasury which have been stripped by the U.S. Treasury itself; (iii) Resolution Funding Corp. securities (“REFCORP”), provided, however, only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable; (iv) pre-refunded municipal bonds rated the same level as U.S. Treasury Notes and Bonds by Moody’s and by S&P, provided, however, that if such municipal bonds are rated only by S&P, then such pre-refunded municipal bonds must have been pre-refunded with cash, direct United States or United States guaranteed obligations; (v) obligations issued by the following agencies, which are backed by the full faith and credit of the United States: (a) Farmers Home Administration (FmHA) - certificates of beneficial ownership; (b) General Services Administration - participation certificates; (c) U.S. Maritime Administration - Guaranteed Title XI financing; (d) Small Business Administration guaranteed participation certificates and guaranteed pool certificates; (e) GNMA guaranteed MSB and participation certificates; and (f) U.S. Department of Housing and Urban Development (HUD) Local Authority Bonds, or (vi) certain obligations of government-sponsored agencies that are not backed by the full faith and credit of the United States limited to: (a) Federal Home Loan Mortgage Corp. (FHLMC) debt obligations; (b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks, and Banks for Cooperatives) consolidated system-wide bonds and notes; (c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations; (d) Federal National Mortgage Association (FNMA) debt obligations; (e) Student Loan Marketing Association (SLMA) debt

obligations; and (f) Financing Corp. (FICO) debt obligations; and (g) other obligations approved by the Rating Agencies for defeasance escrows rated in the highest Rating Category.

“Design-Build Contract” means the Design-Build Contract for the I-405 Improvement Project, dated January 31, 2017, between the Authority and the Design-Build Contractor and any replacement contracts entered into by the Authority following any termination of such agreement, each in a form approved by the California Division Office of the Federal Highway Administration, an agency of the United States Department of Transportation, headquartered in Sacramento, California.

“Design-Build Contractor” means OC 405 Partners, a Joint Venture, a joint-venture comprised of OHL USA Incorporated and Astaldi Construction Company and any successor thereto.

“Design-Build Contractor Payments Account” means the Account by that name created within the Project Fund pursuant to Section 4.02.

“Dissemination Agent” means, with respect to each Series of Obligations requiring an undertaking regarding disclosure under Rule 15c2-12, the party (which may be the Authority) acting as dissemination agent under the applicable Continuing Disclosure Agreement, or any successor dissemination agent designated in writing by the Authority and which has filed a written acceptance with the Authority and the Trustee.

“Distribution Lock-Up Fund” means the Fund by that name created pursuant to Section 4.02.

“DTC” means The Depository Trust Company, New York, New York or any successor thereto.

“Electronic” means, with respect to notice, notice through the internet or through a time-sharing terminal.

“Event of Default” means any of the events specified in Section 7.01.

“Financial Plan” means (a) the initial financial plan submitted by the Authority within 60 days after the effective date of the TIFIA Loan Agreement attached hereto as Exhibit B as set forth in Section 22(a) of such TIFIA Loan Agreement, and (b) the annual updates thereto required pursuant to such Section 22(a).

“Financing Documents” means this Indenture, and any documents and/or instruments evidencing, documenting, securing or otherwise relating to any or all of the Obligations (including each TIFIA Loan Agreement), all as the same may from time to time be amended, modified, extended, renewed and/or restated, and each other document or instrument required to be executed and delivered by the aforementioned agreements.

“First Supplemental Indenture” means that certain First Supplemental Indenture, dated as of June 1, 2017, relating to the issuance of the TIFIA Bond.

"Fiscal Year" means the period of twelve months terminating on June 30 of each year, or any other annual period hereafter selected and designated by the Authority as its Fiscal Year in accordance with applicable law and, if applicable, the TIFIA Loan Agreement.

"Fund" means each fund established in accordance with the terms of this Indenture.

"Funds Transfer Certificate" means a certificate prepared by the Authority in accordance with the terms of this Indenture substantially in the form of Exhibit A attached hereto containing the certifications by the Authority required by this Indenture with respect to a requested transfer of funds from a Fund or Account.

"GAAP" means GAAP for state and local governments as defined by the Governmental Accounting Standards Board or such other nationally recognized professional body, in effect from time to time in the United States of America.

"Government" means the United States of America and its departments and agencies.

"Highest Priority Obligations" means, as of any date, Senior Lien Bonds, unless and until there are no Senior Lien Bonds Outstanding hereunder, in which case it means Subordinate Obligations.

"I-405 Improvement Project" means the financing of the planning, design, development, financing, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance, or any combination of these, with respect to tolled and nontolled facilities, structures, onramps, connector roads, bridges, utilities, equipment and roadways that are on, necessary for, or related to the construction or operation of the portion of Interstate 405 between the SR71 north to Interstate 605.

"Indenture" means this Master Indenture as the same may be amended or supplemented from time to time as permitted hereby.

"Independent Certified Public Accountant" means any certified public accountant or firm of such accountants appointed by the Authority, and who, or each of whom, is independent with respect to the Authority, pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

"Insolvency Law" means the United States Bankruptcy Code, including 11 U.S.C. §101 et seq., as from time-to-time amended and in effect, and any state bankruptcy, insolvency, receivership or similar law now or hereafter in effect.

"Insurance and Condemnation Proceeds Account" means the Account by that name created within the Project Fund pursuant to Section 4.02.

"Interest Payment Date" means, with respect to a Series of Obligations, the date or dates for the payment of interest on such Obligations set forth in a Supplemental Indenture providing for the issuance of such Obligations.

"KBRA" means the Kroll Bond Rating Agency, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the

functions of a securities rating agency, the term “KBRA” shall be deemed to refer to any other nationally recognized statistical rating organization selected by the Authority. **“Major Maintenance Expenditures”** means capital expenditures reasonably necessary for the periodic overhaul or repair (excluding any maintenance or repair of a routine or ordinary course nature) of the Toll Road, including the equipment and systems thereof.

“Major Maintenance Reserve Fund” means the fund by that name created pursuant Section 5.10.

“Major Maintenance Reserve Fund Requirement” means, commencing on the first day of the Fiscal Year following Substantial Completion and, as set forth in a certificate of the Authority filed with the Trustee on or before the beginning of each Fiscal Year thereafter the sum of (a) the amount equal to one hundred percent (100%) of the Major Maintenance Expenditures projected as of the date of calculation to be incurred in the current Fiscal Year and to be paid from Pledged Revenues or any other moneys of the Authority as set forth in the Annual Operating Budget; (b) the amount equal to eighty percent (80%) of the Major Maintenance Expenditures projected to be incurred from the date of calculation in the next Fiscal Year and to be paid from Pledged Revenues or any other moneys of the Authority as set forth in the Annual Operating Budget; (c) the amount equal to sixty percent (60%) of the Major Maintenance Expenditures projected to be incurred from the date of calculation in the second Fiscal Year following the Substantial Completion and to be paid from Pledged Revenues or any other moneys of the Authority as set forth in the Annual Operating Budget; (d) the amount equal to forty percent (40%) of the Major Maintenance Expenditures projected to be incurred from the date of calculation in the third Fiscal Year following the Substantial Completion and to be paid from Pledged Revenues or any other moneys of the Authority as set forth in the Annual Operating Budget; and (e) the amount equal to twenty percent (20%) of the Major Maintenance Expenditures projected to be incurred from the date of calculation in the fourth Fiscal Year and to be paid from Pledged Revenues or any other moneys of the Authority as set forth in the Annual Operating Budget. .

“Master Indenture” has the meaning assigned in the first paragraph hereof.

“Maturity Value,” with respect to any Capital Appreciation Obligation, shall mean the Accreted Value of such Obligation at the maturity thereof and, with respect to a Convertible Capital Appreciation Obligation, shall mean the Accreted Value of such Obligation on the conversion date.

“Monthly Funding Date” means the last day of each calendar month or, if such day is not a Business Day, the next preceding Business Day.

“Moody’s” means Moody’s Investors Service, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, the term “Moody’s” shall be deemed to refer to any other nationally recognized statistical rating organization selected by the Authority.

“MSRB” means the Municipal Securities Rulemaking Board, and its successors and assigns. Until otherwise designated by the MSRB, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB located at <http://emma.msrb.org>.

“Net Revenue” means, for any Fiscal Year, (a) Toll Revenues plus any earnings derived in such period from the investment of moneys on deposit in the Funds and Accounts that are part of the Trust Estate less (b) Operation and Maintenance Expenses for that Fiscal Year paid from Toll Revenues (excluding, in such calculations, (i) any extraordinary or one-time revenues from Toll Revenues for such Fiscal Year, and (ii) any extraordinary or one-time expenses from Operation and Maintenance Expenses for such Borrower Fiscal Year, but only if and to the extent such extraordinary or one-time expenses are paid or payable from extraordinary or one-time revenues being excluded from Toll Revenues for such Fiscal Year). **“Nominee”** means the nominee of the Securities Depository for the Book-Entry Obligations, in whose name such Book-Entry Obligations are to be registered. The initial Nominee shall be Cede & Co., the partnership nominee of DTC.

“Obligations” means all indebtedness of the Authority payable from Revenue incurred or assumed by the Authority for borrowed money (including indebtedness arising under Credit Support Instruments) and all other financing obligations of the Authority relating to the Toll Road that, in accordance with GAAP, are included as a liability on a balance sheet for the Toll Road books and records, including any bonds, notes, certificates or other obligations, as the case may be, authenticated and delivered under and pursuant to this Indenture as Senior Lien Bonds or Subordinate Obligations. For the purpose of determining the “Obligations” payable from Revenue, Obligations that are no longer Outstanding shall be excluded.

“OCTA” or “the Authority” means the Orange County Transportation Authority, a public agency duly formed and existing under the laws of the State of California, and any successor thereto.

“One Month USD LIBOR Rate” means the British Banker’s Association average of interbank offered rates in the London market for dollar deposits for a one month period.

“Operating Agreement” means the agreement to be entered into by and among the Authority and the Toll Operator, as amended, modified, supplemented in accordance with the terms of the TIFIA Loan Agreement attached hereto as Exhibit B and the Operating Agreement, and all related or ancillary agreements, or any other operating agreement entered into by the Authority and one or more entities in accordance with the terms hereof.

“Operation and Maintenance Expenses” means, calculated in accordance with GAAP, all actual maintenance and operation costs incurred and paid or payable by the Authority for the operation and maintenance of the Toll Road payable from Revenue, GAAP including, without limitation, payments with respect to financing leases and installment purchase agreements, all amounts paid or payable under the Operating Agreement, the Police Services Agreement and similar agreements, costs for operation, maintenance and repair, consumables, payments under any lease or rental payments properly considered to be operating expenses, payments pursuant to agreements for the management of the Toll Road, taxes, premiums paid or payable on any insurance, payments for oversight services, all administrative, engineering and policing costs, costs for any security, toll collection and enforcement expenses, fees and expenses of the Traffic Consultant, the Trustee, each trustee for or holder of Subordinate Obligations, any rating agency, credit, liquidity or remarketing fees relating to Obligations, and any other Secured Creditor, any insurance consultant, legal and accounting expenses, and any other reasonable and necessary expense paid or payable for the operation and maintenance of the Toll Road, but excluding expenses paid or scheduled to be paid from proceeds of Obligations, capital expenditures, expenditures for rehabilitation and operational

improvement projects on the Toll Road, depreciation or obsolescence charges or reserves therefore, debt service for Obligations, and any non-cash charges, such as depreciation, amortization of intangibles and other bookkeeping entries of a similar nature.

“Operation and Maintenance Fund” means the Fund by that name created pursuant to Section 4.05.

“Operation and Maintenance Reserve Fund” means the Fund by that name created pursuant to Section 4.08.

“Operation and Maintenance Reserve Fund Requirement” means []

“Opinion of Bond Counsel” means a written opinion of Bond Counsel.

“Ordinance” means Ordinance No. 3, named the “Renewed Measure M Transportation Ordinance and Investment Plan,” adopted by the Authority on July 24, 2006, pursuant to the provisions of the Act.

“Outstanding,” when used with reference to Obligations hereunder means all Obligations that have been issued by the Authority hereunder or pursuant hereto, except such Obligations: (i) canceled or delivered for cancellation; (ii) deemed to be paid in accordance with Section 9.02 or any similar provisions in the constituent instruments defining the rights of the holders of such Obligations; (iii) in lieu of which other Obligations have been authenticated under Sections 2.07 or 2.08 or any similar provisions in the constituent instruments defining the rights of the holders of such Obligations; and (iv) to the extent described in Section 8.05, Obligations held by or for the account of the Authority or Caltrans.

“Participating Underwriter” means any of the original underwriters of any Series of Obligations required to comply with Rule 15c2-12.

“Permitted Investments” means the following:

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Pledged Account” means the account by the name created by Section 4.____.

“Police Services Agreement” means the Police Services Agreement to be entered into by and between the State of California, acting by and through the California Highway Patrol, and the Authority, as amended, modified and supplemented in accordance with its terms.

“Principal Office” means, with respect to the Trustee, the corporate trust office of the Trustee at _____, and solely for purposes of the presentation of Obligations for transfer, exchange or payment, such other or additional offices as may be designated by the Trustee from time to time.

“Project” means the I-405 Improvement Project and additional capital projects extending, improving or otherwise related to the I-405 Improvement Project that the Authority determines to finance hereunder.

“Project Costs” means all or any part of the following with respect to the Project:

(a) the cost of study, design, acquisition, construction, expansion, enlargement, extension, reconstruction, restoration, repair and rehabilitation of the Project or portion thereof (including, but not limited to, indemnity and surety bonds, permits, taxes, licenses, insurance premiums, or other municipal or governmental charges lawfully levied or assessed during construction);

(b) the cost of acquisition of all real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for the Project or portion thereof,

(c) the cost of site preparation, including demolishing or removing any structures on land so acquired and the cost of acquiring any land to which the structures may be removed;

(d) any cost of borings and other preliminary investigations necessary or incident to determining the feasibility or practicability of constructing the Project or portion thereof and any cost necessary or desirable to satisfy conditions associated with the issuance of any permit for the construction thereof (including the costs of environmental related mitigation required in connection therewith);

(e) the cost of all machinery and equipment, vehicles, materials and rolling stock;

(f) Costs of Issuance;

(g) interest on Obligations for the period prior to and during acquisition or completion of construction (or such longer period as may be allowed by applicable law), as determined by the Authority;

(h) the cost of architectural, engineering, environmental feasibility, traffic and revenue, economic and demographic, appraisal, financial, and legal services;

(i) planning, investigations, studies, evaluations, plans, specifications, estimates, and administrative and other expenses that are necessary or incidental to the determination of the feasibility of constructing the Project or portion thereof or incidental to the obtaining of construction contracts or to the construction (including construction administration and inspection), acquisition or financing thereof and that constitute capital costs;

(j) Operation and Maintenance Expenses occurring during and for a period of up to one year after acquisition or completion of construction, as determined by the Authority, provided that, if applicable, the Trustee has received an Opinion of Bond Counsel (which opinion may address either specific Operation and Maintenance Expenses or categories of Operation and Maintenance Expenses) to the effect that the treatment of such Operation and Maintenance Expenses as a Project Cost will not adversely affect the exclusion of interest on any Outstanding Obligations from gross income for federal income tax purposes;

(k) the repayment or reimbursement of any Obligation, loan or advance for any of the foregoing; and

(l) such other costs and expenses as are permitted by the Act or other applicable law at the time such Obligations are issued.

“Project Fund” means the Fund by that name established pursuant to Section 4.02.

“Purchase Price” means, with respect to Obligations, the amount set forth in this Indenture as the amount to be paid when such Obligations are tendered for purchase or deemed tendered for purchase in accordance with the provisions of this Indenture.

“Rating Agency” means, as and to the extent applicable to a Series of Obligations, each of [Moody’s, KBRA and S&P] then maintaining a rating on such Series of Obligations at the request of the Authority.

“Rating Category” means: (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier; and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

“Rating Confirmation” means written evidence from each Rating Agency then rating any Series of Obligations at the request of the Authority to the effect that, following the event that requires the Rating Confirmation, the then current rating for such Series of Obligations will not be lowered to a lower Rating Category or suspended or withdrawn solely as a result of the occurrence of such event.

“Rebate Fund” means the Fund by that name created pursuant to Section 4.02.

“Redemption Fund” means the Fund by that name created pursuant to Section 4.18.

“Representation Letter” means the letter or letters of representation from the Authority to, or other instrument or agreement with, a Securities Depository for Book-Entry Obligations, in which the Authority, among other things, makes certain representations to the Securities Depository with respect to the Book-Entry Obligations, the payment thereof and delivery of notices with respect thereto.

“Reserve Facility” means a letter of credit, surety bond or insurance policy issued to the Trustee by a bank or company licensed to issue a surety bond or insurance policy guaranteeing the timely payment of the principal of and interest on the Obligations supported by the Reserve Facility.

“Reserve Facility Costs” means amounts owed with respect to repayment of draws on a Reserve Facility, including interest thereon at the rate specified in the agreement pertaining to such Reserve Facility and expenses owed to the Reserve Facility Provider in connection with such Reserve Facility.

“Reserve Facility Provider” means any provider of a Reserve Facility, any successor thereto or any replacement therefor.

“Revenues” means: (i) Toll Revenues; (ii) all interest or other income from investment of money in the Funds and Accounts established hereunder (excluding the Rebate Fund, the Operation and Maintenance Fund, the Operation and Maintenance Reserve Fund, the Major Maintenance Reserve Fund, the Unpledged Account and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument); and (iii) such other sources of funds identified as Revenues herein, without duplication of the above.

“Rule 15c2-12” means Securities and Exchange Authority Rule 15c2-12, adopted by the Securities and Exchange Authority under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“S&P” means Standard & Poor’s Global Ratings, a division of Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, the term “S&P” shall be deemed to refer to any other nationally recognized statistical rating organization selected by the Authority.

“Sales Tax Act” means the Local Transportation Authority and Improvement Act, being Division 19 of the Public Utilities Code of the State of California (Section 180000 *et seq.*).

“Sales Tax Eligible Project Costs” means Project Costs that are permitted to be paid from Sales Tax Revenues or the proceeds of Sales Tax Revenue Bonds in accordance with the provisions of the Sales Tax Act, the Ordinance, and the Sales Tax Revenue Bond Indenture, if applicable.

“Sales Tax Revenue Bond Indenture” means that certain Master Indenture of Trust, dated as of December 1, 2010, as amended and supplemented, by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee.

“Sales Tax Revenue Bonds” means Orange County Transportation Authority Sales Tax Revenue Bonds (Limited Tax Bonds) issued pursuant to the Sales Tax Revenue Bond Indenture.

“Sales Tax Revenues” means the amounts distributed to the Authority, pursuant to Section 5.02(B) of the Sales Tax Revenue Bond Indenture, on account of the retail transactions and use tax imposed in the County of Orange pursuant to the Sales Tax Act and the Ordinance.

“Secured Creditors” means, collectively, (i) the Trustee on behalf of the Bondholders, (ii) the TIFIA Lender, and (iii) any other trustee, holder or creditor of any Obligations.

“Securities Depository” means DTC or any other trust company or other entity that provides a book-entry system for the registration of ownership interests in securities and which is acting as security depository for Book-Entry Obligations.

“Senior Lien Bonds” means the TIFIA Bond and other bonds identified as the Orange County Transportation Authority Toll Revenue Senior Lien Bonds authorized by, issued in accordance with, and at any time Outstanding pursuant to, this Indenture.

“Senior Lien Bonds Account” means the Account by that name created within the Project Fund pursuant to Section 4.02.

“Senior Lien Bonds Fund” means the Fund by that name created pursuant to Section 4.02.

“Senior Lien Bonds Interest Account” means the Account by that name created within the Senior Lien Bonds Fund pursuant to Section 4.02.

“Senior Lien Bonds Principal Account” means the Account by that name created within the Senior Lien Bonds Fund pursuant to Section 4.02.

“Senior Lien Bonds Reserve Fund” means the Fund by that name created pursuant to Section 4.02.

“Senior Lien Bonds Reserve Requirement” for the TIFIA Bond, means the TIFIA Reserve Requirement as set forth in the First Supplement Indenture and for any other Senior Lien Bonds means the amount specified by a Supplemental Indenture as the amount required to be held in the Senior Lien Bonds Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Senior Lien Bonds secured by such Fund or Account.

“Series” means all Obligations identified in this Indenture or any Supplemental Indenture as a separate Series.

“Short-Term Put Obligation” means an Obligation with a stated maturity of ten years or less, the principal of which the Authority determines on or before the date of issuance that it intends to pay from remarketing proceeds or proceeds of refunding obligations.

“SIFMA Index” means Securities Industry and Financial Markets Association Municipal Swap Index as of the most recent date such index was published by the Securities Industry and Financial Markets Association or any successor thereto, or in the event such index is no longer published by the Securities Industry and Financial Markets Association or any successor thereto, such comparable replacement index as shall be published by the Securities Industry and Financial Markets Association or any successor thereto. In the event that such comparable replacement index is no longer published by the Securities Industry and Financial Markets Association or any successor thereto, an alternative index shall be selected by the Authority.

“Sinking Fund Installment” means, with respect to any Series of Obligations, each amount so designated for the Term Bonds of such Series in the Supplemental Indenture providing for the issuance of such Series of Obligations requiring payments by the Authority to be applied to the retirement of such Series of Obligations on and prior to the stated maturity date thereof.

“State” means the State of California.

“Subordinate Obligations” means any Obligations that are subordinated in right of payment and lien priority to the Senior Lien Bonds.

“Subordinate Obligations Account” means the Account by that name created within the Project Fund pursuant to Section 4.02.

“Subordinate Obligations Fund” means the Fund by that name created pursuant to Section 4.02.

“Subordinate Obligations Interest Account” means the Account by that name created within the Subordinate Obligations Fund pursuant to Section 4.02.

“Subordinate Obligations Prepayment Account” means the Account by that name created pursuant to Section 4.02.

“Subordinate Obligations Principal Account” means the Account by that name created within the Subordinate Obligations Fund pursuant to Section 4.02.

“Subordinate Obligations Reserve Fund” means the Fund by that name created pursuant to Section 4.02.

“Subordinate Obligations Reserve Requirement” for any Subordinate Obligations means the amount specified by a Supplemental Indenture as the amount required to be held in the Subordinate Obligations Reserve Fund , or an Account thereof, for the payment of principal of and interest on the Outstanding Subordinate Obligations secured by such Fund or Account.

“Substantial Completion” means the opening of a Project in its entirety to tolled vehicular traffic.

“Substantial Completion Date” means, with respect to the I-405 Improvement Project, the date on which the Toll Road portion of the I-405 Improvement Project opens for tolled vehicular traffic, and, with respect to any other Project, the Substantial Completion Date for such Project, if any, set forth in a Supplemental Indenture providing for the issuance of Obligations to finance such Project.

“Supplemental Indenture” means any indenture executed and delivered by the Authority and the Trustee in accordance with this Indenture that is stated to be a supplemental indenture hereto.

“Tax Certificate” means the Tax Certificate delivered by the Authority at the time of the issuance of a Series of Obligations, as the same may be amended and supplemented in accordance with its terms.

“Term Bonds” means Obligations of any Series that are payable on or before their specified maturity dates from Sinking Fund Installments established for that purpose in the Supplemental Indenture providing for the issuance of such Series of Obligations, which Sinking Fund Installments are calculated to retire such Obligations on or before their specified maturity dates.

“Threshold Rating” means a long term rating of either A3 or A- (or their equivalents) or higher or a short term rating of either P-2 or A-2 (or their equivalents) or higher from Moody’s or S&P, respectively.

“TIFIA Bond” means the Senior Lien Bond issued pursuant to the First Supplemental Indenture.

“TIFIA Debt Service Payment Commencement Date” means the fifth (5th) anniversary of the Substantial Completion Date or, if such date does not fall on an Interest Payment Date, the Interest Payment Date immediately preceding the fifth (5th) anniversary of the Substantial Completion Date.

“TIFIA Lender” means the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, for the purpose of making one or more TIFIA Loans to the Authority.

“TIFIA Loan” means the loan made to the Authority by the TIFIA Lender pursuant to the TIFIA Loan Agreement.

“TIFIA Loan Agreement” means the Loan Agreement, dated as of May __, 2017, by and between the Authority and the TIFIA Lender, attached hereto as Exhibit B and any amendments or supplements thereto permitted hereby and thereby.

“TIFIA Mandatory Debt Service” shall have the meaning given in the TIFIA Loan Agreement.

“TIFIA Payment Date” has the meaning specified for the term “Payment Date” (or any similar term) in the TIFIA Loan Agreement.

“TIFIA Reserve Requirement” shall have meaning given to that term in the TIFIA Loan Agreement. **“TIFIA Scheduled Debt Service”** shall have the meaning given in the TIFIA Loan Agreement.

“Toll Agreements” means the Operating Agreement, the Design-Build Contract, the Caltrans DB Cooperative Agreement and the Toll Facility Agreement, and any amendments or supplements thereto permitted thereby and hereby.

“Toll Facility Agreement” means that certain Toll Facility Agreement, dated as of March 3, 2017, by and between the Authority and Caltrans relating to the Authority’s leasehold rights to I-405 Improvement Project right-of-way in Orange County and Caltrans’ role in oversight of the Project, and any amendments or supplements thereto permitted thereby and hereby.

“Toll Operator” means the entity that is a party to the Operating Agreement, or any successor, as operator of the Toll Road responsible for the collection of tolls and fees and the establishment and maintenance of customer accounts and records, pursuant to the Operating Agreement.

“Toll Revenue Fund” means the Fund by that name created pursuant to Section 4.01.

“Toll Revenues” means, calculated in accordance with GAAP, (a) all income, tolls, revenues, rates, fees, charges, rentals, fares, or other receipts, in each case derived by or related to the operation or ownership of the Toll Road and (b) the net proceeds of delay liquidated damages, from business interruption and delay in start-up insurance policies maintained by or for the benefit of the Authority and relating to the Toll Road but only to the extent such proceeds replace amounts described in clause (a) and provided that in no event shall any one time payments or revenue items

be included in the calculation of Revenues for purposes of this Agreement. **"Toll Road"** means the tolled portion of the I-405 Improvement Project.

"Tolling Act" means Streets and Highways Code Section 149.7 of the State of California.

"Traffic Consultant" means any traffic and revenue consultant or firm of nationally-recognized traffic and revenue consultants experienced in performing the duties for which a Traffic Consultant is required to be employed pursuant to the provisions of this Indenture selected by the Authority.

"Trust Estate" has the meaning specified in the Granting Clauses herein.

"Unpledged Account" means the account created by the name under Section 4.1.

"Written Engineer's Certificate" means an instrument in writing signed by a Consulting Engineer confirming the amount of Major Maintenance Expenditures for a Fiscal Year as determined by the Authority.

"Written Request of the Authority" means an instrument in writing signed by an Authorized Representative.

ARTICLE II

THE OBLIGATIONS

Section 2.01 Authorization and Purposes. Obligations in the form of Senior Lien Bonds (including the TIFIA Loan) or Subordinate Obligations may be issued hereunder, in book-entry form or otherwise, from time to time as the issuance thereof is approved by the Authority. The maximum Bond Obligation of Obligations that may be issued hereunder is not limited; subject, however, to any limitations contained in the Act and to the right of the Authority, which is hereby reserved, to limit the initial Bond Obligation of Obligations that may be issued or Outstanding hereunder. The Senior Lien Bonds are designated generally as "Orange County Transportation Authority Toll Revenue Senior Lien Bonds," each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Senior Lien Bonds. The Subordinate Obligations are designated generally as "Orange County Transportation Authority Toll Revenue Subordinate Bonds," each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Subordinate Obligations. The Obligations may be issued in such Series as from time to time shall be established and authorized by the Authority, subject to the covenants, provisions and conditions herein. Each separate Series of Obligations shall be authorized by the Authority in a Supplemental Indenture. No Obligations may be issued under the provisions of this Indenture except in accordance with this Article and Article III.

Obligations may be issued for the purpose of financing the I-405 Improvement Project using a design-build procurement process, or for any other purpose authorized by the Act and this Indenture; provided, however, that for so long as the TIFIA Bond remains Outstanding, the consent

of the TIFIA Lender shall be required for the issuance of additional Obligations as set forth in Sections 3.01 and 3.03.

Section 2.02 General Terms of Obligations. Each Obligation shall be secured hereby and shall bear interest and shall be payable and be additionally secured and have such other terms as shall be specified in its Supplemental Indenture, or if not specified therein, as specified by an Authorized Representative pursuant to Section 2.06.

The principal and Purchase Price of, premium, if any, and interest on the Obligations shall be payable in lawful currency of the United States of America, except as otherwise specified in a Supplemental Indenture. During any period in which any Obligations are Book-Entry Obligations, payment of debt service on such Book-Entry Obligations shall be made to the Securities Depository, or its Nominee, and in accordance with arrangements among the Authority, the Trustee and the Securities Depository. During any period in which any Obligations are not Book-Entry Obligations, unless otherwise specified in a Supplemental Indenture, the principal and Purchase Price of and premium, if any, on all such Obligations shall be payable by wire or check at the Principal Office of the Trustee as the same become due and payable, and the interest on such Obligations shall be paid by wire or check drawn upon the Trustee and mailed on the applicable interest payment date to the persons in whose names the Obligations are registered on the registration books maintained by the Trustee at the close of business on the record date for such interest payment.

Section 2.03 Execution. The Obligations shall be executed in the name and on behalf of the Authority by the facsimile or manual signature of the Chairperson of the Board or any Vice Chairperson of the Board and shall be countersigned by the facsimile or manual signature of the Chief Financial Officer of the Authority, and shall have the official seal of the Authority attached or affixed thereon in manual or facsimile form. Unless otherwise provided in any Supplemental Indenture, the Obligations shall then be delivered to the Trustee for authentication by the Trustee. In case any of the officers who shall have signed or attested any of the Obligations shall cease to be such officer or officers of the Authority before the Obligations so signed or attested shall have been authenticated or delivered by the Trustee or issued by the Authority, such Obligations may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though those who signed and attested the same had continued to be such officers of the Authority, and also any Obligation may be signed and attested on behalf of the Authority by such persons as at the actual date of execution of such Obligation shall be the proper officers of the Authority although at the nominal date of such Obligation any such person shall not have been such officer of the Authority.

Section 2.04 Certificate of Authentication. No Obligations shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form set forth in the form of Obligation referred to in Section 2.05 hereof, executed by the Trustee; and such certificate on any Obligation issued by the Authority shall be conclusive evidence that such Obligation has been duly authenticated and delivered hereunder.

Section 2.05 Forms of Obligations. The Obligations, the Trustee's certificate of authentication and the form of assignment shall be in substantially the forms specified in a Supplemental Indenture or if not specified therein, as specified by an Authorized

Representative pursuant to Section 2.06, and may have such letters, numbers or other marks of identification (including, but not limited to, the Series designation provided for in Section 2.01) and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by an Authorized Representative. The Obligations shall be in either typewritten or printed form, as an Authorized Representative shall direct, provided that any expenses incurred in connection therewith shall be paid by the Authority.

Section 2.06 Issuance, Sale and Delivery of Obligations: Application of Proceeds. The Obligations of each Series shall be delivered by the Trustee in accordance with a Written Request of the Authority, which may be Electronic, in the manner specified herein. Said Written Request of the Authority shall specify the following terms for the Obligations then being issued to the extent such terms are not set forth in the Supplemental Indenture creating such Series of Obligations and are applicable to such Obligations: whether such Obligation is a Senior Lien Bond, Parity Obligation or Subordinate Obligation hereunder; Series designation; Authorized Denominations; form of such Obligation; book-entry provisions, if any; maturity date or dates or maturity determination method, which may vary for Obligations within such Series; principal amount; issue date; interest rate or interest rate determination method, which may vary for Obligations within such Series; record date for interest payments; sinking fund provisions, if any; required reserves, if any; redemption provisions, if any; tender provisions, if any; additional security, if any; and any other terms and conditions that are not inconsistent with this Indenture. Upon the delivery of each Series of Obligations, the proceeds shall immediately be applied and deposited as set forth in the applicable Supplemental Indenture.

Section 2.07 Mutilated, Lost, Stolen or Destroyed Obligations. If any Obligation is mutilated, lost, stolen or destroyed, the Authority shall execute and the Trustee shall authenticate and deliver a new Obligation of the same Series, maturity date, principal amount and tenor in lieu of and in substitution for the Obligation mutilated, lost, stolen or destroyed; provided that there shall be first furnished to the Trustee evidence satisfactory to the Trustee of the ownership of such Obligation and of such loss, theft or destruction (or, in the case of a mutilated Obligation, such mutilated Obligation shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and compliance with such other reasonable regulations as the Authority and Trustee may prescribe. Subject to the proviso set forth in the preceding sentence, if any such Obligation shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Obligation, the Authority may pay the same without surrender thereof. The Authority and the Trustee may charge the Holder of such Obligation with their reasonable fees and expenses in this connection.

Section 2.08 Exchangeability and Transfer of Obligations: Persons Treated as Holders. The Authority hereby directs the Trustee, which is hereby constituted and appointed the bond registrar for the Obligations, to keep books for the registration of the Obligations and for the registration of transfer of the Obligations as provided herein.

Any registered owner of an Obligation, in person or by its duly authorized attorney, may transfer title to its Obligation on the books of registration kept by the Trustee, upon surrender thereof at the Principal Office of the Trustee, together with a written instrument of transfer (in substantially the form of assignment attached to the Obligation or as provided in its Supplemental Indenture) executed by the registered owner or its duly authorized attorney, and upon surrender for

registration of transfer of any Obligation, the Authority shall execute, and the Trustee shall authenticate and deliver in the name of the transferee or transferees, a new Obligation or Obligations of the same Series, maturity date, Bond Obligation and tenor as the Obligation surrendered.

Obligations may be exchanged upon surrender thereof at the Principal Office of the Trustee for Obligations of the same Series, maturity date, Bond Obligation and tenor as the Obligations being exchanged. The Authority shall execute and the Trustee shall authenticate and deliver Obligations that the registered owner making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Such registrations of transfers or exchanges of Obligations shall be without charge to the registered owner of such Obligations, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the registered owner of the Obligation requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration, transfer or exchange shall be paid by the Authority.

The Trustee shall not register any transfer of any Obligation after notice calling such Obligation (or portion thereof) for redemption or partial redemption or notice of mandatory tender with respect thereto has been given and prior to such redemption or mandatory tender, as the case may be, except, in the case of any Obligation to be redeemed in part, the portion thereof not to be redeemed.

The person in whose name any Obligation shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal, premium, if any, or interest shall be made only to or upon the order of the registered owner thereof or his duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Obligation to the extent of the sum or sums so paid.

All Obligations issued upon any transfer or exchange of Obligations shall be legal, valid and binding obligations of the Authority, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Obligations surrendered upon such transfer or exchange.

Section 2.09 Cancellation. All Obligations that have been surrendered to the Trustee pursuant to Section 2.07 or 2.08 of this Indenture and all Obligations that have been paid or redeemed, either at or prior to maturity, except as otherwise provided in a Supplemental Indenture, shall be cancelled and destroyed by the Trustee and a certificate of destruction shall be delivered to the Authority upon its request.

Section 2.10 Senior Lien Bonds Ratably Secured. All Senior Lien Bonds issued hereunder that by their terms are stated to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the Series or the actual time or times of the authentication, delivery or maturity of such Senior Lien Bonds shall be so equally and ratably secured so that, subject to any differences specified in this Indenture, all such Senior Lien Bonds at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with

like effect as if they were of the same Series and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date; provided, however, that the moneys in any Account within the Senior Lien Bonds Reserve Fund shall only secure the Series of Senior Lien Bonds to which such Account relates. The Senior Lien Obligation in the form of or securing payment of a TIFIA Loan will not be secured by any other Account within the Senior Lien Bonds Reserve Fund except the TIFIA Debt Service Reserve Account established by the First Supplemental Indenture.

Section 2.11 Subordinate Obligations Ratably Secured. All Subordinate Obligations issued hereunder that by their terms are stated to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the Series or the actual time or times of the authentication, delivery or maturity of such Subordinate Obligations shall be so equally and ratably secured so that, subject to any differences specified in this Indenture, all such Subordinate Obligations at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they were of the same Series and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date; provided, however, that the moneys in any Account within the Subordinate Obligations Reserve Fund shall only secure the Series of Subordinate Obligations to which such Account relates.

Section 2.12 Book-Entry Only System. Unless an Authorized Representative shall otherwise direct or unless otherwise specified in a Supplemental Indenture, all Obligations issued hereunder shall be issued as Book-Entry Obligations in fully registered form. Book-Entry Obligations shall be registered in the name of the Securities Depository or its Nominee as directed by such Securities Depository. DTC shall act as the initial Securities Depository and has designated Cede & Co. as its Nominee. Beneficial Owners of Obligations will not receive physical delivery of bond certificates except as provided hereinafter. For so long as DTC shall continue to serve as Securities Depository for the Obligations as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no person purchasing, selling or otherwise transferring beneficial ownership of Obligations is to receive, hold or deliver any Obligation certificate.

With respect to Obligations registered in the name of Cede & Co., as Nominee of DTC, the Authority and the Trustee shall have no responsibility or obligation to any participant in DTC (each, a "DTC Participant") or to any person on whose behalf a DTC Participant holds an interest in the Obligations. Without limiting the immediately preceding sentence, the Authority and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Obligations, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Obligations, as shown on the registration books, of any notice with respect to the Obligations, including any notice of redemption or mandatory tender, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of the Obligations, as shown in the registration books, of any amount with respect to principal or Purchase Price of, or premium, if any, or interest on, the Obligations.

Replacement Obligations may be issued directly to Beneficial Owners of Obligations other than DTC, or its Nominee, but only in the event that: (i) DTC determines not to continue to act as Securities Depository for the Obligations (which determination shall become effective no less than 90 days after written notice to such effect to the Authority and the Trustee); or (ii) an Authorized Representative has advised DTC of its determination (which determination is conclusive as to DTC and Beneficial Owners of the Obligations) that DTC is incapable of discharging its duties as Securities Depository for the Obligations; or (iii) the Authority has determined (which determination is conclusive as to DTC and the Beneficial Owners of the Obligations) that the interests of the Beneficial Owners of the Obligations might be adversely affected if such book-entry only system of registration and transfer is continued. Upon occurrence of any of the foregoing events, the Authority shall use its best efforts to attempt to locate another qualified Securities Depository. If the Authority fails to locate another qualified Securities Depository to replace DTC, the Authority shall cause to be authenticated and delivered replacement Obligations, in certificate form, to the Beneficial Owners of the Obligations. In the event that the Authority makes the determination noted in (ii) or (iii) above (provided that the Authority undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Authority to make any such determination), and has made provisions to notify the Beneficial Owners of Obligations of such determination by mailing an appropriate notice to DTC and its Nominee, the Authority shall cause to be issued replacement Obligations in certificate form to Beneficial Owners of the Obligations as shown on the records of DTC provided to the Authority.

Whenever, during the term of the Obligations, the Beneficial Ownership thereof is determined by book-entry at DTC, (i) the requirements in this Indenture of holding, delivering or transferring Obligations shall be deemed modified to require the appropriate person or entity to meet the requirements of DTC as to registering or transferring the book entry to produce the same effect and (ii) delivery of the Obligations and notices to Bondholders will be in accordance with arrangements among the Authority, the Trustee and DTC notwithstanding any provision of this Indenture to the contrary.

The Trustee and the Authority, acting by and through an Authorized Representative, are authorized to enter into a letter of representations with DTC to implement the book-entry only system of Obligation registration described above and all payments of principal, Purchase Price, interest and premium, if any, shall be made in accordance with the letter of representations with DTC.

If at any time, DTC ceases to hold the Obligations in book-entry form, all references herein to DTC shall be of no further force or effect.

ARTICLE III

ADDITIONAL OBLIGATIONS

Section 3.01 Restrictions on Issuance of Additional Senior Lien Bonds.

Subsequent to the initial issuance of the TIFIA Bond pursuant to this Indenture, additional Senior Lien Bonds may be issued if the requirements of (a) or (b) below are met.

(a) The Senior Lien Bonds are issued for purposes of refunding Outstanding Senior Lien Bonds by providing funds for the payment of any or all of the following:

(1) The Bond Obligation, redemption or purchase price (including premium, if any) of the Outstanding Senior Lien Bonds to be refunded;

(2) All expenses incident to the calling, retiring or paying of such Outstanding Senior Lien Bonds, the Costs of Issuance of such refunding Senior Lien Bonds, ;

(3) Interest on all Outstanding Senior Lien Bonds to be refunded to the date such Senior Lien Bonds will be called for redemption or paid at maturity;

(4) Interest on the refunding Senior Lien Bonds from the date thereof to the date of payment or redemption of the Senior Lien Bonds or to be refunded;

(b) provided that the Authority delivers a Certificate of the Authority to the effect that the Authority projects that the Annual Debt Service on all Outstanding Obligations for each Fiscal Year after the issuance of the proposed additional Senior Lien Bonds will be less than the Annual Debt Service on all Outstanding Obligations for such Fiscal Years prior to the issuance of such proposed Senior Lien Bonds. The Senior Lien Bonds constitute Completion Obligations; provided, however, that prior to the incurrence of such Completion Obligations, the Authority shall furnish to the Trustee: (i) a certificate of a licensed architect or Consulting Engineer estimating the costs of completing the facilities for which such Completion Obligations are to be incurred, (ii) a Certificate of the Authority certifying that the amount of such Completion Obligations to be incurred will be sufficient, together with other funds, if applicable, to complete construction of the facilities as estimated by the architect or Consulting Engineer in respect of which such Completion Obligation is to be incurred and pay capitalized interest, if any, on Authority Obligations Outstanding during the completion period, and (iii) written evidence from the applicable credit rating agency or agencies that such Senior Lien Bonds will be rated at an investment grade rating by such credit rating agency.

Section 3.02 Proceedings for Issuance of Additional Obligations.

Whenever the Authority determines to issue Senior Lien Bonds subsequent to the initial issuance of the TIFIA Bond pursuant to this Indenture and the First Supplemental Indenture, the Authority shall, in addition to fulfilling the requirements of Article II and Section 3.01, file with or provide to the Trustee:

(a) a certificate of the Authority stating that no Event of Default specified in Section 6.01 has occurred and is then continuing;

(b) a certificate of the Authority stating that the applicable requirements of Section 3.01 have been satisfied;

(c) such amount, in cash or in the form of a Reserve Facility, as shall equal the Senior Lien Bonds Reserve Requirement, if any, for such Senior Lien Bonds for deposit in the Senior Lien Bonds Reserve Fund, as calculated by the Authority; and

(d) an Opinion of Bond Counsel to the effect that the Supplemental Indenture creating such Senior Lien Bonds has been executed and delivered by the Authority in accordance with this Indenture and that such Senior Lien Bonds, when duly executed by the Authority and authenticated and delivered by the Trustee, will be valid and binding obligations of the Authority.

Section 3.03 Restrictions on Issuance of Subordinate Obligations

Subordinate Obligations may be issued if the requirements of (a), (b) or (c) below are met.

(a) Subordinate Obligations may be issued for the purpose of refunding Outstanding Subordinate Obligations by providing funds for the payment of any or all of the following:

(1) The Bond Obligation, redemption or purchase price (including premium, if any) of the Outstanding Subordinate Obligations to be refunded;

(2) All expenses incident to the calling, retiring or paying of such Outstanding Subordinate Obligations, the Costs of Issuance of such refunding Subordinate Obligations, and any termination payments or other payments to the holders of obligations of the Authority entered into pursuant to California Government Code Section 5922 (or any similar statute) related to such Outstanding Subordinate Obligations;

(3) Interest on all Outstanding Subordinate Obligations to be refunded to the date such Subordinate Obligations will be called for redemption or paid at maturity;

(4) Interest on the refunding Subordinate Obligations from the date thereof to the date of payment or redemption of the Subordinate Obligations to be refunded;

provided that the Authority delivers a Certificate of the Authority to the effect that the Authority projects that the Annual Debt Service on all Outstanding Obligations for each Fiscal Year after the issuance of the proposed additional Subordinate Obligations will be less than the Annual Debt Service on all Outstanding Obligations for each Fiscal Year prior to the issuance of such proposed Subordinate Obligations; and provided further, that, if the maturity date of such additional Subordinate Obligations to be issued extends to a date later than the stated final maturity date of the Obligations being refunded, then Net Revenue in each Fiscal Year from and after the stated final maturity date of such refunded Obligations is projected to be not less one hundred thirty percent (130%) of the Annual Debt Service payable in each such Fiscal Year with respect to all Outstanding Obligations, including the proposed additional Subordinate Obligations.

Additionally, while the TIFIA Bond remains Outstanding, the Authority has received the written consent of the TIFIA Lender, if required under the applicable TIFIA Loan Agreement, in accordance with such TIFIA Loan Agreement, to such issuance.

(b) The Authority delivers a report of the Traffic Consultant to the effect that, as of the date of issuance of the additional Subordinate Obligations:

(1) Net Revenue during the preceding Calculation Period ending not more than ninety (90) days prior to the date of delivery of the proposed additional Subordinate Obligations, was sufficient to satisfy the requirements of Section 5.03(a) of this Indenture (which report may assume that a revision of the tolls that was approved and implemented by the Authority subsequent to the beginning of such Calculation Period had been in effect for the entire Calculation Period), and

(2) projected Net Revenue for each Fiscal Year over the term of the proposed additional Subordinate Obligations is expected be sufficient to satisfy the

requirements of Section 5.03(a)(2) and (3) of this Indenture in each Fiscal Year. In calculating projected Net Revenue, the Traffic Consultant shall take into account amounts projected to be received from any adopted toll increase or increases (provided that no additional approvals need to be obtained and no additional requirements need to be satisfied in order to implement any such increase or increases) and any additional toll lanes and facilities to be designated as included within the definition of Toll Road;

and, while the TIFIA Bond remains Outstanding, the Authority has received the written consent of the TIFIA Lender in accordance with the applicable TIFIA Loan Agreement to such issuance.

(c) Such Subordinate Obligations constitute Completion Obligations; provided, however, that prior to the incurrence of such Completion Obligations, the Authority shall furnish to the Trustee: (i) a certificate of a licensed architect or Consulting Engineer estimating the costs of completing the facilities for which such Completion Obligations are to be incurred and pay capitalized interest, if any, on Authority Obligations Outstanding during the completion period, and (ii) a Certificate of the Authority certifying that the amount of such Completion Obligations to be incurred will be sufficient, together with other funds, if applicable, to complete construction of the facilities as estimated by the architect or a Consulting Engineer in respect of which such Completion Obligations is to be incurred.

Additionally, while the TIFIA Bond remains Outstanding, the Authority has received the written consent of the TIFIA Lender, if required under the applicable TIFIA Loan Agreement, in accordance with such TIFIA Loan Agreement, to such issuance.

Section 3.04 Proceedings for Issuance of Subordinate Obligations.

Whenever the Authority determines to issue Subordinate Obligations, the Authority shall, in addition to fulfilling the requirements of Article II and Section 3.03, file with or provide to the Trustee:

(a) a certificate of the Authority stating that no Event of Default specified in Section 7.01 has occurred and is then continuing;

(b) a certificate of the Authority stating that the applicable requirements of Section 3.03 have been satisfied;

(c) such amount, in cash or in the form of a Reserve Facility, as shall equal the Subordinate Obligations Reserve Requirement, if any, as of the date of issuance of such Series of Subordinate Obligations, for deposit in the Subordinate Obligations Reserve Fund as calculated by the Authority; and

(d) an Opinion of Bond Counsel to the effect that the Supplemental Indenture creating such Series of Subordinate Obligations has been executed and delivered by the Authority in accordance with this Indenture and that such Series of Subordinate Obligations, when duly executed by the Authority and authenticated and delivered by the Trustee, will be valid and binding obligations of the Authority.

ARTICLE III

REDEMPTION

Section 3.05 Redemption and Purchase of Obligations. Each Series of Obligations may be made subject to mandatory or optional redemption or mandatory or optional tender and purchase prior to their respective stated maturities, as a whole or in part, at such time or times, upon such terms and conditions, at such prices, upon such notice and with such effect as may be provided in the Supplemental Indenture creating such Series of Obligations.

Section 3.06 Notice of Redemption. Unless otherwise specified in a Supplemental Indenture creating a Series of Obligations, each notice of redemption shall be mailed by the Trustee, not less than twenty (20) nor more than sixty (60) days prior to the redemption date, to each Owner and to the MSRB. Notice of redemption to the Owners shall be given by first class mail. Each notice of redemption shall state the date of such notice, the date of issue of the Series of Obligations to which such notice relates, the redemption date, the redemption price, the place or places of redemption (including the name and appropriate address or addresses of the Trustee), the CUSIP number (if any) of the maturity or maturities, and, in the case of a Series of Obligations to be redeemed in part only, the identity of the Obligations to be redeemed. Except as provided in Section 4.03 in the case of conditional optional redemption, each such notice shall also state that on said date there will become due and payable on each of said Obligations the redemption price thereof, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Obligations be then surrendered at the address or addresses of the Trustee specified in the redemption notice. Neither the Authority nor the Trustee shall have any responsibility for any defect in the CUSIP number that appears on any Obligation or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the Authority nor the Trustee shall be liable for any inaccuracy in such numbers. Failure of any Owner to receive any notice of redemption or any defect therein shall not affect the sufficiency of any proceedings for redemption.

Section 3.07 Conditional Notice of Redemption; Rescission. Any notice of optional redemption of the Obligations delivered in accordance with Section 4.02 may be conditional, and if any condition stated in the notice of redemption shall not have been satisfied on or prior to the redemption date, said notice shall be of no force and effect and the Authority shall not be required to redeem the Obligations thereby called for redemption, such Obligations shall not become due and payable, and the redemption shall be cancelled and the Trustee shall within a reasonable time thereafter give notice, to the persons and in the manner in which the notice of redemption was given, that such condition or conditions were not met and that the redemption was cancelled. In addition, the Authority may, at its option, on or prior to the date fixed for optional redemption in any notice of redemption of the Obligations, rescind and cancel such notice of redemption by Written Request of the Authority to the Trustee, and any optional redemption of Obligations and notice thereof shall be rescinded and cancelled and the Trustee shall mail notice of such cancellation to the recipients of the notice of redemption being cancelled pursuant to the provisions of Section 4.02. Any optional redemption of Obligations

and notice thereof shall be rescinded and cancelled if for any reason on the date fixed for optional redemption moneys are not available in the Redemption Fund or otherwise held in trust for such purpose in an amount sufficient to pay in full on said date the principal of, interest, and any premium due on the Obligations called for optional redemption and such failure to optionally redeem the Obligations called for redemption shall not be a default hereunder.

Section 3.08 Effect of Redemption. Notice of redemption having been duly given as aforesaid or as otherwise provided in a Supplemental Indenture, and moneys for payment of the redemption price of, together with interest accrued to the redemption date on, the Obligations (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Obligations (or portions thereof) so called for redemption shall become due and payable at the redemption price specified in this Indenture, together with interest accrued thereon to the date fixed for redemption, interest on the Obligations so called for redemption shall cease to accrue, said Obligations (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Obligations shall have no rights in respect thereof except to receive payment of said redemption price and accrued interest to the date fixed for redemption.

Section 3.09 Partial Redemption of Obligations. Upon surrender of any Obligation to be redeemed in part only, the Authority shall execute, and the Trustee shall authenticate and deliver to the Owner of such Obligation, at the expense of the Authority, a new Obligation or Obligations of Authorized Denominations equal in Bond Obligation to the unredeemed portion of the Obligation surrendered, of the same Series, maturity and terms as the surrendered Obligation.

ARTICLE IV

PLEDGE; FUNDS AND ACCOUNTS

Section 4.01 Deposit of Revenue by Trustee; Toll Revenue Fund.

(a) All Toll Revenues received and receivable by the Authority and pledged and assigned by this Indenture to the Trustee, together with the balance of the Trust Estate, are to be paid directly to the Trustee and deposited by it in the Funds and Accounts described in this Article V and held in trust for the purposes set forth herein, and, except as otherwise provided herein, shall not be subject to any lien, levy, garnishment or attachment by any creditor of the Authority nor shall they be subject to any assignment or hypothecation by the Authority. Subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein and therein, the Trustee shall be entitled to and shall collect and receive all of the Toll Revenues, and any Toll Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. Moneys on deposit in the Funds and Accounts described in this Article V (excluding the Rebate Fund, the Unpledged Account and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument) shall be held by the Trustee or the Authority, as applicable, in trust, and pending application in accordance with the provisions of this Article V shall be subject to a lien and charge in favor of the Holders until applied as hereinafter provided. The Trustee shall at all times maintain accurate records of deposits into such Funds and Accounts and the sources and timing of such deposits.

(b) As long as any Obligations or Reserve Facility Costs remain unpaid, the Authority hereby assigns and shall cause Toll Revenues to be transmitted by the Toll Operator on at least a weekly basis directly to the Trustee for deposit in a trust fund, designated as the "Toll Revenue Fund," which Fund the Trustee shall establish and maintain in trust. Investment income on amounts held by the Trustee in the Toll Revenue Fund shall also be deposited in the Toll Revenue Fund. All moneys at any time held in the Toll Revenue Fund shall be held in trust for the benefit of the holders of the Obligations and shall be disbursed, allocated and applied solely for the uses and purposes set forth in this Indenture.

Section 4.02 Establishment of Funds and Accounts.

(a) In addition to the Toll Revenue Fund established pursuant to Section 4.01, the following Funds and Accounts are hereby established and created and shall be maintained in trust by the Trustee:

(1) the Project Fund, and within the Project Fund, the Senior Lien Bonds Account, the Subordinate Obligations Account, the Design-Build Contractor Payments Account and the Insurance and Condemnation Proceeds Account;

(2) the Rebate Fund;

(3) the Senior Lien Bonds Fund and, within the Senior Lien Bonds Fund, the Senior Lien Bonds Interest Account and the Senior Lien Bonds Principal Account and the Senior Obligations Prepayment Account;

(4) the Senior Lien Bonds Reserve Fund;

(5) the Subordinate Obligations Fund and, within the Subordinate Obligations Fund, the Subordinate Obligations Interest Account, the Subordinate Obligations Principal Account;

(6) the Subordinate Obligations Reserve Fund;

(7) the Operation and Maintenance Reserve Fund;

(8) the Major Maintenance Reserve Fund;

(9) Redemption Fund; and

(10) the Distribution Lock-Up Fund, and within the Distribution Lock-Up Fund, the Pledged Account and the Unpledged Account.

and the following Funds are hereby established and created and shall be maintained by the Authority:

(11) the Operation and Maintenance Fund; and

(12) the Unpledged Account.

In addition, upon the written request of the Authority, the Trustee shall establish and maintain additional temporary Funds or Accounts or sub-accounts for the purposes specified in any such request.

(b) All of the Funds and Accounts (other than the Operation and Maintenance Fund and the Unpledged Account) shall be held by the Trustee and, except as expressly provided herein, the Authority shall not have any right to withdraw funds from any Fund or Account established pursuant to Section 4.02(a). The Authority hereby irrevocably authorizes the Trustee to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Fund or Account in accordance with the terms of this Indenture.

Section 4.03 Toll Revenue Fund: Priority of Deposits and Transfers.

(a) From and after the Substantial Completion Date for the I-405 Improvement Project, except for amounts to be deposited in other Funds or Accounts pursuant to this Article, the Authority shall promptly deposit or cause to be deposited into the Toll Revenue Fund all Revenue and transfers from other Funds or Accounts as required by the terms of this Indenture.

(b) From and after the Substantial Completion Date for the I-405 Improvement Project, subject to Section 4.20 hereof, including the delivery of a Funds Transfer Certificate by the Authority (to the extent required by such Section 4.20), the Trustee shall make the following transfers and payments from the Toll Revenue Fund in the amounts, at the times and only for the purposes specified below and in the following order of priority (it being agreed that no amount shall be transferred on any date pursuant to any clause below until amounts sufficient as of that Monthly Funding Date (to the extent applicable) for all the purposes specified under the prior clauses shall have been transferred or set aside):

First, to the Operation and Maintenance Fund, the amount necessary to increase the balance of the Operation and Maintenance Fund to an amount equal to the Operation and Maintenance Expenses then due and payable;

Second, any payments then due and payable by the Authority to the Rebate Fund or any similar rebate fund established with respect to any future tax-exempt borrowing transaction under this Indenture;

Third, to the Senior Lien Bonds Interest Account the sum of (A)(1) in the case of Outstanding Senior Lien Bonds with semiannual interest payment dates, one-sixth (1/6) of the amount of the interest payable on such Senior Lien Bonds on the next interest payment date; (2) in the case of Outstanding Senior Lien Bonds with quarterly interest payment dates, one-third (1/3) of the amount of the interest payable on such Senior Lien Bonds on the next interest payment date; and (3) in the case of Outstanding Senior Lien Bonds with monthly interest payment dates, the amount of interest payable on such Senior Lien Bonds on the next interest payment date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Senior Lien Bonds Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an interest payment date or the last Monthly Funding Date before an interest payment date on any Senior Lien Bonds, any other amount required to make the amount credited to the Senior Lien Bonds Interest Account equal to the amount payable on such Senior Lien Bonds on such interest payment

date; provided, however, that with respect to the TIFIA Bond, only the interest component of TIFIA Mandatory Debt Service shall be set aside pursuant to this Third clause;

Fourth, commencing twelve months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Senior Lien Bonds Principal Account, the sum of (A)(1) in the case of Outstanding Senior Lien Bonds with annual principal or mandatory sinking fund payment dates, one-twelfth (1/12) of the principal and mandatory sinking fund redemptions due on such Senior Lien Bonds; and (2) in the case of Outstanding Senior Lien Bonds with semi-annual principal or mandatory sinking fund payment dates, one-sixth (1/6) of the principal and mandatory sinking fund redemptions due on such Senior Lien Bonds; and (B) the sum of any shortfall in transfers required to have been made to the Senior Lien Bonds Principal Account on any previous Monthly Funding Date; and (C) if the Monthly Funding Date is also a principal payment date (or mandatory sinking fund redemption date) or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Senior Lien Bonds, any other amount required to make the amount credited to the Senior Lien Bonds Principal Account equal to the amount of principal due on such Senior Lien Bonds on such principal payment date or mandatory sinking fund redemption date, provided, however, that with respect to the TIFIA Bond Senior Lien Bonds, only the principal component of TIFIA Mandatory Debt Service shall be set aside pursuant to this Fourth clause;

Fifth, to the Senior Lien Bonds Reserve Fund (or the applicable Account therein) the amount necessary so that the balance therein equals the applicable Senior Lien Bonds Reserve Requirement; provided, however, that in the event that the Trustee shall have withdrawn moneys in the Senior Lien Bonds Reserve Fund or any Account therein for the purpose of paying principal of or interest on the applicable Senior Lien Bonds when due as provided in this Indenture, the Trustee shall limit such deposit to the Senior Lien Bonds Reserve Fund or the applicable Account therein, on each of the next twelve Monthly Funding Dates after such withdrawal, to an amount equal to one-twelfth (1/12th) of the aggregate amount of each such withdrawal until the amount on deposit in the Senior Lien Bonds Reserve Fund (or the applicable Account therein) is equal to the applicable Senior Lien Bonds Reserve Requirement; provided further however, that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Senior Lien Bonds Reserve Fund ratably in accordance with its respective shortfall;

Sixth, to the Senior Obligations Interest Account, an amount which equals one-sixth (1/6) of the TIFIA Scheduled Debt Service (excluding any amounts to be applied to TIFIA Mandatory Debt Service in accordance with the Third and Fourth clauses above) due and payable on the immediately succeeding payment date for such TIFIA Loan;

Seventh, to the Subordinate Obligations Interest Account the sum of (A)(1) in the case of Outstanding Subordinate Obligations with semi-annual interest payment dates, one-sixth (1/6) of the interest payable on such Subordinate Obligations on the next interest payment date; (2) in the case of Outstanding Subordinate Obligations with quarterly interest payment dates, one-third (1/3) of the amount of the interest payable on such Subordinate Obligations on the next interest payment date; and (3) in the case of Outstanding Subordinate Obligations with monthly interest payment dates, the interest payable on such Subordinate Obligations on the next interest payment date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Subordinate Obligations Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly

Funding Date is also an interest payment date or the last Monthly Funding Date before an interest payment date on any Subordinate Obligations, any other amount required to make the amount credited to the Subordinate Obligations Interest Account equal to the interest payable on such Subordinate Obligations on such interest payment date;

Eighth, commencing twelve months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Subordinate Obligations Principal Account the sum of (A)(1) in the case of Outstanding Subordinate Obligations with annual principal payment dates, one-twelfth (1/12) of the principal due on such Subordinate Obligations on the next principal payment date; and (2) in the case of Outstanding Subordinate Obligations with semi-annual principal payment dates, one-sixth (1/6) of the principal redemptions due on such Subordinate Obligations on the next principal payment date; plus (B) the sum of any shortfall in transfers required to have been made to the Subordinate Obligations Principal Account on any previous Monthly Funding Date; plus (C) if the Monthly Funding Date is also a principal payment date or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Subordinate Obligations, any other amount required to make the amount credited to the Subordinate Obligations Principal Account equal to the amount of principal due on such Subordinate Obligations on such principal payment date or mandatory sinking fund redemption date;

Ninth, to the Subordinate Obligations Reserve Fund (or the applicable Account therein), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Subordinate Obligations Reserve Requirement;

Tenth, to the extent sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b), to the Operation and Maintenance Reserve Fund, an amount necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Operation and Maintenance Reserve Requirement. If sufficient funds are not then available on a particular Monthly Funding Date, after application of funds for the purposes specified in the prior clauses, to fund the Operation and Maintenance Reserve Fund in an amount equal to the Operation and Maintenance Reserve Requirement, the Authority may use funds on each subsequent Monthly Funding Date to satisfy the cumulative shortfall in the Operation and Maintenance Reserve Requirement from previous Monthly Funding Dates;

Eleventh, to the extent sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b), to the Major Maintenance Reserve Fund, an amount necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Major Maintenance Reserve Requirement. If sufficient funds are not then available on a particular Monthly Funding Date, after application of funds for the purposes specified in the prior clauses, to fund the Major Maintenance Reserve Fund in an amount equal to the Major Maintenance Reserve Requirement, the Authority may use funds on each subsequent Monthly Funding Date to satisfy the cumulative shortfall in the Major Maintenance Reserve Requirement from previous Monthly Funding Dates; and

Twelfth, to the Distribution Lock-Up Fund, all remaining amounts, if any.

(c) To the extent that on any Calculation Date or any other date of determination requested by the Authority, the Authority determines that (i) the amounts on deposit in the Senior Lien Bonds Reserve Fund are in excess of the applicable Senior Lien Bonds Reserve Requirement, (ii) amounts on deposit in the Subordinate Obligations Reserve Fund are in excess of the applicable Subordinate Obligations Reserve Requirement, (iii) the amounts on deposit in the Major Maintenance Reserve Fund are certified by the Authority to be in excess of the Major Maintenance Reserve Fund Requirement or (v) the amounts on deposit in the Operation and Maintenance Reserve Fund are in excess of the Operation and Maintenance Reserve Requirement, then in each such case, as applicable, the excess amounts shall be transferred into the Toll Revenue Fund.

Section 4.04 Project Fund.

(a) Accounts. Pursuant to Section 4.02(a) hereof, the Trustee is to establish and create and maintain in trust the following separate Accounts within the Project Fund:

- (1) the Senior Lien Bonds Account;
- (2) the Subordinate Obligations Account;
- (3) the Design-Build Contractor Payments Account; and
- (4) the Insurance and Condemnation Proceeds Account.

Project Costs shall be paid from the Project Fund and its Accounts, including the Senior Lien Bonds Account, the Subordinate Obligations Account, the Design-Build Contractor Payments Account and the Insurance and Condemnation Proceeds Account as described below. The Authority shall be entitled to open new Accounts of the Project Fund for such purposes as may be set forth in a Supplemental Indenture.

(b) Senior Lien Bonds Account. The net proceeds of each Series of the Senior Lien Bonds shall be deposited by the Trustee into the applicable sub-account of the Senior Lien Bonds Account as provided by the applicable Supplemental Indenture. The Senior Lien Bonds Account and all sub-accounts therein shall be maintained in order to account for the receipt and disbursement of proceeds (and all earnings thereon) of the Senior Lien Bonds, including but not limited to, the payment of, or reimbursement for a prior payment of, Costs of Issuance of Senior Lien Bonds and other Project Costs permitted to be paid with the proceeds of such Senior Lien Bonds. Funds therein shall be disbursed pursuant to a Funds Transfer Certificate in accordance with the provisions of Section 4.20. Notwithstanding anything to the contrary set forth herein, the amounts on deposit in any such sub-account of the Senior Lien Bonds Account (and all earnings thereon) shall secure only the Senior Lien Bonds issued to fund the initial deposit to such sub-account, and such amounts shall be held by the Trustee hereunder solely for the benefit of the holders of such Senior Lien Bonds until such funds have been disbursed in accordance with this Section. The Authority shall deposit the net proceeds of each draw under each TIFIA Loan Agreement on the respective funding date of such draw in a dedicated sub-account of the Authority in accordance with, and used for the payment of Eligible Project Costs (as such term is defined in the applicable TIFIA Loan Agreement) in accordance with the applicable TIFIA Loan Agreement. Notwithstanding anything to the contrary set forth herein, the amounts on deposit in any such sub-account of the Senior Obligations Account (and all earnings thereon) shall secure only the TIFIA Bond, and such amounts shall be held by the Trustee hereunder

solely for the benefit of the TIFIA Lender until such funds have been disbursed in accordance with this Section.

(c) Subordinate Obligations Account. The net proceeds of Subordinate Obligations shall be deposited by the Trustee into the applicable sub-account of the Subordinate Obligations Account as provided by the applicable Supplemental Indenture. The Subordinate Obligations Account and all sub-accounts therein shall be maintained in order to account for the receipt and disbursement of proceeds (and all earnings thereon) of the Subordinate Obligations, including but not limited to, the payment of, or reimbursement for a prior payment of, Costs of Issuance of Subordinate Obligations and other Project Costs permitted to be paid with the proceeds of such Subordinate Obligations. Funds therein shall be disbursed pursuant to a Funds Transfer Certificate in accordance with the provisions of Section 4.20.

(d) Design-Build Contractor Payments Account. Amounts, including but not limited to liquidated damages, payable to or received by the Authority from the Design-Build Contractor shall be transferred to the Trustee and deposited by the Trustee into the Design-Build Contractor Payments Account and used to pay Project Costs. The Authority shall comply with Section 4.20, including the delivery of a Funds Transfer Certificate (to the extent required by such Section 4.20) in requesting a disbursement of funds from time to time from the Design-Build Contractor Payments Account.

(e) Insurance and Condemnation Proceeds Account. Proceeds of fire and other casualty insurance payable to or received by the Authority with respect to the Toll Road (whether by way of claims, return of premiums, ex gratia settlements or otherwise), and proceeds of any condemnation awards payable to or received by the Authority with respect to the Toll Road shall be transferred to the Trustee and deposited by the Trustee into the Insurance and Condemnation Proceeds Account. If received prior to the applicable Substantial Completion Date, amounts on deposit in such account shall be used to pay Project Costs and shall be transferred in accordance with subsection (f) below. If received after the applicable Substantial Completion Date, amounts on deposit in the Insurance and Condemnation Proceeds Account may be used by the Authority to pay the costs of restoration, repair or rehabilitation of the Toll Road or portion thereof to which such insurance or condemnation proceeds relate; provided, however, that any portion of such amounts that the Authority elects not to use for such restoration, repair or rehabilitation of the Toll Road or that are in excess of the amount needed for such restoration, repair or rehabilitation of the Toll Road, as evidenced by a Certificate of the Authority delivered to the Trustee, shall be transferred to the Redemption Fund and applied to the prepayment of principal of Outstanding Highest Priority Obligations. The Authority shall comply with Section 4.20, including the delivery of a Funds Transfer Certificate (to the extent required by such Section 4.20) in requesting a disbursement of funds from time to time from the Design-Build Contractor Payments Account.

(f) Transfers Upon Final Completion. To the extent that on the date of final completion of the construction of the I-405 Improvement Project, as evidenced by the delivery to the Trustee of a Certificate of the Authority, there shall be any funds remaining on deposit in the Project Fund (or any Account thereof), such funds will be deposited into the Toll Revenue Fund.

Section 4.05 Operation and Maintenance Fund.

(a) The Authority shall establish and maintain the Operation and Maintenance Fund in accordance herewith.

(b) Upon receipt of amounts transferred to the Operation and Maintenance Fund under Article V of this Indenture, the Authority shall thereafter apply the funds in the Operation and Maintenance Fund for the payment of Operation and Maintenance Expenses in accordance with the terms of this Indenture..

Section 4.06 Senior Lien Bonds Reserve Fund.

(a) On the date of issuance of any Series of Senior Lien Bonds that has a Senior Lien Bonds Reserve Requirement, the Senior Lien Bonds Reserve Requirement for those Senior Lien Bonds shall be deposited in the Senior Lien Bonds Reserve Fund in an Account solely for the benefit of those Senior Lien Bonds. Alternatively, the Supplemental Indenture for any Series of Senior Lien Bonds may establish a pooled Senior Lien Bonds Reserve Requirement for that Series of Senior Lien Bonds and any one or more subsequently issued Series of Senior Lien Bonds with the same pooled Senior Lien Bonds Reserve Requirement, in which case the Senior Lien Bonds Reserve Requirement for the initial issue of such Senior Lien Bonds shall be deposited in the Senior Lien Bonds Reserve Fund in an Account solely for the benefit of those Senior Lien Bonds and any additional Senior Lien Bonds with the same pooled Senior Lien Bonds Reserve Requirement, and on the date of issuance of any such additional Senior Lien Bonds, there shall be deposited in the Account the amount necessary to increase the balance in the Account to an amount equal to the Senior Lien Bonds Reserve Requirement for all Senior Lien Bonds secured by that Account.

(b) Monies on deposit in each Account within the Senior Lien Bonds Reserve Fund shall be applied by the Trustee as follows:

(1) If on any (x) interest payment date for Senior Lien Bonds cured by an Account within the Senior Lien Bonds Reserve Fund, (y) principal payment date for such Senior Lien Bonds or (z) redemption date on which such Senior Lien Bonds are subject to mandatory sinking fund redemption, the amount on deposit in the applicable Account of the Senior Lien Bonds Fund, determined after taking into account all amounts transferred to such Account of the Senior Lien Bonds Fund in accordance with clauses Third and Fourth of Section 4.03(b), and amounts transferred from the following Funds in the following order of priority, the Pledged Account, the Distribution Lock-Up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund in accordance with this Indenture on or prior to such date, is not sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Senior Lien Bonds, then moneys shall be transferred to the Senior Lien Bonds Interest Account and/or the Senior Lien Bonds Principal Account, as applicable, from the applicable Account of the Senior Lien Bonds Reserve Fund which, together with moneys then on deposit in the applicable Account of the Senior Lien Bonds Fund, will be sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Senior Lien Bonds on such date. Moneys shall be transferred first to the Senior Lien Bonds Interest Account until such Account, together with any available funds then on deposit in the Senior Lien Bonds Interest Account, is sufficiently funded with respect to such Senior Lien Bonds and thereafter,

to the Senior Lien Bonds Principal Account until such Account, together with any available funds then on deposit in the Senior Lien Bonds Principal Account, is sufficiently funded with respect to such Senior Lien Bonds.

(2) Upon the maturity of Senior Lien Bonds secured by funds on deposit in an Account of the Senior Lien Bonds Reserve Fund or upon the earlier redemption of all or any portion of such Senior Lien Bonds, the Authority may direct the Trustee to transfer amounts on deposit in the applicable Account within the Senior Lien Bonds Reserve Fund to the Senior Lien Bonds Principal Account for application to the final payment of principal of all or a portion of the Senior Lien Bonds secured thereby or to an escrow account established for defeasance of such Senior Lien Bonds pursuant to Article X hereof, provided that, if less than all of the Senior Lien Bonds mature or are redeemed, the amount remaining on deposit in such Account of the Senior Lien Bonds Reserve Fund following any such transfer shall not be less than the Senior Lien Bonds Reserve Requirement applicable to the Senior Lien Bonds secured thereby to remain Outstanding.

(3) Except as provided in paragraph (2) above, any amounts on deposit in an Account of the Senior Lien Bonds Reserve Fund in excess of the applicable Senior Lien Bonds Reserve Requirement shall be applied in accordance with Section 4.03(c) of this Indenture.

(c) The lien on the Senior Lien Bonds Reserve Fund (and all earnings thereon) shall apply only to the Senior Lien Bonds and the related interest of the Holder of such Senior Lien Bonds with respect to amounts on deposit in such Fund from time to time, and such amounts shall be solely for the benefit of such holder of Senior Lien Bonds until such funds have been disbursed in accordance with this Section. If necessary, the Authority shall instruct the Trustee to create Accounts within the Senior Lien Bonds Reserve Fund to facilitate compliance with the provisions of this paragraph.

(d) The Senior Lien Bonds Reserve Requirement for any Series of Senior Lien Bonds may be permitted or required by the Supplemental Indenture establishing the Senior Lien Bonds Reserve Requirement to be funded in whole or in part with a Reserve Facility. The terms and conditions for any Reserve Facility shall be set forth in the Reserve Facility or the Supplemental Indenture establishing the Senior Lien Bonds Reserve Requirement to be met in whole or in part by the Reserve Facility, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this Section 4.08. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Reserve Facilities in or with respect to any Account in the Senior Lien Bonds Reserve Fund to fund payments of principal of and interest on Senior Lien Bonds supported by such Account in the Senior Lien Bonds Reserve Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all Reserve Facility Costs owing to a Reserve Facility Provider have been paid in full.

Section 4.07 Subordinate Obligations Reserve Fund.

(a) The Subordinate Obligations Reserve Requirement for those Subordinate Obligations secured by the Subordinate Obligations Reserve Fund or an Account therein shall be deposited in the Subordinate Obligations Reserve Fund in an Account solely for the benefit of those

Subordinate Obligations on the dates and in the amounts set forth in the Supplemental Indenture authorizing the issuance of such Subordinate Obligations; provided, however, alternatively, the Supplemental Indenture for any Series of Subordinate Obligations may establish a pooled Subordinate Obligations Reserve Requirement for those Subordinate Obligations and any one or more subsequently issued Subordinate Obligations with the same pooled Subordinate Obligations Reserve Requirement, in which case the Subordinate Obligations Reserve Requirement for the initial issue of such Subordinate Obligations shall be deposited in the Subordinate Obligations Reserve Fund in an Account solely for the benefit of those Subordinate Obligations and any additional Subordinate Obligations with the same pooled Subordinate Obligations Reserve Requirement, and on the date of issuance of any such additional Subordinate Obligations, there shall be deposited in the Account the amount necessary to increase the balance in the Account to an amount equal to the Subordinate Obligations Reserve Requirement for all Subordinate Obligations secured by that Account.

(b) Monies on deposit in each Account within the Subordinate Obligations Reserve Fund shall be applied by the Trustee as follows:

(1) If on any (x) interest payment date for Subordinate Obligations secured by an Account within the Subordinate Obligations Reserve Fund, (y) principal payment date for such Subordinate Obligations or (z) redemption date on which such Subordinate Obligations are subject to mandatory sinking fund redemption, the amount on deposit in the applicable Account of the Subordinate Obligations Fund, determined after taking into account all amounts transferred to such Account of the Subordinate Obligations Fund in accordance with clauses Ninth, Tenth and Twelfth of Section 4.03(b), and amounts transferred from the following Funds in the following order of priority, the Unpledged Account, the Distribution Lock-Up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Fund in accordance with this Indenture on or prior to such date, is not sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Subordinate Obligations, then moneys shall be transferred to the Subordinate Obligations Interest Account and/or the Subordinate Obligations Principal Account, as applicable, from the applicable Account of the Subordinate Obligations Reserve Fund which, together with moneys then on deposit in the applicable Account of the Subordinate Obligations Fund, will be sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Subordinate Obligations on such date. Moneys shall be transferred first to the Subordinate Obligations Interest Account until such Account, together with any available funds then on deposit in the Subordinate Obligations Interest Account, is sufficiently funded with respect to such Subordinate Obligations and thereafter, to the Subordinate Obligations Principal Account until such Account, together with any available funds then on deposit in the Subordinate Obligations Principal Account, is sufficiently funded with respect to such Subordinate Obligations.

(2) Upon the maturity of Subordinate Obligations secured by funds on deposit in an Account of the Subordinate Obligations Reserve Fund or upon the earlier redemption of all or any portion of such Subordinate Obligations, the Authority may direct the Trustee to transfer amounts on deposit in the applicable Account within the Subordinate Obligations Reserve Fund to the Subordinate Obligations Principal Account for application to the final payment of principal of all or a portion of the Subordinate Obligations secured thereby or to an escrow account established for defeasance of such Subordinate Obligations

pursuant to Article IX hereof, provided that, if less than all of the Subordinate Obligations mature or are redeemed, the amount remaining on deposit in such Account of the Subordinate Obligations Reserve Fund following any such transfer shall not be less than the Subordinate Obligations Reserve Requirement applicable to the Subordinate Obligations secured thereby to remain Outstanding.

(3) Except as provided in paragraph (2) above, any amounts on deposit in an Account of the Subordinate Obligations Reserve Fund in excess of the applicable Subordinate Obligations Reserve Requirement shall be applied in accordance with Section 5.03(c) of this Indenture.

(c) The lien on the Subordinate Obligations Reserve Fund (and all earnings thereon) shall apply only to the Subordinate Obligations and the related interest of the Holder of such Subordinate Obligations with respect to amounts on deposit in such Fund from time to time, and such amounts shall be solely for the benefit of such holder of Subordinate Obligations until such funds have been disbursed in accordance with this Section. If necessary, the Authority shall instruct the Trustee to create Accounts within the Subordinate Obligations Reserve Fund to facilitate compliance with the provisions of this paragraph.

(d) The Subordinate Obligations Reserve Requirement for any Series of Subordinate Obligations may be permitted or required by the Supplemental Indenture establishing the Subordinate Obligations Reserve Requirement to be funded in whole or in part with a Reserve Facility. The terms and conditions for any Reserve Facility shall be set forth in the Reserve Facility or the Supplemental Indenture establishing the Subordinate Obligations Reserve Requirement to be met in whole or in part by the Reserve Facility, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this Section 4.07. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Reserve Facilities in or with respect to any Account in the Subordinate Obligations Reserve Fund to fund payments of principal of and interest on Subordinate Obligations supported by such Account in the Subordinate Obligations Reserve Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all Reserve Facility Costs owing to a Reserve Facility Provider have been paid in full.

Section 4.08 Major Maintenance Reserve Fund.

(a) The Trustee shall, in accordance with clause Tenth of Section 4.03(b), cause amounts in the Toll Revenue Fund, to the extent available, to be deposited into the Major Maintenance Reserve Fund from time to time in an amount equal to the Major Maintenance Reserve Requirement. Any amounts on deposit in the Major Maintenance Reserve Fund certified by the Authority as no longer being needed for Major Maintenance Expenses shall be applied in accordance with the requirements of Section 4.03(c) of this Indenture.

(b) On any date on which Major Maintenance Expenditures are due and payable or reasonably expected to become due and payable, monies on deposit in the Major Maintenance Reserve Fund shall be applied by the Trustee pursuant to a Written Request of Authority to pay such Major Maintenance Expenditures.

(c) If, after transferring any funds then on deposit in the Pledged Account in accordance with Section 4.10() hereof and the Distribution Lock-Up Fund in accordance with Section 4.10() hereof, on the Business Day prior to an interest payment date or principal payment date, the amount then on deposit in the Senior Lien Bonds Fund or the Subordinate Obligations Fund is insufficient to pay the principal of, and/or interest on, the related Senior Lien Bonds and/or Subordinate Obligations secured thereby then due, the Trustee shall make the following transfers from amounts on deposit in the Major Maintenance Reserve Fund in the following order of priority; first, to the Senior Lien Bonds Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Senior Lien Bonds and to the Subordinate Obligations Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Subordinate Obligations.

Section 4.09 Operation and Maintenance Reserve Fund. The Trustee shall, in accordance with clause Eleventh of Section 4.03(b), cause amounts in the Toll Revenue Fund, to the extent available, to be deposited into the Operation and Maintenance Reserve Fund from time to time in an amount equal to the Operation and Maintenance Reserve Requirement. Any amounts on deposit in the Operation and Maintenance Reserve Fund certified by the Authority as no longer being needed for Operation and Maintenance Expenses shall be applied in accordance with the requirements of Section 4.03(c) of this Indenture.

(b) On any date on which Operation and Maintenance Expenses are due and payable or reasonably expected to become due and payable, monies on deposit in the Operation and Maintenance Reserve Fund shall be applied by the Trustee pursuant to a Written Request of Authority to pay such Operation and Maintenance Expenses.

(c) If, after transferring any funds then on deposit in the Pledged Account in accordance with Section 4.10() hereof, the Distribution Lock-Up Fund in accordance with Section 4.10() hereof and the Major Maintenance Reserve Fund in accordance with Section 4.08, on the Business Day prior to an interest payment date or principal payment date, the amount then on deposit in the Senior Lien Bonds Fund or the Subordinate Obligations Fund is insufficient to pay the principal of, and/or interest on, the related Senior Lien Bonds and/or Subordinate Obligations secured thereby then due, the Trustee shall make the following transfers from amounts on deposit in the Operation and Maintenance Reserve Fund in the following order of priority; first, to the Senior Lien Bonds Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Senior Lien Bonds; and second, to the Subordinate Obligations Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Subordinate Obligations.

Section 4.10 Distribution Lock-Up Fund.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clause Thirteenth of Section 4.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Eleventh of Section 4.03(b), to be deposited into the Distribution Lock-Up Fund.

(b) If, after transferring any funds then on deposit in the Pledged Account in accordance with Section 4.10() hereof, on the Business Day prior to an interest payment date or principal payment date, the amount then on deposit in the Senior Lien Bonds Fund or the Subordinate

Obligations Fund is insufficient to pay the principal of, and/or interest on, the related Senior Lien Bonds and/or Subordinate Obligations secured thereby then due, the Trustee shall make the following transfers from amounts on deposit in the Distribution Lock-Up Fund in the following order of priority; first, to the Senior Lien Bonds Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Senior Lien Bonds and second, to the Subordinate Obligations Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Subordinate Obligations.

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Section 4.11 Rebate Fund. There shall be deposited in the Rebate Fund amounts transferred in accordance with clause Second of Section 4.03(b). All money at any time deposited in the Rebate Fund shall be held by the Trustee to satisfy the Rebate Requirement (as defined in the Tax Certificate) for payment to the United States of America. The Trustee shall have no responsibility with respect to the Rebate Fund or the Rebate Requirement except to follow the written instructions of the Authority.

Section 4.12 Senior Lien Bonds Interest Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clauses Third and Sixth of Section 4.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First and Second of Section 4.03(b), and to the extent applicable, clauses First through Fifth, and before making any transfers to the Senior Lien Bonds Fund from the Pledged Account in accordance with Section 4.10(_), from Distribution Lock-Up Fund in accordance with Section 4.10(_), from the Major Maintenance Reserve Fund in accordance with Section 4.08(c), from the Operation and Maintenance Reserve Fund in accordance with Section 4.09(c), and from the Senior Lien Bonds Reserve Fund in accordance with Section 4.06(b), in such order of priority, to be deposited into the Senior Lien Bonds Interest Account.

(b) On the Business Day prior to each date when the interest portion of debt service on any Senior Lien Bonds shall be due and payable, monies on deposit in the Senior Lien Bonds Interest Account shall be applied pro rata to the payment of the interest due on such Senior Lien Bonds in accordance with this Indenture.

Section 4.13 Senior Lien Bonds Principal Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clauses Fourth and Sixth of Section 4.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Third of Section 4.03(b), and to the extent applicable, clauses First through Fifth, and before making any transfers to the Senior Lien Bonds Fund from the Pledged Account in accordance with Section 4.10(_), from the Distribution Lock-Up Fund in accordance with Section 4.10(_), from the Major Maintenance Reserve Fund in accordance with Section 4.08(c), from the Operation and Maintenance Reserve Fund in accordance with Section 4.09(c) and from the Senior Lien Bonds Reserve Fund in accordance with Section 4.06(b) Senior Lien Bonds, in such order of priority, to be deposited into the Senior Lien Bonds Principal Account.

(b) On the Business Day prior to each date when the principal portion of debt service (including any mandatory sinking fund redemption payments) on any Senior Lien Bonds shall be due and payable, monies on deposit in the Senior Lien Bonds Principal Account shall be applied pro rata to the payment of the principal portion of such Senior Lien Bonds in accordance with this Indenture.

Section 4.14 Subordinate Obligations Interest Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clause Seventh of Section 4.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Sixth of Section 5403(b), and before making any transfers to the Subordinate Obligations Fund from the Pledged Account in accordance with Section 4.10(_), from the Distribution Lock-Up Fund in accordance with Section 4.10(_), from the Major Maintenance Reserve Fund in accordance with Section 4.08(c), from the Operation and Maintenance Reserve Fund in accordance with Section 4.09(c), and from the Senior Lien Bonds Reserve Fund in accordance with Section 4.06(b), in such order of priority, to be deposited into the Subordinate Obligations Interest Account.

(b) On the Business Day prior to the date when the interest portion of debt service on any Subordinate Obligations shall be due and payable, monies on deposit in the Subordinate Obligations Interest Account shall be transferred to the trustee for or Holder of such Subordinate Obligations in accordance this Indenture.

Section 4.15 Subordinate Obligations Principal Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clauses Eighth of Section 4.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Seventh of Section 4.03(b), and before making any transfers to the Subordinate Obligations Fund from the Pledged Account in accordance with Section 4.10(_), from the Distribution Lock-Up Fund in accordance with Section 4.10(_), from the Major Maintenance Reserve Fund in accordance with Section 4.08(c), from the Operation and Maintenance Reserve Fund in accordance with Section 4.09(c), and from the Subordinate Lien Obligations Reserve Fund in accordance with Section 4.07(b), in such order of priority, to be deposited into the Subordinate Obligations Principal Account.

(b) On the Business Day prior to the date when the interest portion of debt service on any Subordinate Obligations shall be due and payable, monies on deposit in the Subordinate Obligations Principal Account shall be transferred to the trustee for or Holder of such Subordinate Obligations in accordance this Indenture.

Section 4.16 RESERVED.

Section 4.17 Establishment and Application of the Redemption Fund.

The Trustee shall establish, maintain and hold in trust a special Fund designated as the "Redemption Fund." All moneys deposited by the Authority with the Trustee for the purpose of redeeming Obligations of any Series (other than pursuant to a mandatory sinking fund redemption) shall, unless otherwise provided in the Supplemental Indenture establishing the terms and conditions for such Series Obligations, be deposited in the Redemption Fund. All

amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of redeeming Obligations of such Series and maturity as shall be specified by the Authority in a Written Request of the Authority delivered to the Trustee, in the manner, at the times and upon the terms and conditions specified in the Supplemental Indenture pursuant to which such Series of Obligations was issued. Such Written Request of the Authority may specify that amounts on deposit in the Redemption Fund that remain unclaimed for a specified period of time shall be paid to the Authority, and the Trustee shall pay such unclaimed amounts to the Authority in accordance with the Written Request of the Authority.

Section 4.18 Records. The Trustee shall cause to be kept and maintained records pertaining to each Fund and Account held by it and all disbursements therefrom and shall deliver monthly to the Authority and, for so long as any Obligations in the form of or securing payment of a TIFIA Loan remain Outstanding, to the TIFIA Lender statements of activity with respect to such Funds and Accounts, provided that the Trustee shall not be obligated to report as to any Fund or Account that (a) has a balance of zero and (b) has not had any activity since the last reporting date.

In addition, the Authority shall cause to be kept and maintained records pertaining to the Operation and Maintenance Fund and all disbursements therefrom and shall deliver monthly to the Trustee and, for so long as the TIFIA Bond remains Outstanding, to the TIFIA Lender statements of activity with respect to such Funds.

Section 4.19 Investment by Trustee. Unless otherwise provided in a Supplemental Indenture, moneys held by the Trustee in the Funds and Accounts created hereunder shall be invested and reinvested in Permitted Investments in accordance with the written instructions of an Authorized Representative.

Unless otherwise specified in the Supplemental Indenture with respect to a Fund or Account created pursuant to such Supplemental Indenture, all Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the Fund or Account that was used to purchase the Permitted Investment. Except as described herein and unless otherwise provided by a Written Request of the Authority or in a Supplemental Indenture with respect to a Fund or Account created pursuant thereto, all interest, profits and other income received from the investment of moneys in any Fund or Account held by the Trustee, other than the Rebate Fund and the Accounts in the Project Fund, shall be transferred to the Toll Revenue Fund when received. All interest, profits and other income received from the investment of moneys in the Rebate Fund shall be deposited in the Rebate Fund. All interest, profits and other income received from the investment of monies in the Operation and Maintenance Fund shall be deposited in the Operation and Maintenance Fund. All interest, profits and other income received from the investment of monies in the Operation and Maintenance Reserve Fund shall be deposited in the Operation and Maintenance Reserve Fund. All interest, profits and other income received from the investment of monies in the Major Maintenance Reserve Fund shall be deposited in the Major Maintenance Reserve Fund. Unless otherwise provided in a Supplemental Indenture establishing an Account within the Project Fund, all interest, profits and other income received from the investment of moneys in an Account within the Project Fund shall be deposited in such Account. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any Permitted Investment equal to the amount of accrued interest, if any, paid as part of the purchase price of such Permitted Investment shall be credited to the Fund or Account from which such accrued interest was paid.

The Trustee is authorized and directed to cause to be sold or redeemed and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any Fund or Account is or will be insufficient to make any required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale or redemption. Absent a Written Request of the Authority instructing the Trustee how to invest the cash balance in a Fund or Account held by the Trustee hereunder, the Trustee shall hold such cash balances uninvested pending its receipt of such a Written Request of the Authority.

All Permitted Investments credited to the Senior Lien Bonds Reserve Fund or the Subordinate Obligations Reserve Fund shall be valued by the Trustee as of each Calculation Date. All Permitted Investments credited to the Senior Lien Bonds Reserve Fund or the Subordinate Obligations Reserve Fund shall be valued at their fair market value determined to the extent practical by reference to the closing bid price thereof published in *The Wall Street Journal* or any other financial publication or generally recognized pricing information service selected by the Trustee in its discretion. The Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

The Authority acknowledges that regulations of the Comptroller of the Currency grant the Authority the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Authority specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

The Trustee or its affiliates may act as sponsor, advisor, principal or agent in the acquisition or disposition of any investment with the prior written approval of an Authorized Representative. The Trustee may commingle any of the moneys held by it pursuant to this Indenture (except for amounts on deposit in the Rebate Fund, and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument) for investment purposes only; provided, however, that the Trustee shall account separately for the moneys belonging to each Fund or Account established pursuant to this Indenture and held by it. The Authority shall not commingle the moneys held by it in the Operation and Maintenance Fund with any other funds held by the Authority. The Trustee may rely on the investment directions of the Authority as to both the suitability and legality of the directed investments.

Section 4.20 Withdrawal and Application of Funds: Priority of Transfers from Funds and Accounts.

(a) [Except as provided in Sections 5.07, 5.08, 5.09, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 5.19, 5.20 and 5.20], each withdrawal or transfer of funds from the Funds and Accounts by the Trustee on behalf of the Authority in accordance herewith shall be made pursuant to an executed Funds Transfer Certificate, which certificate shall be provided and prepared by the Authority in accordance with the terms hereof and shall contain a certification by the Authority that such withdrawal or transfer complies with the requirements of this Indenture.

(b) The Funds Transfer Certificate relating to each applicable Fund or Account shall be delivered to the Trustee no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn from the applicable Fund or Account or transferred from a Fund or Account to another Fund or Account in accordance with this Indenture. The Trustee shall comply

with any such Funds Transfer Certificate; provided, that if the trustee for or Holder of Subordinate Obligations provides written notice to the Trustee, the Authority and the other Secured Creditors that any payment, withdrawal or transfer of funds is not in compliance with this Indenture or the other Financing Documents and specifies such non-compliance in such notice, the Authority shall not be entitled to cause such proposed withdrawal until such time as it has submitted a revised Funds Transfer Certificate which complies with the terms hereof or thereof.

(c) The Authority shall have the right to withdraw or cause to be transferred funds from the Operation and Maintenance Fund, the Operation and Maintenance Reserve Fund and the Major Maintenance Reserve Fund solely for the purpose of payment of Operation and Maintenance Expenses or Major Maintenance Expenditures, respectively, at any time without any approval or consent of the Trustee or any other person.

(d) Each Funds Transfer Certificate requesting a disbursement from an Account within the Project Fund shall contain the following certifications by the Authority or, as to paragraph (5), the Authority and the Consulting Engineer:

(1) the names of the persons, firms or corporations to whom each such payment is due, including the Authority in the case of reimbursements or the Trustee in the case of payments of capitalized interest;

(2) the respective amounts to be paid or reimbursed to such entities;

(3) the purpose or Project Cost by general classification for which each such obligation to be paid or reimbursed was incurred;

(4) that obligations in the stated amounts have been incurred by the Authority and presently are due and payable (except with respect to requisitions for capitalized interest, in which case amounts requisitioned, together with expected earnings from investment thereof, do not exceed amounts properly capitalizable as interest related to projects prior to their completion), or properly are reimbursable to the Authority, and that each item thereof is a Project Cost, is a proper charge against the applicable Account in the Project Fund, and has not been paid or reimbursed previously;

(5) after giving effect to the requisition, sufficient funds are and will be available to the Authority to achieve substantial completion of the applicable Project on or prior to the applicable Long Stop Date; provided that this certification need not be provided with respect to requisitions made after the applicable Substantial Completion Date;

(6) that there has not been filed with or served on the Authority any notice of lien, right of lien, or attachment upon or claim affecting the right of any person, firm or corporation named in such requisition to receive payment of any amounts which has not been released or will not be released simultaneously with the payment of such obligation; and

(7) that, as of the date of such Funds Transfer Certificate, no event or condition exists that constitutes, or that with the notice or lapse of time or both, would constitute, an Event of Default under this Indenture.

ARTICLE V

COVENANTS OF THE AUTHORITY

Section 5.01 Punctual Payment and Performance. The Authority will punctually pay the principal of and the interest on (and redemption premiums, if any, to become due on) its Obligations hereunder in strict conformity with the terms of the Act, this Indenture and such Obligations, and will faithfully observe and perform all of the agreements and covenants contained in this Indenture and such Obligations.

Section 5.02 Against Encumbrances. The Authority will not create or cause or permit to be created any pledge, lien, charge or encumbrance having priority over the lien of the Senior Lien Bonds upon any part of the Trust Estate, except for Operation and Maintenance Expenses payable from Revenue. The Authority will not create or cause or permit to be created any pledge, lien, charge or encumbrance having parity with the lien of the Senior Lien Bonds upon any part of the Trust Estate except the lien of Senior Lien Bonds. The Authority will not create or cause or permit to be created any pledge, lien, charge or encumbrance having priority over the lien of the Subordinate Obligations upon any part of the Trust Estate, except Senior Lien Bonds. The Authority will not create or permit to be created or issue any Obligations secured by the Trust Estate except as provided in Section 3.03.

Section 5.03 Toll and Revenue Covenants.

(a) The Authority covenants that it shall at all times, beginning in the first full Fiscal Year following the Substantial Completion Date for the I-405 Improvement Project, adopt a toll policy that will establish, levy, maintain and collect tolls in connection with the Toll Road and establish such charges for use of the property constituting part of the Toll Road, including, without limitation and as permitted by law, leasehold payments, concession payments, rents and other charges, as shall be sufficient, collectively, to produce Net Revenue in each Fiscal Year equal to or in excess of the coverage ratios set forth in each of (1), (2), and (3) below:

(1) one hundred thirty-five percent (135%) of the Annual Debt Service in such Fiscal Year on all Outstanding Senior Lien Bonds];

(2) one hundred twenty-five percent (125%) of the Annual Debt Service in such Fiscal Year on all Outstanding Subordinate Obligations; and

(3) one hundred percent (100%) of the Annual Debt Service in such Fiscal Year on all Outstanding Obligations, plus the amounts required to be deposited into the Senior Lien Bonds Reserve Fund, the Subordinate Obligations Reserve Fund, the Major Maintenance Reserve Fund, the Operation and Maintenance Reserve Fund and any other Fund established by a Supplemental Indenture to be funded by Revenue.

In making the calculations in (1), (2), and (3) above, the Authority may take into consideration as a credit against Annual Debt Service any amounts received, or reasonably expected to be received, in the Fiscal Year from or as a result of any additional security irrevocably granted or

pledged to the Bondholders by the Authority with respect to the Obligations in accordance with Section 9.01(b) of this Indenture; provided, that if such grant or pledge is not for the benefit of all Obligations, the amounts expected to be received may only be taken into account when making the calculation with respect to the Obligations receiving the benefit of such grant or pledge.

(b) Beginning in the first full Fiscal Year following the Substantial Completion Date for the I-405 Improvement Project, the Authority covenants: (i) to compute projected Net Revenue for each Fiscal Year and the projected ratios described in Section 6.03(a)(1), (2) and (3) (each, a "Coverage Ratio") within thirty Business Days after the beginning of that Fiscal Year (such date of computation being hereinafter referred to as a "Coverage Calculation Date"); (ii) within five Business Days furnish to the Trustee a Certificate of the Authority setting forth the results of such computations; and (iii) if any Coverage Ratio is less than the applicable requirement of Section 6.03(a), to take such action as promptly as practicable after the Coverage Calculation Date (including, without limitation, increasing Toll Revenues through toll increases) as the Authority projects is necessary to cause each projected Coverage Ratio for each Fiscal Year to equal or exceed the requirement of Section 6.03(a) for each such Fiscal Year.

(1) Within 60 days after the end of each Fiscal Year (beginning with the first full Fiscal Year following the Substantial Completion Date for the I-405 Improvement Project), the Authority will file with the Trustee a report setting forth the Net Revenue for such Fiscal Year. The failure of toll rates to yield an amount sufficient to achieve each Coverage Ratio shall not be deemed to constitute an Event of Default so long as the Authority complies with the requirements set forth below in this Section 5.03(b). If any such report indicates that the Net Revenue for such Fiscal Year was less than the amount required pursuant to Section 5.03(a), then as soon as practicable after delivering such report to the Trustee and, while there are Outstanding Obligations in the form of or securing payment of a TIFIA Loan, the TIFIA Lender, the Authority shall employ a Traffic Consultant to review and analyze the operations of the Toll Road and to submit to the Board, as soon as practicable (but not later than such date as will enable the Board to act upon it within 180 days after the end of the Fiscal Year in question), a written report which shall include the actions that the Traffic Consultant recommends should be taken by the Authority with respect to (i) revising the toll rates, (ii) altering its methods of operation, or (iii) taking other action projected to produce the amount so required to comply in each year with each Coverage Ratio (or, if less, the maximum amount deemed feasible by the Traffic Consultant and that the Traffic Consultant estimates will not adversely affect the amount of Net Revenue). Promptly upon its receipt of such written report (and, in any case, within 180 days after the end of the Fiscal Year in question), after giving due consideration thereto, the Authority will revise the toll rates, as permitted by law, alter its methods of operation, or take such other action as it deems appropriate. Such revisions, alterations, or actions need not comply with the recommendations of the Traffic Consultant so long as Net Revenue projected by the Traffic Consultant to be produced by the revisions, alterations or actions then taken by the Authority are at least equal to the amount required hereinabove. The Trustee shall have no responsibility to review any written report received pursuant to this Section 5.03(b).

(c) The Authority further covenants that such toll rates for traffic using the Toll Road will be established and maintained in a reasonable way to cover all traffic (other than vehicles used for maintaining the Toll Road; police, fire, and other public emergency vehicles; buses owned and operated by any public agency; vehicles with multiple passengers or which allow for a limited

number of passengers, including motorcycles, according to policies determined by the State or the Authority; electric, hybrid-electric and other vehicles that meet emission-reduction policies determined by the State or the Authority; vehicles which are otherwise exempt from payment of tolls under State or federal law; and any vehicles during a public emergency declared by the Authority) consistent with the requirements hereof, but with such classifications as the Authority may deem appropriate.

(d) Notwithstanding any provision to the contrary, nothing in this Section 5.03 shall be deemed to require the Authority to collect tolls and other fees with respect to which the Authority has determined, based upon a report from a Traffic Consultant, that the costs of collection would exceed the amount of tolls and other fees expected to be collected; and provided further that nothing contained in this Section 5.03 shall prevent the Authority from temporarily reducing or eliminating tolls and other fees in connection with programs which it intends to use to increase Net Revenue.

Section 5.04 Annual Budget; Financial Plan. The Authority covenants that, for each Fiscal Year, it will take such actions as may be required of it to prepare and will adopt an annual budget in accordance with applicable law, including the Act, and the Toll Agreements. The Authority further covenants that it will provide to the Trustee (A) no later than 15 days after the commencement of each Fiscal Year, a preliminary budget, and (B) not later than the first day of each Fiscal Year, a copy of the Authority's final budget (such copy of the final budget being referred to herein as the "Annual Operating Budget"). The Authority further covenants that it will provide to the Trustee a copy of the Authority's Financial Plans concurrently with their submission to the TIFIA Lender. The Trustee shall have no responsibility to review such preliminary budget, Annual Operating Budget or Financial Plan and shall only retain such documents as a repository for the holders of the Obligations.

Section 5.05 Operation and Maintenance of the Toll Road. The Authority covenants and agrees that it has taken, and, so long as any Obligations are Outstanding, that it will take, all steps necessary to ensure that it will continue to have lawful right and lawful power to operate and maintain the Toll Road as a revenue-producing facility and that it will impose and collect tolls on the Toll Road consistent with its obligations under the Act and the Toll Agreements. The Authority covenants and agrees to at all times operate the Toll Road in accordance with the requirements of the Act and the Toll Agreements. The Authority further covenants and agrees that it will pay all Operation and Maintenance Expenses and keep the Toll Road in good repair in accordance with customary business practices and the Maintenance Standards (as defined in the Toll Facility Agreement). The Authority further covenants that, should any Obligations remain Outstanding following the expiration of the Authority's authorization to impose tolls on the Toll Road, and should the Authority project that, within five calendar years such authorization will expire with Obligations remaining Outstanding, the Authority will petition the Legislature of the State to extend its authorization to impose such tolls.

Section 5.06 Retention of Assets. Subject to the provisions of the Act and the Toll Agreements, the Authority covenants not to sell, lease or otherwise dispose of assets necessary to operate the Toll Road in the manner and at the levels of activity required to enable it to perform its covenants contained herein, including, without limitation, the covenants contained in Section 5.03 and Section 5.05.

Section 5.07 Insurance. The Authority covenants to carry at all times insurance (including reasonable self-insurance) or cause insurance to be carried (including by the Design-Build Contractor, its subcontractors and the Toll Operator) with responsible insurance and/or reinsurance companies authorized and qualified to do business in (or with companies duly authorized and qualified to do business in) the State and to assume the risks thereof consistent with insurance requirements of all agreements entered into by the Authority in connection with the design, construction, operation and maintenance of each Project until the Substantial Completion Date therefor, and after the Substantial Completion of the I-405 Improvement Project, of the Toll Road.

Nothing contained herein shall be deemed or construed to prevent the Authority from maintaining policies of insurance with respect to the Toll Road in which parties other than the Authority are named as dual obligee beneficiaries, provided that such other parties shall be limited to Caltrans, OCTA, the Trustee, the TIFIA Lender, contractors constructing Additional Projects and persons supplying toll collection and revenue management system equipment or facilities. Upon request of the Trustee, the Authority shall provide the Trustee with an officer's certificate stating that it is in compliance with this Section 5.07.

Section 5.08 Payment of Claims. The Authority will pay and discharge any and all lawful claims that, if unpaid, might become a charge or lien upon the Trust Estate or any part thereof, prior to or on a parity with the charge and lien upon the Revenue securing the Obligations Outstanding hereunder.

Section 5.09 Receipt and Deposit of Cash Advances. The Authority covenants and agrees that, immediately upon receipt of cash advances representing deposits against future toll payments from users or potential users of the Toll Road by or on behalf of the Authority, it will (i) deposit and hold, or cause to be deposited and held, such moneys in a special account, separate from other assets of the Authority, and cause such moneys to be deposited with and held by a bank or trust company (which may be the Trustee), (ii) invest such moneys only in Permitted Investments of the type described in [clauses (i), (ii), (iii), (iv), (v), (vi), (ix), (xii), (xvii) or (xviii) of the definition thereof], maturing within thirty (30) days from the date of the investment, and (iii) promptly, and in any event within seven Business Days after such deposits become tolls, transfer or cause the transfer of moneys from such account for credit to the Toll Revenue Fund. The Authority further covenants and agrees that it will not enter into any agreement pursuant to which cash advances received by any other person, business organization or governmental entity may be applied to the payment of tolls unless such person, business organization or governmental entity, as the case may be, has agreed to take such actions as the Authority may determine are reasonably necessary to assure that the Authority will receive timely payment of such tolls.

Section 5.10 Toll Agreements. The Authority hereby covenants and agrees that it has all lawful right and power to enter into the Toll Agreements and that it shall perform all of its material obligations and exercise all of the powers granted to it thereunder (including but not limited to the Authority's powers to enforce performance by the counterparty to each such Toll Agreement of such counterparty's obligations thereunder) as the Authority may, in its reasonable judgment, determine are necessary to complete or cause the Substantial Completion and final completion of the portions of the I-405 Improvement Project comprising the Toll Road, to allow the Toll Road to be opened to vehicular traffic, and to commence and

continue collection of tolls established pursuant to Section 6.03 of this Indenture. The Authority hereby covenants and agrees to employ the design-build method of procurement in connection with the design and construction of the I-405 Improvement Project.

Section 5.11 Construction and Maintenance From Other Sources Permitted. Notwithstanding any provision to the contrary in this Indenture, the Authority may, in accordance with the Act and other applicable laws, construct, reconstruct, rehabilitate, improve, acquire, lease, operate, or maintain, or any combination of these, both tolled and nontolled facilities, structures, onramps, connector roads, bridges, and roadways that are on, necessary for, or related to the construction or operation of the I-405 Improvement Project using any funds legally available therefore, including, without limitation and as applicable, Sales Tax Revenues, proceeds of Sales Tax Revenue Bonds and federal, State and local grants, loans and matching funds. Notwithstanding any other provision of this Indenture, the United States of America, the State or any of their respective agencies, departments or political subdivisions may construct, reconstruct, rehabilitate, improve, acquire, lease, operate, maintain, or any combination of these, both tolled and nontolled facilities, structures, onramps, connector roads, bridges, and roadways related to or competing with the I-405 Improvement Project or to pay for all or any part of the cost thereof, and the Authority has no power or authority to grant, permit, prohibit, prevent or interfere with any such actions.

Section 5.12 Tax Covenants.

(a) The Authority shall not use or permit the use of any proceeds of the Obligations or any funds of the Authority, directly or indirectly, to acquire any securities or obligations that would cause the interest on Obligations intended by the Authority to be exempt from federal income taxation to become subject to federal income taxation, and shall not take or permit to be taken any other action or actions that would cause any such Obligations to be an “arbitrage bond” within the meaning of Section 148 of the Code or “federally guaranteed” within the meaning of Section 149(b) of the Code and any such applicable regulations promulgated from time to time thereunder. The Authority shall observe and not violate the requirements of Section 148 of the Code and any such applicable regulations. The Authority shall comply with all requirements of Sections 148 and 149(b) of the Code to the extent applicable to Obligations. In the event that at any time the Authority is of the opinion that for purposes of this Section 6.03(a) it is necessary to restrict or to limit the yield on the investment of any moneys held by the Trustee under this Indenture, the Authority shall so instruct the Trustee under this Indenture in writing, and the Trustee shall take such action as may be reasonably necessary in accordance with such instructions.

(b) The Authority covenants to comply with the provisions and procedures of each Tax Certificate.

(c) The Authority shall not, and shall not cause the Trustee to, use or permit the use of any proceeds of the Obligations or any funds of the Authority (so long as such proceeds or other funds are under its control), directly or indirectly, in any manner, and shall not take or omit to take any action that would cause any of the Obligations to be treated as an obligation not described in Section 103(a) of the Code if such Obligations were, when originally issued, intended by the Authority to be obligations described in Section 103(a) of the Code.

(d) Notwithstanding any provisions of this Section 5.12 or any Tax Certificate, if the Authority shall provide to the Trustee an Opinion of Bond Counsel to the effect that any specified action required under this Section 5.12 is no longer required or that some further or different action is required to maintain the exclusion from gross income for federal income tax purposes of interest on any Obligations, the Trustee and the Authority may conclusively rely on such opinion in complying with the requirements of this Section, and, notwithstanding any other provision of this Indenture or any Tax Certificate, the covenants hereunder shall be deemed to be modified to that extent.

(e) The Trustee shall follow the directions of the Authority given pursuant to the Tax Certificate, and shall have no liability or responsibility to enforce compliance by the Authority with the terms of the Tax Certificate.

Section 5.13 Accounting Records; Financial Statements and Other Reports.

(a) The Authority shall keep appropriate accounting records in accordance with GAAP. Such accounting records shall at all times during business hours be subject to the inspection of the Trustee or of any Holder (or its representative authorized in writing).

(b) The Authority shall prepare and file with the Trustee annually within 180 days after the close of each Fiscal Year financial statements of the Authority for the Toll Road for such Fiscal Year, together with an audit report thereon prepared by an Independent Certified Public Accountant. The Trustee shall have no duty to review, verify or analyze such audit report and financial statements and shall hold such audit report and financial statements solely as a repository for the benefit of the holders of the Obligations. The Trustee shall not be deemed to have notice of any information contained therein or default or Event of Default which may be disclosed therein in any manner.

Section 5.14 Protection of Trust Estate and Rights of Holders. The Authority shall preserve and protect the Trust Estate and the security of the Obligations issued hereunder and the rights of the holders of such Obligations and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any Senior Lien Bonds or Subordinate Obligations by the Authority, such Obligations shall be incontestable by the Authority.

Section 5.15 Payment of Governmental Charges and Compliance with Governmental Regulations. The Authority shall pay and discharge all taxes or payments in lieu of taxes, assessments and other governmental charges or liens that may be levied, assessed or charged upon the Revenue, or any part thereof, promptly as and when the same shall become due and payable, except that the Authority shall not be required to pay any such governmental charges so long as the application or validity thereof shall be contested in good faith and the Authority shall have set aside reserves to cover such payments.

Section 5.16 Maintenance of Powers. The Authority covenants that it will at all times use its best efforts to maintain the powers, rights, functions, duties and obligations now reposed on it pursuant to the Act and all other laws and the Toll Facility Agreement and will not at any time voluntarily do, suffer or permit any act or thing the effect of which would be to hinder, delay or imperil either the payment of the indebtedness evidenced by any of the

Obligations hereunder or Credit Support Instruments relating thereto or the performance or observance of any of the covenants herein contained.

Section 5.17 Covenants Binding on Authority and Successors. All covenants, stipulations, obligations and agreements of the Authority contained in this Indenture shall be deemed to be covenants, stipulations, obligations and agreements of the Authority to the full extent authorized or permitted by law. If the powers or duties of the Authority shall hereafter be transferred by amendment of the Act or a new act or any provision of the Constitution or any other law of the State or in any other manner there shall be a successor to the Authority, and if such transfer shall relate to any matter or thing permitted or required to be done under this Indenture by the Authority then the entity that shall succeed to such powers or duties of the Authority shall act and be obligated in the place and stead of the Authority as in this Indenture provided, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon any officer, board, body or Authority to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreement shall be transferred by or in accordance with law.

Section 5.18 Continuing Disclosure. Upon the issuance of any Series of Obligations (other than the TIFIA Bond), or upon conversion of any Series of Obligations to an interest rate period, requiring an undertaking regarding continuing disclosure under Rule 15c2-12, the Authority hereby covenants and agrees that it will execute and deliver a Continuing Disclosure Agreement with respect to such Series of Obligations and comply with and carry out all of the provisions of such Continuing Disclosure Agreement applicable to it. Notwithstanding any other provision of this Indenture, failure of the Authority to comply with the provisions of any Continuing Disclosure Agreement shall not constitute an Event of Default under this Indenture; provided, however, that the Trustee, at the request of any Participating Underwriter or the Owner of an Outstanding Obligation, shall (but only to the extent that the Trustee is indemnified to its satisfaction from any liability or expense, including fees and expenses of its attorneys) or any Owner or Beneficial Owner of an Obligation may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order to cause the Authority to comply with its obligations under this Section.

Section 5.19 Further Assurances. The Authority will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Holders of the rights and benefits provided herein.

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES

Section 6.01 Events of Default. Any one of the following and any other event specified in a Supplemental Indenture as an Event of Default shall constitute an Event of Default hereunder:

(a) default in the payment of any interest on any Highest Priority Obligation when and as the same shall have become due and payable;

(b) default in the payment of the principal of or premium, if any, on any Highest Priority Obligation when and as the same shall become due and payable, whether at the stated maturity or redemption date thereof or otherwise;

(c) default by the Authority in the observance or performance of any other covenant or agreement of the Authority contained in this Indenture and the continuance thereof for a period of sixty (60) days after written notice thereof to the Authority given by the Trustee;

(d) if the Authority files a petition in voluntary bankruptcy for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(e) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the Authority insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Authority, or approving a petition filed against the Authority seeking reorganization of the Authority under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof; or

(f) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the Revenue, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control.

Section 6.02 Application of Revenue and Other Funds After Default. If an Event of Default shall occur and be continuing, the Trust Estate shall be under the control of and applied by the Trustee as follows and in the following order:

(a) first, to the payment of all fees, costs and other expenses (including the reasonable fees, costs and expenses of counsel and actual fees, costs and expenses due and payable by the Authority pursuant to the indemnity required by [Section 6.06(c)]) owed to the Trustee, and then to the pro rata payment of all costs and other expenses (including the reasonable fees, costs and expenses of counsel) owed to the trustee or Holder of any Obligations in connection with the performance of their obligations under the Financing Documents, including to the TIFIA Lender under the applicable TIFIA Loan Agreement, to which they are a party and the consummation of the transactions contemplated thereby (in each case to the extent not previously satisfied);

(b) second, to the payment of Operation and Maintenance Expenses;

(c) third, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) on all Senior Lien Bonds then Outstanding, in each case in the order of maturity of the payments thereof;

(d) fourth, to the pro rata payment of all unpaid principal amounts of any Senior Lien Bonds then due;

(e) fifth, to the pro rata payment of all accrued and unpaid default interest then due, if any, with respect to any Senior Lien Bonds ;

(f) sixth, to the pro rata payment of all accrued and unpaid redemption or prepayment premium then due, if any, with respect to any Senior Lien Bonds;

(g) seventh, to the pro rata payment of all other amounts, if any, due and payable under any Financing Document with respect to any Senior Lien Bonds;

(h) eighth, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) on all Subordinate Obligations;

(i) ninth, if any unpaid principal of any Subordinate Obligations has become due, to the pro rata payment of such unpaid principal amounts;

(j) tenth, to the pro rata payment of all accrued and unpaid default interest then due, if any, with respect to any Subordinate Obligations ;

(k) eleventh, to the pro rata payment of all accrued and unpaid redemption or prepayment premium then due, if any, with respect to any Subordinate Obligations;

(l) twelfth, to the pro rata payment of all other amounts, if any, due and payable under any Financing Document with respect to any Subordinate Obligations;

(m) thirteenth, to the Distribution Lock-Up Fund; and

(n) fourteenth, upon the payment in full of all Secured Obligations, to pay to the Authority, or as may be directed by the Authority, or as a court of competent jurisdiction may direct, any Revenue or other funds then remaining in the Trust Estate.

Section 6.03 No Acceleration. There shall be no right of acceleration with respect to the Obligations.

Section 6.04 Suits at Law or in Equity and Mandamus. In case one or more Events of Default shall occur, then and in every such case the Trustee may, and shall at the request of the Holders of not less than a majority of the Bond Obligation of the Highest Priority Obligations then Outstanding (or such greater percentage of the Holders of Highest Priority Obligations as may be specified in the Supplemental Indenture) upon receiving indemnity reasonably satisfactory to it, potentially including indemnity provided by such Holders [(subject to Section 7.06(c))], proceed to protect and enforce Bondholder rights by such appropriate judicial proceeding as shall be deemed most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Indenture, or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the holders of Obligations by this Indenture or such Obligations or by law. The provisions of this Indenture shall constitute a contract with each and every Bondholder and the duties of the Authority shall be enforceable by the Trustee on behalf of any Bondholder by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan

of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding without the approval of the Holders so affected.

Section 6.05 Waivers. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 6.06 Rights of Subordinate Lenders.

(a) Nothing in this Article VI or elsewhere in this Indenture shall be construed to limit or preclude the exercise of any rights or remedies reserved by the trustee for or Holder of any Subordinate Obligations;

(b) The Holder of any Subordinate Obligations may request, and the Trustee shall, upon receiving indemnity reasonably satisfactory to it from the Authority, proceed to protect and enforce such Holder's rights by such appropriate judicial proceeding as shall be deemed most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Indenture, or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in such Holder as a third-party beneficiary by this Indenture or by law. The provisions of this Indenture shall constitute a contract with the Holders of the Subordinate Obligations and the duties of the Authority shall be enforceable by the Trustee on behalf of such Holders by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of the Holders Subordinate Obligations any plan of reorganization, arrangement, adjustment, or composition affecting the Subordinate Obligations or the rights of the Holders of such Obligations, or to authorize the Trustee to vote in respect of the claim of such Holders in any such proceeding without the approval of the Holders of such Obligations.

The Authority agrees to provide adequate indemnity to the Trustee on behalf of the Holders of any Subordinate Obligations in accordance with this Section 6.06; provided that such indemnity shall be provided from Revenues in accordance with the provisions of this Indenture; and provided, further, that in no event shall such indemnity exceed the amount of indemnity that the Authority is required to provide such Holders as provided in the agreement relating to the issuance of such Obligations; and provided, further, that in no event shall the Trustee be required to continue to protect and enforce such Holder's rights if it does not receive adequate indemnity to proceed.

ARTICLE VII

THE TRUSTEE

Section 7.01 Trustee. (a) US Bank Trust Company, National Association will serve as the Trustee under this Indenture. The Trustee shall be required to perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee shall,

during the existence of any Event of Default (that has not been cured), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as reasonable persons would exercise or use under the circumstances in the conduct of their own affairs. The Trustee accepts the duties imposed upon it hereunder and agrees, particularly: (i) to hold all sums held by it for the payment of the principal and Purchase Price of, premium, if any, or interest on the Obligations in trust for the benefit of the Holders of the Obligations as provided herein until such sums shall be paid to such Holders of such Obligations or otherwise disposed of as herein provided; (ii) to authenticate and cancel Obligations as provided herein; (iii) to perform its obligations under this Indenture; and (iv) to keep such books and records relating to its duties as Trustee as shall be consistent with reasonable industry practice and to make such books and records available for inspection by the Authority at all reasonable times upon reasonable notice.

The Authority shall cause the necessary arrangements to be made and to be thereafter continued whereby: (i) funds derived from the sources specified in this Indenture will be made available at the Principal Office of the Trustee for the timely payment of principal and Purchase Price of, premium, if any, and interest on the Obligations; (ii) Obligations shall be made available for authentication, exchange and registration of transfer by the Trustee at the Principal Office of the Trustee; and (iii) the Trustee shall be furnished such records and other information, at such times, as shall be required to enable the Trustee to perform the duties and obligations imposed upon it hereunder.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action or its own negligent failure to act, except that, at all times regardless of whether or not any Event of Default shall exist: (i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; (ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate, notice, order, requisition, request, consent or opinion furnished to the Trustee conforming to the requirements of this Indenture; but in the case of any such certificate, notice, order, requisition, request, consent or opinion which by any provision hereof is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not it, on its face, conforms to the requirements of this Indenture; (iii) the Trustee shall not be liable for any error of judgment made in good faith unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and (iv) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority, or such larger or smaller percentage as may be required hereunder, in Bond Obligation of the Highest Priority Obligations at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Indenture. The permissive right of the Trustee to do things enumerated in this Indenture as a right shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(c) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers. The Trustee shall not be required to

give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises. Before taking any action under this Indenture relating to an Event of Default or taking any other action (other than making payments of principal and interest in accordance with the provisions of this Indenture) hereunder, the Trustee may require that indemnity reasonably satisfactory to it be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability.

(d) No delivery of Obligations to the Trustee or purchase of Obligations by the Trustee shall constitute a redemption of Obligations or any extinguishment of the debt represented thereby, unless such Obligations are surrendered by the Authority to the Trustee for cancellation pursuant to this Indenture.

(e) The Trustee shall not be accountable for the use or application by the Authority of the proceeds of the Obligations or for the use or application of any money paid over to the Authority by the Trustee in accordance with the provisions of this Indenture. The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Obligations other than information provided by the Trustee for use therein, if any.

(f) Whenever in the administration of this Indenture the Trustee shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the Authority and delivered to the Trustee and such certificate, in the absence of negligence or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

(g) The Trustee may elect to accept and act upon instructions or directions pursuant to this Indenture sent by facsimile or Electronic means, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Authority elects to give the Trustee facsimile or Electronic instructions and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling in the absence of its negligence or willful misconduct. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. In the absence of negligence or willful misconduct by the Trustee, the Authority agrees to assume all risks arising out of the use of such facsimile or Electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 7.02 Compensation and Indemnification of Trustee. The Authority shall: (i) pay the Trustee reasonable compensation (which, to the extent permitted by applicable law, shall not be limited by any law limiting the compensation of the trustee of an express trust); (ii) pay or reimburse the Trustee upon request for all reasonable fees, expenses,

disbursements and advances incurred or made in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own negligence or willful misconduct; and (iii) to the extent permitted by applicable law, indemnify the Trustee and its officers, directors, agents and employees for, and to hold it harmless against, any loss, liability, cost, suit, claim, judgment, damage or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the performance of its duties hereunder, including legal fees and expenses and the costs and expenses of defending itself against or investigating any claim of liability or expense, except to the extent that any such liability or expense was due to its own negligence or willful misconduct. The obligations of the Authority under this Section 7.02 shall survive the satisfaction and discharge of this Indenture and the earlier removal or resignation of the Trustee. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

The Authority agrees to provide adequate indemnity to the Trustee on behalf of the TIFIA Lender in accordance with this Section 7.02; provided that such indemnity shall be provided from Revenues in accordance with the provisions of this Indenture; and provided, further, that in no event shall such indemnity exceed the amount of indemnity that the Authority is required to provide the TIFIA Lender as provided in the agreement relating to the issuance of such Obligations; and provided, further, that in no event shall the Trustee be required to continue to protect and enforce the TIFIA Lender's rights if it does not receive adequate indemnity to proceed.

Section 7.03 Qualifications of Trustee; Resignation; Removal.

(a) There shall at all times be a trustee hereunder that is a commercial bank, trust company or national association organized and doing business under the laws of the United States or of a state thereof, authorized under such laws to exercise corporate trust powers, having (or if such bank, trust company or national association is a member of a bank holding company system, its holding company has) a combined capital and surplus of at least five hundred million dollars (\$500,000,000), and subject to supervision or examination by federal or state authority. If such banks, trust companies, or banking associations publish reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then, for the purposes of this Section 7.03, the combined capital and surplus of such banks, trust companies or banking associations shall be deemed to be their combined capital and surplus as set forth in their most recent reports of conditions so published.

(b) The Trustee may at any time resign by giving at least thirty (30) days' written notice to the Authority. Upon receiving such notice of resignation, the Authority, shall promptly appoint a successor trustee by an instrument in writing. If no successor trustee shall have been so appointed and have accepted appointment within thirty (30) days after the giving of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide Holder of a Highest Priority Obligation for at least six months may, on behalf of itself and any others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(c) In case at any time either of the following shall occur: (i) the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.03 and shall fail to resign after written request therefor by the Authority or by any Holder who has been a bona fide Holder of a Highest Priority Obligation for at least six months; or (ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, the Authority may remove the Trustee and appoint a successor trustee by an instrument in writing executed by an Authorized Representative, or any Holder who has been a bona fide Holder of a Highest Priority Obligation for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee. If no successor trustee shall have been so appointed by the Authority and have accepted appointment within thirty (30) days after such removal, the Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide Holder of a Highest Priority Obligation for at least six months may, on behalf of itself and any others similarly situated, petition any such court for the appointment of a successor trustee.

(d) The Authority or Holders of a majority in Bond Obligation of the Highest Priority Obligation at the time Outstanding may at any time remove the Trustee and appoint a successor trustee by an instrument or concurrent instruments in writing signed by an Authorized Representative of the Authority or by such Holders, as the case may be.

(e) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.03 shall become effective upon written acceptance of appointment by the successor trustee acceptable to the Authority. Any successor trustee shall execute, acknowledge and deliver to the Authority and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the Written Request of the Authority or the request of the successor trustee, the predecessor trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the rights, powers and trusts of the trustee so ceasing to act. Upon request of any such successor trustee, the Authority shall execute any and all instruments in writing necessary or desirable for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and duties. No successor trustee shall accept appointment as provided in this Section 7.03 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of this Section 7.03. Upon acceptance of appointment by a successor trustee as provided in this Section 7.03, the Authority or such successor trustee shall give Holders notice of the succession of such trustee to the trusts hereunder.

(f) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under this

Section 7.03 and acceptable to the Authority, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

(g) In the event of the resignation or removal of the Trustee, the Trustee shall deliver any money and any Obligations and its related books and records held by it in such capacity to its successor.

(h) The Trustee may execute any of the trusts or powers hereof and perform any of its duties and responsibilities hereunder by or through attorneys, agents or receivers, including issuing and paying agents as provided in Section 7.05, and the Trustee shall not be answerable for the conduct of the same if appointed with due care hereunder, provided that the Trustee shall remain responsible for its duties hereunder. The Trustee may consult with counsel and the advice or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in the absence of negligence and willful misconduct and in accordance with such advice or opinion of counsel.

Section 7.04 Instrument of Bondholders. Any instrument required by this Indenture to be executed by Bondholders may be in any number of writings of similar tenor and may be executed by Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Obligations given in any of the following forms shall be sufficient for any of the purposes of this Indenture: (i) a certificate of any officer in any jurisdiction who by law has power to take acknowledgements within such jurisdiction that the person signing such writing acknowledged before him the execution thereof; or (ii) a certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Obligations therein mentioned.

The Trustee may rely on such an instrument of Bondholders unless and until the Trustee receives notice in the form specified in (i) or (ii) above that the original such instrument is no longer reliable. In the event that the Trustee shall receive conflicting directions from two or more groups of Bondholders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Highest Priority Obligations, the directions given by the group of Bondholders that holds the largest percentage of Highest Priority Obligations shall be controlling and the Trustee shall follow such directions to the extent required herein. The Trustee shall have no liability provided it is following the instructions of such Bondholders permitted to direct the Trustee pursuant to this Indenture.

Section 7.05 Issuing and Paying Agents. The Authority may appoint and at all times have one or more issuing and paying agents in such place or places as the Authority may designate, for the payment of a Series of Obligations. Such issuing and paying agent shall meet the qualifications for the Trustee and the procedures and conditions for removal and resignation set forth in Section 7.03 hereof. It shall be the duty of the Trustee to make such arrangements with any such issuing and paying agent as may be necessary to assure, to the extent of the moneys held by the Trustee for such payment, the prompt payment of Obligations presented at either place of payment.

ARTICLE VIII

AMENDMENTS

Section 8.01 Amendments to Indenture Not Requiring Consent of Bondholders. Except to the extent restricted by a Supplemental Indenture, the Authority and the Trustee, without the consent of or notice to any Bondholders, may execute Supplemental Indentures amending this Indenture for one or more of the following purposes:

(a) to grant to or confer upon the Trustee for the benefit of the Holders of any Series of Obligations or of all Obligations any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Trustee; provided, that while the TIFIA Bond remains Outstanding, the TIFIA Lender shall either (i) receive the benefit of any such additional grant, or (ii) consent in writing to not receiving such additional benefit;

(b) to grant or pledge to the Trustee for the benefit of the Holders of any Series of Obligations or of all Obligations any additional security; provided, that while the TIFIA Bond remains Outstanding, the TIFIA Lender shall either (i) receive the benefit of any such additional grant or pledge, or (ii) consent in writing to not receiving such additional benefit;

(c) to amend this Indenture in such manner as may be necessary or convenient in connection with the book-entry system for payments, transfers and other matters relating to the Obligations;

(d) to cure any ambiguity, supply any omission, or to correct or supplement any provision of this Indenture that, in the Opinion of Bond Counsel, is defective or inconsistent with any other provision of this Indenture;

(e) to insert such provisions clarifying matters or questions arising under this Indenture as are necessary or desirable and are not contrary to or inconsistent with this Indenture as theretofore in effect;

(f) to make any change therein necessary, in the Opinion of Bond Counsel, to maintain the exclusion from gross income for federal income tax purposes of the interest on any Outstanding Obligations intended by the Authority to bear federally tax-exempt interest;

(g) to modify, amend or supplement this Indenture or any Supplemental Indenture in such manner as to permit, if presented, the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or under any state blue sky law;

(h) to make modifications or adjustments necessary in order to accommodate a Credit Support Instrument or a Reserve Facility;

(i) to modify, alter, amend or supplement this Indenture if (1) all of the Obligations to be affected thereby are variable interest rate obligations, (2) the modification, alteration, amendment or supplement shall not become effective until written notice thereof shall have been given to Bondholders of the affected Series by the Trustee, and (3) thirty (30) days shall

have passed during which time such Bondholders shall have had the opportunity to tender their variable interest rate bonds for purchase;

(j) to modify, alter, amend or supplement this Indenture if the TIFIA Bond remains Outstanding unless the Authority has obtained the prior written consent of the TIFIA Lender to such modification, alteration, amendment or supplement;

(k) to make any change therein that does not materially and adversely affect the rights of any of the Holders of the Obligations (and the absence of a material or adverse effect is required to, be evidenced by a Certificate of the Authority or an Opinion of Bond Counsel delivered pursuant to Section 8.04); and

(l) to issue additional Obligations hereunder in accordance with the terms hereof, including to specify and determine the lien status of a Series of Obligations or, if applicable, the springing lien status of a Series of Obligations and also any other matters and things relative to such Obligations which are not contrary to or inconsistent with this Indenture as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the original issuance of such Obligations;

provided, in addition to the limitation set forth in Section 8.04, that no such amendment may permit, or be construed as permitting, (i) an extension of the maturity of the principal of, or the mandatory redemption date of, or interest on, any Obligation, or (ii) a reduction in the principal amount of, or the redemption premium or the rate of interest on, any Obligation, or (iii) a preference or priority of any Senior Lien Bonds over any other Senior Lien Bonds, or (iv) a preference or priority of any Subordinate Obligation or Subordinate Obligations over any other Subordinate Obligation or Subordinate Obligations, or Senior Lien Obligation or (v) a reduction in the Bond Obligation of the Obligations required for any consent to any amendment pursuant to Section 8.02.

Section 8.02 Amendments to Indenture Requiring Consent of Bondholders and TIFIA Lender. Exclusive of amendments authorized by Section 8.01 and subject to the terms and provisions contained in this Section 8.02 and in any Supplemental Indenture, and further subject at all times prior to repayment of each Senior Obligation in the form of or securing payment of a TIFIA Loan in full pursuant to its terms to receipt of written consent from the TIFIA Lender, the Holders of at least a majority in aggregate Bond Obligation of the Obligations Outstanding at the time such consent is given, and in case less than all of the several Series of Obligations then Outstanding are affected by the modification or amendment, of the Holders of at least a majority in aggregate Bond Obligation of the Obligations of each Series so affected and Outstanding at the time such consent is given (provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Obligations of any particular Series and maturity remain Outstanding, the consent of the Holders of such Obligations shall not be required and such Obligations shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Obligations under this Section 8.02) shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to such other amendments hereto for the purpose of modifying, altering, amending, or supplementing any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section 8.02 shall permit, or be construed as permitting (i) an extension of the maturity of the principal of, or the mandatory redemption date of, or interest on, any Obligation, or (ii) a reduction in the principal

amount of, or the redemption premium or the rate of interest on, any Obligation, or (iii) a preference or priority of any Senior Lien Bonds over any other Senior Lien Bonds, or (iv) a preference or priority of any Subordinate Obligation over any other Subordinate Obligation, or (v) a reduction in the Bond Obligation of the Obligations required for any consent to any amendment.

Section 8.03 Notice to and Consent of Bondholders. If consent of the Bondholders is required under the terms of this Indenture for the amendment of this Indenture or for any other similar purpose, the Authority shall cause notice of the proposed amendment to be given by first-class mail to the Holders of the Outstanding Obligations then shown on the registration books for the Obligations. Such notice shall briefly set forth the nature of the proposed amendment or other action and shall state that copies of any such amendment are on file at the office of the Authority and the Principal Office of the Trustee for inspection by all Bondholders. If, within sixty (60) days or such longer period as shall be prescribed by the Authority following the mailing of such notice, the Holders of the requisite principal amount of the Obligations Outstanding by instruments filed with the Authority shall have consented to the amendment or other proposed action, then the Authority may adopt or execute, as appropriate, such amendment or take such proposed action and the consent of the Bondholders shall thereby be conclusively presumed. Such instruments filed with the Authority may include documents, including Certificates of the Authority, stating that Holders of Obligations have consented to an amendment by purchasing such Obligations if the official statement or other disclosure document related to such purchase disclosed that the purchase of the Obligations was deemed to mean that the Holders consented to the amendment.

Section 8.04 Execution and Effect of Supplemental Indentures. Prior to executing any Supplemental Indenture hereunder, the Trustee shall receive, and is entitled to rely upon, an Opinion of Bond Counsel to the effect that such Supplemental Indenture is authorized or permitted hereunder. The Trustee is not obligated to execute any Supplemental Indenture adversely affecting its rights, duties protections and immunities hereunder. The Trustee shall not execute any Supplemental Indenture materially affecting the priority of payment of any Subordinate Obligation or the rights or obligations of the holder of any Subordinate Obligation, as evidenced by the Opinion of Bond Counsel delivered pursuant to this Section 8.04, without the prior written consent of the trustee for or required holders of such Subordinate Obligation. Upon the execution and delivery of any Supplemental Indenture pursuant to this Article XIII, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Outstanding Obligations shall thereafter be determined, exercised and enforced subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 8.05 Obligations Owned by Authority. (a) For purposes of this Article IX, Obligations owned or held by or for the account of the Authority shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Obligations provided for in this Article VIII, and the Authority shall not be entitled with respect to such Obligations to give any consent or take any other action provided for in this Article VIII; except that in determining whether the Trustee shall be protected in relying upon any such approval or consent of a Holder, only Obligations which the Trustee actually knows to be owned

by the Authority shall be disregarded unless all Obligations are owned or held by or for the account of the Authority, in which case such Obligations shall be considered Outstanding for the purpose of such determination. Upon request of the Trustee, at the time of any consent or other action is to be taken under this Article VIII, the Authority shall furnish the Trustee a Certificate of the Authority, upon which the Trustee may rely, describing all Senior Lien Bonds so to be excluded.

(b) The purchase or other acquisition of Obligations by or on behalf of the Authority shall not cancel, extinguish, or otherwise affect the Obligations unless such Obligations are surrendered by the Authority to the Trustee for cancellation in accordance with Section 9.01(b).

ARTICLE IX

DISCHARGE OF LIEN

Section 9.01 **Discharge of Lien and Security Interest.** (a) At the election of the Authority, upon payment in full of all the Obligations and of all other amounts payable under this Indenture, the pledge and lien on the Trust Estate arising under this Indenture shall cease, determine and be void; provided, however, such discharge of this Indenture shall not terminate the powers and rights granted to the Trustee with respect to the payment, transfer and exchange of the Obligations, and Section 7.02 shall survive hereunder. In such event, upon the written request of the Authority, the Trustee shall cooperate with an accounting for such period or periods as shall be requested by the Authority to be prepared and filed with the Authority and shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge as prepared by or on behalf of the Authority, and the Trustee shall pay over, transfer, assign or deliver to the Authority all moneys or securities or other property held by it pursuant to this Indenture which are not required for the payment or redemption of Obligations not theretofore surrendered for such payment or redemption.

(b) The Authority may at any time surrender to the Trustee for cancellation any Obligations previously authenticated and delivered hereunder that the Authority at its option may have acquired in any manner whatsoever and such Obligations upon such surrender and cancellation shall be deemed to be paid and retired.

(c) Notwithstanding any provision in this Indenture to the contrary, if the principal of or interest on any Obligations shall be paid by a Credit Provider, those Obligations shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Authority within the meaning of this Section 9.01, and the pledge of the Trust Estate and all covenants, agreements and other obligations of the Authority as herein provided shall continue to exist and shall run to the benefit of such Credit Provider, and such Credit Provider shall be subrogated to the rights of the Holders.

Section 9.02 **Provision for Payment of Obligations.** Except for the TIFIA Bond, Obligations (or any portion of the Obligations) shall be deemed to have been paid within the meaning of Section 9.01 if:

(a) there shall have been irrevocably deposited with the Trustee or other fiduciary in trust either (i) lawful money of the United States of America in an amount that shall be sufficient, or (ii) Defeasance Securities, the principal and interest on which when due, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient (as confirmed by a report of an Independent Certified Public Accountant), to pay when due the principal amount of, redemption premium (if any) and all unpaid interest on such Obligations (or any portion thereof) to the maturity or the redemption date thereof, as the case may be; and

(b) if any such Obligations are to be redeemed on any date prior to their maturity, (i) the Trustee shall have received (not less than 25 days prior to the proposed redemption date) in form satisfactory to it irrevocable written instructions from an Authorized Representative to redeem such Obligations on such date and (ii) notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been irrevocably made for the giving of such notice.

Limitations elsewhere specified herein regarding the investment of money held by the Trustee shall not be construed to prevent the depositing and holding of the Defeasance Securities described in Section 9.02(a)(ii) for the purpose of defeasing the lien of this Indenture as to Obligations that have not yet become due and payable. In addition, all money so deposited with the Trustee as provided in Section 9.02(a)(i) may also be invested and reinvested, at the written direction of an Authorized Representative, in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, subject to the confirming report of an Independent Certified Public Accountant as to the sufficiency thereof as provided in Section 9.02(a)(ii), and all income from all Defeasance Securities in the hands of the Trustee pursuant to this Section 9.02, that is not required for the payment of the principal of the Obligations and interest and redemption premium, if any, thereon with respect to which such money shall have been so deposited, shall be deposited in the Toll Revenue Fund as and when realized and applied as is other money deposited in the Toll Revenue Fund, or, in the event there are no longer any Obligations Outstanding under this Indenture, such income shall be automatically paid over to the Authority.

Notwithstanding any other provision of this Indenture, no Obligation that is subject to optional or mandatory tender in accordance with the provisions of the Supplemental Indenture pursuant to which such Obligation was issued, shall be deemed to be paid within the meaning of this Indenture, unless arrangements shall have been made to assure that such Obligation, if tendered for purchase prior to the date of its redemption or maturity in accordance with the provisions of the applicable Supplemental Indenture, could be paid and redeemed from such moneys or Defeasance Securities as are provided pursuant to this Section 9.02.

Section 9.03 Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any of the Obligations that remain unclaimed for two (2) years after the date when such Obligations shall have become due and payable (during which period the Trustee shall hold such moneys without liability for interest), either at their stated maturity dates, tender for purchase or by call for redemption, if such moneys were held by the Trustee at such date, or for two (2) years after the date of deposit of such moneys, if deposited with Trustee after the date when such Obligations or the Purchase Price thereof became due and payable, shall automatically be repaid by the Trustee to the Authority as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the

Holders shall look only to the Authority for the payment of the principal or Purchase Price of, the redemption premiums, if any, and interest on such Obligations.

ARTICLE X

MISCELLANEOUS

Section 10.01 Liability of Authority Limited to Trust Estate.

Notwithstanding anything contained herein, the Authority shall not be required to advance any money derived from any source of income other than from the Trust Estate as provided herein for the payment of the principal of or redemption premium, if any, or interest on the Obligations or for the performance of any agreements or covenants contained herein. The Authority may, however, advance funds for any such purpose so long as such funds are derived from a source legally available for such purpose and may be used by the Authority for such purpose without incurring an indebtedness prohibited hereby.

The Obligations are limited obligations of the Authority payable, as to principal thereof, and redemption premium, if any, upon the redemption of any thereof, and interest thereon, solely from the Trust Estate as provided herein and the Authority is not obligated to pay them except from the Trust Estate. The Obligations do not constitute a debt or liability of the State or of any political subdivision of the State other than the Authority, or a pledge of the full faith and credit of the State or of any political subdivision of the State.

Section 10.02 Limitation of Rights; Third Party Beneficiary. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Obligations is intended or shall be construed to give to any Person other than the Bondholders and each Secured Creditor any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the Bondholders and each Secured Creditor.

Section 10.03 Rights of Credit Providers. (a) A Supplemental Indenture authorizing a Series of Obligations may provide that any Credit Provider providing a Credit Support Instrument with respect to Obligations of such Series may exercise any right under this Indenture given to the Owners of the Obligations to which such Credit Support Instrument relates.

(b) All provisions under this Indenture authorizing the exercise of rights by a Credit Provider with respect to consents, approvals, directions, waivers, appointments, requests or other actions, shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Credit Provider were not mentioned therein during any period during which there is a default by such Credit Provider under the applicable Credit Support Instrument or after the applicable Credit Support Instrument shall at any time for any reason cease to be valid and binding on the Credit Provider, or shall be declared to be null and void by final judgment of a court of competent jurisdiction, or after the Credit Support Instrument has been rescinded, repudiated by the Credit Provider or terminated, or after a receiver, conservator or liquidator has been appointed for the Credit Provider or if the Credit Provider is rated

below Baa3 by Moody's or BBB- by S&P. All provisions relating to the rights of a Credit Provider shall be of no further force and effect if all amounts owing to the Credit Provider under a Credit Support Instrument have been paid and the Credit Support Instrument provided by such Credit Provider is no longer in effect.

Section 10.04 Severability. If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in this Indenture or in the Obligations shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have executed this Indenture and each and every other section, paragraph, sentence, clause or phrase hereof, and authorized the issuance of the Obligations pursuant to this Indenture, irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

Section 10.05 Notices. Except as otherwise provided herein, it shall be sufficient service or giving of notice, request, complaint, demand or other paper if the same shall be duly mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Authority:

Orange County Transportation Authority
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584

Attention: Executive Director—Finance and Administration
Telephone: 714-560-5649
Fax: 714-560-5800

If to the Trustee:

US Bank Trust Company, National Association

Attention: Corporate Trust
Telephone:
Fax:

The Authority and the Trustee by notice given hereunder may designate any different addresses to which subsequent notices, certificates or other communications shall be sent, or addresses or other instructions for the giving of Electronic notice, but no notice directed to any one such entity shall be thereby required to be sent to more than two addresses.

Section 10.06 **Payments Due on Non-Business Days.** Except as specifically provided otherwise in a Supplemental Indenture, any payment or transfer that would otherwise become due on a day that is not a Business Day need not be made on such day but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date due, and no interest shall accrue for the period from and after the date due.

Section 10.07 **Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

Section 10.08 **California Law.** This Indenture shall be construed and governed in accordance with the laws of the State of California.

Section 10.09 **Effective Date.** This Indenture shall become effective upon its execution and delivery.

Section 10.10 **Execution in Several Counterparts.** This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Master Indenture to be executed by their officers thereunto duly authorized as of the day and year first written above.

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

By _____

Darrell Johnson
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
General Counsel

**US BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Trustee**

By _____

Authorized Officer

EXHIBIT A

FORM OF FUNDS TRANSFER CERTIFICATE

EXHIBIT B
TIFIA LOAN AGREEMENT

[TO BE ATTACHED]

FIRST SUPPLEMENTAL INDENTURE

between

ORANGE COUNTY TRANSPORTATION AUTHORITY

and

US BANK TRUST COMPANY, NATIONAL ASSOCIATION

as Trustee

Dated as of June 1, 2017

Relating to the

**Orange County Transportation Authority
Toll Revenue Senior Bonds,
2017 TIFIA Series**

**(Supplementing the Master Indenture
Dated as of June 1, 2017)**

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THIS FIRST SUPPLEMENTAL INDENTURE, dated as of June 1, 2017 (this “First Supplemental Indenture”), between the ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity duly existing under the laws of the State of California (the “Authority”) and US BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (together with any successor thereto, the “Trustee”).

WITNESSETH:

WHEREAS, this First Supplemental Indenture is supplemental to the Master Indenture, dated as of June 1, 2017 (as supplemented and amended from time to time pursuant to its terms, the “Indenture”), between the Authority and the Trustee;

WHEREAS, the Indenture provides that the Authority may issue Senior Obligations from time to time as authorized by a Supplemental Indenture, which Senior Obligations are to be secured by the Trust Estate in accordance with the Indenture;

WHEREAS, the Authority and the Trustee desire to enter into this First Supplemental Indenture to set forth the terms of the Authority’s obligations to the TIFIA Lender, relating to the execution and delivery of a TIFIA Loan Agreement dated as of July __, 2017 and attached to the Master Indenture as Exhibit B (the “2017 TIFIA Loan Agreement”) authorizing and setting forth the terms and conditions of a TIFIA Loan (the “2017 TIFIA Loan”) from the TIFIA Lender to the Authority, which TIFIA Loan is to be evidenced by a bond entitled “Orange County Transportation Authority Toll Revenue Senior Bond, 2017 TIFIA Series” (the “2017 TIFIA Bond”), to be issued in an aggregate principal amount not to exceed \$_____;

WHEREAS, the 2017 TIFIA Loan Agreement is being entered into as indebtedness under, pursuant to and in accordance with the Act, and the proceeds of the 2017 TIFIA Loan may be disbursed by the TIFIA Lender to be used to finance the Project (as that term is defined in the 2017 TIFIA Loan Agreement); and

WHEREAS, the Authority desires to provide at this time for the issuance of the 2017 TIFIA Bond, as further provided in this First Supplemental Indenture;

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE XVIII

DEFINITIONS

Section 18.01. Definitions.

(a) Definitions. Unless the context otherwise requires, or as otherwise provided in subsection (b) of this Section, all terms defined in the Indenture shall have the same meanings, respectively, in this First Supplemental Indenture.

(b) Additional Definitions. Unless the context otherwise requires, the following terms shall, for all purposes of this First Supplemental Indenture, have the following meanings:

“Authorized Denominations” means, with respect to the 2017 TIFIA Bond, \$1,000,000 principal amount and any integral multiple of \$1 in excess thereof.

“Interest Payment Date” means, with respect to the 2017 TIFIA Bond, each June 1 and December 1 (and, if applicable, each Interim Payment Date) of each applicable year on and after the TIFIA Debt Service Payment Commencement Date, or if such day is not a Business Day, then the Business Day succeeding such date.

“Interim Payment Date” means any date (a) on which interest on or principal of any Obligations is payable and (b) that is not a June 1 or December 1 occurring on or after the TIFIA Debt Service Payment Commencement Date.

“Issue Date” means the date of delivery of the 2017 TIFIA Bond to the TIFIA Lender.

“Principal Payment Date” means, with respect to the 2017 TIFIA Bond, each scheduled principal payment date as set forth in the Loan Amortization Schedule (as defined in the TIFIA Loan Agreement), which shall occur on June 1 of each applicable year on and after the TIFIA Debt Service Payment Commencement Date, or if such day is not a Business Day, then the Business Day succeeding such date.

“Record Date” means, with respect to the 2017 TIFIA Bonds, the fifteenth (15th) day (whether or not a Business Day) of the month preceding the month in which such Interest Payment Date occurs.

“Registration Books” has the meaning specified in Section 20.04(a).

“First Supplemental Indenture” means this First Supplemental Indenture, dated as of June 1, 2017.

“Senior Obligations Reserve Account (2017 TIFIA Loan)” means the Senior Obligations Reserve Account (2017 TIFIA Loan) established within the Senior Obligations Reserve Fund pursuant to Section 21.02.

“Senior Obligations Reserve Account (2017 TIFIA Loan) Reserve Requirement” means _____.

Section 18.02. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. Defined terms shall include any variant of the terms set forth in this Article XVIII.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this First Supplemental Indenture, refer to the Indenture.

ARTICLE XIX

FINDINGS, DETERMINATIONS AND DIRECTIONS

Section 19.01. Findings and Determinations. The Authority hereby finds and determines that the 2017 TIFIA Bond shall be issued pursuant to Article XX hereof and upon the issuance of the 2017 TIFIA Bond, any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the issuance thereof, will exist, will have happened and will have been performed, in due time, form and manner, as required by the Constitution and statutes of the State.

Section 19.02. Recital in Bonds. There shall be included in the definitive 2017 TIFIA Bond, and also in the temporary 2017 TIFIA Bond, if any is issued, a certification and recital that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by that 2017 TIFIA Bond, and in the issuing of that 2017 TIFIA Bond, exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State and the Act, and that said 2017 TIFIA Bond, together with all other indebtedness of the Authority payable out of Revenue, is within every debt and other limit prescribed by the Constitution and statutes of the State and the Act, and that neither the full faith and credit nor the taxing power of the State is pledged to the payment of principal or interest of the 2017 TIFIA Bond, and that such certification and recital shall be in such form as is set forth in the form of the 2017 TIFIA Bond attached hereto as Exhibit B.

Section 19.03. Effect of Findings and Recital. From and after the issuance of the 2017 TIFIA Bond, the findings and determinations herein shall be conclusive evidence of the existence of the facts so found and determined in any action or proceeding in any court in which the validity of the 2017 TIFIA Bond is at issue, and no bona fide purchaser of any such 2017 TIFIA Bond containing the certification and recital shall be required to see to the existence of any fact, or to the performance of any condition, or to the taking of any proceeding, required prior to such issuance, or to the application of the purchase price for such 2017 TIFIA Bond.

ARTICLE XX

AUTHORIZATION OF THE 2017 TIFIA BOND

Section 20.01. Authorization; Principal Amount, Designation and Series. The Authority hereby approves the terms and provisions of the 2017 TIFIA Loan Agreement substantially in the form and substance contained in Exhibit B to the Master Indenture. Pursuant to the provisions of the Indenture and the provisions of the Act, and to evidence the principal and interest payment obligations of the Authority under the 2017 TIFIA Loan Agreement, a Senior Obligation entitled to the benefit, protection and security of such provisions, including without limitation the grant of the Trust Estate in the Indenture subject to the provisions of the Indenture, is hereby authorized in the aggregate principal amount not to exceed \$_____. Such

Senior Obligation shall be designated as, and shall be distinguished from the Senior Obligations of all other Series by the title, “Orange County Transportation Authority Toll Revenue Senior Bond, 2017 TIFIA Series.”

Section 20.02. Priority and Lien.

(a) The principal and interest payment obligations pursuant to the 2017 TIFIA Loan Agreement and evidenced by the 2017 TIFIA Bond shall, subject to the provisions of Section 20.02(b) of this First Supplemental Indenture, constitute Senior Obligations under the Indenture. Payment obligations other than the obligation to pay principal and interest under the 2017 TIFIA Loan Agreement (and corresponding obligation to pay principal of and interest on the 2017 TIFIA Bond), including but not limited to fees and expenses payable to the TIFIA Lender under the 2017 TIFIA Loan Agreement, shall constitute either Operation and Maintenance Expenses or, to the extent such obligations are not Operation and Maintenance Expenses, Senior Obligations.

(b) RESERVED.

Section 20.03. Purpose. The 2017 TIFIA Bond is issued for the purpose of financing the Project (as that term is defined in the 2017 TIFIA Loan Agreement).

Section 20.04. Form, Denomination, Numbers and Letters. The 2017 TIFIA Bond shall not be issued as a book-entry-only Obligation. Initially there shall be delivered hereunder one fully registered 2017 TIFIA Bond numbered R-1, without interest coupons. Any 2017 TIFIA Bonds issued in replacement thereof upon transfer or exchange shall be numbered consecutively from R-2 upward, payable to the Owner thereof. The 2017 TIFIA Bond and the certificate of authentication shall be substantially in the form attached hereto as Exhibit B, which form is hereby approved and adopted as the form of the 2017 TIFIA Bond and as the form of the certificate of authentication. The 2017 TIFIA Bond shall be issued as one or more single 2017 TIFIA Bonds for each Owner, and each such 2017 TIFIA Bond shall be in an Authorized Denomination.

Section 20.05. Date, Maturities and Interest Rates.

(a) The 2017 TIFIA Bond shall be dated the Issue Date. The principal amount of the 2017 TIFIA Bond will increase from time to time by the amount disbursed by the TIFIA Lender to the Authority pursuant to the 2017 TIFIA Loan Agreement, as noted by the TIFIA Lender on the grid attached to the 2017 TIFIA Bond as Appendix One, with a copy to the Authority and the Trustee. Interest on such principal amount of the 2017 TIFIA Bond will be compounded on June 1 and December 1 of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Loan Agreement. The 2017 TIFIA Bond (i) may and shall be prepaid prior to the respective payment dates, in whole or in part, and at such time, in such amounts and with such notice as may be provided in the 2017 TIFIA Loan Agreement and the form of 2017 TIFIA Bond set forth herein, and (ii) the principal of and interest on the 2017 TIFIA Bond shall be payable, all as provided, and in the manner required or indicated, herein and in the form of 2017 TIFIA Bond set forth herein and as set forth in the 2017 TIFIA Loan Agreement, including Section 9(e) thereof.

(b) The TIFIA Loan as evidenced by the 2017 TIFIA Bond shall mature on the earlier of (i) June 1, 20__ and (ii) the date that is 35 years after the Substantial Completion Date (as defined in the TIFIA Loan Agreement), and shall bear interest at the rate of ____% per annum (or the TIFIA Default Rate (as defined in the TIFIA Loan Agreement), if applicable), compounded and payable on the dates and in accordance with the form of 2017 TIFIA Bond set forth herein and in the 2017 TIFIA Loan Agreement.

(c) For purposes of all calculations of Annual Debt Service or Maximum Annual Debt Service (i) debt service on the 2017 TIFIA Bond shall include only TIFIA Mandatory Debt Service; provided that, for purposes of such calculation during the period prior to the TIFIA Debt Service Payment Commencement Date, the TIFIA Mandatory Debt Service shall be deemed to be zero, and (ii) the 2017 TIFIA Bond shall be treated as a Senior Obligation.

(d) The entity in whose name the 2017 TIFIA Bond shall be registered in the registration books of the Trustee at any time shall be deemed and treated as the absolute Owner thereof for all purposes of the Indenture, whether or not the 2017 TIFIA Bond shall be overdue, and the Authority and the Trustee shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. Payment of, or on account of, the principal of, premium, if any, and interest on the 2017 TIFIA Bond shall be made only to such Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon the 2017 TIFIA Bond to the extent of the sum or sums so paid. Pursuant to Section 17 of the TIFIA Loan Agreement, the Owner of the 2017 TIFIA Bond shall at all times be the party to the TIFIA Loan Agreement having all rights and obligations of the "TIFIA Lender" thereunder. Accordingly, the 2017 TIFIA Bond may be transferred by an Owner only to a transferee that is a party to the TIFIA Loan Agreement having all rights and obligations of the "TIFIA Lender" thereunder. The Trustee shall not register any transfer or exchange of the 2017 TIFIA Bond unless the Owner and the Owner's prospective transferee deliver to the Trustee a letter substantially in the form as set forth in Exhibit A attached hereto. The Trustee may rely on the letter in making a transfer or exchange of the 2017 TIFIA Bond without any investigation. In the event there is more than one Owner of the 2017 TIFIA Bond, payments of principal of and interest on the 2017 TIFIA Bond shall be made ratably, based on the aggregate principal amount of 2017 TIFIA Bond held by each such Owner.

(e) The Authority appoints the Trustee to act as the paying agent for paying the principal of and interest on the 2017 TIFIA Bond and any other amounts under the 2017 TIFIA Loan Agreement, and hereby instructs the Trustee to make the payments when due to the TIFIA Lender in accordance with this Section 20.05. The Trustee shall keep proper records of all payments made by the Authority and the Trustee with respect to the 2017 TIFIA Bond, and of all exchanges and replacements of 2017 TIFIA Bond, as provided in the Indenture.

Section 20.06. Conditions To Delivery of 2017 TIFIA Bonds. The 2017 TIFIA Bond shall be executed and delivered as authorized by this First Supplemental Indenture and the Indenture, including Article II thereof, upon execution and delivery of the 2017 TIFIA Loan Agreement.

Section 20.07. Disposition of Proceeds of 2017 TIFIA Bonds. The proceeds from the sale of the 2017 TIFIA Bond shall be received by the Authority and applied by the Authority in accordance with the 2017 TIFIA Loan Agreement.

ARTICLE XXI

TRANSFERS; SENIOR OBLIGATIONS RESERVE ACCOUNT (2017 TIFIA LOAN)

Section 21.01. Transfers to the Debt Service Fund. Transfers to the Senior Obligations Fund with respect to the 2017 TIFIA Bond shall commence on the sixth Monthly Funding Date prior to the TIFIA Debt Service Payment Commencement Date. On each Interest Payment Date and each Principal Payment Date thereafter, the Trustee shall transfer to the Owner of the 2017 TIFIA Bond money on deposit in the Senior Obligations Fund to pay principal of and interest on the 2017 TIFIA Bond due and payable on such Interest Payment Date or Principal Payment Date. On each June 1 and December 1 (or if such day is not a Business Day, then the Business Day succeeding such date) on and after the TIFIA Loan Prepayment Commencement Date, the Trustee shall transfer the amount then on deposit in the Senior Obligations Prepayment Account to the Owner of the 2017 TIFIA Bond to prepay principal of the 2017 TIFIA Bond.

Section 21.02. Senior Obligations Reserve Account (2017 TIFIA Loan). There is hereby established the Senior Obligations Reserve Account (2017 TIFIA Loan) within the Senior Obligations Reserve Fund, such account to be held by the Trustee. The funds set aside and placed in the Senior Obligations Reserve Account (2017 TIFIA Loan) on account of the Senior Obligations Reserve Account (2017 TIFIA Loan) Reserve Requirement shall be held solely for the benefit of the Owner of the 2017 TIFIA Bond, and shall be used, withdrawn, and replenished as provided herein and in Sections 5.03 and 5.10. If, on any date of valuation of Permitted Investments credited to the Senior Obligations Reserve Account (2017 TIFIA Loan) pursuant to Section 5.23, the amount on deposit in the Senior Obligations Reserve Account (2017 TIFIA Loan) exceeds the Senior Obligations Reserve Account (2017 TIFIA Loan) Reserve Requirement as of such date, the Trustee shall transfer such excess amount to the Toll Revenue Fund.

ARTICLE XXII

OTHER PROVISIONS

Section 22.01. Tax Status. It is the intention of the Authority that the 2017 TIFIA Bond not be an obligation described in section 103 of the Code interest on which is excludable from the gross income of the holders and in that regard the Authority agrees not to file a form 8038-G, or any comparable information return relating to tax-exempt obligations, with the Internal Revenue Service.

Section 22.02. No Amendment without Consent of the TIFIA Lender. So long as the TIFIA Lender is the Owner of the 2017 TIFIA Bond, the Authority shall not enter into a Supplemental Indenture (other than the First Supplemental Indenture and this First Supplemental Indenture) pursuant to the Indenture without the prior written consent of the TIFIA

Lender as set forth in the Indenture except to authorize the issuance of additional obligations for which, under the provisions of the 2017 TIFIA Loan Agreement and the Indenture, the consent of the TIFIA Lender is not required.

ARTICLE XXIII

MISCELLANEOUS

Section 23.01. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this First Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this First Supplemental Indenture, and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this First Supplemental Indenture shall remain valid.

Section 23.02. Parties Interested Herein. Nothing in this First Supplemental Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Authority, the Trustee, and the Owners of the 2017 TIFIA Bond, any right, remedy or claim under or by reason of this First Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this First Supplemental Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Authority, the Trustee and the Owners.

Section 23.03. Headings Not Binding. The headings in this First Supplemental Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this First Supplemental Indenture.

Section 23.04. Indenture to Remain in Effect. Save and except as amended and supplemented by this First Supplemental Indenture, the Master Indenture shall remain in full force and effect.

Section 23.05. Effective Date of First Supplemental Indenture. This First Supplemental Indenture shall take effect upon its execution and delivery.

Section 23.06. Execution in Counterparts. This First Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this First Supplemental Indenture by their officers thereunto duly authorized as of the day and year first written above.

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
General Counsel

US BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Trustee

By: _____
Authorized Officer

EXHIBIT A

FORM OF TRANSFEREE'S LETTER

US BANK TRUST COMPANY, NATIONAL ASSOCIATION

Re: Orange County Transportation Authority
Toll Revenue Senior Bond, 2017 TIFIA Series

Ladies and Gentlemen:

The undersigned representatives of _____ (the "Seller") and _____ (the "Purchaser"), do hereby certify, represent and warrant for the benefit of US BANK TRUST COMPANY, NATIONAL ASSOCIATION, as trustee (the "Trustee"), that the Purchaser is a party to the 2017 TIFIA Loan Agreement having all rights and obligations of the "TIFIA Lender" thereunder. The Purchaser understands that in connection with any future transfer or exchange of the 2017 TIFIA Bond by the Purchaser, there must be delivered to the Trustee a letter of the transferee in substantially the form of Exhibit A to the First Supplemental Indenture.

The undersigned Purchaser hereby further represents as follows:

1. The Purchaser has full power and authority to carry on its business as now conducted, deliver this letter and make the representations contained herein.
2. The Purchaser has knowledge and experience in financial and business matters that make it capable of evaluating the 2017 TIFIA Bond and the risks associated with the purchase of the 2017 TIFIA Bond; has the ability to bear the economic risk of an investment in the 2017 TIFIA Bond; and is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.
3. The Purchaser has conducted its own investigation of the financial condition of the Authority, the 2017 TIFIA Bond, the Indenture, the Toll Road, the Revenues and the Trust Estate, and has obtained such information regarding the 2017 TIFIA Bond, such facilities and the Authority and its operations, financial condition and financial prospects as the Purchaser deems necessary to make an informed investment decision with respect to the purchase of the 2017 TIFIA Bond.
4. The Purchaser is purchasing the 2017 TIFIA Bond for its own account solely and not with a present view to any distribution of the 2017 TIFIA Bond or any interest therein or portion thereof or without a present intention of distributing or reselling the 2017 TIFIA Bond or any interest therein or portion thereof, provided that the Purchaser retains the right at any time to dispose of the 2017 TIFIA Bond or any interest therein or portion thereof as it may determine to be in its best interests, subject to the requirements and provisions of the Indenture. In the event that the Purchaser disposes of the 2017 TIFIA Bond or any part thereof in the future, the Purchaser understands that it has the

responsibility for complying with any applicable federal and state securities laws and all rules and regulations promulgated pursuant thereto.

5. The Purchaser understands that the 2017 TIFIA Bond is a limited obligation of the Authority secured solely by the Trust Estate as defined and provided in the Indenture and the Authority is not obligated to pay the 2017 TIFIA Bond except from said Trust Estate. The 2017 TIFIA Bond does not constitute a debt or liability of the State of California or any political subdivision of the State other than the Authority. Neither the full faith and credit nor the taxing power of the State of California or any political subdivision of the State of California is pledged to the payment of principal of or interest on the 2017 TIFIA Bond.

6. The Purchaser acknowledges that the 2017 TIFIA Bond has not been registered under the Securities Act of 1933, as amended, and that such registration is not legally required. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any subsequent disposition of the 2017 TIFIA Bond, and further acknowledges that any current exemption from registration of the 2017 TIFIA Bond does not affect or diminish this requirement.

7. In entering into this transaction, the Purchaser has not relied upon any representations or opinions of the Authority (except as with respect to representations, warranties and covenants made by the Authority in the Indenture), its counsel or its bond counsel, Nossaman LLP or other counsel to the Authority relating to the legal consequences or other aspects of its investment in the 2017 TIFIA Bond.

9. The Purchaser has been informed that the 2017 TIFIA Bond (i) has not been and will not be registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

10. None of the Authority, its governing body, or any of its employees, counsel or agents will have any responsibility to the Purchaser for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Authority or its financial condition or regarding the 2017 TIFIA Bond, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the Authority to the Purchaser with respect to the 2017 TIFIA Bond. The Purchaser acknowledges that, as between the Purchaser and all of such parties, the Purchaser has assumed responsibility for obtaining such information and making such review as the Purchaser deemed necessary or desirable in connection with its decision to purchase the 2017 TIFIA Bond.

Terms not defined herein shall have the meanings given to them under the Master Indenture, dated as of June 1, 2017, as supplemented, including as supplemented by the First Supplemental Indenture, dated as of June 1, 2017 (as so supplemented, the “Indenture”), each by and between Orange County Transportation Authority and The Bank of New York Mellon Trust Company, N.A., as Trustee.

IN WITNESS WHEREOF, the undersigned representatives have hereunto executed this letter as of the _____ day of _____, 20__.

[SELLER]

By: _____
Name: _____
Title: _____

[PURCHASER]

By: _____
Name: _____
Title: _____

[MUST BE SIGNED BY ACTUAL PURCHASER
MAY NOT BE SIGNED BY NOMINEE OR AGENT]

EXHIBIT B
FORM OF 2017 TIFIA BOND

Number R-1

Not to Exceed \$_____

UNITED STATES OF AMERICA

STATE OF CALIFORNIA

ORANGE COUNTY TRANSPORTATION AUTHORITY
TOLL REVENUE SENIOR BOND, 2017 TIFIA SERIES
(I-405 IMPROVEMENT PROJECT)
(TIFIA – 2017-_____)

Registered Owner: **UNITED STATES DEPARTMENT OF TRANSPORTATION,**
acting by and through the Federal Highway Administrator

Maturity Date: **June 1, 20__**

Maximum
Principal Amount: _____ **AND NO/100 DOLLARS**

Interest Rate: _____%

Issue Date: **July __, 2017**

ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity duly organized and existing under the laws of the State of California (the “Authority”) for value received, hereby promises to pay (but solely from the Trust Estate hereinafter referred to) to the United States Department of Transportation, acting by and through the Federal Highway Administrator (the “TIFIA Lender” and “Registered Owner”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the TIFIA Lender (such lesser amount, together with any interest at the rate set forth above that is compounded on June 1 and December 1 of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Loan Agreement, dated July __, 2017, by and between the Authority and the TIFIA Lender (the “TIFIA Loan Agreement”), being hereinafter referred to as the “Outstanding TIFIA Loan Balance”), together with accrued and unpaid interest (including, if applicable, interest at the TIFIA Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding TIFIA Loan Balance from the last compounding date, compounded on the basis of a 365-day or 366-day year, as appropriate, all as more fully described in the below-referenced TIFIA Loan Agreement, which is hereby made a part hereof. Each Disbursement made by the TIFIA Lender to the Authority pursuant to the TIFIA Loan Agreement, and each prepayment made on account

of the Outstanding TIFIA Loan Balance, shall be recorded by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as Appendix One with a copy to the Authority and the Trustee in accordance with the terms of the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with Appendix Two, as revised from time-to-time in accordance with the TIFIA Loan Agreement, until paid in full. Such Appendix Two shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement. Payments of interest hereon are to be made in accordance with Sections 9 and 10 of the TIFIA Loan Agreement as the same become due. Principal of and interest on this Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This 2017 TIFIA Series Bond is a fully registered Bond and the principal of and interest on the 2017 TIFIA Series Bond shall be payable by wire transfer to the Registered Owner hereof in accordance with the TIFIA Loan Agreement.

This Bond is one of a duly authorized issue of bonds of the Authority, designated as “Orange County Transportation Authority Toll Revenue Senior Bonds” (the “Bonds”), of the series designated above, all of which are being issued pursuant to the provisions of Division 12 of the Public Utilities Code of the State of California (the “OCTA Act”) and a Master Indenture, dated as of June 1, 2017 (the “Master Indenture”), as supplemented, including as supplemented by a First Supplemental Indenture, dated as of June 1, 2017 (the “First Supplemental Indenture”), each between the Authority and US Bank Trust Company, National Association, as trustee (the “Trustee”). The Master Indenture, as supplemented and amended from time to time pursuant to its terms, including as supplemented by the First Supplemental Indenture, is hereinafter referred to as the “Indenture.” Said authorized issue of Bonds is not limited in principal amount and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in the Indenture provided. Capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Indenture.

THIS BOND IS A LIMITED OBLIGATION OF THE AUTHORITY SECURED SOLELY BY THE TRUST ESTATE AS DEFINED AND PROVIDED IN THE INDENTURE AND THE AUTHORITY IS NOT OBLIGATED TO PAY THIS BOND EXCEPT FROM SAID TRUST ESTATE. THIS BOND DOES NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION OF THE STATE OTHER THAN THE AUTHORITY. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA IS PLEDGED TO THE PAYMENT OF PRINCIPAL OR INTEREST OF THIS BOND.

Reference is hereby made to the Indenture, the OCTA Act and the TIFIA Loan Agreement for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Trust Estate and the rights of the registered owners of the Bonds and all the terms of the Indenture and the TIFIA Loan Agreement are hereby incorporated herein and constitute a contract between the Authority and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued and

other indebtedness may be incurred on a parity or senior basis with the Series of Bonds of which this Bond is a part, but only subject to the conditions and limitations contained in the Indenture and the TIFIA Loan Agreement. Fees, costs and other amounts are payable from time to time by the Authority to the TIFIA Lender in connection with and pursuant to the terms of the TIFIA Loan Agreement and the Indenture.

This Bond is secured by and payable both as to principal and interest, and as to any premium upon the redemption hereof, solely from the Trust Estate as defined in the Indenture, subject only to the provisions of the Indenture permitting application thereof for the purposes and on the terms and conditions set forth therein, and the Authority is not obligated to pay this Bond except from such Trust Estate.

THIS BOND SHALL AND MAY BE PREPAID in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid to be determined by the Authority in accordance with the TIFIA Loan Agreement and the Indenture; provided, however, that any prepayment in part made at the option of the Authority shall be in principal amounts of \$1,000,000 or any integral multiple of \$10,000 above \$1,000,000), at any time or from time to time, without penalty or premium, by paying to the Owner all or part of the principal amount of this Bond in accordance with the TIFIA Loan Agreement.

THIS BOND SHALL BE SUBJECT TO MANDATORY PREPAYMENT in accordance with the TIFIA Loan Agreement and the Indenture.

ON EACH PAYMENT DUE DATE, payments hereon are to be made in the manner and at the place specified by the Owner.

The rights and obligations of the Authority and of the holders and registered owners of the Bonds of the Series of Bonds of which this Bond is a part may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture and the TIFIA Loan Agreement, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of Bonds.

This Bond is transferable or exchangeable as provided in the Indenture, only upon the Bond Register at the Principal Office of the Trustee, by the registered owner hereof in person, or by such owner's duly authorized attorney, upon surrender of this Bond at the Principal Office of the Trustee, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or such owner's duly authorized attorney, and thereupon a new Bond or Bonds of the same series, maturity, interest rate and in the aggregate maximum principal amount, shall be issued to the registered owner or owners in exchange therefor as provided in the Indenture, upon payment of any charges therein prescribed.

The person in whose name this Bond is registered shall be deemed and regarded as the absolute owner hereof for all purposes, including receiving payment of, or on account of, the principal of and premium and interest due hereon.

Pursuant to the First Supplemental Indenture and Section 19 of the TIFIA Loan Agreement, the Owner of this Bond shall at all times be the party to the TIFIA Loan Agreement

having all rights and obligations of the "TIFIA Lender" under the TIFIA Loan Agreement. The Trustee shall not register any transfer or exchange of this Bond unless the Owner and the Owner's prospective transferee delivers to the Trustee a letter substantially in the form as set forth in Exhibit A attached to the First Supplemental Indenture.

ANY DELAY ON THE PART OF THE TIFIA LENDER in exercising any right hereunder or under the TIFIA Loan Agreement shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default. The Authority hereby waives presentment, demand, protest and notice of any kind.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California and the OCTA Act, and that this Bond, together with all other indebtedness of the Authority secured by the Trust Estate, is within every debt and other limit prescribed by the Constitution and statutes of the State of California and the OCTA Act.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF the Orange County Transportation Authority has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its duly authorized representatives all as of the Issue Date set forth above.

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
Chair of the Board

(Seal)

Countersigned:

By: _____
Chief Financial Officer

[FORM OF CERTIFICATE OF AUTHENTICATION]

It is hereby certified that this Bond has been issued under the provisions of the Indenture described in this Bond.

Dated of Authentication: _____

US BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Trustee

By: _____
Authorized Officer

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

(Please Print or Type Name and Address of Assignee)

PLEASE INSERT SOCIAL SECURITY OR OTHER
TAX IDENTIFICATION NUMBER OF ASSIGNEE

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

to transfer the within Bond on the books kept for registration thereof with full power of
substitution in the premises.

Dated:

Signature:

(Signature of Assignor)

Notice: The signature on this assignment must
correspond with the name of the Registered Owner as it
appears upon the face of the within Bond in every
particular without alteration or enlargement or any
change whatsoever.

SIGNATURE GUARANTEED:

Notice: Signature must be guaranteed by an
eligible guarantor firm.

**APPENDIX ONE
I-405 IMPROVEMENT PROJECT**

Maximum Principal Sum: \$ _____

Maturity Date: June 1, 20__

Borrower: Orange County Transportation Authority

TIFIA Lender : The United States Department of Transportation, acting by and through
the Build America Bureau

DISBURSEMENTS AND PAYMENTS OF PRINCIPAL¹

Date	Amount of Disbursement	Amount of Principal Paid	Unpaid Principal Sum	Notation Made By

¹ This Grid may be extended if the number of Disbursements, payments and extensions so requires.

APPENDIX TWO

TIFIA LOAN AMORTIZATION SCHEDULE I-405 IMPROVEMENT PROJECT

Maximum Principal Amount: \$ _____			Effective Date: July __, 2017		Interest Rate: _____ %	
Date	Beginning Balance	Disbursements	Interest (Accrued)	Interest Paid	Principal Repayment	Ending Balance

Transportation Infrastructure Finance and Innovation Act Loan Approval for the Interstate 405 Improvement Project

Background

- In April 2015, the Board of Directors approved the Interstate 405 Improvement Project which included the construction of the 405 Express Lanes
- Board of Directors directed staff to utilize the most effective financing available
- In November 2016, the Toll Agreement with Caltrans was approved and the Design-Build contractor (OC 405 Partners) was selected
- Estimated project costs total \$1.9 billion

Sources of Funds for Project Costs*

Source of Funds	Amount in Millions
M2 Sales Tax: Pay-As-You-Go	\$244.581
M2 Sales Tax: Debt Issuances (2019 and 2021)**	893.000
Federal Funds	45.648
State Funds (SHOPP and TCIF)	89.771
Toll Revenues: TIFIA Loan	627.000
Total	\$1,900.000

* As of June 1, 2017

** Utilizing the Line of Credit to satisfy the TIFIA request for committed funds at closing

Financing Milestones

- February 2016 – Submitted Letter of Interest
- July 2016 – Received indicative “BBB-” rating from S&P Global
- January 2017 – Executed Design-Build contract and issued Notice-to-Proceed No. 1
- May 2017 – Received Credit Review Team approval
- May 2017 – Submitted formal TIFIA Application
- May 2017 – Approved a Line of Credit provided by Bank of America N.A.
- June 2017 – Received secondary approval from Credit Review Team

Key Provisions of TIFIA Loan Agreement

- Loan is payable solely from net revenues from 405 Express Lanes
- Interest payments are deferred for five years from substantial completion
- Principal payments are deferred for ten years from substantial completion
- Requires a minimum 1.35 times debt service coverage ratio
- Completion bonds allowed, up to 15 percent of loan amount
- Reserve accounts are funded with net revenues
 - Debt service reserve, Operations and Maintenance, and Major Maintenance
- Excess net revenues are kept in a Distribution Lock-Up fund for seven years after substantial completion
 - After seven years, 50 percent of excess net revenues are used to pay down the TIFIA loan

Recommendations

- Approve the substantially final form of the TIFIA Loan Agreement between OCTA and the USDOT in the amount of approximately \$627 million, the substantially final form of the Master Trust Indenture and Supplemental Indenture by and between OCTA and the Trustee, and authorize the CEO to negotiate and execute a final TIFIA Act Loan Agreement, Master Indenture, and Supplemental Indenture
- Authorize the Chairman, Vice-Chair, CEO, Executive Director of Finance and Administration, and the Treasurer to sign all documents related to the TIFIA loan, including the TIFIA Loan Agreement and Bond, the Master Indenture, Supplemental Indenture, and any certificates, notices, receipts or agreements in connection with the foregoing

Next Steps

- Seek OCTA Board of Directors approval on June 26, 2017
- Receive investment grade ratings for the project in late June 2017
- Council on Credit and Finance expected approval on June 28, 2017
- Secretary of Transportation expected approval during early July 2017
- Loan closing in July 2017
- Issue Notice-to-Proceed No. 2 to OC 405 Partners after loan closing