



BOARD AGENDA

Orange County Transportation Authority Board Meeting
Orange County Transportation Authority Headquarters
Board Room - Conference Room 07-08
550 South Main Street
Orange, California
Monday, March 22, 2021 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 Orange County Transportation Authority (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

The 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 Board of Directors 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.

Public Availability of Agenda Materials

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.

Guidance for Public Access to the Board of Directors/Committee Meeting

On March 12, 2020 and March 18, 2020, Governor Gavin Newsom enacted Executive Orders N-25-20 and N-29-20 authorizing a local legislative body to hold public meetings via teleconferencing and make public meetings accessible telephonically or electronically to all members of the public to promote social distancing due to the state and local State of Emergency resulting from the threat of Novel Coronavirus (COVID-19).

In accordance with Executive Order N-29-20, and in order to ensure the safety of the Orange County Transportation Authority (OCTA) Board of Directors (Board) and staff and for the purposes of limiting the risk of COVID-19, in person public participation at public meetings of the OCTA will not be allowed during the time period covered by the above referenced Executive Orders.



BOARD AGENDA

Guidance for Public Access to the Board of Directors/Committee Meeting (Continued)

Instead, members of the public can listen to AUDIO live streaming of the Board and Committee meetings by clicking the below link:

<http://www.octa.net/About-OCTA/Who-We-Are/Board-of-Directors/Live-and-Archived-Audio/>

Public comments may be submitted for the upcoming Board and Committee meetings by emailing them to ClerkOffice@octa.net.

If you wish to comment on a specific agenda Item, please identify the Item number in your email. All public comments that are timely received will be part of the public record and distributed to the Board. Public comments will be made available to the public upon request.

In order to ensure that staff has the ability to provide comments to the Board Members in a timely manner, please submit your public comments **30 minutes prior to the start time of the Board and Committee meeting date.**



BOARD AGENDA

Call to Order

Roll Call

Invocation

Director Jones

Pledge of Allegiance

Director Harper

Special Calendar

Orange County Local Transportation Authority Special Calendar Matters

- 1. Adopt Resolutions of Necessity for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5**
Joe Gallardo/James G. Beil

Overview

The Orange County Transportation Authority is implementing the State Route 55 Improvement Project between Interstate 405 and Interstate 5. The project requires acquisition of property rights from public and private parties adjacent to the existing freeway and city streets. Currently, staff has been unable to reach an agreement to purchase required property rights from the subject properties. It is necessary for the Board of Directors to adopt resolutions of necessity and commence the eminent domain process to obtain possession of required property rights to maintain the project delivery and construction schedules.

Recommendation

Adopt Resolution of Necessity Nos. 2021-017, 2021-018, and 2021-019, and authorize and direct General Counsel to prepare, commence, and prosecute a proceeding in eminent domain for the purpose of acquiring necessary right-of-way and real property interests for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.



BOARD AGENDA

Consent Calendar (Items 2 through 9)

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

Orange County Transportation Authority Consent Calendar Matters

2. Approval of Minutes

Approval of the Orange County Transportation Authority and affiliated agencies' regular meeting minutes of March 8, 2021.

3. Agreement for Construction of the Anaheim Canyon Metrolink Station Improvement Project

Lora Cross/James G. Beil

Overview

The Orange County Transportation Authority, in coordination with the Southern California Regional Rail Authority and the City of Anaheim, has completed plans, specifications, and cost estimates for the Anaheim Canyon Metrolink Station Improvement Project. An invitation for bids was released on October 27, 2020. Bids were received in accordance with Board of Directors-approved procedures for public works projects. Board of Directors' approval is requested to execute the agreement.

Recommendations

- A. Find Environmental Construction, Inc., the apparent low bidder, as non-responsive for failure to meet the federal program requirement for Disadvantaged Business Enterprise participation.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2193 between the Orange County Transportation Authority and Stacy and Witbeck, Inc., the lowest responsive, responsible bidder, in the amount of \$13,480,000, for the construction of the Anaheim Canyon Metrolink Station Improvement Project.



BOARD AGENDA

3. (Continued)

- C. Authorize the use of up to \$4,300,000, in additional federal Congestion Mitigation and Air Quality Improvement Program funds to provide full funding for construction of the Anaheim Canyon Metrolink Station Improvement Project.
- D. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program to facilitate programming of the Project.

4. State Legislative Status Report

Alexis Leicht/Lance M. Larson

Overview

The Orange County Transportation Authority provides regular updates to the Legislative and Communications Committee on policy issues directly impacting its overall programs, projects, and operations. Positions are recommended on two legislative proposals including one that will remove the sunset date on existing design-build authority for highway projects and another that seeks to require metropolitan planning organizations to meet vehicle miles traveled reduction targets as part of the regional transportation plan. An update is provided on an audit of the California Air Resources Board and its administration of transportation programs intended to reduce greenhouse gas emissions. As discussions related to post-pandemic recovery continue, an overview of the most recently passed legislative relief package and advocacy efforts regarding vaccine prioritization for public transit workers is given.

Recommendations

- A. Adopt a SUPPORT position on AB 1499 (Daly, D-Anaheim), which would remove the sunset date on existing design-build authority for highway projects.
- B. Adopt an OPPOSE UNLESS AMENDED position on SB 261 (Allen, D-Santa Monica), which would require metropolitan planning organizations to meet vehicle miles traveled reduction targets as part of the regional transportation plan.



BOARD AGENDA

5. Federal Legislative Status Report Dustin J. Sifford/Lance M. Larson

Overview

The Orange County Transportation Authority regularly updates the Legislative and Communications Committee on policy issues directly impacting its programs, projects, and operations. An update is provided on Congressional action to enact the President's \$1.9 trillion stimulus funding package. An overview is provided of two transportation-related hearings, one on the reauthorization of federal transportation programs and the other on maintaining equity in transportation safety enforcement.

Recommendation

Receive and file as an information item.

Orange County Transit District Consent Calendar Matters

6. Local Transportation Fund Claims for Fiscal Year 2021-22 Sam Kaur/Andrew Oftelie

Overview

The Orange County Transit District is eligible to receive funding from the Local Transportation Fund for providing public transportation services throughout Orange County. In order to receive these funds, the Orange County Transit District, as the public transit and community transit services operator, must file claims with the Orange County Transportation Authority, the transportation planning agency for Orange County.

Recommendation

Adopt Orange County Transit District Resolution No. 2021-013 authorizing the filing of Local Transportation Fund claims, in the amounts of \$152,727,401 to support public transportation and \$8,094,904 for community transit services.



BOARD AGENDA

7. Approval to Release Invitation for Bids for Battery Chargers for 40-Foot Plug-In Battery-Electric Buses

Dayle Withers/Jennifer L. Bergener

Overview

The Orange County Transportation Authority Board of Directors approved the purchase of ten battery-electric buses for use as a pilot for operation of OC Bus fixed-route service. Charging the buses will require a combination of electrical infrastructure provided by Southern California Edison through the Charge Ready Program and battery chargers secured through a separate procurement. Staff is requesting Board of Directors' approval to release an invitation for bids for battery chargers necessary to support the battery-electric bus pilot.

Recommendation

Approve the release of Invitation for Bids 0-2731 for battery chargers for 40-foot plug-in battery-electric buses.

8. Bus Operations Performance Measurements Report for the Second Quarter of Fiscal Year 2020-21

Johnny Dunning, Jr./Jennifer L. Bergener

Overview

The Orange County Transportation Authority operates fixed-route bus and demand-response paratransit service throughout Orange County and into neighboring counties. The established measures of performance for these services assess the safety, courtesy, reliability, and overall quality of the services. This report summarizes the year-to-date performance of these services through the second quarter of fiscal year 2020-21.

Recommendation

Receive and file as an information item.



BOARD AGENDA

Orange County Local Transportation Authority Consent Calendar Matters

9. Agreement for Public Communications and Community Outreach Consultant Services for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

Calina North/Maggie McJilton

Overview

On April 27, 2020, the Board of Directors approved the release of a request for proposals for public outreach consulting services during the pre-construction and construction phases of the State Route 55 Improvement Project between Interstate 405 and Interstate 5. Proposals were received in accordance with the Orange County Transportation Authority's procurement procedures for professional and technical services. Board of Directors' approval is requested to execute an agreement for these services.

Recommendations

- A. Approve the selection of Costin Public Outreach Group, as the firm to provide public outreach consulting services for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2104 between the Orange County Transportation Authority and Costin Public Outreach Group, in the amount of \$1,684,990 for a five-year initial term, effective through September 30, 2025, with an option term of up to 36 months, to provide public outreach consulting services for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.



BOARD AGENDA

Regular Calendar

Orange County Transportation Authority Regular Calendar Matters

10. Transportation Infrastructure Finance and Innovation Loan Interest Rate Reset Form of Financing Documents

Robert Davis/Andrew Oftelie

Overview

On October 26, 2020, the Orange County Transportation Authority Board of Directors directed staff to proceed with pursuing an interest rate reset of the Orange County Transportation Authority's 2017 Transportation Infrastructure Finance and Innovation Act Loan for up to \$628.9 million for the Interstate 405 Improvement Project. The form of the financing documents for the proposed transaction is presented for 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 for up to \$628.9 million, the substantially final form of the Second Supplemental Indenture by and between the Orange County Transportation Authority and the Trustee, and the substantially final form of the Loan Pay-off and Termination Agreement between the Orange County Transportation Authority and the United States Department of Transportation.
- B. Authorize the Chief Executive Officer to negotiate and execute a final Transportation Infrastructure Finance and Innovation Act Loan Agreement, Second Supplemental Indenture, and Loan Payoff and Termination Agreement.



BOARD AGENDA

10. (Continued)

- C. Authorize the Chairman, Vice Chairman, Chief Executive Officer, Chief Financial Officer, Director of Finance and Administration, and Department Manager of Treasury and Public Finance to sign all documents related to the Transportation Infrastructure Finance and Innovation Act loan, including the Transportation Infrastructure Finance and Innovation Act Loan Agreement, the Second Supplemental Indenture, Loan Pay-off and Termination Agreement, and any certificates, notices, receipts, or agreements in connection with the foregoing.

Orange County Local Transportation Authority Regular Calendar Matters

11. OC Streetcar Project Supplemental Contingency

Mary Shavaliar/James G. Beil

Overview

The Orange County Transportation Authority is currently underway with the implementation of the OC Streetcar project. Board of Directors' approval is requested to provide additional funding to supplement the contingency for the project.

Recommendations

- A. Authorize the use of up to an additional \$7.32 million in Measure M2 funds and up to \$8.29 million in additional Federal Congestion Mitigation and Air Quality Improvement Program funds to supplement the contingency for the OC Streetcar project. Along with other previously-approved funding adjustments of \$70,000, this will increase the Federal Transit Administration Full Funding Grant Agreement funding from \$407.76 million to \$423.44 million, with use of federal funds contingent on Federal Transit Administration approval.
- B. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program and execute or amend all necessary agreements to facilitate the above action.



BOARD AGENDA

12. Amendment to Agreement for Construction Management Services for the OC Streetcar Project

Mary Shavalier/James G. Beil

Overview

On July 25, 2016, the Orange County Transportation Authority Board of Directors approved an agreement with PGH Wong Engineering, Inc., to provide construction management services for the OC Streetcar project for a term of five years. An amendment to the existing agreement is necessary for the consultant to continue providing construction management services.

Recommendation

Authorize the Chief Executive Officer to negotiate and execute Amendment No. 11 to Agreement No. C-6-0926 between the Orange County Transportation Authority and PGH Wong Engineering, Inc., in the amount of \$6,829,862, and extend the agreement term through November 30, 2021, for continued OC Streetcar project construction management services. This will increase the maximum cumulative obligation of the agreement to a total contract value of \$17,983,474.

Discussion Items

13. Public Comments

14. Chief Executive Officer's Report

15. Directors' Reports

16. Closed Session

A Closed Session will be held as follows:

Pursuant to Government Code Section 54956.9(d)(1) - Conference with General Counsel - Existing Litigation - Evan Weiss, et al., v. Orange County Transportation Authority, et al - OSCS Case No. 30-2012-00605637.



BOARD AGENDA**17. Adjournment**

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, April 12, 2021**, at the Orange County Transportation Authority Headquarters, Board Room - Conference Room 07-08, 550 South Main Street, Orange, California.



March 22, 2021

To: Members of the Board of Directors
From: Darrell E. Johnson, Chief Executive Officer
Subject: Adopt Resolutions of Necessity for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

Overview

The Orange County Transportation Authority is implementing the State Route 55 Improvement Project between Interstate 405 and Interstate 5. The project requires acquisition of property rights from public and private parties adjacent to the existing freeway and city streets. Currently, staff has been unable to reach an agreement to purchase required property rights from the subject properties. It is necessary for the Board of Directors to adopt resolutions of necessity and commence the eminent domain process to obtain possession of required property rights to maintain the project delivery and construction schedules.

Recommendation

Adopt Resolution of Necessity Nos. 2021-017, 2021-018, and 2021-019, and authorize and direct General Counsel to prepare, commence, and prosecute a proceeding in eminent domain for the purpose of acquiring necessary right-of-way and real property interests for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.

Background

The acquisition of public and private properties is often required to implement transportation projects, even though extensive efforts are made during the planning and design process to avoid or minimize the impacts to public and private properties. Cooperative Agreement Nos. C-7-1753 and C-7-1936 between the Orange County Transportation Authority (OCTA) and the California Department of Transportation (Caltrans) were approved by the Board of Directors (Board) on June 12, 2017 and September 11, 2017, respectively. These documents defined the roles and responsibilities of OCTA and Caltrans for final design and right-of-way (ROW) acquisition for the State Route 55 (SR-55) Improvement Project between Interstate 405 (I-405) and

Interstate 5 (I-5) (Project). Pursuant to the cooperative agreements, OCTA is the lead implementing agency for final design and ROW acquisition for the Project. The environmental document and project report were approved by Caltrans on August 31, 2017 and September 11, 2017, respectively.

Discussion

Construction of the Project will impact 33 properties between I-405 and I-5, including three multi-residential properties, 20 commercial/industrial properties, one hotel, three vacant properties, five public properties, and one railroad property. There are 31 properties identified as partial acquisitions and two properties identified as full acquisitions. The Project may require the displacement of tenants/occupants from a multi-residential complex and may cause the displacement of several businesses. Displacees will be provided relocation assistance in accordance with OCTA and Caltrans' policies and procedures. The real property requirements for the Project include the acquisition of the two full fee interests, partial fee interests (FEE), permanent highway easements (PHE), permanent footing easements (PFE), permanent utility easements (PUE), tie-back easements, temporary construction easements (TCE), and access control rights needed to construct the proposed highway and high-occupancy vehicle lane improvements. The partial FEEs, PHEs, PFEs, PUEs, and TCEs are required for roadway construction, soundwalls, retaining walls, drainage systems, and for the installation of above-ground and underground facilities, including electrical, telecommunication, water, sewer, and storm drain systems.

Resolution No. 2021-017 pertains to the acquisition of one partial FEE and two TCEs over a portion of the property owned by John Washer, Trustee of the John Washer Living Trust, dated August 9, 2005. The acquisition of the subject partial FEE is needed to accommodate the widening of SR-55 and construct a retaining wall. The acquisition of the subject TCEs are needed to provide sufficient work area to construct the freeway improvements, retaining wall, and Duryea Avenue modifications. The property owner, through its legal representative, provided OCTA staff with the attached written notice of the intent to appear and be heard on the proposed adoption of a resolution of necessity (RON) (Attachment A).

Resolution No. 2021-018 pertains to the acquisition of one partial FEE, one PHE, and one TCE over a portion of the property owned by HBR, LLC. The acquisition of the subject partial FEE and PHE is needed to accommodate the widening of SR-55. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway improvements.

Resolution No. 2021-019 pertains to the acquisition of one partial FEE, one PHE, and one TCE over a portion of the property owned by Dan R. O'Neil and Bonnie J. O'Neil, Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust, dated February 8, 1996. The acquisition of the subject partial FEE and PHE is needed to accommodate the widening of SR-55. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway improvements. The property owner, through its legal representative, provided OCTA staff with the attached written notice of the intent to appear and be heard on the proposed adoption of a RON (Attachment B).

The property owners have been given substantially more time than the 30 days required by the Federal Highway Administration to consider OCTA's written purchase offer and have been contacted multiple times as described in Attachment C. These contacts include OCTA staff requesting a meeting with the property owners to conduct an OCTA policies and procedures first level review to describe the Project design and the need for the property.

OCTA must secure possession of the interests in the subject properties by July 2021 to meet Project schedule deadlines. Delay in acquiring the interests in these properties will cause Project delays. Proceeding with these RONs will ensure that Project schedules are maintained.

The "List of Property Owners" and "Photo Aerial Exhibits," attachments D and E respectively, provide information on property ownerships and locations.

Acquisition of the subject property interests is being conducted in accordance with OCTA's Real Property Policies and Procedures and Caltrans guidelines. The required property interests were identified, engineered, and appraised by OCTA. The full appraised amount for each respective property interest was offered to the property owner under the requirements of Governmental Code Section 7267.2.

In order to proceed with the acquisition of the properties required for the Project and to comply with state and federal laws for ROW acquisition, the Board is requested to adopt the RONs for the subject properties. This action will allow OCTA to commence eminent domain proceedings to acquire the interests in real property needed for the Project.

The following resolutions are recommended:

- Resolution No. 2021-017 John Washer, Trustee of the John Washer Living Trust, dated August 9, 2005 – Action is recommended for an acquisition of one FEE and two TCEs over a portion of the property to accommodate the widening of SR-55 and construct a retaining wall, and provide sufficient work area to construct the freeway improvements, retaining wall, and Duryea Avenue modifications.

- Resolution No. 2021-018 HBR, LLC – Action is recommended for an acquisition of one FEE, one PHE, and one TCE over a portion of the property to accommodate the widening of SR-55 and provide sufficient work area to construct the freeway improvements.
- Resolution No. 2021-019 Dan R. O’Neil and Bonnie J. O’Neil, Trustees of the Dan R. O’Neil and Bonnie J. O’Neil Grantor Trust, dated February 8, 1996 – Action is recommended for an acquisition of one FEE, one PHE, and one TCE over a portion of the property to accommodate the widening of SR-55 and provide sufficient work area to construct the freeway improvements.

Eminent domain proceedings commence with action by the Board to adopt a RON in accordance with the California Code of Civil Procedure Section 1245.240, which requires an affirmative vote of two-thirds of the Board members. The Board is requested to determine whether the following criteria have been met:

1. The public interest and necessity require the Project;
2. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The property interest(s) sought to be acquired is necessary for the Project; and
4. The offer required by Governmental Code Section 7267.2 has been made to the owner or owners of record.

Any property owner and/or its designated representative affected by a RON may request an appearance to speak to the Board when the RON is considered on matters of Project design and the impact to the subject property. The issue regarding compensation for the value of the property affected by the RON should not be discussed. In the event the Board approves the RONs (attachments F-H), OCTA’s General Counsel will proceed with litigation in order to obtain possession and ultimate use of the property interests. Staff will continue negotiations with the property owners throughout the eminent domain process with the objective of reaching an agreement on the acquisition without the necessity of trial.

Summary

The acquisition of specified real property interests is required for the construction of the Project. Statutory offers have been made to the property owners and negotiations are ongoing. Adopting these RONs and commencing eminent domain proceedings are requested to maintain the Project delivery schedule.

Attachments

- A. Letter from John S. Peterson, Peterson Law Group, to Clerk of the Board, Orange County Transportation Authority, Dated March 4, 2021
- B. Letters from William P. Warden, William P. Warden Attorney at Law, to Clerk of the Board, Orange County Transportation Authority, Dated March 11, 2021
- C. Correspondence/Contact Summary with Property Owners
- D. List of Property Owners, State Route 55 Improvement Project Between Interstate 405 and Interstate 5, Board of Directors Exhibit Matrix
- E. Photo Aerial Exhibits
- F. Resolution No. 2021-017
- G. Resolution No. 2021-018
- H. Resolution No. 2021-019

Prepared by:



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Approved by:



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Via Email and Federal Express

March 4, 2021

Clerk of the Board
Orange County Transportation Authority
550 South Main Street
Orange, CA 92863-1584
Email: *clerkoffice@octa.net*

**Re: OCTA Board of Director's intent to adopt a Resolution of Necessity
1021 Duryea Ave., Irvine, APN 430-115-01: John Washer, Trustee
Hearing Date: March 22, 2021**

Members of the Board:

Our office represents John Washer, owner of the referenced property, and Cabinets Plus, the business operated thereat. We request that this letter be made part of the record at the March 22, 2021, hearing at which the Board will determine whether it will adopt a resolution of necessity in the above referenced matter. This letter shall serve as an objection pursuant to Code of Civil Procedure §1245.230(d), which requires that an offer be made in accordance with Government Code §7267.2 prior to adoption of a resolution of necessity. We also request the opportunity to appear and be heard at the time of the hearing.

A purported offer has been made to Mr. Washer, but it does not comply with the legal requirements for such an offer. Prior to adopting a resolution of necessity, an offer must be made to the owner pursuant to Government Code §7267.2. Subsection (b)(3) of this code section provides that the offer include:

If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits. (Gov't Code, §7267.2(b)(3).)

John Washer owns the subject property on which Cabinets Plus designs, constructs, and delivers interior cabinet configurations throughout southern California. The proposed acquisition by OCTA involves a fee take of approximately 3,121 square feet off the western portion of the subject property that fronts the 55 Freeway, plus two separate temporary construction easements totaling approximately 1,393 square feet. As a percentage of the referenced property, the acquisition itself may not appear to be substantial, taking into account the approximately 49,772 square feet of the property as a whole; however, the effects the partial acquisitions will have on the property and the tenantability will be substantial.

The proposed acquisition will negatively impact access to the loading portions of the business' warehouse; impede the circulation needed for loading and unloading operations; and interfere with the work flow and processes Cabinets Plus relies on and has had in place for years. The appraisal in support of OCTA's prelitigation offer pursuant to Government Code §7267.2 was completed by Hennessey & Hennessey, LLC, dated August 26, 2020 (the "Hennessey Appraisal"). Beginning on page 68 of the Hennessey Appraisal, OCTA's appraiser discusses the effects of the project as it relates to the proposed acquisitions on the Washer property. In pertinent part, the appraiser states:

As a part of the project, I have been informed that OCTA has obtained a license agreement with the adjacent property owners to use abutting properties for circulation and parking purposes. The new lot will replace the 23 parking spaces impacted during the exclusive use period of the TCE term. It is an extraordinary assumption of this report that the loss of use of 23 parking spaces will be mitigated by the creation of a new parking area.

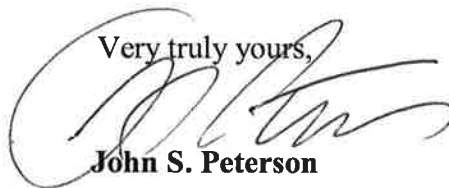
As a part of creating this new circulation and parking lot, the fence enclosing the north side of the parking lot will be removed, and the temporary storage containers in that area will be relocated. The fence and these items will be restored after the use of this parking arrangement has terminated. Creating the offsite parking and moving the storage containers are outside the scope of this appraisal assignment.

Based on this analysis, the Hennessey Appraisal concludes that the Washer property will suffer \$0 in "severance damages" (damage to the remainder property as a result of the partial acquisition). "This is because the fee acquisition does not negatively impact the functional utility of the subject development." (Hennessey Appraisal, pg. 75).

As acknowledged by the Hennessey Appraisal, the referenced property will lose 23 parking spaces. There is no specificity or plan certainty related to OCTA's mitigation plan, other than to say a license has been obtained with an adjacent property owner. The Hennessey Appraisal assumes this, and this alone, will fully mitigate the disruption to the current uses of the subject property, and therefore the highest and best use will not be impacted and severance damages are not warranted to be awarded per Government Code §7267.2(b)(3). Meanwhile, beyond the reference in the Hennessey Appraisal, Mr. Washer has not received a written offer for, or an adequate description of these licensed areas intended to mitigate the parking space losses. As such, Mr. Washer is not in a position to properly evaluate the validity or the sufficiency of the offer and the impact on Cabinets Plus.

Further specifics and the explanation required in the Government Code must be provided to Mr. Washer in order to comply with the prelitigation offer requirements before the resolution of necessity can be adopted. (See the Law Revision Commission Comment to Code of Civil Procedure 1245.230(b): "The description must be sufficiently precise to enable the owner to determine the physical extent of the taking and the interest sought.") To state that losing 23 parking spaces will be fully mitigated, is not the same as describing how the mitigation will be carried out by OCTA in order to support a conclusion of \$0 for damages to the remainder.

Given the extent of the proposed taking as it relates to the subject property, a substantial reconfiguration of the business operations may be in order. At a minimum, in its offer OCTA must provide adequate specificity regarding the "licensed areas" if it intends to include same as part of its offer and proposed mitigation. This will directly affect the highest and best use analysis required in the eminent domain valuation analysis. The analysis set forth in the Hennessey Appraisal does not rise to the standard set forth in Government Code §7267.2, and thus the offer made to Mr. Washer is inadequate.

Very truly yours,

John S. Peterson

Michael L. D'Angelo, Esq.

Memorandum of Points and Authorities Submitted by
Dan R. O'Neil and Bonnie J. O'Neil before the

Board of Directors of the Orange County Transportation Authority

Hearing on the Board's Intent to Adopt a Resolution of Necessity
to Acquire an Interest in Real Property by Eminent Domain

March 22, 2021 9:00 a.m.
550 South Main Street, Orange, California

I. INTRODUCTION

This hearing involves a taking from 2601 Ritchey Street, Santa Ana, California. The proposed taking is of 4,236 square feet in fee, 741 square feet in a permanent highway easement and a temporary construction easement of 1,469 square feet. The offer from OCTA to the owners does not comply with *Government Code* §7267.2 and *Code of Civil Procedure* §1245.230. It does not contain a sufficient written statement of and summary of the basis for, the amount which it believes to be just compensation. It values the land taken the same as other less useful land without explanation. Further, the taking will result in the loss of an outdoor advertising sign licensed by the Department of Transportation, Office of Outdoor Advertising. No offer is made for this loss and the written statement fails to explain the omission.

II. STATEMENT OF FACT

2061 Ritchey Street is a 1.47 acre triangular shaped lot on the North West side of S.R. 55. It has 512 feet abutting S.R. 55 and 396 feet facing Ritchey Street. The proposed fee acquisition is an 8.5 foot wide strip that runs the entire length of S.R. 55. The permanent highway easement is 1.5 feet wide and runs the entire length of the fee acquisition. The temporary construction easement is a 3 foot wide strip running along the entire length of the permanent highway easement. Thus, a 10 foot strip running the length of S.R. 55 will be permanently taken and another 3 feet for the 60 month period of the temporary construction easement.

2061 Ritchie Street is operated as a storage company. It consists of a building where records are stored and outside parking for vehicle storage. On the south side of the building there are eight trailer spaces that currently rent for \$675 per month that will be lost and one space that rents for \$3,500 per month that will be lost. The strip between the building and S.R. 55 contains space for parking 16 semi-trucks that currently rent for \$350 a month each. On the north side of the building four parking spaces that rent for \$450 per month will be lost.

OCTA has offered to acquire the fee and permanent highway easement for \$65.00 per square foot. In making this offer, OCTA values all of the land the same, \$65.00 per square foot. This reasoning is flawed. The 10 foot strip along S.R. 55 is much more valuable than the land

Memorandum of Points and Authorities

March 22, 2021

facing Ritchey Street because it can be used for parking semi-trucks and trailers and the Ritchey side can't. These spaces will be lost if OCTA takes the 10 foot strip and the permanent highway easement. The appraiser valued all space on the lot at \$65.00 per square foot regardless of its ability to generate income. Neither the appraisal nor the offer to purchase explains this decision.

On the south side of the building there are eight trailer spaces that currently rent for \$675 per month that will be lost and one space that rents for \$3,500 per month that will be lost. The strip between the building and S.R. 55 contains space for parking 14 trucks that currently rent for \$350 a month each. On the north side of the building four parking spaces that rent for \$450 per month will be lost plus an additional 4 truck parking spaces that rent for \$300.

The appraisal suggests that the south side parking spaces can be saved by moving the driveway. The driveway can't simply be moved. The owners would have to apply for a permit from the City of Santa Ana. Any such permit would carry conditions that the owners bring the entire area up to current municipal code requirements including, sidewalks, lighting, fencing, curbs and possibly sewers and electrical.

On the North side of the building, there is an outdoor advertising sign operating under a permit issued by the California Department of Transportation, Office of Outdoor Advertising. It is located in the 10 foot strip that OCTA proposes to permanently take. The taking will obviously require the sign to be moved. If the sign is moved off of its assigned spot, it will lose its permit. It cannot be moved without a new permit issued by the Department of Transportation and approved by the City of Santa Ana. The chances of obtaining such a permit are virtually non-existent. OCTA makes no offer for the loss of this valuable sign and makes no explanation for the omission.

This omission is inexplicable because the O'Neils operated a similar sign on another location on S.R. 55, 1929 E St Andrew Place, that is subject to eminent domain proceedings. In appraising that property, the same appraiser, Meredith McDonald, noted:

During the site inspection, it was noted that the existing trucks parked at the larger parcel hangover onto the grass berm located along the eastern portion of the larger parcel. One of the trucks is a designated, approved outdoor advertising sign, approved by Caltrans. The outdoor advertising sign is attached to a truck trailer, with the wheels removed. It is not permanently attached to the real estate and considered to be a movable improvement. The trucks that overhang will need to be relocated for the construction contractor to be allowed access to the temporary construction easement area. **This appraisal report is based on an extraordinary assumption that the approved outdoor advertising sign/truck trailer can be relocated during the construction period, then relocated back at the completion of the construction period.**

The appraisal suggests that the loss on the north side can be mitigated by moving the parking spaces back 15 feet. If this is done, large doorways used for loading and unloading material will be blocked.

III. DISCUSSION

As the Board knows, the exercise of the power of eminent domain requires a finding of public necessity. *Government Code* § 1240.030. There are three essential elements to the public necessity finding: (1) public interest and necessity require the project, (2) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and (3) the property sought to be acquired is necessary for the project. *Id*

Before adopting a resolution of necessity, the public entity must establish an amount it believes to be just compensation for the property and make an offer to the owner for that amount. *Government Code* § 7267.2 (a). The offer must be accompanied by a written statement of the basis for the amount established as just compensation. *See City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal. App. 3d 1005, 1011-1013.

Code of Civil Procedure §1245.220 requires a finding that the offer required by Section 7267.2 has been made before a resolution of necessity can be passed. The resolution of necessity must contain a declaration that either the offer required by Section 7267.2 of the *Government Code* has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence. *Code of Civil Procedure* § 1245.230(c)(4).

The offer required by *Government Code* §7267.2 must be supported by a written statement containing detail sufficient to indicate clearly the basis for the offer including: (1) the date of valuation, highest and best use, and applicable zoning of property; (2) the principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value; and (3) if appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

Failure to include an adequate written statement in support of an offer may constitute grounds for dismissal of an eminent domain action brought following the adoption of a resolution of necessity. *See City of San Jose v. Great Oaks Water Co., supra*; The adequacy of a written statement in support of an offer is properly raised at a resolution of necessity hearing. *People v. Cole.* (1992) 7 Cal. App. 4th 1281.

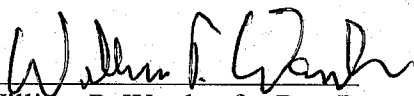
Pursuant to California *Code of Regulations* Title 25, Section 6182(i)(1)&(2) the

owner of real property is to be given a reasonable opportunity to present materials which he believes to be relevant to the question of valuation and suggest modifications in the proposed terms and conditions of the purchase. If the evidence presented indicates the need for a new appraisal, the public entity shall have its appraisal updated. If a modification of the amount of just compensation an appropriate price adjustment shall be made.

The subject offer lacks an adequate supporting written statement. It does not explain why it used for comparable sales properties that did not abut a major highway. It does not explain why it did not use comps from the I-405 widening project. It does not explain why it valued revenue generating parking spaces the same as land that cannot be used for vehicle storage. It does not explain why it did not perform a capitalization analysis for the lost parking. It does not explain why it does not consider the loss of the outdoor advertising sign. It does not explain why it assumes a driveway can be moved without regulatory repercussions.

O'Neil requests that the Board order a new appraisal based on the foregoing.

Dated: March 11, 2021



William P. Warden for Dan R.
O'Neil and Bonnie J. O'Neil,
Trustees

Written Testimony of
William P. Warden

before the

Board of Directors of the
Orange County Transportation Authority

Hearing on the Board's Intent to Adopt a Resolution of Necessity
to Acquire an Interest in Real Property by Eminent Domain

March 22, 2021 9:00 a.m.
550 South Main Street, Orange, California

My name is William P. Warden. I am an attorney at law and have practiced in Orange County since 1994. Before that, I practiced in other states.

I have been involved in regulatory issues relating to outdoor advertising signs at 2061 Ritchey Street, Santa Ana, California since 2000.

In 2017 the California Department of Transportation, Office of Outdoor Advertising advised the property owners that they would have to obtain a permit under the California Outdoor Advertising Act, *Business & Professions Code §5200 et seq.* I was retained to represent O'Neil in connection with that effort. The California Outdoor Advertising Act requires advertisers to obtain a permit before displaying an outdoor advertising sign adjacent to a freeway. A permitted sign has to be 500 feet from any other permitted display on the same side of the freeway.

To bring O'Neil into compliance with the Outdoor Advertising Act, I worked with George Anzo who is the Department of Outdoor Advertising's Southern Area Manager. Mr. Anzo helped us to identify a location on the subject property where a permitted sign could be placed. He came to the property, staked the location and advised that the display had to be kept at that exact spot.

On June 29, 2017 the owners filed an application for a permits for Ritchey Street. On July 19, 2017 the Department of Outdoor Advertising advised us that it could not process the applications because it did not include consent from the City of Santa Ana. George Anzo then contacted Santa Ana's Building and Planning Agency. Building and Planning advised Mr. Anzo that they would not issue a permit. On November 17, 2017 Mr. Anzo advised O'Neil that its application was rejected.


During this time, I was in negotiations with the City Attorney's Office. On February 8, 2018 the City Attorney's Office sent Mr. Anzo a letter stating that it had no intention of filing an enforcement action against O'Neil. On June 11, 2018 Mr. Anzo issued a second denial of O'Neil's application stating that the City Attorney's letter was not sufficient consent. Finally, on

February 21, 2019 the City Attorney's Office sent a letter stating that it consented to O'Neil's proposed sign. On February 25, 2019 Mr. Anzo sent a letter stating that the application was granted.

I recently contacted Mr. Anzo and asked if the sign on the current location could be moved back because OCTA was taking a 10 foot strip along the highway. He advised that the signs could not be moved without a new permit approved by both the Department of Transportation and the City of Santa Ana. Based on my experience with this matter, I do not believe that a new permit is obtainable. And, even if it was, the sign would be much less visible from S.R. 55

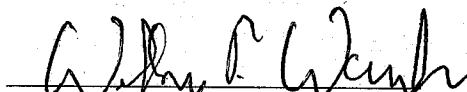
Respectfully Submitted:

March 11, 2021


William P. Warden

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to matters stated on information and belief or as opinions and I believe them to be true and correct.

Dated:


William P. Warden

Written Testimony of
Dan R. O'Neil

before the

Board of Directors of the
Orange County Transportation Authority

Hearing on the Board's Intent to Adopt a Resolution of Necessity
to Acquire an Interest in Real Property by Eminent Domain

March 22, 2021, 550 South Main Street, Orange, California

My name is Dan R. O'Neil. My wife, Bonnie, and I are the Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust 1995, executed on January 31, 1996. The Trust owns the real property located at 2061 Ritchey Street, Santa Ana, California.

2061 Ritchey Street is a 1.47 acre triangular shaped lot on the North West side of S.R. 55. It has 512 feet facing S.R. 55 and 396 feet facing Ritchey Street. OCTA proposes to acquire a 4,263 partial fee interest, a 741 square foot permanent highway easement and a 1,469 square foot temporary construction easement. The proposed fee acquisition is an 8.5 foot wide strip that runs the entire length S.R. 55. The permanent highway easement is 1.5 feet wide and runs the entire length of the fee acquisition. The temporary construction easement is a 3 foot wide strip running along the entire length of the permanent highway easement. Thus, a 10 foot strip running the length of S.R. 55 will be permanently taken and another 3 feet for the 60 month period of the temporary construction easement.

OCTA has offered to acquire the fee and permanent highway easement for \$65.00 per square foot. In making this offer, OCTA values all of the land the same, \$65.00 per square foot. This reasoning is flawed. The 10 foot strip along S.R. 55 is much more valuable than the land facing Ritchey Street because it can be used for parking trucks and trailers and the Ritchey side can't. In making the assumption that all of the land was of the same value, the appraiser mistakenly assumed that the property was used by a trucking company. It is not used by a trucking company. It is used by a storage company and some spaces are more valuable than others for a storage company. Moreover, none of the comps used by the appraiser are applicable to 2061 Ritchey Street. None are located on a major freeway such as S.R. 55. See attached Exhibit "A." There should have been numerous comps from the I 405 widening project, but for some reason they were ignored.

On the south side of the building there are eight trailer spaces that currently rent for \$675 per month that will be lost and one space that rents for \$3,500 per month that will be lost. The strip between the building and S.R. 55 contains space for parking 14 trucks that currently rent for \$350 a month each. On the north side of the building four parking spaces that rent for \$450 per month will be lost an additional 4 truck parking spaces that rent for \$300 per month will be lost.

Most alarmingly, there is an outdoor advertising sign operating under a permit issued by the California Department of Transportation, Office of Outdoor Advertising located on the north side of the building. It is located in the 10 foot strip that OCTA proposes to permanently take. It currently rents for \$7,500 per month. The appraisal makes no mention of the sign and makes no offer for its loss. This is surprising because we operate a similar sign on 1929 E St Andrew Place. That property is also subject to eminent domain proceedings in connection with the S.R. 55 widening project. In appraising that property, the same appraiser, Meredith McDonald, noted:

During the site inspection, it was noted that the existing trucks parked at the larger parcel hangover onto the grass berm located along the eastern portion of the larger parcel. One of the trucks is a designated, approved outdoor advertising sign, approved by Caltrans. The outdoor advertising sign is attached to a truck trailer, with the wheels removed. It is not permanently attached to the real estate and considered to be a movable improvement. The trucks that overhang will need to be relocated for the construction contractor to be allowed access to the temporary construction easement area. **This appraisal report is based on an extraordinary assumption that the approved outdoor advertising sign/truck trailer can be relocated during the construction period, then relocated back at the completion of the construction period.**

The assumption that the sign can be moved during construction then moved back is wrong. In 2017 we applied for a permit for the Ritchey Street sign from the California Department of Transportation, Division of Outdoor Advertising. George Anzo who is the Southern Area Director came to Ritchey Street and staked the exact spot where the sign had to be located. He told us that under the Outdoor Advertising Act each sign had to be 500 feet from the next permitted sign and that it could not be moved off of its designated spot. He told us that our spot was one of the last permissible locations on our side of SR-55 between the I-5 and the I-405.

On June 29, 2017 we filed an application for a permit. The Department of Outdoor Advertising initially would not process our application because we did not have consent from Santa Ana. Later the Department denied our application because the Santa Ana Building and Planning would not issue a permit. Finally, my attorney was able to get an approval through the City Attorney's Office and the Department granted our application. It is my understanding that the City Attorney wishes no further involvement.

George Anzo has advised my attorney that if the display is moved, our permit will be cancelled and that we would need a new permit for a different location. The new permit would require approval by the City of Santa Ana as well as the Department of Transportation. I do not believe that it will be possible to obtain another approval from the City of Santa Ana.

Moreover, even if we get permission to move the display, it will be about 25 feet further from the highway and will be much less visible. I have also been told that during construction equipment will be parked in the easement further reducing visibility. I will not be able to

maintain current rates during the construction period. This also needs to be taken into account in a new appraisal.

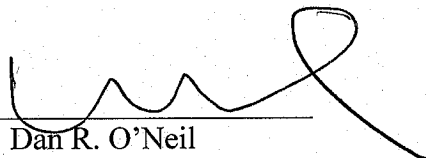
Other issues of concern are that the appraiser mistakenly states that access is provided by way of three driveways from St. Andrew Place. This is wrong. Access is provided by two driveways from Ritchey Street.

The appraiser proposes mitigating some of the loss of parking by moving the existing driveway. The assumption that the existing driveway can just be moved is flawed. In order to move the driveway, the owners would have to apply for a permit from the City of Santa Ana. Anyone who has done business in Santa Ana knows that a permit issued in response to such an application would carry requirements that the owners bring the entire area in compliance with the current municipal code including sidewalks, lighting, fencing, curbs and any other requirements that the planning staff can dream up. It is not just a matter of moving the driveway.

I would request that the Board order a new appraisal taking into account our loss of revenue from parking and the outdoor advertising sign and the impracticability of moving the driveway.

Thank you for your attention to this matter.

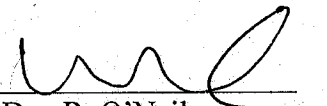
Dated: 3/11/21



Dan R. O'Neil

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to matters stated on information and belief or as opinions and I believe them to be true and correct.

Dated: 3/11/21



Dan R. O'Neil

EXHIBIT "A"

Comp. No. 1, 201 N. Berry Street, Brea, CA 92821. This is not on any freeway.

Comp. No. 2, NWC Noritsu Ave. & Knott Ave., Buena Park, CA 90620. Not on freeway. Mostly unimproved.

Comp. No. 3, 800 E. Walnut Avenue, Fullerton, CA 92831. This is not on any freeway.

Comp. No. 4, 4 Orion, Aliso Viejo, CA 92656. This is not on any freeway. This property was mostly grass/dirt lot

Comp. No. 5, 4412 E. La Palma Avenue, Anaheim, CA 92807. This is not on any freeway. This property was mostly grass/dirt lot

Comp. No. 6, 1205 N. Kraemer Blvd., Anaheim, CA 92806. This is not on any freeway. This property was mostly grass/dirt lot

Correspondence/ Contact Summary with Property Owners

Correspondence/Contact Summary
Resolution No. 2021-017

John Washer, Trustee of the John Washer Living Trust, dated August 9, 2005
(CPN 103711)

Date	Reason for Contact
May 6, 2019	The Orange County Transportation Authority (OCTA) sent Notice of Decision to Appraise to property owner.
July 18, 2019	OCTA's legal counsel contacted property owner's legal counsel to schedule an appraisal walkthrough of the subject property.
July 29, 2019	OCTA's legal counsel met with owner, owner's legal counsel, and appraiser at subject property for appraisal walkthrough.
December 16, 2019	OCTA's legal counsel, real estate appraiser, and fixtures and equipment appraiser met with property owner and owner's legal counsel at the subject property for site inspection.
February 14, 2020	OCTA's legal counsel contacted property owner's legal counsel via telephone to request meeting at the subject property with property owner and OCTA representatives to discuss proposed mitigation plan for alternative access and parking during exclusive use temporary construction easements (TCE) term.
February 18, 2020	OCTA's legal counsel contacted property owner's legal counsel via email regarding property owner's request that take lines be staked prior to site meeting to discuss proposed mitigation plan.
March 2, 2020	OCTA's legal counsel contacted property owner's legal counsel via email regarding property owner's request that take lines be staked prior to site meeting to discuss proposed mitigation plan.
March 3, 2020	OCTA's legal counsel contacted property owner's legal counsel via email to discuss staking of take lines.
March 4, 2020	OCTA's legal counsel contacted property owner's legal counsel via email to confirm staking of take lines and to request scheduling of meeting at subject property to discuss proposed takings and proposed mitigation plan.
March 24, 2020	OCTA's legal counsel contacted property owner's legal counsel via email to request scheduling of meeting at subject property to discuss proposed takings and proposed mitigation plan, (with acknowledgement that pending COVID-19 stay-at-home order required delay for several weeks, at least.
May 7, 2020	OCTA's legal counsel contacted property owner's legal counsel via email to restart conversation of scheduling a meeting at the site with the property owner and OCTA representatives—subject to social distancing and other safety measures—to address his client's concerns regarding the

	proposed takings/project and to discuss proposed mitigation plan.
May 18, 2020	OCTA's legal counsel contacted property owner's legal counsel via email and telephone to discuss scheduling a meeting at the site.
May 19, 2020	OCTA's legal counsel contacted property owner's legal counsel via telephone to discuss proposed mitigation plan and to request scheduling of meeting at the subject property with property owner and OCTA representatives to discuss the same.
May 27, 2020	OCTA's legal counsel contacted property owner's legal counsel via email to schedule meeting at subject property to discuss proposed mitigation plan, etc.
June 4, 2020	OCTA staff, OCTA legal counsel, and OCTA right-of-way agent met on-site with property owner's legal counsel to discuss project and potential impacts to the property, proposed mitigation plan.
June 5, 2020	OCTA's legal counsel contacted property owner's legal counsel via email to provide copies of the draft final plans for project at the subject property, per property owner's request.
August 25, 2020	OCTA's legal counsel contacted property owner's legal counsel via telephone to discuss project status.
September 29, 2020	Property owner's legal counsel contacted OCTA's legal counsel via telephone to inform him of property owner's intention to purchase neighboring property for relocation of a portion of his business during project construction.
October 2, 2020	Property owner's legal counsel contacted OCTA's legal counsel via telephone to inquire as to third-party use of city-owned property adjacent to the subject property.
October 5, 2020	OCTA's legal counsel contacted property owner's legal counsel via telephone regarding property owner's inquiry about third-party use of city-owned property adjacent to the subject property.
December 1, 2020	OCTA's legal counsel contacted property owner's legal counsel via telephone to inquire as to property owner's preferred method of service of offer.
December 2, 2020	OCTA's legal counsel contacted property owner's legal counsel via email regarding service of offer.
December 3, 2020	OCTA's legal counsel contacted property owner's legal counsel via telephone and email regarding service of offer.
December 7, 2020	OCTA's legal counsel contacted property owner's legal counsel via email regarding service of offer.
December 11, 2020	OCTA's right-of-way agent sent offer package to the property owner's legal counsel via email and sent a hard copy via regular mail, as requested.

January 22, 2021	OCTA's legal counsel contacted property owner's legal counsel via telephone to discuss compensation offer, proposed mitigation plan.
February 9, 2021	OCTA's legal counsel contacted property owner's legal counsel via email to discuss compensation offer, proposed mitigation plan.
February 24, 2021	Property owner's legal counsel contacted OCTA's legal counsel via telephone to discuss property owner's completed acquisition of neighboring property, property owner's non-interest in OCTA's construction of the proposed mitigation plan.
March 4, 2021	Property owner's legal counsel contacted OCTA's legal counsel via telephone to discuss property owner's objection to resolution of necessity, property owner's interest in OCTA's construction of the proposed mitigation plan.
March 4, 2021	OCTA Clerk of the Board received letter from property owner's legal counsel regarding notice of intention to appear and be heard at Hearing on Intent to Adopt Resolution of Necessity.

Correspondence/Contact Summary
Resolution No. 2021-018

HBR, LLC
(CPN 103733)

Date	Reason for Contact
May 6, 2019	OCTA sent Notice of Decision to Appraise to property owner.
February 25, 2020	Telephone conversation between OCTA's right-of-way agent and property owner regarding project.
April 27, 2020	Telephone conversation between OCTA's right-of-way agent and property owner regarding project.
June 23, 2020	OCTA's right-of-way agent presented OCTA's offer in-person to the property owner.
June 26, 2020	OCTA's right-of-way agent emailed property owner a copy of the full appraisal report.
July 17, 2020	Exchange of emails between OCTA's legal counsel and counsel for property owner re project.
July 20, 2020	Telephone call between legal counsel for property owner and OCTA's legal counsel.
July 23, 2020	Exchange of emails and telephone between OCTA's legal counsel and counsel for property owner regarding project.
August 27, 2020	Email correspondence between property owner and OCTA's right-of-way agent regarding project.
October 18, 2020	Exchange of emails and telephone call between OCTA's legal counsel and counsel for property owner regarding meeting with city staff.
October 19, 2020	Meeting with OCTA and city staff, property owner, legal counsel for OCTA and property owner, and property owner's architect regarding project and cut and reface of buildings.
November 10, 2020	Email from property owner's architect regarding meeting with city staff and proposed cut and refacing of buildings.
November 19, 2020	Meeting with OCTA and city staff, property owner, legal counsel for OCTA and property owner, and property owner's architect regarding project and cut and refacing of buildings.
December 3, 2020	Email from property owner to legal counsel and OCTA staff regarding meeting with city staff.
December 7, 2020	Exchange of emails among legal counsel, property owner, and OCTA staff regarding setting meeting to discuss project.
December 15, 2020	Telephone call between legal counsel for OCTA and property owner regarding project.
January 14, 2021	Conference call between OCTA's right-of-way agent, OCTA staff and property owner regarding negotiations.
January 28, 2021	Conference call between OCTA's right-of-way agent, OCTA staff and property owner regarding negotiations.

February 11, 2021	Conference call between OCTA's right-of-way agent, OCTA staff and property owner regarding negotiations.
February 25, 2021	Conference call between OCTA's right-of-way agent, OCTA staff and property owner regarding negotiations.
March 2, 2021	Conference call between OCTA staff and property owner regarding project.
March 4, 2021	Conference call between OCTA's right-of-way agent, OCTA staff and property owner regarding negotiations.

Correspondence/Contact Summary
Resolution No. 2021-019

**Dan R. O'Neil and Bonnie J. O'Neil, Trustees of the Dan R. O'Neil and
Bonnie J. O'Neil Grantor Trust, dated February 8, 1996
(CPN 103734)**

Date	Reason for Contact
February 7, 2019	OCTA sent Notice of Decision to Appraise to property owner.
November 26, 2019	OCTA's appraiser conducted the appraisal inspection.
October 6, 2020	Phone call and exchange of emails between OCTA's legal counsel and William Warden (owners' attorney) discussing owners' concerns with California Department of Transportation (Caltrans)-issued billboard permits on this property and on another of owners' properties (CPN 103732) (the "Related Property").
October 13, 2020	Email exchange between OCTA's legal counsel and William Warden. OCTA's legal counsel proposes solution whereby owners could settle real estate claims prior to litigation, while reserving the right to bring subsequent claims for this property and Related Property in the event that Caltrans revokes billboard permits.
October 21, 2020	Email exchanges between OCTA's legal counsel and William Warden discussing owners' request that OCTA make a settlement offer related to potential loss of visibility claims on this property and Related Property. OCTA's legal counsel explains that a proposal for an agreement that resolves owners' real estate claims, but reserves potential claims related to loss of billboard permits (the "View Carve-Out Agreement") will be extended to owners.
October 27, 2020	OCTA's right-of-way agent sent offer package to the property owners via email and sent a hard copy via overnight mail.
November 23, 2020	Email exchanges between OCTA's legal counsel and William Warden wherein OCTA's legal counsel states that View Carve-Out Agreement is being drafted.
November 27, 2020	Email exchanges between OCTA's legal counsel and William Warden wherein OCTA's legal counsel requests additional information about status of billboard permits as needed to draft proposal for View Carve-Out Agreement for Related Property.
December 8, 2020	Email exchange between OCTA's legal counsel and William Warden wherein William Warden requests that OCTA's proposal for View Carve-Out Agreement for Related Property should be presented directly to property owners through OCTA's right-of-way agents.

January 19, 2021	Email exchange between OCTA's legal counsel and William Warden wherein William Warden explains that property owners are consulting with Caltrans to confirm that billboards can remain after project completion.
January 21, 2021	William Warden informs OCTA's legal counsel that owners will not sign View Carve-Out Agreement for either this property or Related Property unless there are assurances from Caltrans that billboards can remain after project completion.
March 11, 2021	OCTA Clerk of the Board received letters from property owner's legal counsel regarding notice of intention to appear and be heard at Hearing on Intent to Adopt Resolution of Necessity.

**List of Property Owners
State Route 55 Improvement Project Between Interstate 405 and Interstate 5
Board of Directors Exhibit Matrix**

Resolution No.	APN	CPN	Owner	Property Address	Area Needed	Type of Acquisition	Reason for Acquisition
2021-017	430-115-01	103711	John Washer, Trustee of the John Washer Living Trust, dated August 9, 2005	1021 Duryea Avenue Irvine, CA 92614	3,121 sq. ft. 1,191 sq. ft. 202 sq. ft.	FEE TCE TCE	One partial FEE and two TCEs over a portion of the property to accommodate the widening of SR-55 and to construct a retaining wall and provide sufficient work area to construct the freeway improvements, retaining wall, and Duryea Avenue modifications.
2021-018	403-041-07	103733	HBR, LLC	1969 – 2019 S. Ritchey Street Santa Ana, CA 92705	3,546 sq. ft. 630 sq. ft. 1,260 sq. ft.	FEE PHE TCE	One partial FEE, one PHE, and one TCE over a portion of the property to accommodate the widening of SR-55 and provide sufficient work area to construct the freeway improvements.
2021-019	403-041-08	103734	Dan R. O'Neil and Bonnie J. O'Neil, Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust, dated February 8, 1996	2061 Ritchey Street Santa Ana, CA 92705	4,263 sq. ft. 741 sq. ft. 1,469 sq. ft.	FEE PHE TCE	One partial FEE, one PHE, and one TCE over a portion of the property to accommodate the widening of SR-55 and provide sufficient work area to construct the freeway improvements.

Legend

APN = Assessor's Parcel Number
CPN = Caltrans Parcel Number
FEE = Partial Fee
TCE = Temporary Construction Easement
PHE = Permanent Highway Easement
SR-55 = State Route 55

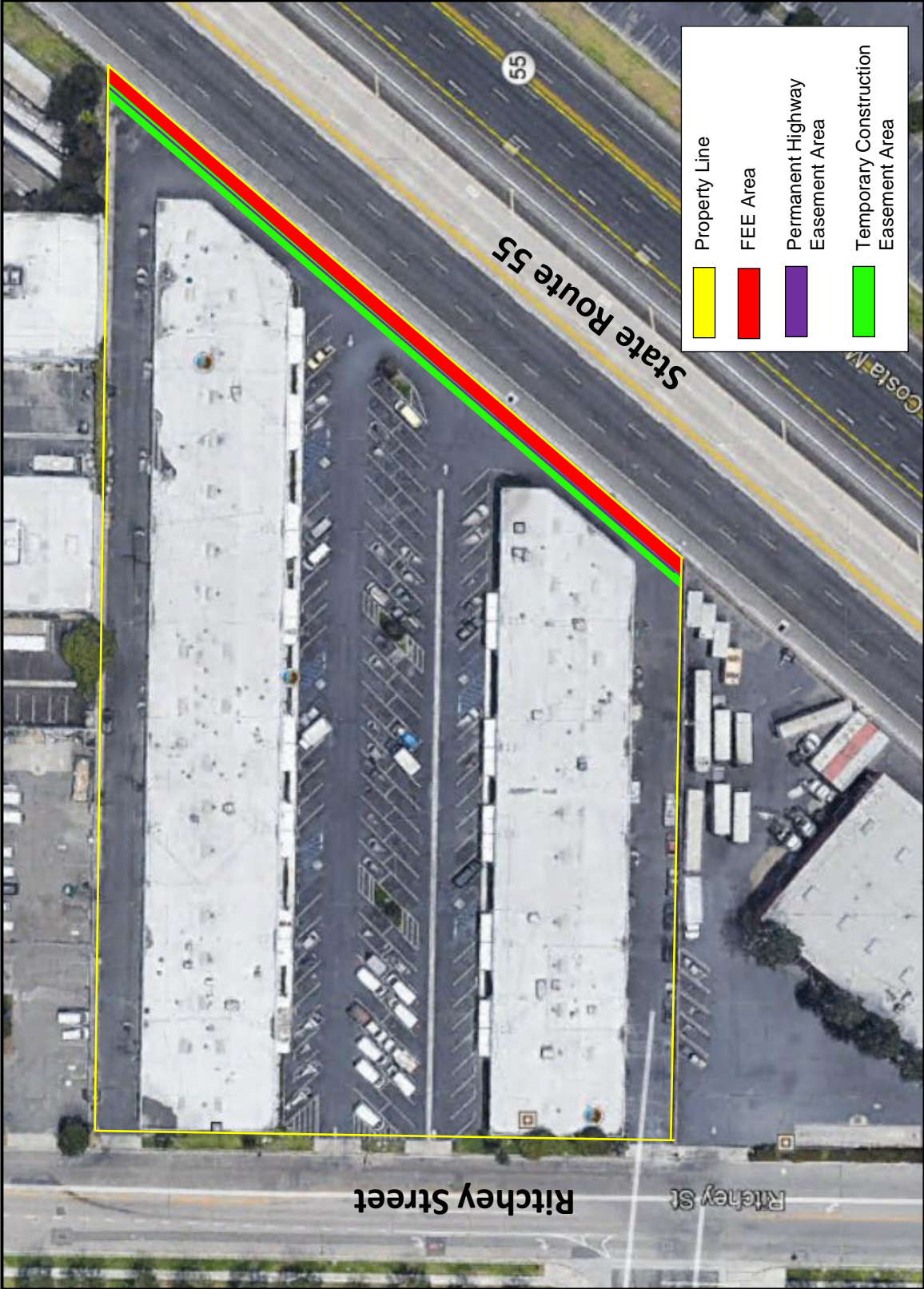
Photo Aerial Exhibits

Resolution No. 2021-0017 (Washer Living Trust)

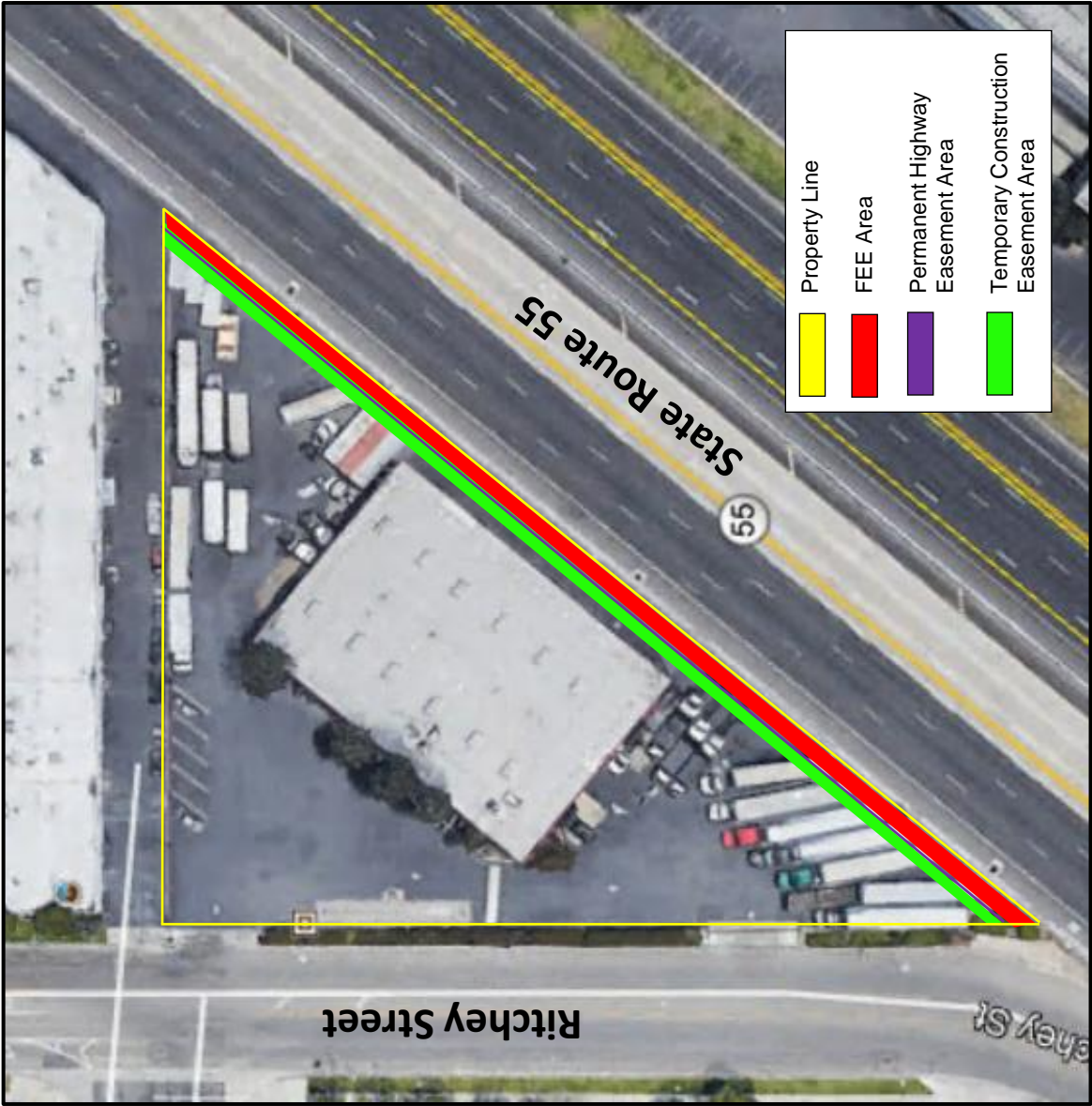


Not to Scale,
For Presentation
Purposes Only

Resolution No. 2021-018 (HBR, LLC)



Not to Scale,
For Presentation
Purposes Only



Not to Scale,
For Presentation
Purposes Only

RESOLUTION NO. 2021-017

A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF INTERESTS IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF PORTIONS OF ASSESSOR PARCEL NO. 430-115-01.

WHEREAS, the Orange County Transportation Authority (the "Authority") is undertaking the State Route 55 ("SR-55") Improvement Project between Interstate 405 and Interstate 5, a right-of-way for freeway purposes and all public uses appurtenant thereto (the "Project"); and

WHEREAS, the Project is intended to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding travel and high occupancy vehicle (HOV) lanes in each direction; and

WHEREAS, the Project requires the acquisition of property interests from public and private parties; and

WHEREAS, the Project will be a transportation improvement project serving the public interest; and

WHEREAS, subsection (a) of the California Public Utilities Code section 130220.5 authorizes the Authority to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

WHEREAS, portions of the real property located at 1021 Duryea Avenue, in the City of Irvine, California ("Subject Property"), are required for the Project. The specific portions of the Subject Property required for the Project are a partial fee acquisition as described and depicted in Exhibit "A" attached hereto (Parcel 103711-1), a temporary construction easement as described and depicted in Exhibit "B" attached hereto (Parcel 103711-2); and a temporary construction easement as described and depicted in Exhibit "C" attached hereto (Parcel 103711-3) (collectively, "Property Interests"); and

WHEREAS, if such access currently exists, reasonable vehicular and pedestrian access to and from the Subject Property will be maintained at all times; and

WHEREAS, the Authority communicated an offer of compensation to the owner or owners of record for the acquisition of the Property Interests; and

WHEREAS, in accordance with section 1245.235 of the California Code of Civil Procedure, on February 19, 2021, the Authority mailed a Notice of Hearing on the Intent of the Authority to Adopt a Resolution of Necessity for acquisition by eminent domain of the Property Interests. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the Subject Property; and

WHEREAS, the Authority provided written notice to the City of Irvine as required by subsection (c) of California Public Utilities Code section 130220.5; and

WHEREAS, the Project, including all amendments thereto, together with the staff reports, environmental documents and all other evidence presented to the Authority's Board of Directors at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

WHEREAS, pursuant to section 1245.235 of the California Code of Civil Procedure, the Authority scheduled a hearing for March 22, 2021, at 9:00 a.m. and gave to each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll a reasonable opportunity to be heard; and

WHEREAS, said hearing has been held by the Authority's Board of Directors; and

WHEREAS, the Authority may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, BE IT RESOLVED, by at least a two-thirds vote of the Authority's Board of Directors under Code of Civil Procedure sections 1240.030 and 1245.230, the Authority does hereby find and determine as follows:

Section 1. Incorporation of Findings and Recitals. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

Section 2. Compliance with California Code of Civil Procedure. There has been compliance by the Authority with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

Section 3. Public Use. The public use for which the Property Interests are to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Authority to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

Section 4. Necessity.

(a) The proposed Project is necessary to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding travel and high occupancy vehicle (HOV) lanes in each direction; and

(b) The public interest and necessity require the acquisition by eminent domain proceedings of the Property Interests.

Section 5. Description of Property Interests. The Property Interests sought to be acquired are more particularly described and depicted in Exhibits "A" through "C" attached hereto and incorporated herein by reference.

Section 6. Findings. The Authority hereby finds, determines, and declares each of the following:

(a) The public interest and necessity require the proposed Project;

(b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The Property Interests sought to be acquired are necessary for the proposed Project; and

(d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record.

Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the Property Interests are already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the Property Interests, or any portion thereof, are already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the Property Interests, or any portion thereof, are already devoted.

Section 8. Acquisition of Substitute Property. To the extent portions of the real property to be acquired for the Project are currently devoted to or held for some public use, the Authority intends to acquire substitute property pursuant to California Code of Civil Procedure sections 1240.320 and 1240.330. The requirements of said Code sections have been satisfied and the acquisition of said substitute property is necessary for the Project. The substitute property may be conveyed by the Authority to the owner(s) of the necessary property.

Section 9. Authority to Exercise Eminent Domain. The Authority is hereby authorized and empowered to acquire the Property Interests, including the improvements thereon, if any, by eminent domain for the proposed Project.

Section 10. Further Activities. The Authority's legal counsel ("Counsel") is hereby authorized and empowered to acquire the Property Interests in the name of and on behalf of the Authority by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be permitted and required by law, and to make such security deposits as may be required by law and/or order of court, to permit the Authority to take possession of the Property Interests at the earliest possible time.

Section 11. Effective Date. This Resolution of Necessity shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this _____ day of _____, 2021.

ANDREW DO, CHAIRMAN
ORANGE COUNTY
TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

JAMES M. DONICH
GENERAL COUNSEL

ATTEST:

I, Andrea West, Interim Clerk of the Board of Directors of the Orange County Transportation Authority, do hereby certify that the foregoing Resolution No. 2021-017, by the following votes:

AYES:

NOES:

ABSENT:

ANDREA WEST
INTERIM CLERK OF THE BOARD

EXHIBIT "A"

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel 103711-1: FEE

That portion of Lot 21 of Tract No. 6636, in the City of Irvine, County of Orange, State of California, as shown on a map filed in Book 258, Pages 30 and 31 of Miscellaneous Maps, in the office of the County Recorder of said County, lying northwesterly of the following described line:

BEGINNING at a point on the northeasterly line of said Lot 21, distant thereon South 57°21'56" East, 12.83 feet from the most northerly corner of said Lot 21; thence leaving said northeasterly line, South 40°38'58" West, 75.17 feet; thence South 49°21'02" East, 0.75 feet; thence South 40°38'58" West, 4.50 feet; thence North 49°21'02" West, 0.75 feet; thence South 40°38'58" West, 161.47 feet to the southwesterly line of said Lot 21.

The bearings shown herein are based on the California Coordinate System of 1983, Zone VI, North American Datum of 1983 (1991.35 epoch). The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997834.

This conveyance is made for the purpose of a freeway and the GRANTOR hereby releases and relinquishes to the GRANTEE any and all abutter's rights including access rights, appurtenant to GRANTOR's remaining property, in and to the freeway.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature: Vincent T. Davis
Vincent T. Davis, PLS

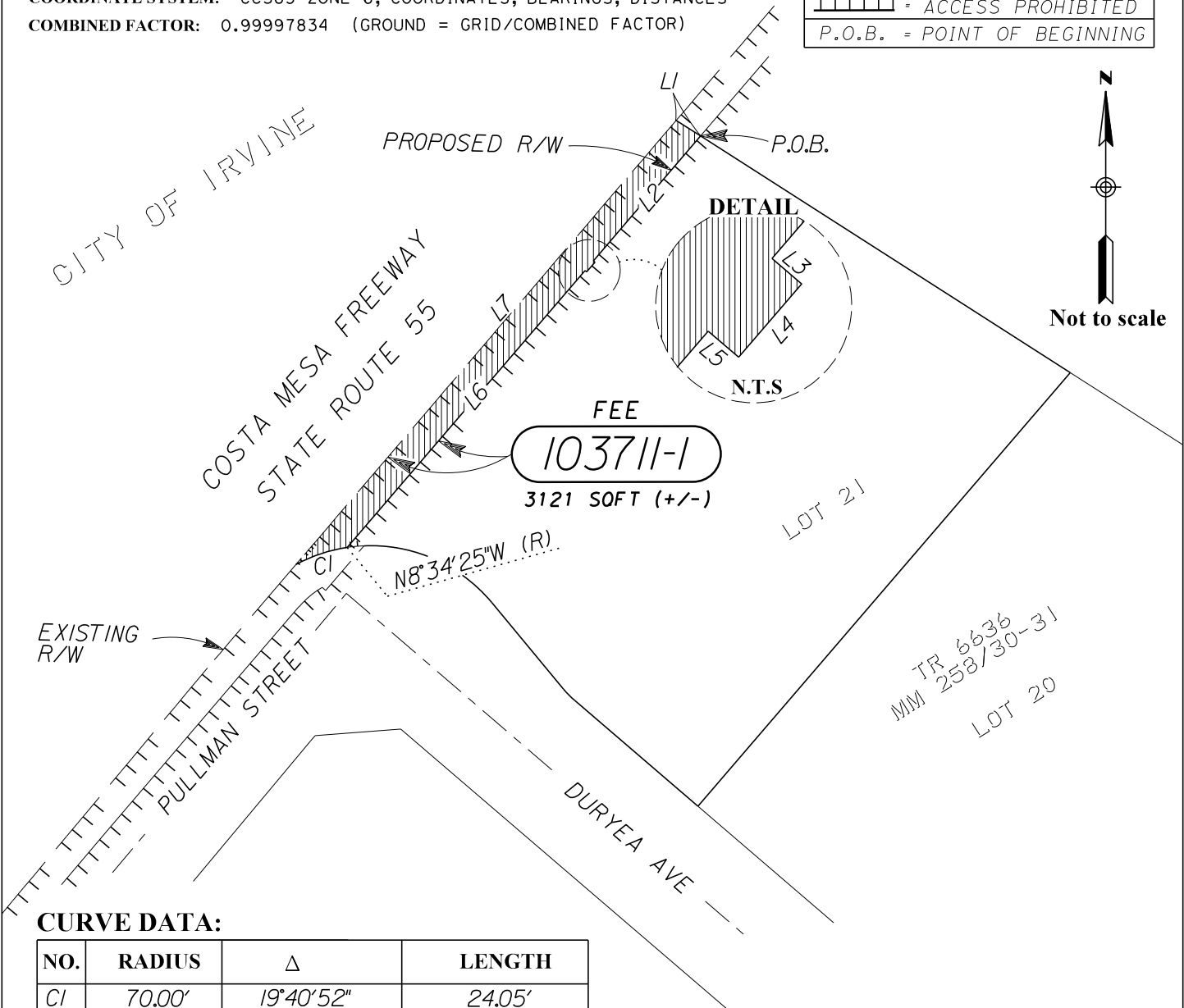
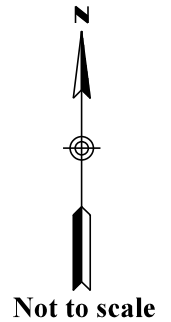
Date: 19 FEB 2020



DATUM: NAD83 EPOCH 1991.35 ORANGE COUNTY SURVEYOR ADJUSTMENT.
COORDINATE SYSTEM: CCS83 ZONE 6, COORDINATES, BEARINGS, DISTANCES
COMBINED FACTOR: 0.99997834 (GROUND = GRID/COMBINED FACTOR)

LEGEND:

||||| = ACCESS PROHIBITED
P.O.B. = POINT OF BEGINNING



LINE DATA:

NO.	BEARING	DISTANCE
L1	S57°21'56"E	12.83'
L2	S40°38'58"W	75.17'
L3	S49°21'02"E	0.75'
L4	S40°38'58"W	4.50'
L5	N49°21'02"W	0.75'
L6	S40°38'58"W	161.47'
L7	N40°33'37"E	259.88'

Vincent T. Davis
VINCENT T. DAVIS
03 Feb 2021
DATE

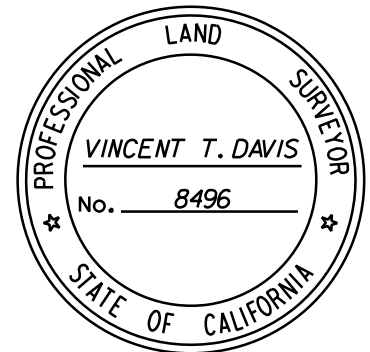


EXHIBIT "A1"
(Page 1 of 1)

COUNTY: ORA
RTE: 55
P.M.: 7.5

NOT TO SCALE
DATE: FEB 2021

PARCEL:
103711-1
APN: 430-115-01

EXHIBIT "B"

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 430-115-01

Caltrans Parcel No.: 103711-2

This temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "B1" and depicted in Exhibit "B2" attached hereto, subject to the rights and limitations set forth herein ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the SR 55 Improvement Project. The TCE shall be for a period of sixty (60) months, a portion of which shall be exclusive (subject to the Rights and Limitations of Use and Occupancy set forth below) and a portion of which shall be non-exclusive. Specifically, the actual physical construction activities within the TCE area shall be limited to a period of twenty-four (24) consecutive months within the sixty (60) month TCE period (the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the Rights and Limitations of Use and Occupancy set forth below. OCTA's use and occupancy of the TCE during the remaining thirty-six (36) months of the TCE period will be non-exclusive.

Rights and Limitations of Use and Occupancy of TCE:

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days' written notice as to when the Construction Period will commence.
- During the Construction Period, OCTA may place a temporary fence around the TCE area.
- Access to the TCE area by OCTA shall be from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. Any and all improvements so removed shall be included in the compensation paid by OCTA for this TCE.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials, any temporary improvements, and all construction-related debris. The TCE area will be graded and compacted. Functionally equivalent pavement material will be installed by OCTA to restore the TCE area to a similar condition that existed prior to commencement of the construction activities.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

EXHIBIT "B1"
LEGAL DESCRIPTION

CALTRANS PARCEL NO. 103711-2

TEMPORARY CONSTRUCTION EASEMENT

APN 430-115-01

THAT PORTION OF LOT 21 OF TRACT NO. 6636, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 258, PAGES 30 AND 31, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF PULLMAN STREET, 56.00 FEET WIDE, AND DURYEA AVENUE, 60.00 FEET WIDE, BOTH AS SHOWN ON SAID TRACT MAP;

THENCE ALONG SAID CENTERLINE OF DURYEA AVENUE SOUTH 49°21'12" EAST, 38.52 FEET;

THENCE LEAVING SAID CENTERLINE OF DURYEA AVENUE NORTH 40°38'48" EAST, 39.98 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID DURYEA AVENUE, SAID POINT BEING ON A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 70.00 FEET, A RADIAL LINE TO SAID POINT ON CURVE BEARS NORTH 39°26'04" EAST;

THENCE NORTHWESTERLY AND WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°00'29" AN ARC LENGTH OF 58.65 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE NON-TANGENT TO SAID CURVE NORTH 40°38'58" EAST, 161.47 FEET;

THENCE SOUTH 49°21'02" EAST, 0.75 FEET;

THENCE NORTH 40°38'58" EAST, 4.50 FEET;

THENCE NORTH 49°21'02" WEST, 0.75 FEET;

THENCE NORTH 40°38'58" EAST, 75.17 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 21;

THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 57°21'56" EAST, 5.05 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 40°38'58" WEST, 231.26 FEET;

THENCE SOUTH 37°51'45" WEST, 5.14' FEET TO SAID NORTHERLY RIGHT-OF-WAY LINE, SAID POINT BEING ON SAID NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 70.00 FEET, A RADIAL LINE TO SAID POINT ON CURVE BEARS NORTH 02°22'15" WEST;

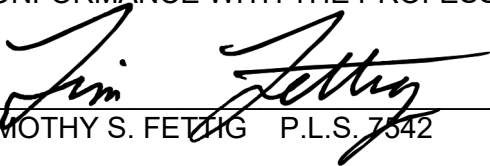
THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°12'10" AN ARC LENGTH OF 7.58 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS A GRID AREA 1,191 SQUARE FEET OR 0.027 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE CALIFORNIA COORDINATE SYSTEM (CCS83), ZONE VI, NAD 83 (1991.35 EPOCH OCS ADJUSTMENT), ALL DISTANCES SHOWN ARE GRID, TO OBTAIN GROUND DISTANCES DIVIDE BY 0.99997834.

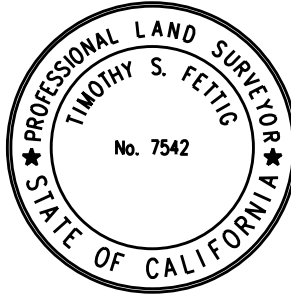
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B2", ATTACHED HERETO AND MADE A PART HEREOF.

THIS DOCUMENT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.


TIMOTHY S. FETTING P.L.S. 7542

8/16/19
DATE



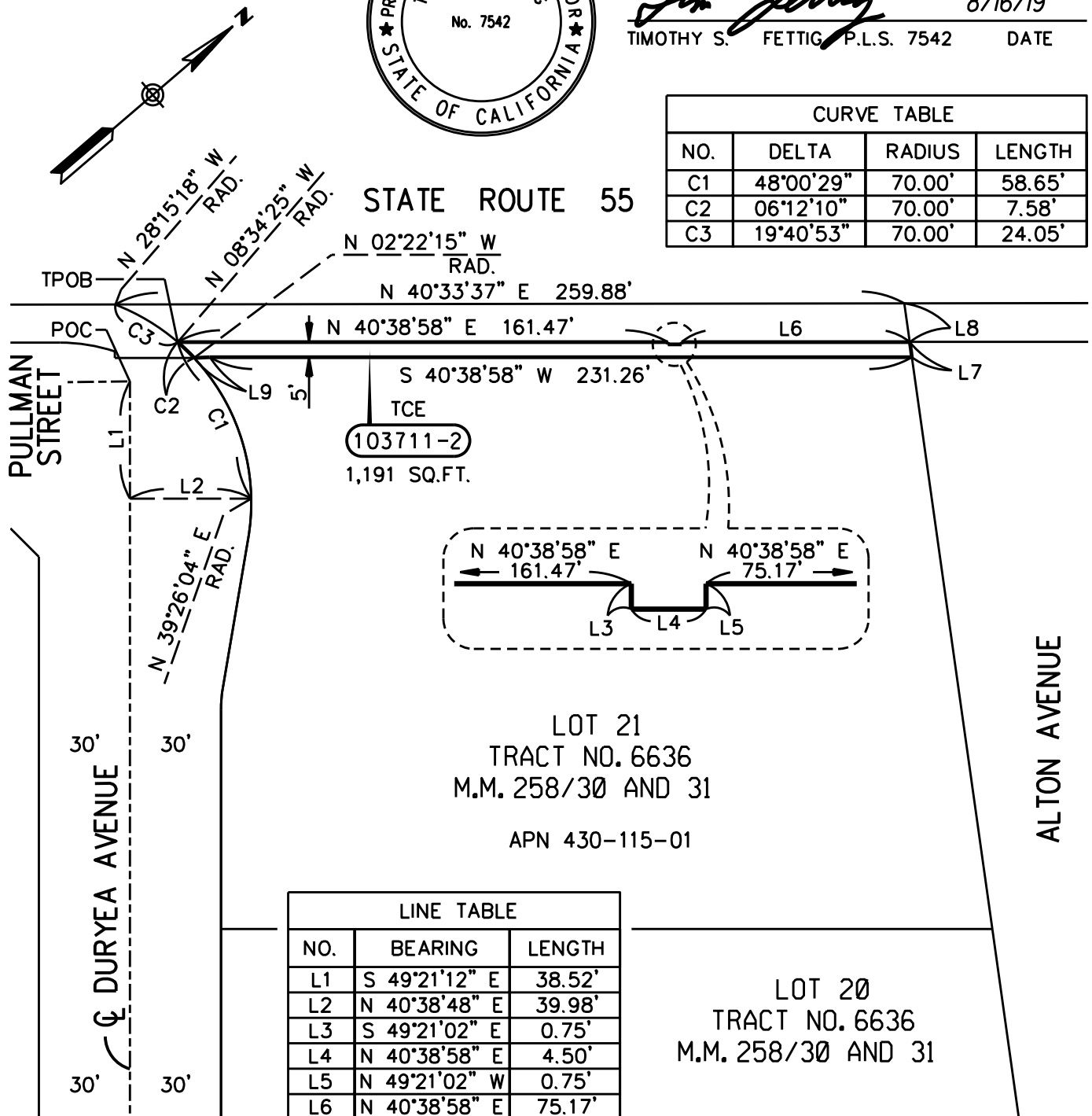


Tim Fetting
TIMOTHY S. FETTING P.L.S. 7542

8/16/19

DATE

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	48°00'29"	70.00'	58.65'
C2	06°12'10"	70.00'	7.58'
C3	19°40'53"	70.00'	24.05'



THE BEARINGS AND DISTANCES SHOWN ARE
CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83),
ZONE VI, NAD 83 (1991.35 EPOCH
O.C.S. GPS ADJUSTMENT).
ALL DISTANCES SHOWN ARE GRID DISTANCES.
DIVIDE THE GRID DISTANCES SHOWN
BY 0.99997834 TO OBTAIN GROUND DISTANCES.

SHEET 1 OF 1

EXHIBIT "B2"

103711-2

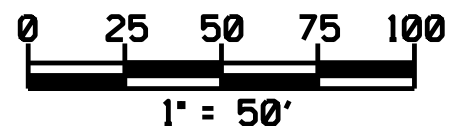


EXHIBIT "C"

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 430-115-01

Caltrans Parcel No.: 103711-3

This non-exclusive temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "C1" and depicted in Exhibit "C2" attached hereto, subject to the Rights and Limitations of Use and Occupancy set forth below ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the SR 55 Improvement Project. The TCE shall be for a period of sixty (60) months, provided however, the actual physical construction activities within the TCE area shall be limited to a period of twelve (12) consecutive months within the sixty (60) month TCE period (the "Construction Period").

Rights and Limitations of Use and Occupancy of TCE:

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days' written notice as to when the Construction Period will commence.
- Reasonable pedestrian and vehicular access to the property shall be maintained at all times.
- Access to the TCE area shall be from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. Any and all improvements so removed shall be included in the compensation paid by OCTA for this TCE.
- The entry gate across the driveway will be protected in place.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials, any temporary improvements, and all construction-related debris. The TCE area will be graded and compacted. Functionally equivalent pavement material will be installed by OCTA to restore the TCE area to a similar condition that existed prior to commencement of the construction activities.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

EXHIBIT "C1"
LEGAL DESCRIPTION

CALTRANS PARCEL NO. 103711-3

TEMPORARY CONSTRUCTION EASEMENT

APN 430-115-01

THAT PORTION OF LOT 21 OF TRACT NO. 6636, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 258, PAGES 30 AND 31, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF PULLMAN STREET, 56.00 FEET WIDE, AND DURYEA AVENUE, 60.00 FEET WIDE, BOTH AS SHOWN ON SAID TRACT MAP;

THENCE ALONG SAID CENTERLINE OF DURYEA AVENUE SOUTH 49°21'12" EAST, 38.52 FEET;

THENCE LEAVING SAID CENTERLINE OF DURYEA AVENUE NORTH 40°38'48" EAST, 39.98 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID DURYEA AVENUE, SAID POINT BEING ON A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 70.00 FEET, A RADIAL LINE TO SAID POINT ON CURVE BEARS NORTH 39°26'04" EAST, SAID POINT HEREINAFTER REFERRED TO AS POINT 'A';

THENCE NORTHWESTERLY AND WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°00'29" AN ARC LENGTH OF 58.65 FEET;

THENCE LEAVING SAID NORTHEASTERLY RIGHT-OF-WAY LINE NON-TANGENT TO SAID CURVE NORTH 40°38'58" EAST, 161.47 FEET;

THENCE SOUTH 49°21'02" EAST, 0.75 FEET;

THENCE NORTH 40°38'58" EAST, 4.50 FEET;

THENCE NORTH 49°21'02" WEST, 0.75 FEET;

THENCE NORTH 40°38'58" EAST, 75.17 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 21;

THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 57°21'56" EAST, 5.05 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 40°38'58" WEST, 231.26 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 74.00 FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS NORTH 00°12'05" EAST, SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

THENCE EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 38°46'39" AN ARC LENGTH OF 50.08 FEET TO A LINE THAT BEARS NORTH 31°03'48" EAST FROM SAID POINT 'A';

THENCE ALONG SAID LINE NON-TANGENT TO SAID CURVE SOUTH 31°03'48" WEST, 4.04 FEET TO SAID POINT 'A';

THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 41°48'19" AN ARC LENGTH OF 51.07 FEET TO LINE THAT BEARS SOUTH 37°51'45" WEST FROM THE TRUE POINT OF BEGINNING;

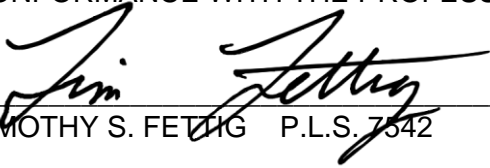
THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG SAID LINE NON-TANGENT TO SAID CURVE NORTH 37°51'45" EAST, 5.14 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS A GRID AREA 202 SQUARE FEET OR 0.005 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE CALIFORNIA COORDINATE SYSTEM (CCS83), ZONE VI, NAD 83 (1991.35 EPOCH OCS ADJUSTMENT), ALL DISTANCES SHOWN ARE GRID, TO OBTAIN GROUND DISTANCES DIVIDE BY 0.99997834.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "C2", ATTACHED HERETO AND MADE A PART HEREOF.

THIS DOCUMENT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.


TIMOTHY S. FETTING P.L.S. 7542

2/13/20
DATE

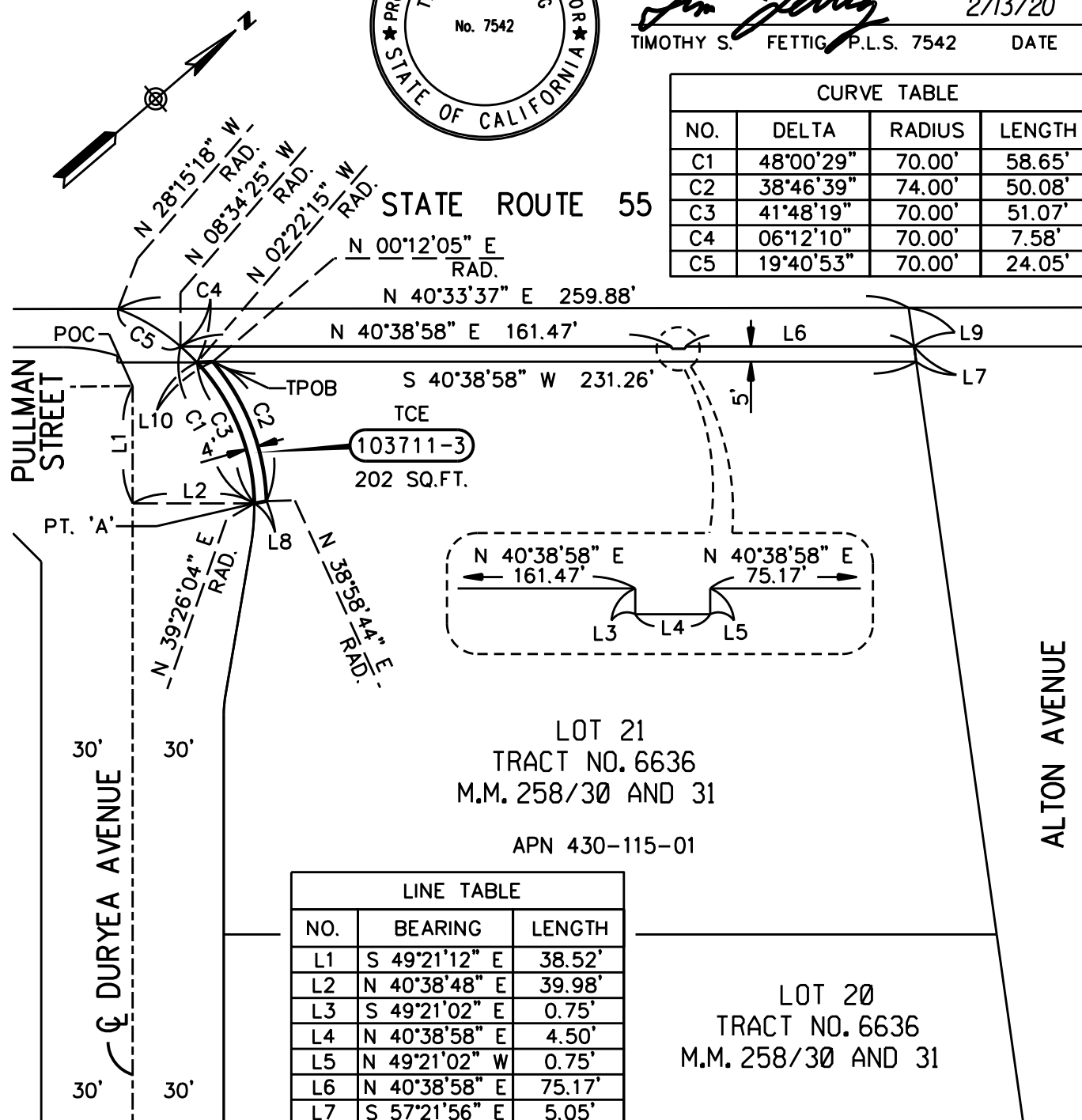


A circular seal for a Professional Land Surveyor. The outer ring contains the text "PROFESSIONAL LAND SURVEYOR" at the top and "STATE OF CALIFORNIA" at the bottom, separated by two stars. The inner circle contains the name "TIMOTHY S. FETTING" and the number "No. 7542".

Tim Fettig
TIMOTHY S. FETTIG P.L.S.

TIMOTHY S. FETTIG P.L.S. 7542 DATE

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	48°00'29"	70.00'	58.65'
C2	38°46'39"	74.00'	50.08'
C3	41°48'19"	70.00'	51.07'
C4	06°12'10"	70.00'	7.58'
C5	19°40'53"	70.00'	24.05'



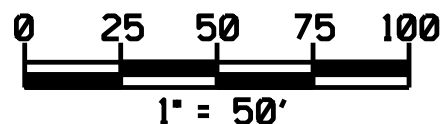
LINE TABLE		
NO.	BEARING	LENGTH
L1	S 49°21'12" E	38.52'
L2	N 40°38'48" E	39.98'
L3	S 49°21'02" E	0.75'
L4	N 40°38'58" E	4.50'
L5	N 49°21'02" W	0.75'
L6	N 40°38'58" E	75.17'
L7	S 57°21'56" E	5.05'
L8	S 31°03'48" W	4.04'
L9	N 57°21'56" W	12.83'
L10	N 37°51'45" E	5.14'

LOT 20
TRACT NO. 6636
M.M. 258/30 AND 31

SHEET 1 OF 1

EXHIBIT "C2"

103711-3



THE BEARINGS AND DISTANCES SHOWN ARE
CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83),
ZONE VI, NAD 83 (1991.35 EPOCH
O.C.S. GPS ADJUSTMENT).

ALL DISTANCES SHOWN ARE GRID DISTANCES.
DIVIDE THE GRID DISTANCES SHOWN
BY 0.99997834 TO OBTAIN GROUND DISTANCES.

RESOLUTION NO. 2021-018

A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF INTERESTS IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF PORTIONS OF ASSESSOR PARCEL NO. 403-041-07.

WHEREAS, the Orange County Transportation Authority (the "Authority") is undertaking the State Route 55 ("SR-55") Improvement Project between Interstate 405 and Interstate 5, a right-of-way for freeway purposes and all public uses appurtenant thereto (the "Project"); and

WHEREAS, the Project is intended to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding travel and high occupancy vehicle (HOV) lanes in each direction; and

WHEREAS, the Project requires the acquisition of property interests from public and private parties; and

WHEREAS, the Project will be a transportation improvement project serving the public interest; and

WHEREAS, subsection (a) of the California Public Utilities Code section 130220.5 authorizes the Authority to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

WHEREAS, portions of the real property located at 1969-2019 S. Ritchey Street, in the City of Santa Ana, California (the "Subject Property"), are required for the Project. The specific portions of the Subject Property required for the Project is a partial fee acquisition as described and depicted in Exhibit "A" attached hereto, a highway easement as legally described and depicted in Exhibit "B" attached hereto; and a temporary construction easement as legal described and depicted in Exhibit "C" attached hereto (the "Property Interests"); and

WHEREAS, if such access currently exists, reasonable vehicular and pedestrian access to and from the Subject Property will be maintained at all times; and

WHEREAS, the Authority communicated an offer of compensation to the owner or owners of record for the acquisition of the Property Interests; and

WHEREAS, in accordance with section 1245.235 of the California Code of Civil Procedure, on February 19, 2021, the Authority mailed a Notice of Hearing on the Intent of the Authority to Adopt a Resolution of Necessity for acquisition by eminent domain of the Property Interests. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the Subject Property; and

WHEREAS, the Authority provided written notice to the City of Santa Ana as required by subsection (c) of California Public Utilities Code section 130220.5; and

WHEREAS, the Project, including all amendments thereto, together with the staff reports, environmental documents and all other evidence presented to the Authority's Board of Directors at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

WHEREAS, pursuant to section 1245.235 of the California Code of Civil Procedure, the Authority scheduled a hearing for March 22, 2021 at 9:00 a.m. and gave to each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll a reasonable opportunity to be heard; and

WHEREAS, said hearing has been held by the Authority's Board of Directors; and

WHEREAS, the Authority may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, BE IT RESOLVED, by at least a two-thirds vote of the Authority's Board of Directors under Code of Civil Procedure sections 1240.030 and 1245.230, the Authority does hereby find and determine as follows:

Section 1. Incorporation of Findings and Recitals. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

Section 2. Compliance with California Code of Civil Procedure. There has been compliance by the Authority with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

Section 3. Public Use. The public use for which the Property Interests are to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Authority to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

Section 4. Necessity.

(a) The proposed Project is necessary to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding travel and high occupancy vehicle (HOV) lanes in each direction; and

(b) The public interest and necessity require the acquisition by eminent domain proceedings of the Property Interests.

Section 5. Description of Property Interests. The Property Interests sought to be acquired are more particularly described and depicted in Exhibits "A" through "C" attached hereto and incorporated herein by reference.

Section 6. Findings. The Authority hereby finds, determines and declares each of the following:

(a) The public interest and necessity require the proposed Project;

(b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The Property Interests sought to be acquired are necessary for the proposed Project; and

(d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record.

Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the Property Interests are already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the Property Interests, or any portion thereof, are already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the Property Interests, or any portion thereof, are already devoted.

Section 8. Acquisition of Substitute Property. To the extent portions of the real property to be acquired for the Project are currently devoted to or held for some public use, the Authority intends to acquire substitute property pursuant to California Code of Civil Procedure sections 1240.320 and 1240.330. The requirements of said Code sections have been satisfied and the acquisition of said substitute property is necessary for the Project. The substitute property may be conveyed by the Authority to the owner(s) of the necessary property.

Section 9. Authority to Exercise Eminent Domain. The Authority is hereby authorized and empowered to acquire the Property Interests, including the improvements thereon, if any, by eminent domain for the proposed Project.

Section 10. Further Activities. The Authority's legal counsel ("Counsel") is hereby authorized and empowered to acquire the Property Interests in the name of and on behalf of the Authority by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be permitted and required by law, and to make such security deposits as may be required by law and/or order of court, to permit the Authority to take possession of the Property Interests at the earliest possible time.

Section 11. Effective Date. This Resolution of Necessity shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this _____ day of _____, 2021.

ANDREW DO, CHAIRMAN
ORANGE COUNTY
TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

JAMES M. DONICH
GENERAL COUNSEL

ATTEST:

I, Andrea West, Interim Clerk of the Board of Directors of the Orange County Transportation Authority, do hereby certify that the foregoing Resolution No. 2021-018, by the following votes:

AYES:

NOES:

ABSENT:

ANDREA WEST
INTERIM CLERK OF THE BOARD

EXHIBIT "A"

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel 103733-1: FEE

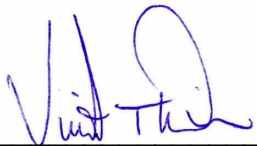
That portion of Parcel 3, in the City of Santa Ana, County of Orange, State of California, as shown on a map filed in Book 7, Page 46 of Parcel Maps, in the office of the County Recorder of said County, lying southeasterly of the following described line:

BEGINNING at a point on that certain course shown as having a bearing of North 88°39'03" West and a length of 324.92 in the southerly line of said Parcel 3, distant thereon South 88°39'33" East 314.05 feet from the westerly terminus of said certain course; thence leaving said southerly line, North 40°38'58" East 420.06 feet to the northerly line of said Parcel 3.

This conveyance is made for the purpose of a freeway and the GRANTOR hereby releases and relinquishes to the GRANTEE any and all abutter's rights including access rights, appurtenant to GRANTOR's remaining property, in and to the freeway.

The bearings shown herein are based on the California Coordinate System of 1983, Zone VI, North American Datum of 1983 (1991.35 epoch). The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997834.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature: 
Vincent T. Davis, PLS

Date: 09 June 2020

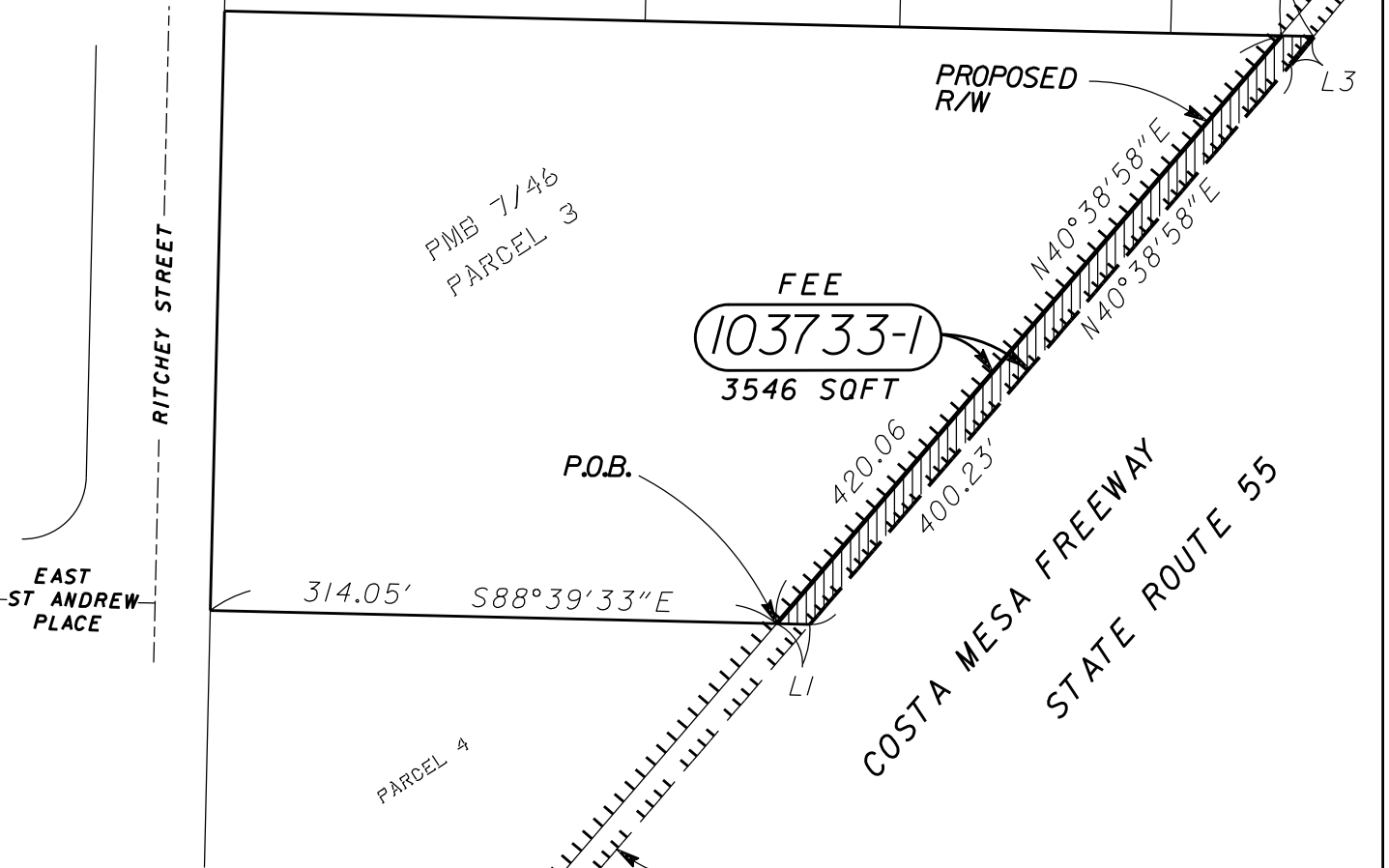




Not to scale

DATUM: **NAD83 EPOCH 1991.35 ORANGE COUNTY SURVEYOR ADJUSTMENT.**
COORDINATE SYSTEM: **CCS83 ZONE 6, COORDINATES, BEARINGS, DISTANCES**
COMBINED FACTOR: **0.99997834 (GROUND - GRID/COMBINED FACTOR)**

CITY OF SANTA ANA



LEGEND:

	ACCESS PROHIBITED
P.O.B.	POINT OF BEGINNING

LINE DATA:

NO.	BEARING	DISTANCE
L1	S88°39'33"E	10.92'
L2	S88°39'30"E	10.37'
L3	N39°23'50"E	19.49'

EXISTING
R/W

VINCENT T. DAVIS

17 Dec 2020

DATE

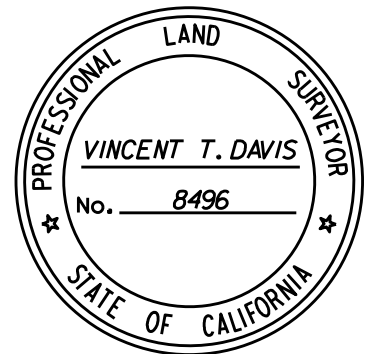


EXHIBIT "A1"

(Page 1 of 1)

COUNTY: ORA
RTE: 55
P.M.: 6.8

NOT TO SCALE
DATE: DEC 2020

PARCEL:
103733-1
APN: 403-041-07

EXHIBIT "B"

HIGHWAY EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION
Assessor Parcel No.: 403-041-07
Caltrans Parcel No.: 103733-2

This non-exclusive highway easement shall be in, on, over, under, and across that certain real property described in Exhibits "B" and "B1" attached hereto, subject to the rights and limitations described herein ("Highway Easement"). The Highway Easement shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") for purposes of constructing, compacting, maintaining, removing, and replacing, as applicable, compacted material thereto in connection with the construction of the SR 55 Improvement Project.

The owner and occupant(s) of the real property subject to the Highway Easement shall not construct any permanent improvements within the easement area described in the attached Exhibits "B" and "B1" that would impede OCTA's rights as defined herein. OCTA will install compacted material, within that portion of the Highway Easement area affected by OCTA's work. The owner and occupant(s) shall not excavate within the Highway Easement area or disturb any compacted material installed within the Highway Easement area. The owner and occupant(s) of the real property subject to the Highway Easement will have the right to use the surface of the easement area described in the attached Exhibits "B" and "B1" for access or automobile parking purposes, once the compacted material is in place.

The rights and obligations of OCTA and the owner of the real property subject to the Highway Easement shall run with the land and be binding upon and/or inure to the benefit of OCTA's and the property owner's respective heirs, successors and assigns.

OCTA expressly reserves the right to convey, transfer, or assign the Highway Easement subject to the same rights and limitations described herein.

EXHIBIT "B"
LEGAL DESCRIPTION

Parcel 103733-2

HIGHWAY EASEMENT

That portion of Parcel 3, in the City of Santa Ana, County of Orange, State of California, as shown on a map filed in Book 7, Page 46 of Parcel Maps, in the office of the County Recorder of said County, lying southeasterly of the following described line:

BEGINNING at a point on that certain course shown as having a bearing of North 88°39'03" West and a length of 324.92 in the southerly line of said Parcel 3, distant thereon South 88°39'33" East 312.11 feet from the westerly terminus of said certain course; thence leaving said southerly line, North 40°38'58" East 420.06 feet to the northerly line of said Parcel 3.

EXCEPT THEREFROM that portion lying southeasterly of the following described line: **BEGINNING** at a point on that certain course shown as having a bearing of North 88°39'03" West and a length of 324.92 in the southerly line of said Parcel 3, distant thereon South 88°39'33" East 314.05 feet from the westerly terminus of said certain course; thence leaving said southerly line, North 40°38'58" East 420.06 feet to the northerly line of said Parcel 3.

The bearings shown herein are based on the California Coordinate System of 1983, Zone VI, North American Datum of 1983 (1991.35 epoch). The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997834.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature: 
Vincent T. Davis, PLS

Date: 27 Jan 2020

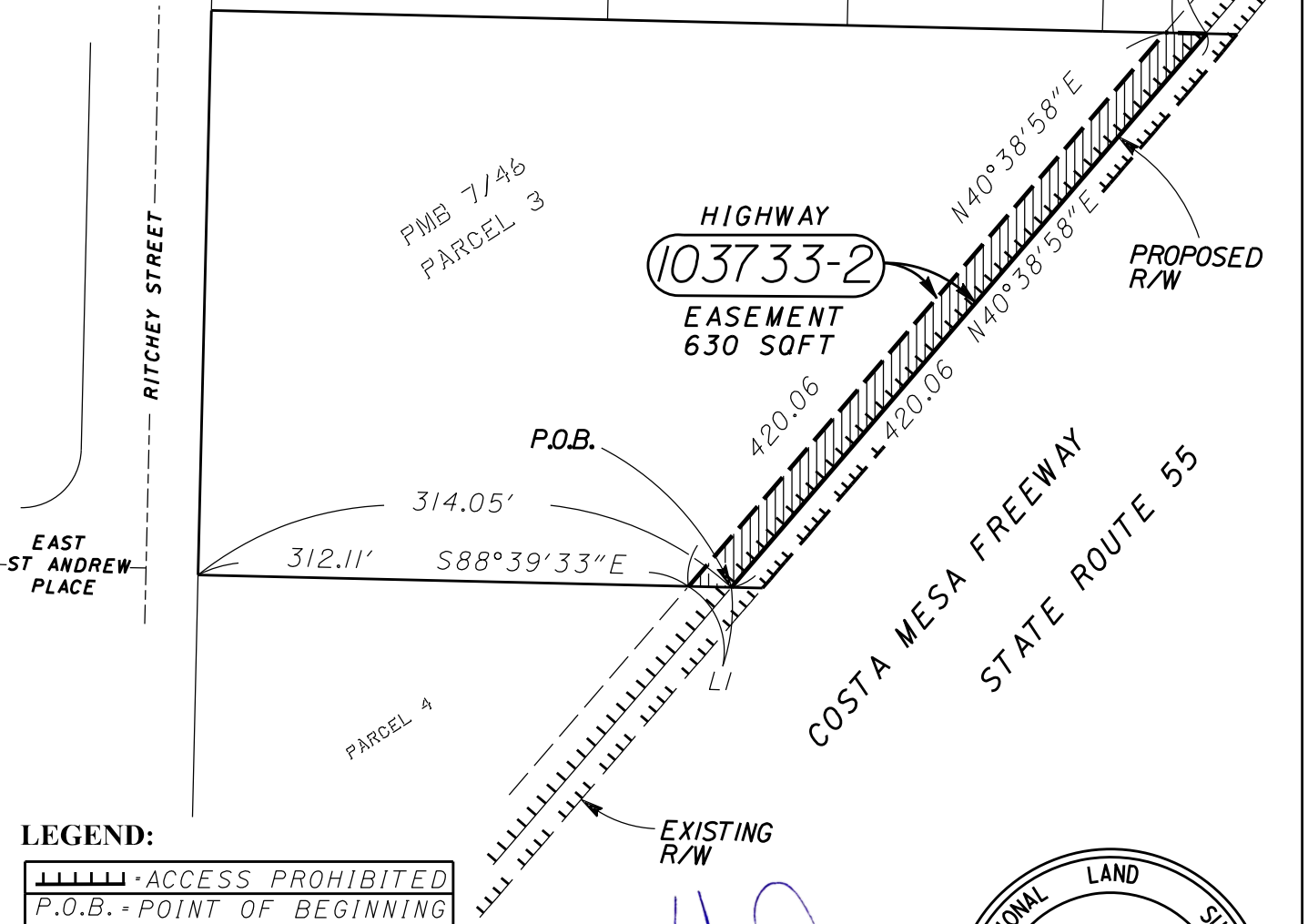




Not to scale

DATUM: **NAD83 EPOCH 1991.35 ORANGE COUNTY SURVEYOR ADJUSTMENT.**
COORDINATE SYSTEM: **CCS83 ZONE 6, COORDINATES, BEARINGS, DISTANCES**
COMBINED FACTOR: **0.99997834 (GROUND - GRID/COMBINED FACTOR)**

CITY OF SANTA ANA



LEGEND:

ACCESS PROHIBITED
P.O.B. = POINT OF BEGINNING

LINE DATA:

NO.	BEARING	DISTANCE
L1	S88°39'33"E	1.94'
L2	S88°39'30"E	1.94'

VINCENT T. DAVIS
17 Dec 2020
DATE

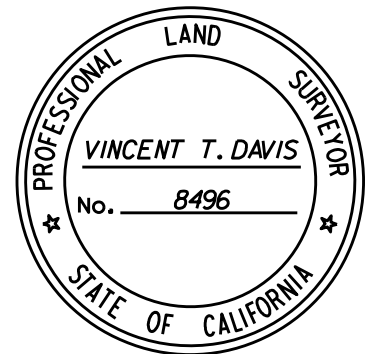


EXHIBIT "B1"

(Page 1 of 1)

COUNTY: ORA
RTE: 55
P.M.: 6.8

NOT TO SCALE
DATE: DEC 2020

PARCEL:
103733-2
APN: 403-041-07

EXHIBIT "C"

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 403-041-07

Caltrans Parcel No.: 103733-3

This temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "C1" and depicted in Exhibit "C2" attached hereto, subject to the rights and limitations set forth herein ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the SR 55 Improvement Project. The TCE shall be for a period of sixty (60) months, a portion of which shall be exclusive (subject to the Rights and Limitations of Use and Occupancy set forth below) and a portion of which shall be non-exclusive. Specifically, the actual physical construction activities within the TCE area shall be limited to a period of twenty-four (24) consecutive months within the sixty (60) month TCE period (the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the Rights and Limitations of Use and Occupancy set forth below. OCTA's use and occupancy of the TCE during the remaining thirty-six (36) months of the TCE period will be non-exclusive.

Rights and Limitations of Use and Occupancy of TCE:

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days' written notice as to when the Construction Period will commence.
- During the Construction Period, OCTA may place a temporary fence around the TCE area.
- Circulation patterns for the property shall be maintained via mitigation measures that shall require the cutting and refacing of the two industrial buildings located on the property, which mitigation measures shall be implemented by OCTA, or in the alternative, OCTA will provide compensation to owner for such mitigation measures.
- Access to the TCE area by OCTA shall be from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. Any and all improvements so removed shall be included in the compensation paid by OCTA for this TCE.
- The business pole sign must be removed to an area outside of the TCE area and permanently outside the proposed fee area (CPN:103733-1) to be acquired by OCTA. OCTA shall remove the sign during the Construction Period. OCTA shall pay compensation for a new replacement sign and its installation.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials, any temporary improvements, and all construction-related debris. The TCE area will be graded and compacted. Functionally equivalent pavement material will be installed by OCTA to restore the TCE area to a similar condition that existed prior to commencement of the construction activities.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

EXHIBIT "C1"
LEGAL DESCRIPTION

CALTRANS PARCEL NO. 103733-3

TEMPORARY CONSTRUCTION EASEMENT

APN 403-041-07

THAT PORTION OF PARCEL 3 IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 7, PAGE 46, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL 3;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 3 NORTH 88°39'33" WEST, 12.86 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING SAID SOUTHERLY LINE NORTH 40°38'58" EAST, 420.06 FEET TO THE NORTHERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHERLY LINE NORTH 88°39'30" WEST, 3.88 FEET;

THENCE LEAVING SAID NORTHERLY LINE SOUTH 40°38'58" WEST, 420.06 FEET TO SAID SOUTHERLY LINE;

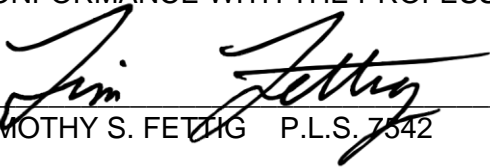
THENCE ALONG SAID SOUTHERLY LINE SOUTH 88°39'33" EAST, 3.88 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL 103733-3 CONTAINS A TOTAL GRID AREA 1,260 SQUARE FEET OR 0.029 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE CALIFORNIA COORDINATE SYSTEM (CCS83), ZONE VI, NAD 83 (1991.35 EPOCH OCS ADJUSTMENT), ALL DISTANCES SHOWN ARE GRID, TO OBTAIN GROUND DISTANCES DIVIDE BY 0.99997834.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "C2", ATTACHED HERETO AND MADE A PART HEREOF.

THIS DOCUMENT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.


TIMOTHY S. FETTING P.L.S. 7542

1/30/2020

DATE



PLAT TO ACCOMPANY
LEGAL DESCRIPTION

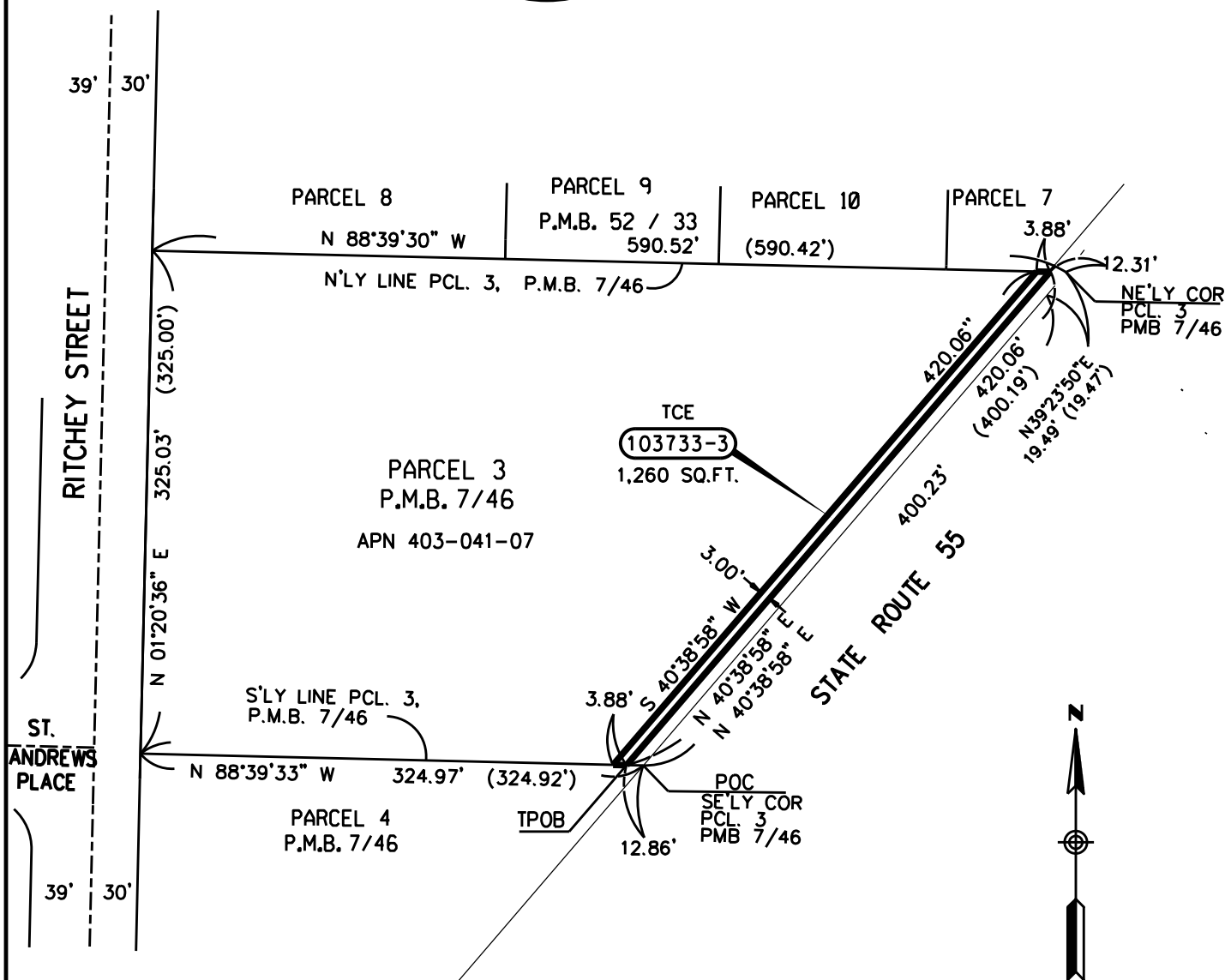


PREPARED BY ME OR UNDER MY DIRECTION:

Tim Fetting
TIMOTHY S. FETTING P.L.S. 7542

1/30/2020

DATE

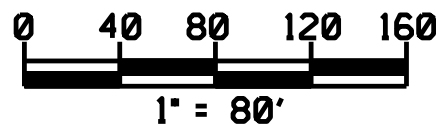


(XXX.XX) INDICATES MEASURED DISTANCE
PER P.M.B. 7/46

THE BEARINGS AND DISTANCES SHOWN ARE
CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83),
ZONE VI, NAD 83 (1991.35 EPOCH
O.C.S. GPS ADJUSTMENT).
ALL DISTANCES SHOWN ARE GRID DISTANCES.
DIVIDE THE GRID DISTANCES SHOWN
BY 0.99997834 TO OBTAIN GROUND DISTANCES.

EXHIBIT "C2"

103733-3



RESOLUTION NO. 2021-019

A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF INTERESTS IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF PORTIONS OF ASSESSOR PARCEL NO. 403-041-08.

WHEREAS, the Orange County Transportation Authority (the "Authority") is undertaking the State Route 55 ("SR-55") Improvement Project between Interstate 405 and Interstate 5, a right-of-way for freeway purposes and all public uses appurtenant thereto (the "Project"); and

WHEREAS, the Project is intended to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding travel and high occupancy vehicle (HOV) lanes in each direction; and

WHEREAS, the Project requires the acquisition of property interests from public and private parties; and

WHEREAS, the Project will be a transportation improvement project serving the public interest; and

WHEREAS, subsection (a) of the California Public Utilities Code section 130220.5 authorizes the Authority to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

WHEREAS, portions of the real property located at 2061 Ritchey Street, in the City of Santa Ana, California (the "Subject Property"), are required for the Project. The specific portions of the Subject Property required for the Project are a partial fee acquisition as described and depicted in Exhibit "A" attached hereto, a highway easement as legally described and depicted in Exhibit "B" attached hereto; and a temporary construction easement as legal described and depicted in Exhibit "C" attached hereto; (the "Property Interests"); and

WHEREAS, if such access currently exists, reasonable vehicular and pedestrian access to and from the Subject Property will be maintained at all times; and

WHEREAS, the Authority communicated an offer of compensation to the owner or owners of record for the acquisition of the Property Interests; and

WHEREAS, in accordance with section 1245.235 of the California Code of Civil Procedure on February 19, 2021, the Authority mailed a Notice of Hearing on the Intent of the Authority to Adopt a Resolution of Necessity for acquisition by eminent domain of the Property Interests. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the Subject Property; and

WHEREAS, the Authority provided written notice to the City of Santa Ana as required by subsection (c) of California Public Utilities Code section 130220.5; and

WHEREAS, the Project, including all amendments thereto, together with the staff reports, environmental documents and all other evidence presented to the Authority's Board of Directors at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

WHEREAS, pursuant to section 1245.235 of the California Code of Civil Procedure, the Authority scheduled a hearing for March 22, 2021 at 9:00 a.m. and gave to each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll a reasonable opportunity to be heard; and

WHEREAS, said hearing has been held by the Authority's Board of Directors; and

WHEREAS, the Authority may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, BE IT RESOLVED, by at least a two-thirds vote of the Authority's Board of Directors under Code of Civil Procedure sections 1240.030 and 1245.230, the Authority does hereby find and determine as follows:

Section 1. Incorporation of Findings and Recitals. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

Section 2. Compliance with California Code of Civil Procedure. There has been compliance by the Authority with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

Section 3. Public Use. The public use for which the Property Interests are to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Authority to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

Section 4. Necessity.

(a) The proposed Project is necessary to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding travel and high occupancy vehicle (HOV) lanes in each direction; and

(b) The public interest and necessity require the acquisition by eminent domain proceedings of the Property Interests.

Section 5. Description of Property Interests. The Property Interests sought to be acquired are more particularly described and depicted in Exhibits "A" through "C" attached hereto and incorporated herein by reference.

Section 6. Findings. The Authority hereby finds, determines and declares each of the following:

(a) The public interest and necessity require the proposed Project;

(b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The Property Interests sought to be acquired are necessary for the proposed Project; and

(d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record.

Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the Property Interests are already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the Property Interests, or any portion thereof, are already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the Property Interests, or any portion thereof, are already devoted.

Section 8. Acquisition of Substitute Property. To the extent portions of the real property to be acquired for the Project are currently devoted to or held for some public use, the Authority intends to acquire substitute property pursuant to California Code of Civil Procedure sections 1240.320 and 1240.330. The requirements of said Code sections have been satisfied and the acquisition of said substitute property is necessary for the Project. The substitute property may be conveyed by the Authority to the owner(s) of the necessary property.

Section 9. Authority to Exercise Eminent Domain. The Authority is hereby authorized and empowered to acquire the Property Interests, including the improvements thereon, if any, by eminent domain for the proposed Project.

Section 10. Further Activities. The Authority's legal counsel ("Counsel") is hereby authorized and empowered to acquire the Property Interests in the name of and on behalf of the Authority by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be permitted and required by law, and to make such security deposits as may be required by law and/or order of court, to permit the Authority to take possession of the Property Interests at the earliest possible time.

Section 11. Effective Date. This Resolution of Necessity shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this _____ day of _____, 2021.

ANDREW DO, CHAIRMAN
ORANGE COUNTY
TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

JAMES M. DONICH
GENERAL COUNSEL

ATTEST:

I, Andrea West, Interim Clerk of the Board of Directors of the Orange County Transportation Authority, do hereby certify that the foregoing Resolution No. 2021-019, by the following votes:

AYES:

NOES:

ABSENT:

ANDREA WEST
INTERIM CLERK OF THE BOARD

EXHIBIT "A"

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel 103734-1: FEE

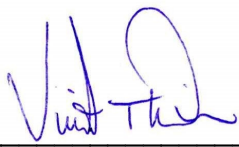
That portion of Parcel 4, in the City of Santa Ana, County of Orange, State of California, as shown on a map filed in Book 7, Page 46 of Parcel Maps, in the office of the County Recorder of said County, lying southeasterly of the following described line:

BEGINNING at a point on that certain course shown as having a bearing of North 01°20'57" East and a length of 396.91 on the westerly line of said Parcel 4, distant thereon South 01°20'36" West, 383.60 feet from the northerly terminus of said certain course; thence leaving said westerly line North 40°38'58" East, 495.76 feet to the northerly line of said Parcel 4.

This conveyance is made for the purpose of a freeway and the GRANTOR hereby releases and relinquishes to the GRANTEE any and all abutter's rights including access rights, appurtenant to GRANTOR's remaining property, in and to the freeway.

The bearings shown herein are based on the California Coordinate System of 1983, Zone VI, North American Datum of 1983 (1991.35 epoch). The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997834.

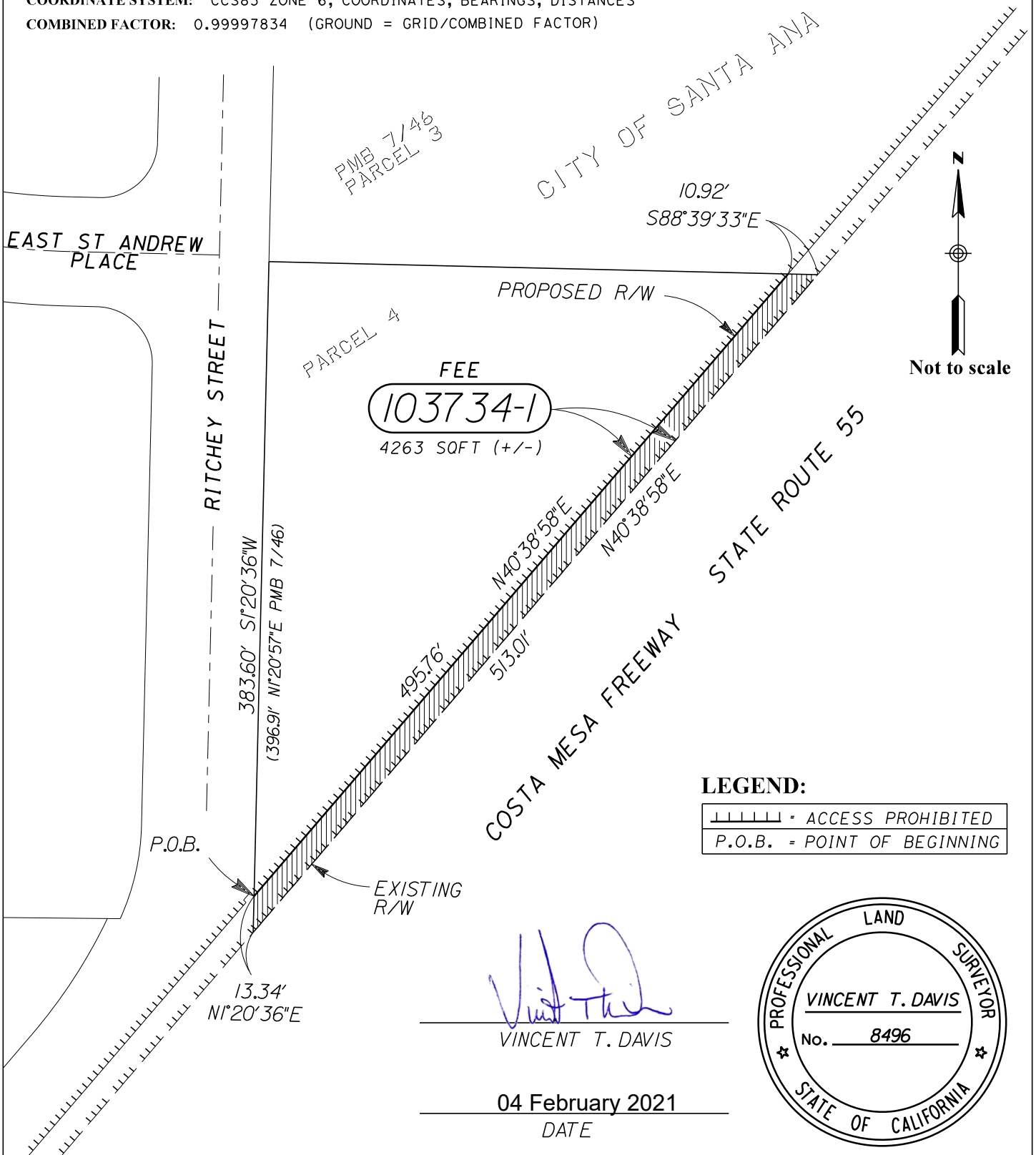
This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature: 
Vincent T. Davis, PLS

Date: 26 Aug 2020



DATUM: NAD83 EPOCH 1991.35 ORANGE COUNTY SURVEYOR ADJUSTMENT.
COORDINATE SYSTEM: CCS83 ZONE 6, COORDINATES, BEARINGS, DISTANCES
COMBINED FACTOR: 0.99997834 (GROUND = GRID/COMBINED FACTOR)



LEGEND:

||||| * ACCESS PROHIBITED
P.O.B. = POINT OF BEGINNING

Vincent T. Davis

VINCENT T. DAVIS

04 February 2021

DATE

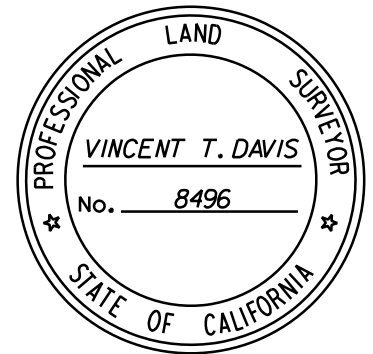


EXHIBIT "A1"

(Page 1 of 1)

COUNTY: ORA
RTE: 55
P.M.: 8.9

NOT TO SCALE

DATE: FEB 2021

PARCEL:
103734-1

APN: 403-041-08

EXHIBIT "B"

**HIGHWAY EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 403-041-08

Caltrans Parcel No.: 103734-2

This non-exclusive highway easement shall be in, on, over, under, and across that certain real property described in Exhibit "B" attached hereto, subject to the rights and limitations described herein ("Highway Easement"). The Highway Easement shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") for purposes of constructing, compacting, maintaining, removing, and replacing, as applicable, compacted material thereto in connection with the construction of the SR 55 Improvement Project.

The owner and occupant(s) of the real property subject to the Highway Easement shall not landscape or construct any improvements within the easement area described in the attached Exhibit "B." OCTA will install compacted material, within that portion of the Highway Easement area affected by OCTA's work. The owner and occupant(s) shall not excavate within the Highway Easement area or disturb any compacted material installed within the Highway Easement area. The owner and occupant(s) of the real property subject to the Highway Easement will have the right to use the surface of the easement area described in the attached Exhibit "B" for access or automobile parking purposes, once the compacted material is in place.

The rights and obligations of OCTA and the owner of the real property subject to the Highway Easement shall run with the land and be binding upon and/or inure to the benefit of OCTA's and the property owner's respective heirs, successors and assigns.

OCTA expressly reserves the right to convey, transfer, or assign the Highway Easement subject to the same rights and limitations described herein.

EXHIBIT "B"
LEGAL DESCRIPTION

Parcel 103734-2: HIGHWAY EASEMENT

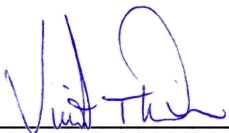
That portion of Parcel 4, in the City of Santa Ana, County of Orange, State of California, as shown on a map filed in Book 7, Page 46 of Parcel Maps, in the office of the County Recorder of said County, lying southeasterly of the following described line:

BEGINNING at a point on that certain course shown as having a bearing of North 01°20'57" East and a length of 396.91 in the westerly line of said Parcel 4, distant thereon South 01°20'36" West 381.23 feet from the northerly terminus of said certain course; thence leaving said westerly line, North 40°38'58" East 492.70 feet to the northerly line of said Parcel 4.

EXCEPTING THEREFROM that portion lying southeasterly of the following described line: **BEGINNING** at a point on that certain course shown as having a bearing of North 01°20'57" East and a length of 396.91 in the westerly line of said Parcel 4, distant thereon South 01°20'36" West 383.60 feet from the northerly terminus of said certain course; thence leaving said westerly line, North 40°38'58" East 495.76 feet to the northerly line of said Parcel 4.

The bearings shown herein are based on the California Coordinate System of 1983, Zone VI, North American Datum of 1983 (1991.35 epoch). The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997834.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature: 
Vincent T. Davis, PLS

Date: 04 February 2021



DATUM: NAD83 EPOCH 1991.35 ORANGE COUNTY SURVEYOR ADJUSTMENT.
COORDINATE SYSTEM: CCS83 ZONE 6, COORDINATES, BEARINGS, DISTANCES
COMBINED FACTOR: 0.99997834 (GROUND = GRID/COMBINED FACTOR)

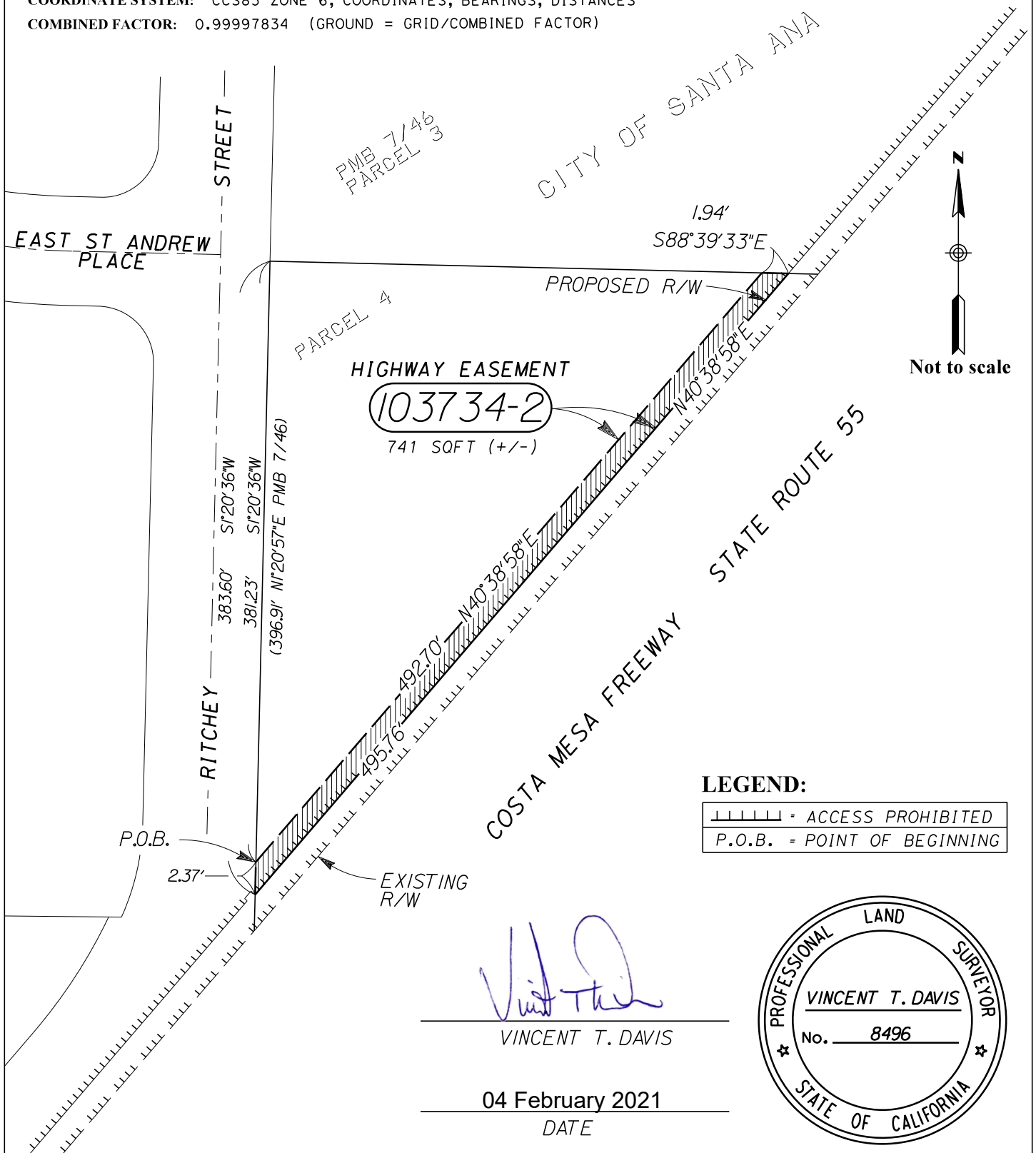


EXHIBIT "B1"

(Page 1 of 1)

COUNTY: ORA
RTE: 55
P.M.: 8.9

NOT TO SCALE
DATE: FEB 2021

PARCEL:
103734-2

APN: 403-041-08

EXHIBIT "C"

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 403-041-08

Caltrans Parcel No.: 103734-3

This temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "C1" and depicted in Exhibit "C2" attached hereto, subject to the rights and limitations set forth herein ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the SR 55 Improvement Project. The TCE shall be for a period of sixty (60) months, a portion of which shall be exclusive (subject to the Rights and Limitations of Use and Occupancy set forth below) and a portion of which shall be non-exclusive. Specifically, the actual physical construction activities within the TCE area shall be limited to a period of twenty-four (24) consecutive months within the sixty (60) month TCE period (the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the Rights and Limitations of Use and Occupancy set forth below. OCTA's use and occupancy of the TCE during the remaining thirty-six (36) months of the TCE period will be non-exclusive.

Rights and Limitations of Use and Occupancy of TCE:

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days' written notice as to when the Construction Period will commence.
- During the Construction Period, OCTA may place a temporary fence around the TCE area.
- Access to the TCE area by OCTA shall be from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. Any and all improvements so removed shall be included in the compensation paid by OCTA for this TCE.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials, any temporary improvements, and all construction-related debris. The TCE area will be graded and compacted. Functionally equivalent pavement material will be installed by OCTA to restore the TCE area to a similar condition that existed prior to commencement of the construction activities.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

EXHIBIT "C1"
LEGAL DESCRIPTION

CALTRANS PARCEL NO. 103734-3

TEMPORARY CONSTRUCTION EASEMENT

APN 403-041-08

THAT PORTION OF PARCEL 4 IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 7, PAGE 46, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHERLY CORNER OF SAID PARCEL 4;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 4 NORTH 1°20'36" EAST, 15.71 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING SAID WESTERLY LINE NORTH 40°38'58" EAST, 492.70 FEET TO THE NORTHERLY LINE OF SAID PARCEL 4;

THENCE ALONG SAID NORTHERLY LINE NORTH 88°39'33" WEST, 3.88 FEET;

THENCE LEAVING SAID NORTHERLY LINE SOUTH 40°38'58" WEST, 486.58 FEET TO SAID WESTERLY LINE;

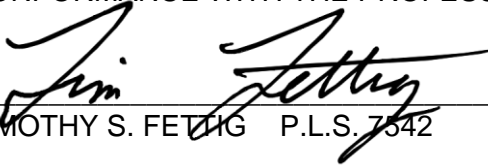
THENCE ALONG SAID WESTERLY LINE SOUTH 1°20'36" WEST, 4.74 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL 103734-3 CONTAINS A TOTAL GRID AREA 1,469 SQUARE FEET OR 0.034 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE CALIFORNIA COORDINATE SYSTEM (CCS83), ZONE VI, NAD 83 (1991.35 EPOCH OCS ADJUSTMENT), ALL DISTANCES SHOWN ARE GRID, TO OBTAIN GROUND DISTANCES DIVIDE BY 0.99997834.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "C2", ATTACHED HERETO AND MADE A PART HEREOF.

THIS DOCUMENT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.


TIMOTHY S. FETTING P.L.S. 7542

2/13/20
DATE



PLAT TO ACCOMPANY
LEGAL DESCRIPTION



PREPARED BY ME OR UNDER MY DIRECTION:

Tim Fetting
TIMOTHY S. FETTIG P.L.S. 7542

2/13/2020

DATE

PARCEL 3
P.M.B. 7/46

N 88°39'33" W 324.97' (324.92')
N'LY LINE PCL. 4, P.M.B. 7/46

3.88'

12.86'

486.58'
492.70' (512.95')
513.01'

TCE

103734-3

1,469 SQ.FT.

PARCEL 4
P.M.B. 7/46

APN 403-041-08

STATE ROUTE 55

N 40°38'58" E
N 40°38'58" E
N 40°38'58" E

3.00'



RITCHIEY STREET

ST.
ANDREWS
PLACE

30'
39'
396.94' (396.91')
W'LY LINE PCL. 4, P.M.B. 7/46
N 01°20'36" E
30'

4.74'
15.71'
TPOB
POC
S'LY COR.
PCL. 4
P.M.B. 7/46

(XXX.XX) INDICATES MEASURED DISTANCE
PER P.M.B. 7/46

THE BEARINGS AND DISTANCES SHOWN ARE
CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83),
ZONE VI, NAD 83 (1991.35 EPOCH
O.C.S. GPS ADJUSTMENT).
ALL DISTANCES SHOWN ARE GRID DISTANCES.
DIVIDE THE GRID DISTANCES SHOWN
BY 0.99997834 TO OBTAIN GROUND DISTANCES.

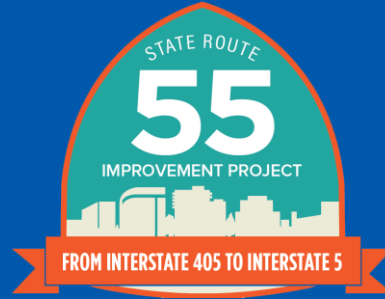
EXHIBIT "C2"

103734-3

0 30 60 90 120

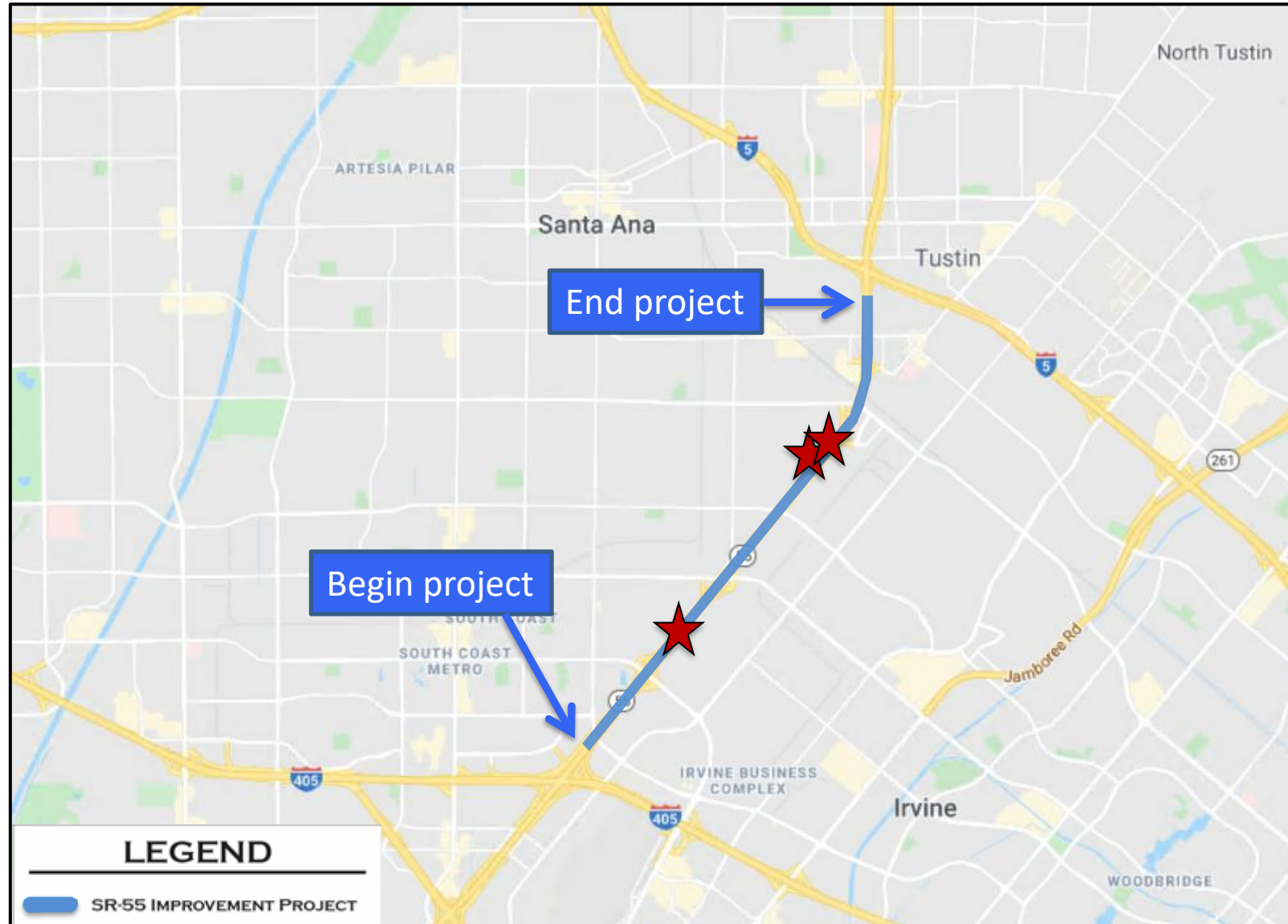


1" = 60'



Adopt Resolutions of Necessity for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

State Route 55 Improvement Project Resolutions of Necessity Locations



Resolution of Necessity No. 2021-017

John Washer, Trustee of the John Washer Living Trust



Resolution of Necessity No. 2021-017

John Washer, Trustee of the John Washer Living Trust



Resolution of Necessity No. 2021-017

John Washer, Trustee of the John Washer Living Trust



Resolution of Necessity No. 2021-018

HBR, LLC



Resolution of Necessity No. 2021-018

HBR, LLC



Resolution of Necessity No. 2021-018

HBR, LLC



Not to Scale,
For Presentation
Purposes Only

Resolution of Necessity No. 2021-018

HBR, LLC



Resolution of Necessity No. 2021-019

Dan R. O'Neil and Bonnie J. O'Neil,
Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust



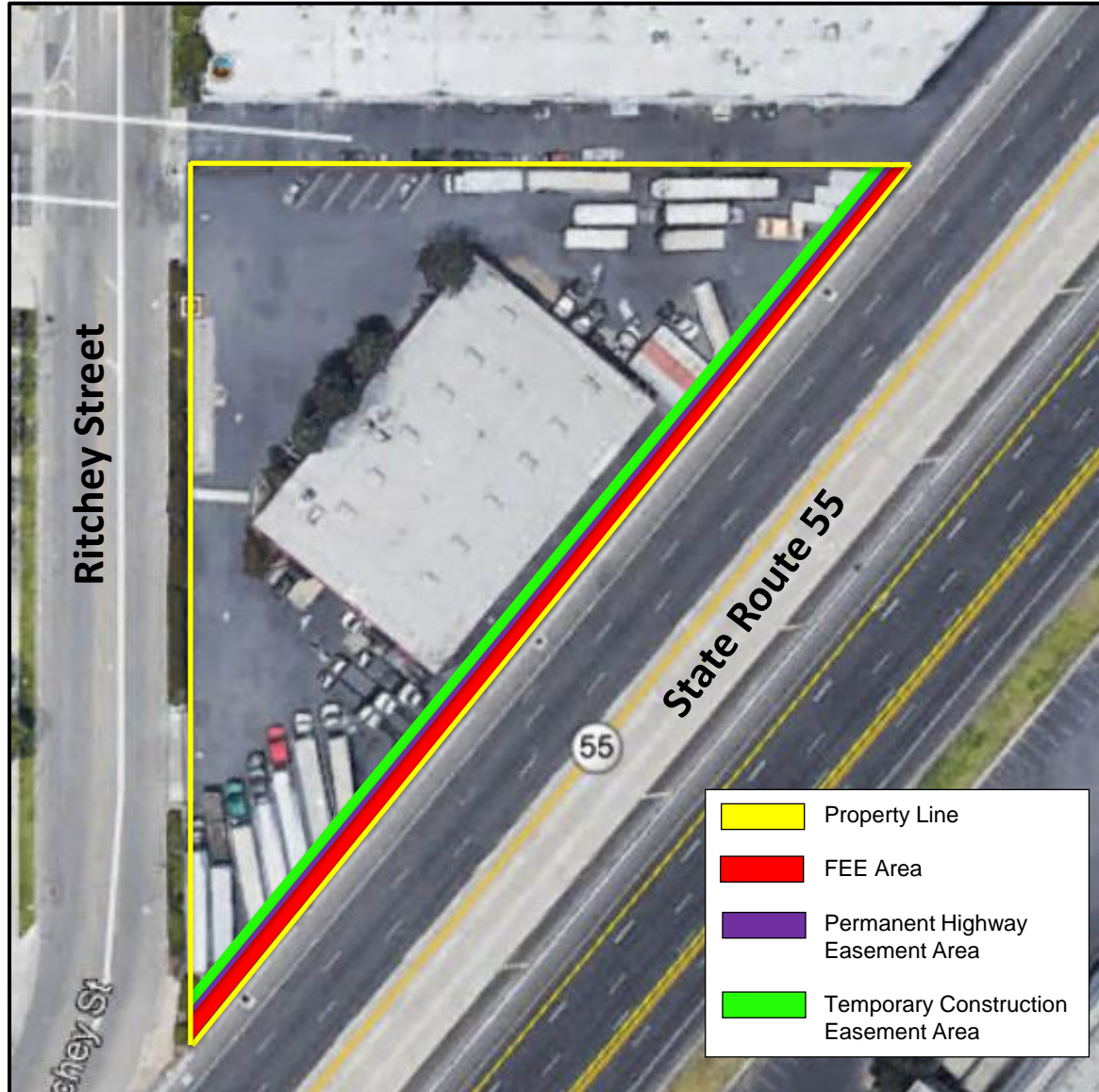
Resolution of Necessity No. 2021-019

Dan R. O'Neil and Bonnie J. O'Neil,
Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust



Resolution of Necessity No. 2021-019

Dan R. O'Neil and Bonnie J. O'Neil,
Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust



Resolution of Necessity No. 2021-019

Dan R. O'Neil and Bonnie J. O'Neil,
Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust



Four Requirements to be Considered to Adopt Resolutions

1. The public interest and necessity require the proposed project.
2. The proposed project is planned in a manner that will be most compatible with the greatest public good and the least private injury.
3. The property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

MINUTES

Board of Directors' Meeting

Call to Order

The Monday, March 8, 2021, regular meeting of the Orange County Transportation Authority (OCTA) and affiliated agencies was called to order by Chairman Do at 9:00 a.m. at the OCTA Headquarters, 550 South Main Street, Board Room – Conference Room 07-08, Orange, California.

Roll Call

The Deputy Clerk of the Board (DCOB) conducted an attendance Roll Call and announced there was quorum of the Board of Directors (Board) as follows:

Via Teleconference: Andrew Do, Chairman
Mark A. Murphy, Vice Chairman
Lisa A. Bartlett
Doug Chaffee
Barbara Delgleize
Brian Goodell
Patrick Harper
Michael Hennessey
Gene Hernandez
Joseph Muller
Vicente Sarmiento
Tim Shaw
Harry S. Sidhu
Donald P. Wagner
Ryan Chamberlain, District Director – Caltrans District 12

Directors Absent: None

Staff Present: Jennifer L. Bergener, Deputy Chief Executive Officer
Gina Ramirez, Deputy Clerk of the Board
Sahara Meisenheimer, Deputy Clerk of the Board

Via Teleconference: Darrell E. Johnson, Chief Executive Officer
James Donich, General Counsel

Invocation

Director Bartlett gave the invocation.

Pledge of Allegiance

Director Hernandez led in the Pledge of Allegiance.

Special Calendar

There were no Special Calendar matters.

Consent Calendar (Items 1 through 14)

1. Approval of Minutes

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to approve the Orange County Transportation Authority and affiliated agencies' regular meeting minutes of February 22, 2021.

2. OC Streetcar Project Management Consultant: Oversight Controls and Contract Compliance, Internal Audit Report No. 21-503

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to direct staff to implement two recommendations provided in OC Streetcar Project Management Consultant: Oversight Controls and Contract Compliance, Internal Audit Report No. 21-503.

3. Coronavirus Update

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to receive and file as an information item.

4. Fiscal Year 2020-21 Second Quarter Grant Reimbursement Status Report

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to receive and file as an information item.

5. Orange County Transportation Authority Investment and Debt Programs Report - January 2021

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to receive and file as an information item.

6. Consultant Selection for the Development of Orange County Mobility Hubs Strategy

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to:

- A. Approve the selection of Steer Davies & Gleave, Inc., as the firm to develop the Orange County Mobility Hubs Strategy.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2646 between the Orange County Transportation Authority and Steer Davies & Gleave, Inc., in the amount of \$297,371, to develop the Orange County Mobility Hubs Strategy.

7. Cooperative Agreement with the California Department of Transportation for the State Route 57 Northbound Improvement Project Between Orangewood Avenue and Katella Avenue

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to authorize the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-1-3300 between the Orange County Transportation Authority and the California Department of Transportation, in the amount of \$450,000, to provide oversight of the plans, specifications, and estimates, and to advertise and award the construction contract for the State Route 57 Northbound Improvement Project between Orangewood Avenue and Katella Avenue.

8. Approval to Release Request for Proposals for the Preparation of Plans, Specifications, and Estimates for the State Route 57 Northbound Improvement Project Between Orangewood Avenue and Katella Avenue

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to:

- A. Approve the proposed evaluation criteria and weightings for Request for Proposals 1-3298 for consultant services for the preparation of plans, specifications, and estimates for the State Route 57 Northbound Improvement Project between Orangewood Avenue and Katella Avenue.

8. (Continued)

- B. Approve the release of Request for Proposals 1-3298 for consultant services for the preparation of plans, specifications, and estimates for the State Route 57 Northbound Improvement Project between Orangewood Avenue and Katella Avenue.

9. Cooperative Agreement with Southern California Regional Rail Authority for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-1, to authorize the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-1-3290 between the Orange County Transportation Authority and the Southern California Regional Rail Authority, in the amount of \$542,850, to provide construction support services for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.

Director Wagner voted in opposition.

10. Environmental Mitigation Program Endowment Fund Investment Report for December 31, 2020

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to receive and file as an information item.

11. Measure M2 Quarterly Progress Report for the Period of October 2020 Through December 2020

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to receive and file as an information only item.

12. Agreement for Measure M2 Environmental Mitigation Program Regulatory Support Services

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to:

- A. Approve the selection of Glenn Lukos Associates, Inc., as the firm to provide regulatory support of the Orange County Transportation Authority's Measure M2 Environmental Mitigation Program.

12. (Continued)

- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2701 between the Orange County Transportation Authority and Glenn Lukos Associates, Inc., in the amount of \$500,000, for a five-year term to provide regulatory permitting services associated with the Orange County Transportation Authority's Measure M2 Environmental Mitigation Program.

13. Agreements for Freeway Service Patrol Services

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to:

- A. Approve the selection of Veterans Towing, LLC, to provide freeway service patrol services for service area 1.
- B. Approve the selection of California Coach Orange, Inc., to provide freeway service patrol services for service areas 3, 5, and 10.
- C. Approve the selection of California Roadside Service, LLC, to provide freeway service patrol services for service area 6.
- D. Approve the selection of Beach Town Towing, LLC, doing business as Orange County Motor Club, to provide freeway service patrol services for service area 8.
- E. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2721 between the Orange County Transportation Authority and Veterans Towing, LLC, in the amount of \$3,984,992, to provide freeway service patrol services for service area 1 from October 2, 2021 through October 2, 2027.
- F. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-1-3311 between the Orange County Transportation Authority and California Coach Orange, Inc., in the amount of \$16,170,275, to provide freeway service patrol services for service areas 3 and 10 from October 2, 2021 through October 2, 2027, and service area 5 from December 4, 2021 through October 2, 2027.
- G. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-1-3312 between the Orange County Transportation Authority and California Roadside Service, LLC, in the amount of \$4,868,234, to provide freeway service patrol services for service area 6 from October 2, 2021 through October 2, 2027.

13. (Continued)

- H. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-1-3313 between the Orange County Transportation Authority and Beach Town Towing, LLC, doing business as Orange County Motor Club, in the amount of \$5,431,156, to provide freeway service patrol services for service area 8 from December 4, 2021 through October 2, 2027.

14. Agreement for Call Box Maintenance Services

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 15-0, to:

- A. Approve the selection of CASE Emergency Systems, as the firm to provide call box maintenance services to maintain call boxes operated under the Orange County Service Authority for Freeway Emergencies program.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2632 between the Orange County Transportation Authority and CASE Emergency Systems, in the amount of \$2,432,315, to provide call box maintenance services for a six-year initial term, with one, two-year option term.

Regular Calendar

There were no Regular Calendar matters.

Discussion Items

15. Update on Interstate 5 Widening Project Between State Route 73 and El Toro Road

Niall Barrett, Program Manager, and Fernando Chavarria, Principal Community Relations Specialist, co-presented a PowerPoint presentation.

Chairman Do thanked Mr. Barrett and Mr. Chavarria for the presentation and requested Director Bartlett, as the Supervisor for the Fifth District and partner for this project, address the Board.

Director Bartlett thanked the Orange County Transportation Authority (OCTA) staff for an outstanding presentation and the excellent outreach program.

Director Bartlett stated that there had been a good response from the public. She noted this is a significant project for south county. Fixing this pinch point increases regional mobility and enhances public safety for all south county residents.

15. (Continued)

Director Bartlett requested Darrell E. Johnson, Chief Executive Officer, (CEO), to discuss the outreach on the new mall project.

Darrell E. Johnson, CEO, responded that nothing on the freeway project today will preclude any options considered for the El Toro Road Interchange. He noted OCTA has been working with the cities of Laguna Hills, Lake Forest, and Laguna Woods to find an acceptable and agreeable solution among all parties. Mr. Johnson, CEO, noted in the late spring or early summer, staff anticipates making a presentation to the Board about the El Toro Road Interchange status.

Director Muller echoed Director Bartlett's comments and stated this is an important project for south county. He thanked staff for all the hard work they have done on this project.

Director Shaw inquired about the benefit to the traveling public and whether staff measured the throughput or travel time, and how it's quantified.

Mr. Johnson, CEO, stated the information is available in the project approval documents. Staff will provide specific information in terms of travel time, and vehicle hours of delay in a written format to the Board.

Director Goodell inquired about Caltrans providing the right of way for additional bike lanes across the Oso Parkway Bridge.

Mr. Johnson, CEO, stated that Caltrans, the City of Mission Viejo, and OCTA, have discussed the bike issue and he will discuss it further with Director Chamberlain.

16. Sales Tax Update

Darrell E. Johnson, Chief Executive Officer, provided opening comments and introduced Sean Murdock, Director of Finance and Administration, who presented a PowerPoint presentation.

Chairman Do inquired about how OCTA tracks ridership and makes adjustments to the level of services as the state opens up the economy and gets over the coronavirus (COVID-19).

Mr. Johnson, CEO, stated since OCTA reduced the bus service quite deep last April in response to COVID-19. Since then, OCTA has added service back and is currently operating at roughly 1.3 million revenue vehicle hours. OCTA is working towards a June service change, which will be similar to what OCTA has today. He noted that staff is keeping a very close eye on economic activities such as the opening of major sports stadiums, theme parks, and community colleges on April 1st.

17. Public Comments

The DCOB stated that the COB Department received a public comment on March 7, 2021 from Craig A. Durfey. The Board was emailed the comment on March 8, 2021 and the comment would be retained as part of the record for today's Board meeting.

18. Chief Executive Officer's Report

American Rescue Plan Act-

- The Senate passed the American Rescue Plan Act of 2021 on Saturday, March 6th. This is the President's \$1.9 trillion economic stimulus package to facilitate a federal response to the ongoing pandemic.
- The bill contains more than \$30 billion in relief funding to transit agencies nationwide and \$1.5 billion to Amtrak.
- California's transit agencies are expected to receive approximately \$4 billion.
- The bill is expected to be passed by the House as early as today and signed into law in short order.
- Staff will analyze the legislative language and provide detailed analysis at the March 18th Legislative and Communications Committee meeting.

Transit Planning Public Meetings-

- On March 9th, OCTA hosted three public meetings to get feedback from bus customers on the June service change and future transit planning efforts. The meeting will be in English at 6:00 p.m. via Zoom. Staff will host two additional sessions in Vietnamese and Spanish on March 10th at 3:00 p.m. and 6:00 p.m.

19. Directors' Reports

Director Delgleize thanked Jeff Mills and Chris Boucly for attending the Huntington Beach city council meeting and providing a presentation. She noted the information was noteworthy and appreciated the local outreach on Interstate 405 freeway.

Director Shaw provided an update of the State Route 91 (SR-91) Advisory Committee meeting. He noted Gene Hernandez is the new Committee Chairman.

Director Hernandez stated he was honored to be leading the SR-91 Committee and requested that everyone become aware of the fantastic work done in that area.

19. (Continued)

Director Goodell attended the Orange County Council of Governments (OCCOG) Board meeting. He reported that three vacancies were filled by Dan Kalmick, from the City of Huntington Beach, Connor Traut from the City Buena Park, and Scott Voigts from the City Lake Forest.

20. Closed Session

There were no Closed Session items scheduled.

21. Adjournment

The meeting adjourned at 9:53 a.m.

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, March 22, 2021**, at the Orange County Transportation Authority Headquarters, Board Room - Conference Room 07-08, 550 South Main Street, Orange, California.

ATTEST:

Gina Ramirez
Deputy Clerk of the Board

Andrew Do
Chairman



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors

From: Andrea West, Interim Clerk of the Board *Andrea West*

Subject: Agreement for Construction of the Anaheim Canyon Metrolink Station Improvement Project

Transit Committee Meeting of March 11, 2021

Present: Directors Do, Jones, Sarmiento, Shaw, and Sidhu
Absent: Director Chaffee

Committee Vote

Following the roll call vote, this item was declared passed 5-0 by the Members present.

Committee Recommendations

- A. Find Environmental Construction, Inc., the apparent low bidder, as non-responsive for failure to meet the federal program requirement for Disadvantaged Business Enterprise participation.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2193 between the Orange County Transportation Authority and Stacy and Witbeck, Inc., the lowest responsive, responsible bidder, in the amount of \$13,480,000, for the construction of the Anaheim Canyon Metrolink Station Improvement Project.
- C. Authorize the use of up to \$4,300,000, in additional federal Congestion Mitigation and Air Quality Improvement Program funds to provide full funding for construction of the Anaheim Canyon Metrolink Station Improvement Project.
- D. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program to facilitate programming of the Project.



March 11, 2021

To: Transit Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Agreement for Construction of the Anaheim Canyon Metrolink Station Improvement Project

Overview

The Orange County Transportation Authority, in coordination with the Southern California Regional Rail Authority and the City of Anaheim, has completed plans, specifications, and cost estimates for the Anaheim Canyon Metrolink Station Improvement Project. An invitation for bids was released on October 27, 2020. Bids were received in accordance with Board of Directors-approved procedures for public works projects. Board of Directors' approval is requested to execute the agreement.

Recommendations

- A. Find Environmental Construction, Inc., the apparent low bidder, as non-responsive for failure to meet the federal program requirement for Disadvantaged Business Enterprise participation.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2193 between the Orange County Transportation Authority and Stacy and Witbeck, Inc., the lowest responsive, responsible bidder, in the amount of \$13,480,000, for the construction of the Anaheim Canyon Metrolink Station Improvement Project.
- C. Authorize the use of up to \$4,300,000, in additional federal Congestion Mitigation and Air Quality Improvement Program funds to provide full funding for construction of the Anaheim Canyon Metrolink Station Improvement Project.
- D. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program to facilitate programming of the Project.

Discussion

The Orange County Transportation Authority (OCTA), in coordination with the Southern California Regional Rail Authority (SCRRA) and the City of Anaheim (City), has completed plans, specifications, and cost estimates for the Anaheim Canyon Metrolink Station Improvement Project (Project). The Project will include the addition of approximately 3,400 linear feet of secondary track, a second platform, extending the existing platform, improvements for two at-grade railroad crossings located on Tustin Street and La Palma Avenue, and the installation of shade structures, benches, and ticket vending machines. These improvements will both accommodate planned future train service and enhance on-time service and safety.

OCTA will lead the construction of track, structures, and other civil improvements. SCRRA will lead the construction of signals, communications, and wayside positive train control facilities in support of the Project as defined in Cooperative Agreement No. C-4-1714, which was approved by the Board of Directors (Board) on August 25, 2014.

Funding Plan

There have been increases to total costs for the Project since the original cost estimate was developed, and funds programmed. SCRRA enacted a new policy for flagging that requires additional flagmen and personnel when work is being performed in multiple sites along an active rail line, as is the case for the Project. The Project also had an increase in costs for design and project management due to plan revisions for accommodating permanent maintenance access and the addition of a traffic signal design required by the City. An additional \$4,300,000 is needed to cover the increase in the construction costs because of these requirements.

Staff is recommending the use of up to \$4,300,000 in additional federal Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds to provide full funding for the Project. The Project is eligible for CMAQ funding as it will reduce pollutants by increasing ridership on Metrolink commuter rail while decreasing the number of vehicle trips taken. This use of CMAQ funds is also consistent with the Board-approved Capital Programming Policies as it directs these funds to rail capital projects. The Capital Programming Policies also direct all external funds to Measure M2 (M2) projects, and this Project is included in Project R in the Next 10 Delivery Plan.

CMAQ funding is available for this Project due to the recent SB 1 (Chapter 5, Statutes of 2017) award of \$140,000,000 to the freeway program for the State

Route 55 (SR-55) Improvement Project from Interstate 405 to Interstate 5. CMAQ funding was previously reserved for the high-occupancy vehicle component of the SR-55 Improvement Project, but the SB 1 funding received has reduced the amount of CMAQ funding required. Furthermore, it is anticipated that there will be savings in CMAQ funding from the Laguna Niguel to San Juan Capistrano Passing Siding Project that would be redirected to this Project.

The original and proposed funding plans for the total Project cost, including prior phases, is provided below:

<u>Funding Programs</u>	<u>Previous Funding Plan (in 000's)</u>	<u>Proposed Funding Plan (in 000's)</u>	<u>Difference (in 000's)</u>
CMAQ	\$26,132	\$30,432	\$4,300
M2	\$2,000	\$2,000	\$ 0
Revenue from Sale of Federal Assets	\$1,275	\$1,275	\$ 0
Commuter Urban Rail Endowment Fund	\$493	\$493	\$ 0
Total	\$29,900	\$34,200	\$4,300

When OCTA approves a programming change for a project, a capital funding plan is provided so the Board can consider the change while simultaneously reviewing the overall funding for capital projects in the transit program. Once approved, the changes noted above will be added into the Capital Funding Program Report for the transit program as provided in Attachment A.

Procurement Approach

This procurement was handled in accordance with OCTA's Board-approved procedures for public works projects. These procedures, which conform to both federal and state requirements, require that contracts are awarded to the lowest responsive, responsible bidder after a sealed bidding process.

On October 12, 2020, the Board authorized the release of Invitation for Bids (IFB) 0-2193, which was released through OCTA's CAMM NET system. The Project was advertised on October 29 and November 2, 2020, in a newspaper of general circulation. A pre-bid virtual conference was held on November 9, 2020, and was attended by 13 firms. Eight addenda were issued to provide the pre-bid conference registration sheets and handle administrative

issues related to the IFB. On January 21, 2021, five bids were received and publicly opened.

All bids were reviewed by staff from both the Contracts Administration and Materials Management and Rail Programs departments to ensure compliance with the contract terms and conditions, as well as technical specifications. The list of bidders and bid amounts is presented below:

<u>Firm and Location</u>	<u>Bid Amount</u>
Environmental Construction, Inc. Woodland Hills, California	\$12,168,668
Stacy and Witbeck, Inc. Alameda, California	\$13,480,000
Griffith Company Santa Fe Springs, California	\$13,809,508
Granite Construction Company Carlsbad, California	\$14,310,310
Reyes Construction, Inc. Pomona, California	\$16,289,748

The apparent low bidder, Environmental Construction, Inc., was deemed non-responsive for failure to meet the federal program requirement for Disadvantaged Business Enterprise (DBE) participation or demonstrate sufficient good faith efforts (GFE) as required by regulations set by the United States Department of Transportation, which is providing funding for this Project. The DBE goal for this Project was established at 11 percent. Environmental Construction, Inc., only met a goal of 1.32 percent and did not submit any GFE documentation by the due date specified in the IFB. The firm later informed OCTA that it did not fully vet the IFB requirements and did not complete the GFE.

The final engineer's estimate for this Project was \$11,767,591, which included the final engineering plans for retaining walls that are required to provide permanent access for rail signal maintenance, which were issued as an addendum to the bid package. The recommended firm's bid is 14.5 percent above the engineer's estimate. The engineer's analysis of the bids concluded that the higher bid may be attributed to difficulty of construction due to site

constraints, access limitations, and construction near an active railroad track. In addition, specialized design of the shade structures and light poles to match the existing ones at the station, as well as higher steel prices, may also be attributed to the higher bid. For these reasons, although the lowest responsive, responsible bid of \$13,480,000, submitted by Stacy and Witbeck, Inc., is higher than the engineer's estimate, it is considered by staff to be acceptable, fair, and reasonable. The recommended firm's bid met the requirements of the IFB, as well as all federal and state requirements.

State law requires award to the lowest responsive, responsible bidder. As such, staff recommends award to Stacy and Witbeck, Inc., the lowest, responsive, responsible bidder, in the amount of \$13,480,000, for construction of the Project.

Fiscal Impact

Funding for the Project is approved in the OCTA Fiscal Year 2020-21 Budget, Capital Programs Division, Account No. 0018-9084-C5061-TXD, and is funded with CMAQ funds from the Federal Transit Administration. As noted above, staff is proposing to increase the amount of programmed CMAQ funds so that the Project is fully funded.

Summary

Staff recommends the Board of Directors authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2193 between the Orange County Transportation Authority and Stacy and Witbeck, Inc., the lowest responsive, responsible bidder, in the amount of \$13,480,000, for construction of the Anaheim Canyon Metrolink Station Improvement Project.

Attachment

A. Capital Funding Program Report

Prepared by:



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Approved by:



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Capital Funding Program Report

Pending OCTA Board of Directors (Board) Approval - March 22, 2021

Rail Project											
Project Title	M Code	Total Funding	Federal Funds			State Funds			Local Funds		
			STBG/CMAQ	FTA	Other Fed.	STIP	SB1	Other State	M1	M2	Other Local
Fullerton Transportation Center parking expansion	M1/R	\$33,667				\$11,250		\$11,035	\$9,718		\$1,664
OC Streetcar (New Starts) ¹	M1/S	\$423,438	\$62,412	\$162,554				\$25,586		\$172,886	
OC Streetcar (non-New Starts)	M1/S	\$8,601		\$341					\$6,904	\$1,213	\$143
Anaheim Canyon Station ²	R	\$34,200	\$30,432							\$2,000	\$1,768
Fullerton Transportation Center Stair Rehabilitation	R	\$1,330		\$1,295							\$35
Future VSS	R	\$217		\$174							\$43
Laguna Niguel to San Juan Capistrano Passing Siding	R	\$36,360	\$25,056	\$1,015		\$3,000		\$6,734			\$555
Metrolink new capital	R	\$516		\$516							
Metrolink rehabilitation/renovation - FY 2011-12 to FY 2023-24	R	\$169,802		\$169,802							
Metrolink station and track improvements, and rehabilitation	R	\$3,063		\$2,617							\$446
Orange Olive Wye Connection	R	\$16,000				\$16,000					
Placentia Commuter Rail Station	R	\$34,825	\$50			\$2,500		\$400		\$8,000	\$23,875
Preventive Maintenance (SCRRA - Metrolink) - FY 16-17 to FY 23-24	R	\$65,374		\$65,374							
San Juan Creek Bridge replacement	R	\$43,091	\$908	\$39,832	\$913			\$59		\$1,379	
Slope stabilization Laguna Niguel-Lake Forest	R	\$5,168		\$4,834						\$334	
State College grade separation (LOSSAN)	R	\$79,284						\$46,000		\$33,284	
Ticket vending machines	R	\$6,857									\$6,857
VSS at Commuter Rail Stations	R	\$4,409		\$3,594				\$56			\$759
M2 Project S Transit extensions to Metrolink (Rubber Tire)	S	\$733								\$733	
Rail Project Totals		\$966,935	\$118,858	\$451,948	\$913	\$32,750		\$89,870	\$16,622	\$219,829	\$36,145

Federal Funding Total	\$571,719
State Funding Total	\$122,620
Local Funding Total	\$272,596
Total Funding (000's)	\$966,935

Rail Project Completed											
Project Title	M Code	Total Funding	Federal Funds			State Funds			Local Funds		
			STBG/CMAQ	FTA	Other Fed.	STIP	SB1	Other State	M1	M2	Other Local
Laguna Niguel-Mission Viejo Station parking improvements and expansion (ADA ramps)	M1/R	\$5,177	\$2,800	\$732					\$1,645		
Metrolink Grade Crossing Safety Improvements (OCX)	M1/R	\$80,618						\$18,250	\$7,600	\$30,710	\$24,058
Metrolink rolling stock	M1/R	\$158,009	\$42,230	\$35,390				\$36,300	\$44,089		
Metrolink Service Track Expansion	M1/R	\$119,957						\$51,399	\$68,558		
Orange Transportation Center parking structure	M1/R	\$31,003	\$2,555	\$2,644		\$13,762			\$1,850	\$420	\$9,772
Sand Canyon Avenue grade separation	M1/R	\$62,050	\$10,536					\$28,192	\$3,116	\$5,352	\$14,854
M2 Project S Fixed-Guideway Anaheim Rapid Connection	M1/S	\$9,924		\$1,516					\$6,000	\$1,286	\$1,122
Anaheim Regional Intermodal Transportation Center (ARTIC) construction	M1/T	\$184,164	\$33,250	\$37,253	\$3,501	\$29,219			\$43,900	\$35,291	\$1,750



Capital Funding Program Report

Pending OCTA Board of Directors (Board) Approval - March 22, 2021

Rail Project Completed											
Project Title	M Code	Federal Funds				State Funds			Local Funds		
		Total Funding	STBG/CMAQ	FTA	Other Fed.	STIP	SB1	Other State	M1	M2	Other Local
Fullerton Transportation Station expansion planning, environmental PSR	M1/T	\$0	\$0						\$0		
Santa Ana grade separation planning and environmental PSR	M1/T	\$1,333	\$1,180						\$153		
Santa Ana Transportation Station planning and environmental PSR	M1/T	\$1,003	\$888						\$115		
17th Street grade separation environmental	R	\$2,476								\$2,476	
Control Point at 4th Street	R	\$2,985		\$2,985							
Control Point Stadium Crossover	R	\$6,490		\$3,245				\$3,245			
LOSSAN Corridor grade separations PSR in Anaheim, Orange, and Santa Ana	R	\$2,699								\$2,699	
Metrolink grade crossing safety improvements ROW	R	\$3,025								\$3,025	
North Beach crossings safety enhancements	R	\$348						\$166		\$182	
Positive Train Control (Metrolink)	R	\$39,916		\$4,492	\$1,234			\$34,190			
Rail Crossing signal lights and pedestrian gates	R	\$252						\$252			
Rail Station Platform safety improvements (Fullerton, Irvine, and Tustin)	R	\$553						\$553			
Safety repairs for San Clemente Pier Station	R	\$122						\$122			
San Clemente Beach Trail Crossings safety enhancements	R	\$4,999						\$2,170		\$2,251	\$578
Transit Rail Security (monitors, fencing, video surveillance)	R	\$163						\$163			
Go Local	S	\$7,730							\$7,730		
ARTIC environmental, ROW, program management support, site plan	M1	\$41,369							\$8,869		\$32,500
Fiber Optics installation (Metrolink)	M1	\$23,183		\$10,903				\$10,479	\$1,801		
Laguna Niguel-Mission Viejo Station parking expansion (south lot)	M1	\$4,135						\$695	\$3,440		
Tustin Rail Station parking expansion	M1	\$15,390				\$1,100		\$7,181	\$7,109		
Rail Project Completed Totals		\$809,073	\$93,439	\$99,160	\$4,735	\$44,081		\$193,357	\$205,975	\$83,692	\$84,634
Federal Funding Total		\$197,334									
State Funding Total		\$237,438									
Local Funding Total		\$374,301									
Total Funding (000's)		\$809,073									



Capital Funding Program Report

Pending OCTA Board of Directors (Board) Approval - March 22, 2021

Board Actions:

1. Authorize the use of up to an additional \$7.32 million in M2 and up to \$8.29 million in additional federal CMAQ funds for the OC Streetcar to supplement the contingency for the Project which along with other previously approved funding adjustments of \$0.07 million will increase the FTA Full Funding Grant Agreement funding from \$407.76 million to \$423.44 million with use of federal funds contingent on FTA approval.
2. Authorize the use of up to \$4.3 million in additional federal CMAQ funds to provide full funding for the Anaheim Canyon Metrolink Station Improvement Project.

Acronyms:

ADA - Americans with Disabilities Act
CMAQ - Congestion Mitigation Air Quality Improvement Program
FTA - Federal Transit Administration
FY - Fiscal Year
LOSSAN - Los Angeles-San Diego-San Luis Obispo Rail Corridor
M Code - Project Codes in Measure M1 and M2
M1 - Measure M1
M2 - Measure M2
OC - Orange County
OCTA - Orange County Transportation Authority
OCX - Rail-Highway Grade Crossing/Safety Enhancement Project
PSR - Project Study Report
ROW - Right-of-Way
STBG - Surface Transportation Block Grant
STIP - State Transportation Improvement Program
VSS - Video Surveillance System



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors

From: Andrea West, Interim Clerk of the Board

(A)

Subject: State Legislative Status Report

Legislative and Communications Committee Meeting of March 18, 2021

Present: Directors Bartlett, Delgleize, Hennessey, Hernandez, Murphy, Sidhu, and Wagner

Absent: None

Committee Vote

Following the roll call vote, this item was declared passed 7-0 by the Members present.

Committee Recommendations (Reflects a change from staff's recommendations.)

Recommendation C was added

- A. Adopt a SUPPORT position on AB 1499 (Daly, D-Anaheim), which would remove the sunset date on existing design-build authority for highway projects.
- B. Adopt an OPPOSE UNLESS AMENDED position on SB 261 (Allen, D-Santa Monica), which would require metropolitan planning organizations to meet vehicle miles traveled reduction targets as part of the regional transportation plan.
- C. Adopt an OPPOSE UNLESS AMENDED position on AB 339 (Lee, D-Milpitas), and SB 274 (Wieckowski, D-Fremont), which would revise the Ralph M. Brown Act requirements for local agencies.

Committee Discussion

At the March 18, 2021, Legislative and Communications Committee meeting, a discussion ensued regarding AB 339 (Lee, D-Milpitas) and SB 274 (Wieckowski, D-Fremont). Staff is currently monitoring the bills and will provide additional information prior to the March 22, 2021 Board of Directors meeting.



March 18, 2021

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: State Legislative Status Report

For

Overview

The Orange County Transportation Authority provides regular updates to the Legislative and Communications Committee on policy issues directly impacting its overall programs, projects, and operations. Positions are recommended on two legislative proposals including one that will remove the sunset date on existing design-build authority for highway projects and another that seeks to require metropolitan planning organizations to meet vehicle miles traveled reduction targets as part of the regional transportation plan. An update is provided on an audit of the California Air Resources Board and its administration of transportation programs intended to reduce greenhouse gas emissions. As discussions related to post-pandemic recovery continue, an overview of the most recently passed legislative relief package and advocacy efforts regarding vaccine prioritization for public transit workers is given.

Recommendations

- A. Adopt a SUPPORT position on AB 1499 (Daly, D-Anaheim), which would remove the sunset date on existing design-build authority for highway projects.
- B. Adopt an OPPOSE UNLESS AMENDED position on SB 261 (Allen, D-Santa Monica), which would require metropolitan planning organizations to meet vehicle miles traveled reduction targets as part of the regional transportation plan.

Discussion

AB 1499 (Daly): Transportation: Design-Build: Highways

AB 1499 (Daly, D-Anaheim) would remove the sunset date, currently set to expire on January 1, 2024, to indefinitely extend the ability to utilize the design-build procurement method (design-build) on the state highway system. In 2013, Orange County Transportation Authority (OCTA) sponsored AB 401 (Chapter 586, Statutes of 2021), authored by Assembly Member Tom Daly

(D-Anaheim), to expand the use of design-build for highway projects after estimating that this method would create significant time and cost savings for the Interstate 405 (I-405) Improvement Project. Existing authority at the time was very limited and had sunset provisions that did not align with the I-405 Improvement Project timeline. Since the initial authorization, several other entities have used this statewide authority, including the Riverside County Transportation Commission and the California Department of Transportation to successfully implement projects.

Design-build provides for the delivery of public works projects from a single entity, streamlining the traditional design-bid-build process by combining project design, permit, and construction schedules. Utilizing design-build on the I-405 Improvement Project has expedited the project by two years and allowed for associated cost savings. Although at this time OCTA has not identified additional projects to use this authority, extending the design-build authority is imperative for the expedited and streamlined delivery of highway projects and provides a valuable project delivery option moving forward. This will be especially important as the State looks toward post-pandemic recovery and begins discussions regarding economic stimulus, particularly around infrastructure and job creation.

A comprehensive analysis of AB 1499, along with the text of the bill, is included as Attachment A. A SUPPORT position is consistent with OCTA's 2021-22 State Legislative Platform principle to "Support new and existing alternative project delivery methods, such as design-build, public-private partnership authority, and construction manager/general contractor authority, through expanding mode and funding eligibility while also allowing the appropriate balance of partnership between the State and local agencies." AB 1499 is co-sponsored by the Self-Help Counties Coalition and the Professional Engineers in California Government.

SB 261 (Allen): Regional Transportation Plans: Sustainable Communities Strategies

SB 261 (Allen, D-Santa Monica) is a continuation of the author's previous efforts to expand upon SB 375's (Chapter 728, Statutes of 2008) requirements for a metropolitan planning organization (MPO) to develop a sustainable communities strategy (SCS) as part of their regional transportation plan (RTP), demonstrating the ability to meet regional greenhouse gas (GHG) emission reduction targets. Specifically, SB 261 would extend the SB 375 framework beyond 2035 and require that the SCS meet GHG emission and vehicle miles traveled (VMT) reduction targets in 2045 and 2050. SB 261 is substantially similar to a bill introduced by the same author last year, SB 1363 (Allen, D-Santa Monica) that OCTA opposed unless amended. SB 1363 ultimately did not move forward due to the truncated legislative session in 2020.

Last year's bill, SB 1363, would have required that MPOs meet VMT reduction targets in conjunction with SB 375's GHG emission reduction targets in 2035, 2045, and 2050. Whereas the initial GHG targets for 2020 and 2035 were developed with public input, the new GHG and VMT reduction targets would be set by the California Air Resources Board (CARB), without input from the Regional Targets Advisory Committee established under SB 375. Under SB 1363, the VMT reduction targets could be expressed in miles per capita, percent reduction, or another metric set by CARB. Finally, the bill would have required that cities and counties report every other year to MPOs on housing production near transportation investments consistent with the SCS or applicable alternative planning strategy.

SB 261 contains many of the same provisions as SB 1363, including identical language on VMT targets and target years, the same VMT metric, and similar reporting requirements. There are, however, two important differences. First, SB 261 contains much more detailed language specifying the circumstances under which CARB may reject a draft SCS. SB 261 extends the deadline by which MPOs must submit the draft SCS to CARB from the 60-day timeframe in current law to 90 days, and CARB has the option to comment within 45 days of receiving the draft SCS. CARB may also explicitly reject the SCS if it utilizes a technical methodology that will not yield accurate GHG and VMT estimates, has insufficient data or documentation to support the GHG and VMT estimates, contains GHG and VMT calculations that do not demonstrate the region will meet the targets for all years, or does not include specific strategies that sufficiently demonstrate GHG and VMT reductions to achieve the targets. The second major change is that SB 261 expands the reporting requirements for localities, mandating that cities and counties also report on job growth near transportation investments.

Many of OCTA's concerns with SB 261 mirror issues raised last year, although there are additional concerns with the language new to this year's version of the bill. An overview of OCTA's four recommended changes to improve SB 261 and make it more consistent with the original intent of SB 375 include:

- Clarifying language to ensure that CARB does not prioritize its own reasoning and policy goals over that of the localized, bottoms-up planning approach envisioned by SB 375, resulting in CARB more frequently rejecting a region's SCS and thereby further delaying the transportation planning process.
- Regions would be required to meet new GHG emission and VMT reduction targets in both 2045 and 2050. Instead, the bill should be amended to focus solely on 2050 to allow for sufficient time to pass after the 2035 targets, and more fully see the results of measures implemented since that time.
- The bill fails to ensure adequate public input from MPOs and subregional agencies in the development of VMT targets. The bill should be amended to allow for greater public engagement from MPOs and subregional

agencies, including regional transportation planning agencies, county transportation commissions, and councils of governments, in the development of VMT reduction targets.

- The bill's definition of VMT should be clarified so that it only applies to passenger automobiles and light trucks, excluding electric vehicles, so that the metric more appropriately correlates with GHG emissions. An alternative to requiring specific VMT reduction targets would be to develop a suite of best practices that MPOs can choose from to adopt as part of the RTP, thereby maintaining SB 375's bottoms-up approach.

An analysis of SB 261 and the bill text are included as Attachment B. An OPPOSE UNLESS AMENDED position on SB 261 is consistent with OCTA's 2021-2022 State Legislative Platform principle to "Oppose proposals that reduce the rights and responsibilities of county transportation commissions in planning, funding, and delivering transportation programs."

Audit of the California Air Resources Board Overview

At the request of the Joint Legislative Audit Committee, the Office of the California State Auditor conducted an audit of CARB's transportation programs intended to reduce GHG emissions. Overall, the audit found that CARB is not collecting sufficient data to evaluate the actual GHG reduction results as a part of these programs. Specifically, the audit found that CARB has not done enough to formally acknowledge the overlap of reduction benefits that occur between its regulatory and incentive programs. The audit gave the example that CARB does not isolate the benefits between regulatory programs, like the Innovative Clean Transit regulation, and incentive programs that provide financial support to consumers who purchase zero-emission vehicles. Although both of these programs are intended to reach CARB's goal of reducing GHG emissions, the audit concluded that CARB does not do enough to identify the GHG reductions each individual program achieves. The report goes on to say that if CARB was accurately collecting and measuring data, they may find that their incentive programs are augmenting the impact from its regulatory programs.

Another key finding from the audit is that CARB does not accurately measure the effects of their programs on consumer behavior. Of the five incentive programs CARB administers, only the Clean Vehicle Rebate Program collects data on behavioral impacts associated with the program. The audit states that having more information on how each of their programs affect a consumer's choice to purchase a lower emission vehicle, resulting in a reduction in GHG emissions, is crucial to measuring the success of the programs in terms of reaching the State's goals.

Overall, the audit concluded that because CARB does not accurately take into account the effects their regulations have on emissions, CARB overstates the incentive programs' GHG reductions although it is unclear to what degree. This

then impacts the Legislature's ability to make accurate assessments of the success of these programs and whether they should continue to be funded at higher or lower levels.

Other areas where the audit found that CARB fails to correctly measure are the socioeconomic benefits and number of jobs its programs achieve. In agreement with the audit, CARB has agreed to begin taking steps toward reconciling the issues outlined in the report and following its recommendations. Specifically, the audit recommends establishing a program to identify the overlap between incentive and regulatory programs and developing a process to define, collect, and evaluate data on the behavioral changes that result from each of its incentive programs. Staff will continue to monitor how this audit may impact funding programs and regulatory measures affecting OCTA's programs and projects.

Update on Vaccination Prioritization Efforts

OCTA has continued to partner with transit agencies across the state and the California Transit Association (CTA) to advocate for the prioritization of essential, frontline transit operators for the federally approved vaccines that prevent coronavirus (COVID-19). In the original vaccine distribution plan, transportation workers were prioritized following seniors over the age of 65 and workers in healthcare, education, emergency response services, childcare, and food and agriculture. In January, the State announced a shift in its vaccine prioritization framework from this blended industry-sector and age-based approach to one that is more focused on age, citing concerns that an approach that singles out industries was causing confusion and delays. Because of this transition, eligibility for transportation workers was eliminated.

However, the State's guidance following the transition detailed which jobs qualified within the education sector includes school bus drivers. On February 24, 2021, CTA submitted a letter to Governor Gavin Newsom arguing that the guidance should be amended to broaden school bus drivers to transit workers overall because they provide millions of trips a year to students across the state. The letter is included as Attachment C. Specifically, the letter references that in Orange County there are approximately 3.7 million student boardings every year. In light of these efforts, on March 11, 2021, the State amended its guidance to reinstate public transit workers in the vaccination prioritization framework. As of writing this staff report, public transit workers will be eligible to receive the vaccine on March 15, 2021, citing that they are at high risk for occupational exposure.

Summary of Recent State Stimulus Measures

On February 23, 2021, the Governor signed a legislative package to provide relief related to the COVID-19 pandemic. Included in the agreement is the Golden State Stimulus which will provide \$600 in one-time, direct payments to

households that qualified for the Earned Income Tax Credit in 2020. Additional relief is provided through fee waivers for bars and restaurants and individuals holding barbering or cosmetology license. This legislative package also includes more than \$2 billion in grants for small businesses, \$400 million in new federal funds that will provide stipends for all state-subsidized childcare and preschool providers, \$24 million for financial assistance and services through the Housing for Harvest program, \$100 million in emergency financial aid for qualifying low-income students, and \$6 million to support outreach and application assistance to University of California, California State University, and California Community College students made newly eligible under the CalFresh program.

Summary

A support position is requested regarding a legislative proposal to indefinitely extend existing design-build authority for highway projects. An oppose unless amended position is recommended for a bill related to imposing vehicle miles traveled reduction requirements as a part of regional transportation plans. An overview is provided on a recent audit of the California Air Resources Board. An update is given on efforts related to prioritizing public transit workers for the coronavirus vaccine and recently enacted stimulus measures for post-pandemic recovery.

Attachments

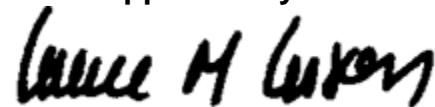
- A. AB 1499 (Daly, D-Anaheim) Bill Analysis with Bill Language
- B. SB 261 (Allen, D-Santa Monica) Bill Analysis with Bill Language
- C. Letter from Michael Pimentel, Executive Director, California Transit Association, to the Honorable Gavin Newsom, Governor, State of California, dated February 24, 2021, re: Transit is Essential to Reopening of Schools – Prioritize Frontline Transit Workers in Vaccine Distribution Plan
- D. Orange County Transportation Authority Legislative Matrix

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Approved by:



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BILL: AB 1499 (Daly, D-Anaheim)
Introduced February 19, 2021

SUBJECT: AB 1499 would remove the sunset date on existing design-build authority for highway projects.

STATUS: Pending in the Assembly
Introduced February 19, 2021

SUMMARY AS OF MARCH 3, 2021:

In 2013, the Orange County Transportation Authority (OCTA) sponsored AB 401 (Chapter 586, Statutes of 2013) to expand the use of the design-build procurement method. Specifically, AB 401 authorized unlimited use of design-build authority for state highway projects done by regional transportation agencies, and authorized the California Department of Transportation (Caltrans) to utilize design-build for up to ten projects. The authority currently sunsets on January 1, 2024. AB 1499 (Daly, D-Anaheim) seeks to remove this sunset date.

EFFECTS ON ORANGE COUNTY:

Under the traditional design-bid-build approach, the owner or sponsor would first complete the design of the facility, and then offer it to qualified contractors for bid, awarding it to the lowest responsible and responsive bidder for construction. Design-build provides for the delivery of public works projects from a single entity, streamlining the traditional design-bid-build process by combining project design, permit, and construction schedules. Current law gives Caltrans the responsibilities associated with construction inspection services for the project, including those related to surveying and quality control, as well as public safety issues.

When OCTA sponsored AB 401, it was estimated that using the traditional design-bid-build method instead of the design-build method for the Interstate 405 (I-405) Improvement Project could have taken two or three additional years to complete and, consequently, potentially creating higher costs due to inflationary pressures. However, at that time, design-build was not broadly authorized in statute. Prior to the enactment of AB 401, OCTA had success using design-build to construct the State Route 22 Improvement Project using the limited authority from AB 958 (Chapter 541, Statutes of 2000). The provisions in AB 958 granting this authority were later amended by AB 372 (Chapter 262, Statutes of 2006) to limit the use of design-build to only transit projects, excluding future use for highway or local street and road projects.

In 2009, as part of the state budget process, the Legislature approved SBX2-4 (Chapter 2, Statutes of 2009) to create design-build and public-private partnership authority in the form of pilot programs aimed at transportation projects. More specifically, the design-build authority in SBX2-4 allowed for five local street, road, bridge, tunnel, or public transit projects, as well as ten state highway bridge or tunnel projects until

January 1, 2014. Because the request for proposals for the I-405 Improvement project was not anticipated to be released until mid-2014, the project did not qualify for existing design-build authority under SBX2-4 and, therefore, required additional legislative authority that was successfully secured by OCTA staff through AB 401 in 2013. Since the enactment of this legislation, several highway projects have been eligible to utilize the design-build authority, including the I-405 Improvement project, and projects undertaken by the Riverside County Transportation Commission and Caltrans.

Although OCTA does not have current projects lined up to utilize this procurement method, OCTA believes the design-build authority is imperative for the expedited and streamlined delivery of highway projects and provides a valuable option for future consideration. This will be especially important as the State looks toward post-pandemic recovery and begins discussions regarding economic stimulus, particularly around infrastructure and job creation.

Co-sponsors of this legislation include the Self-Help Counties Coalition and the Professional Engineers in California Government. A support position is consistent with OCTA's 2020-21 State Legislative Platform principle to "Support new and existing alternative project delivery methods, such as design-build, public-private partnership authority, and construction manager/general contractor authority, through expanding mode and funding eligibility while also allowing the appropriate balance of partnership between the State and local agencies."

OCTA POSITION:

Staff recommends: SUPPORT

ASSEMBLY BILL

No. 1499

Introduced by Assembly Member Daly

February 19, 2021

An act to amend Section 6829 of the Public Contract Code, and to amend Section 91.2 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1499, as introduced, Daly. Transportation: design-build: highways.

(1) Existing law authorizes the Department of Transportation to utilize design-build procurement for up to 10 projects on the state highway system, based on either best value or lowest responsible bid. Existing law authorizes regional transportation agencies, as defined, to utilize design-build procurement for projects on or adjacent to the state highway system. Existing law also authorizes those regional transportation agencies to utilize design-build procurement for projects on expressways that are not on the state highway system, as specified. Existing law repeals these provisions on January 1, 2024, or one year from the date that the Department of Transportation posts on its internet website that the provisions described below related to construction inspection services for these projects have been held by a court to be invalid.

This bill would delete the January 1, 2024, repeal date, thus extending the above provisions indefinitely.

(2) Existing law provides that these design-build authorizations do not include construction inspection services for projects on or interfacing with the state highway system. Existing law requires the Department

of Transportation to perform construction inspection services for projects on or interfacing with the state highway system, as specified. Existing law repeals these provisions on January 1, 2024.

This bill would delete the January 1, 2024, repeal date, thus extending the above provisions indefinitely.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6829 of the Public Contract Code is
2 amended to read:

3 ~~6829. (a) This chapter shall remain in effect only until January~~
4 ~~1, 2024, and as of that date is repealed, unless a later enacted~~
5 ~~statute, that is enacted before January 1, 2024, deletes or extends~~
6 ~~that date.~~

7 ~~(b) Notwithstanding subdivision (a), if~~

8 6829. (a) If any provision or application of Section 91.2 of
9 the Streets and Highways Code is held invalid by a court of
10 competent jurisdiction, this chapter shall be repealed one year from
11 the date in which the department posts on its ~~Internet Web site~~
12 *internet website* that Section 91.2 of the Streets and Highways
13 Code has been held invalid.

14 ~~(e)~~

15 (b) The repeal of this chapter shall not affect an executed
16 design-build contract or cooperative agreement entered into
17 pursuant to this chapter prior to the date of its repeal, regardless
18 of the stage of the project at the time of repeal.

19 SEC. 2. Section 91.2 of the Streets and Highways Code is
20 amended to read:

21 91.2. (a) The department shall perform construction inspection
22 services for projects on or interfacing with the state highway system
23 authorized pursuant to Chapter 6.5 (commencing with Section
24 6820) of Part 1 of Division 2 of the Public Contract Code. The
25 department shall use department employees or consultants under
26 contract with the department to perform the services described in
27 this subdivision and subdivision (b), consistent with Article XXII
28 of the California Constitution. Construction inspection services
29 performed by the department for those projects include, but are
30 not limited to, material source testing, certification testing,

1 surveying, monitoring of environmental compliance, independent
2 quality control testing and inspection, and quality assurance audits.
3 The construction inspection duties and responsibilities of the
4 department shall include a direct reporting relationship between
5 the inspectors and senior department engineers responsible for all
6 inspectors and construction inspection services. The senior
7 department engineer responsible for construction inspection
8 services shall be responsible for the acceptance or rejection of the
9 work.

10 (b) Notwithstanding any other law, the department shall retain
11 the authority to stop the contractor's operation wholly or in part
12 and take appropriate action when public safety is jeopardized on
13 a project on or interfacing with the state highway system authorized
14 pursuant to Chapter 6.5 (commencing with Section 6820) of Part
15 1 of Division 2 of the Public Contract Code. The department shall
16 ensure that public safety and convenience is maintained whenever
17 work is performed under an encroachment permit within the state
18 highway right-of-way, including, but not limited to, work
19 performed that includes lane closures, signing, work performed at
20 night, detours, dust control, temporary pavement quality, crash
21 cushions, temporary railings, pavement transitions, falsework,
22 shoring, and delineation. The department shall regularly inspect
23 the job sites for safety compliance and any possible deficiencies.
24 If any deficiency is observed, a written notice shall be sent by the
25 department to the regional transportation agency's designated
26 resident engineer to correct the deficiency. Once the deficiency is
27 corrected, a written notice describing the resolution of the
28 deficiency shall be sent to the department and documented.

29 (c) The department shall use department employees or
30 consultants under contract with the department to perform the
31 services described in subdivisions (a) and (b), consistent with
32 Article XXII of the California Constitution. Department employee
33 and consultant resources necessary for the performance of those
34 services, including personnel requirements, shall be included in
35 the department's capital outlay support program for workload
36 purposes in the annual Budget Act.

37 (d) "Construction inspection services" shall not include
38 surveying work performed as part of a design-build contract.

- 1 ~~(e) This section shall remain in effect only until January 1, 2024,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2024, deletes or extends that date.~~
4 ~~(f)~~
5 (e) If any provision or application of this section is held invalid
6 by a court of competent jurisdiction, the department shall post on
7 its ~~Internet Web site~~ *internet website* within 10 business days of
8 the decision of invalidity that this section has been held invalid.

BILL: SB 261 (Allen, D-Santa Monica)

SUBJECT: SB 261 would revise the SB 375 (Chapter 728, Statutes of 2008) regional greenhouse gas emission reduction process in several ways, including adding vehicle miles traveled reduction targets

STATUS: Pending in Senate Environmental Quality Committee
Introduced January 27, 2021

SUMMARY AS OF MARCH 2, 2021:

SB 261 (Allen, D-Santa Monica) is a continuation of the author's previous efforts to expand upon SB 375's (Chapter 728, Statutes of 2008) requirements for a metropolitan planning organization (MPO) to develop a sustainable communities strategy (SCS) as part of their regional transportation plan (RTP), demonstrating the ability to meet regional greenhouse gas (GHG) emission reduction targets. Specifically, SB 261 would extend the SB 375 framework beyond 2035 and require that the SCS meet GHG emission and vehicle miles traveled (VMT) reduction targets in 2045 and 2050. SB 261 is substantially similar to a bill introduced by the same author last year, SB 1363 (Allen, D-Santa Monica), that the Orange County Transportation Authority (OCTA) opposed unless amended.

The author's initial bill on the subject, SB 150 (Chapter 646, Statutes of 2017), required the California Air Resources Board (CARB) to issue a report every four years assessing each MPOs' progress in meeting SB 375's GHG emission reduction goals. Based on the findings of the first SB 150 report, the author introduced legislation two years ago, SB 526 (Allen, D-Santa Monica), that would have required MPOs to report on VMT reductions achieved as part of the strategies implemented under the SCS. This bill would have also required CARB to complete progress reports to determine if each MPO was on track to meeting its respective GHG emission reduction targets. Finally, SB 526 would have established a state working group to develop strategies to further reduce regional GHG emissions, including the identification of an investment strategy. OCTA and the California Association of Councils of Government (CALCOG) opposed the bill. The author ultimately held SB 526, pledging to continue working on issues brought forward by the opposition.

Last year, the author introduced legislation, SB 1363, taking a slightly different approach than that of SB 526. SB 1363 would have required that MPOs meet VMT reduction targets in conjunction with SB 375's GHG emission reduction targets. SB 1363 would have required that MPOs meet GHG and VMT reduction targets in 2035, 2045, and 2050. Whereas the initial GHG targets for 2020 and 2035 were developed with public input, the new GHG and VMT reduction targets would be set by CARB, without input from the Regional Targets Advisory Committee established under SB 375. Under SB 1363, the VMT reduction targets could be expressed in miles per capita, percent reduction, or another metric set by CARB. Finally, the bill would have required that cities and counties report every other year to MPOs on housing production near transportation investments consistent with the SCS or applicable alternative planning strategy. Similar to SB 526 in

2019, OCTA and CALCOG both adopted oppose unless amended position on SB 1363. The bill, however, was ultimately held given the truncated legislative session in 2020.

This year's bill, SB 261, is substantially similar to SB 1363. In fact, SB 261 contains many of the provisions, almost word-for-word, from SB 1363, including identical language on VMT targets and target years, the same VMT metric, and similar reporting requirements. There are, however, two important differences. First, SB 261 contains much more detailed language specifying the circumstances under which CARB may reject a draft SCS. SB 261 extends the deadline by which MPOs must submit the draft SCS to CARB from the 60-day timeframe in current law to 90 days, and CARB has the option to comment within 45 days of receiving the draft SCS. CARB may also explicitly reject the SCS if it utilizes a technical methodology that will not yield accurate GHG and VMT estimates, has insufficient data or documentation to support the GHG and VMT estimates, contains GHG and VMT calculations do not demonstrate the region will meet the targets for all years, or does not include specific strategies that sufficiently demonstrate GHG and VMT reductions to achieve the targets. The second major change is that SB 261 expands the reporting requirements for localities, mandating that cities and counties also report on job growth near transportation investments.

EFFECTS ON ORANGE COUNTY:

The Southern California Association of Governments (SCAG) develops the RTP for a six-county area, which includes Orange County, every four years. The RTP outlines the region's transportation planning objectives for at least a 20-year period. OCTA develops a long-range transportation plan to detail transportation planning priorities in Orange County, which is then integrated into SCAG's RTP. In 2008, SB 375 required the development of the SCS as a new element of the RTP. The SCS serves as the region's plan for reducing regional GHG by better integrating transportation, land use, and planning decisions. The SCS must demonstrate the region's ability to meet GHG emission reduction targets, set by CARB, by 2020 and 2035. SB 375 provided a carve out for the SCAG region that recognizes the unique role of county transportation commissions in planning, programming, and selecting transportation projects for funding. In the SCAG region, county transportation commissions and subregional council of governments may jointly elect to do a subregional SCS, to be integrated into SCAG's regional SCS. In 2012, OCTA and the Orange County Council of Governments were one of two subregions within the SCAG region to elect to do a subregional SCS.

The intent behind SB 375 was to facilitate bottoms-up planning approach that maximized flexibility in the SCS development process in order to meet the region's specific needs, recognizing differences in geographic, demographic, and funding requirements while reflecting the fact that transportation agencies do not have control over land use decisions. SB 261, like SB 1363 last year, would add new VMT reduction requirements to the SCS, utilizing a process largely controlled by CARB without adequate input by MPOs and regional transportation agencies.

While many of OCTA's concerns with SB 261 mirror issues raised last year with regard to SB 1363, new language included in SB 261 creates further issues by outlining how and when CARB may reject a draft SCS. OCTA is concerned that this language will result in CARB prioritizing its own reasoning and policy goals over that of the localized, bottoms-up planning approach envisioned by SB 375, resulting in CARB more frequently rejecting a region's SCS and thereby further delaying the transportation planning process, and impacting the funding of transportation projects. SB 261 also increases the likelihood that CARB and MPOs disagree about modeling methodology. There is no way in which any entity, neither CARB nor any MPO, can perfectly forecast every outcome of every housing and transportation policy. If SB 261 is enacted, CARB could reject SCAG's RTP/SCS for failing to foresee the impacts of another global pandemic, natural disasters, other unforeseeable circumstances, or everchanging policy goals. Moreover, SB 261 gives CARB both more time to review a draft SCS and the option to comment on the MPO's draft SCS, making the language about rejecting a draft SCS unnecessary. If CARB has concerns about a draft SCS, SB 261 allows CARB to comment on such concerns. CARB should have little reason to reject a draft SCS on which an MPO has worked to address CARB's pre-submittal comments. Instead, SB 261 allows CARB to continue to move the goalposts on MPOs working to deliver housing and transportation improvements tailored to the needs of its communities.

Like SB 1363, SB 261 extends SB 375's GHG targets beyond the original dates, now requiring that both VMT and GHG reduction targets be met in 2035, 2045, and 2050. OCTA is specifically concerned that regions must meet the GHG and VMT targets in 2045 and 2050. Requiring targets this close together overburdens the SCS development process since there is not likely to be a measurable reduction in either metric in a period of just five years, especially since MPOs and subregions are forecasting the long-term impacts of GHG and VMT reduction strategies over the next two decades. Any differences over a five-year period that far into the forecast window are more likely to be a result of modeling variances and not meaningful GHG or VMT reduction. OCTA recommends that the bill be amended to set GHG and VMT targets for years 2030 and 2050, streamlining the effectiveness of the SCS in meeting SB 375's goals. This suggestion would also create a more regular target period of every 15 years after SB 375's enactment date.

Like SB 1363, SB 261 also fails to ensure adequate engagement from MPOs and subregional agencies in the development of the new GHG emission reduction or VMT targets. Under current law, the Regional Targets Advisory Committee, consisting of various stakeholders including SCAG and OCTA, was created to directly influence the creation of future targets. Unfortunately, SB 261 does not include a similar input mechanism in the development of VMT targets, instead giving CARB the authority to set VMT reduction targets that will go into each region's SCS without such input. OCTA recommends that the bill be amended to allow for greater public engagement from MPOs and subregional agencies, including regional transportation planning agencies, county transportation commissions, and councils of governments, in the development of VMT reduction targets to facilitate adequate input from the local leaders best-suited to speak to the needs of their communities.

Similar to last year's bill, OCTA is also concerned about the bill's definition of VMT, which does not specifically target a reduction in VMT that aligns with emission reduction requirements. Currently, the bill would include measurements of VMT associated with goods movement, transit service, and other vital sectors that often help reduce GHG emissions. The section of the bill that defines how VMT will be measured should explicitly clarify that the VMT targets only apply to passenger automobiles and light trucks, as is the case with the GHG reduction targets. The VMT metric should also account for significant changes in automobile markets, such as VMT by electric vehicles. The increase in zero-emission vehicles will only become more pronounced with the continued implementation of Executive Order N-79-20, which sets a goal that all new passenger vehicles sold in California be zero-emission starting in 2035. Another option, instead of requiring specific VMT reduction targets, would be to develop a suite of best practices that MPOs can choose from to adopt as part of the RTP, thereby maintaining a bottoms-up approach. The development of best practices should be done in the same manner as suggested for the setting of VMT targets, with involvement from transportation agencies, MPOs, and other responsible entities.

An OPPOSE UNLESS AMENDED position on SB 261 is consistent with OCTA's 2021-2022 State Legislative Platform principle to "Oppose proposals that reduce the rights and responsibilities of county transportation commissions in planning, funding, and delivering transportation programs."

OCTA POSITION:

Staff recommends: OPPOSE UNLESS AMENDED

Introduced by Senator Allen

January 27, 2021

An act to amend Section 65080 of the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 261, as introduced, Allen. Regional transportation plans: sustainable communities strategies.

Existing law requires certain transportation planning agencies to prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system. Certain of these agencies are designated under federal law as metropolitan planning organizations. Existing law requires that each regional transportation plan include a sustainable communities strategy developed to achieve greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035 established by the State Air Resources Board.

This bill would require that the sustainable communities strategy be developed to additionally achieve greenhouse gas emission reduction targets for the automobile and light truck sector for 2045 and 2050 and vehicle miles traveled reduction targets for 2035, 2045, and 2050 established by the board. The bill would make various conforming changes to integrate those additional targets into regional transportation plans.

Existing law requires each metropolitan planning organization to adopt a public participation plan for development of the sustainable communities strategy, and to submit to the state board a description of the technical methodology it intends to use to estimate the greenhouse gas emissions from its sustainable communities strategy. Existing law

encourages the metropolitan planning organization to work with the state board until the state board concludes that the technical methodology operates accurately.

This bill would require, rather than encourage, the metropolitan planning organization to work with the state board for that purpose. The bill would require the metropolitan planning organization to, at least 90 days before adopting a sustainable communities strategy, submit to the state board for review a draft sustainable communities strategy, and to respond to any comments on the draft it receives from the state board.

Existing law requires the metropolitan planning organization to submit its adopted sustainable communities strategy to the state board for review.

This bill would require that the sustainable communities strategy be submitted within 60 days of adoption. The bill would require the state board to reject the metropolitan planning organization's determination that the strategy submitted would achieve the greenhouse gas emission vehicle miles traveled reduction targets if it determines that certain criteria are met.

This bill would require each city, county, or city and county to biennially report to its metropolitan planning organization the number of housing and jobs, and transit supportive infrastructure, existing and planned, that demonstrates implementation of strategies included in the applicable sustainable communities strategy, as specified.

By imposing new requirements on local agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65080 of the Government Code, as
2 amended by Section 1 of Chapter 177 of the Statutes of 2020, is
3 amended to read:

4 65080. (a) Each transportation planning agency designated
5 under Section 29532 or 29532.1 shall prepare and adopt a regional
6 transportation plan directed at achieving a coordinated and balanced
7 regional transportation system, including, but not limited to, mass
8 transportation, highway, railroad, maritime, bicycle, pedestrian,
9 goods movement, and aviation facilities and services. The plan
10 shall be action-oriented and pragmatic, considering both the
11 short-term and long-term future, and shall present clear, concise
12 policy guidance to local and state officials. The regional
13 transportation plan shall consider factors specified in Section 134
14 of Title 23 of the United States Code. Each transportation planning
15 agency shall consider and incorporate, as appropriate, the
16 transportation plans of cities, counties, districts, private
17 organizations, and state and federal agencies.

18 (b) The regional transportation plan shall be an internally
19 consistent document and shall include all of the following:

20 (1) A policy element that describes the transportation issues in
21 the region, identifies and quantifies regional needs, and describes
22 the desired short-range and long-range transportation goals, and
23 pragmatic objective and policy statements. The objective and policy
24 statements shall be consistent with the funding estimates of the
25 financial element. The policy element of transportation planning
26 agencies with populations that exceed 200,000 persons may
27 quantify a set of indicators including, but not limited to, all of the
28 following:

29 (A) Measures of mobility and traffic congestion, including, but
30 not limited to, daily vehicle hours of delay per capita and vehicle
31 miles traveled per capita.

32 (B) Measures of road and bridge maintenance and rehabilitation
33 needs, including, but not limited to, roadway pavement and bridge
34 conditions.

35 (C) Measures of means of travel, including, but not limited to,
36 percentage share of all trips (work and nonwork) made by all of
37 the following:

38 (i) Single occupant vehicle.

1 (ii) Multiple occupant vehicle or carpool.

2 (iii) Public transit including commuter rail and intercity rail.

3 (iv) Walking.

4 (v) Bicycling.

5 (D) Measures of safety and security, including, but not limited
6 to, total injuries and fatalities assigned to each of the modes set
7 forth in subparagraph (C).

8 (E) Measures of equity and accessibility, including, but not
9 limited to, percentage of the population served by frequent and
10 reliable public transit, with a breakdown by income bracket, and
11 percentage of all jobs accessible by frequent and reliable public
12 transit service, with a breakdown by income bracket.

13 (F) The requirements of this section may be met using existing
14 sources of information. No additional traffic counts, household
15 surveys, or other sources of data shall be required.

16 (2) A sustainable communities strategy prepared by each
17 metropolitan planning organization as follows:

18 (A) No later than September 30, 2010, the State Air Resources
19 Board shall provide each affected region with greenhouse gas
20 emission reduction targets for the automobile and light truck sector
21 for 2020 and 2035, respectively. *No later than December 31, 2024,*
22 *the state board shall provide each affected region with additional*
23 *greenhouse gas emission reduction targets for the automobile and*
24 *light truck sector for 2045 and 2050, respectively. No later than*
25 *December 31, 2024, the state board, in furtherance of achieving*
26 *the greenhouse gas emission reduction targets, shall provide each*
27 *affected region with vehicle miles traveled reduction targets for*
28 *2035, 2045, and 2050.*

29 (i) No later than January 31, 2009, the state board shall appoint
30 a Regional Targets Advisory Committee to recommend factors to
31 be considered and methodologies to be used for setting 2020 and
32 2035 greenhouse gas emission reduction targets for the affected
33 regions. The committee shall be composed of representatives of
34 the metropolitan planning organizations, affected air districts, the
35 League of California Cities, the California State Association of
36 Counties, local transportation agencies, and members of the public,
37 including homebuilders, environmental organizations, planning
38 organizations, environmental justice organizations, affordable
39 housing organizations, and others. The advisory committee shall
40 transmit a report with its recommendations to the state board no

1 later than September 30, 2009. In recommending factors to be
2 considered and methodologies to be used, the advisory committee
3 may consider any relevant issues, including, but not limited to,
4 data needs, modeling techniques, growth forecasts, the impacts of
5 regional jobs-housing balance on interregional travel and
6 greenhouse gas emissions, economic and demographic trends, the
7 magnitude of greenhouse gas reduction benefits from a variety of
8 land use and transportation strategies, and appropriate methods to
9 describe regional targets and to monitor performance in attaining
10 those targets. The state board shall consider the report before
11 setting the targets.

12 (ii) Before setting the *greenhouse gas emissions and vehicle*
13 *miles traveled reduction* targets for a region, the state board shall
14 exchange technical information with the metropolitan planning
15 organization and the affected air district. ~~The For purposes of~~
16 ~~setting the greenhouse gas emission reduction targets for 2020~~
17 ~~and 2035, the metropolitan planning organization may recommend~~
18 ~~a target for the region. The metropolitan planning organization~~
19 ~~shall hold at least one public workshop within the region after~~
20 ~~receipt of the report from the advisory committee. The state board~~
21 ~~shall release draft greenhouse gas emission targets for 2020 and~~
22 ~~2035 for each region no later than June 30, 2010, and for~~
23 ~~2045 and 2050, no later than September 30, 2024. The state board~~
24 ~~shall release draft vehicle miles traveled reduction targets for~~
25 ~~2035, 2045, and 2050 for each region no later than September 30,~~
26 ~~2024.~~

27 (iii) In establishing these targets, the state board shall take into
28 account greenhouse gas emission *and vehicle miles traveled*
29 reductions that will be achieved by *measures approved or proposed*
30 *by state agencies to reduce greenhouse gas emissions and vehicle*
31 *miles traveled and achieved by* improved vehicle emission
32 standards, changes in fuel composition, and other measures it has
33 approved that will reduce greenhouse gas emissions *or vehicle*
34 *miles traveled* in the affected regions, and prospective measures
35 the state board plans to adopt to reduce greenhouse gas emissions
36 from other greenhouse gas emission sources as that term is defined
37 in subdivision (i) of Section 38505 of the Health and Safety Code
38 and consistent with the regulations promulgated pursuant to the
39 California Global Warming Solutions Act of 2006 (Division 25.5

(commencing with Section 38500) of the Health and Safety Code), including Section 38566 of the Health and Safety Code.

(iv) The state board shall update the regional greenhouse gas emission *and vehicle miles traveled* reduction targets every eight years consistent with each metropolitan planning organization's timeframe for updating its regional transportation plan under federal law until 2050. The state board may revise the targets every four years based on changes in the factors considered under clause (iii). The state board shall exchange technical information with the Department of Transportation, metropolitan planning organizations, local governments, and affected air districts and engage in a consultative process with public and private stakeholders, before updating these targets.

(v) The greenhouse gas emission reduction targets may be expressed in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by the state board.

(vi) *The vehicle miles traveled reduction targets may be expressed in miles per capita, percent reduction, or in any other metric deemed appropriate by the state board.*

(B) Each metropolitan planning organization shall prepare a sustainable communities strategy, subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to use the most recent planning assumptions considering local general plans and other factors. The sustainable communities strategy shall—~~(i) identify do all of the following:~~

~~(i) Identify the general location of uses, residential densities, and building intensities within the region, (ii) identify region.~~

~~(ii) Identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation and employment growth, (iii) identify growth.~~

~~(iii) Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584, (iv) identify 65584.~~

~~(iv) Identify a transportation network to service the transportation needs of the region, (v) gather region.~~

1 (v) *Gather* and consider the best practically available scientific
2 information regarding resource areas and farmland in the region
3 as defined in subdivisions (a) and (b) of Section ~~65080.01, (vi)~~
4 ~~consider 65080.01.~~

5 (vi) *Consider* the state housing goals specified in Sections 65580
6 and ~~65581, (vii)~~ set 65581.

7 (vii) *Set* forth a forecasted development pattern for the region,
8 which, when integrated with the transportation network, and other
9 transportation measures and policies, will reduce the greenhouse
10 gas emissions *and vehicle miles traveled* from automobiles and
11 light trucks to achieve, if there is a feasible way to do so, the
12 greenhouse gas emission *and vehicle miles traveled* reduction
13 targets approved by the state board, and ~~(viii)~~ *allow board.*

14 (viii) *Allow* the regional transportation plan to comply with
15 Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506).

16 (C) (i) Within the jurisdiction of the Metropolitan
17 Transportation Commission, as defined by Section 66502, the
18 Association of Bay Area Governments shall be responsible for
19 clauses (i), (ii), (iii), (v), and (vi) of subparagraph (B); the
20 Metropolitan Transportation Commission shall be responsible for
21 clauses (iv) and (viii) of subparagraph (B); and the Association of
22 Bay Area Governments and the Metropolitan Transportation
23 Commission shall jointly be responsible for clause (vii) of
24 subparagraph (B).

25 (ii) Within the jurisdiction of the Tahoe Regional Planning
26 Agency, as defined in Sections 66800 and 66801, the Tahoe
27 Metropolitan Planning Organization shall use the Regional Plan
28 for the Lake Tahoe Region as the sustainable communities strategy,
29 provided that it complies with clauses (vii) and (viii) of
30 subparagraph (B).

31 (D) In the region served by the Southern California Association
32 of Governments, a subregional council of governments and the
33 county transportation commission may work together to propose
34 the sustainable communities strategy and an alternative planning
35 strategy, if one is prepared pursuant to subparagraph (I), for that
36 subregional area. The metropolitan planning organization may
37 adopt a framework for a subregional sustainable communities
38 strategy or a subregional alternative planning strategy to address
39 the intraregional land use, transportation, economic, air quality,
40 and climate policy relationships. The metropolitan planning

1 organization shall include the subregional sustainable communities
2 strategy for that subregion in the regional sustainable communities
3 strategy to the extent consistent with this section and federal law
4 and approve the subregional alternative planning strategy, if one
5 is prepared pursuant to subparagraph (I), for that subregional area
6 to the extent consistent with this section. The metropolitan planning
7 organization shall develop overall guidelines, create a public
8 participation plan pursuant to subparagraph (F), ensure
9 coordination, resolve conflicts, make sure that the overall plan
10 complies with applicable legal requirements, and adopt the plan
11 for the region.

12 (E) The metropolitan planning organization shall conduct at
13 least two informational meetings in each county within the region
14 for members of the board of supervisors and city councils on the
15 sustainable communities strategy and alternative planning strategy,
16 if any. The metropolitan planning organization may conduct only
17 one informational meeting if it is attended by representatives of
18 the county board of supervisors and city council members
19 representing a majority of the cities representing a majority of the
20 population in the incorporated areas of that county. Notice of the
21 informational meeting or meetings shall be sent to the clerk of the
22 board of supervisors and to each city clerk. The purpose of the
23 meeting or meetings shall be to discuss the sustainable communities
24 strategy and the alternative planning strategy, if any, including the
25 key land use and planning assumptions with the members of the
26 board of supervisors and the city council members in that county
27 and to solicit and consider their input and recommendations. In
28 order to maximize the opportunity for participation by members
29 of the public throughout the region, these informational meetings
30 may be conducted by electronic means if a call-in telephonic option
31 is also provided and the informational meeting is not required to
32 be conducted pursuant to the Ralph M. Brown Act (Chapter 9
33 (commencing with Section 54950) of Part 1 of Division 2 of Title
34 5).

35 (F) Each metropolitan planning organization shall adopt a public
36 participation plan, for development of the sustainable communities
37 strategy and an alternative planning strategy, if any, that includes
38 all of the following:

39 (i) Outreach efforts to encourage the active participation of a
40 broad range of stakeholder groups in the planning process,

1 consistent with the agency's adopted Federal Public Participation
2 Plan, including, but not limited to, affordable housing advocates,
3 transportation advocates, neighborhood and community groups,
4 environmental advocates, home builder representatives,
5 broad-based business organizations, landowners, commercial
6 property interests, and homeowner associations.

7 (ii) Consultation with congestion management agencies,
8 transportation agencies, and transportation commissions.

9 (iii) Public engagement gatherings throughout the region to
10 provide the public with the information and tools necessary to
11 provide a clear understanding of the issues and policy choices. At
12 least one gathering shall be available to each county in the region
13 with outreach to residents of that county. For counties with a
14 population greater than 500,000, at least three public engagement
15 gatherings shall be held. In order to maximize the opportunity for
16 participation by members of the public throughout the region, these
17 public engagement gatherings may be conducted by electronic
18 means if a call-in telephonic option is also provided and the public
19 engagement gathering is not required to be conducted pursuant to
20 the Ralph M. Brown Act (Chapter 9 (commencing with Section
21 54950) of Part 1 of Division 2 of Title 5).

22 (iv) Preparation and circulation of a draft sustainable
23 communities strategy and an alternative planning strategy, if one
24 is prepared, not less than 55 days before adoption of a final regional
25 transportation plan.

26 (v) At least three public hearings on the draft sustainable
27 communities strategy in the regional transportation plan and
28 alternative planning strategy, if one is prepared. If the metropolitan
29 ~~transportation~~ *planning* organization consists of a single county,
30 at least two public hearings shall be held. To the maximum extent
31 feasible, the hearings shall be in different parts of the region. In
32 order to maximize the opportunity for participation by members
33 of the public throughout the region, these public hearings may be
34 conducted by electronic means if a call-in telephonic option is also
35 provided and the public hearing is not required to be conducted
36 pursuant to the Ralph M. Brown Act (Chapter 9 (commencing
37 with Section 54950) of Part 1 of Division 2 of Title 5).

38 (vi) A process for enabling members of the public to provide a
39 single request to receive notices, information, and updates.

1 (G) In preparing a sustainable communities strategy, the
2 metropolitan planning organization shall consider spheres of
3 influence that have been adopted by the local agency formation
4 commissions within its region.

5 (H) Before adopting a sustainable communities strategy, the
6 metropolitan planning organization shall quantify the ~~reduction~~
7 *reductions* in greenhouse gas emissions *and vehicle miles traveled*
8 projected to be achieved by the sustainable communities strategy
9 and set forth the difference, if any, between the amount of ~~that~~
10 ~~reduction~~ *those reductions* and the ~~target~~ *targets* for the region
11 established by the state board.

12 (I) If the sustainable communities strategy, prepared in
13 compliance with subparagraph (B) or (D), is unable to reduce
14 greenhouse gas emissions *and vehicle miles traveled* to achieve
15 the greenhouse gas emission *and vehicle miles traveled* reduction
16 targets established by the state board, the metropolitan planning
17 organization shall prepare an alternative planning strategy to the
18 sustainable communities strategy showing how those greenhouse
19 gas emission *and vehicle miles traveled* targets would be achieved
20 through alternative development patterns, infrastructure, or
21 additional transportation measures or policies. The alternative
22 planning strategy shall be a separate document from the regional
23 transportation plan, but it may be adopted concurrently with the
24 regional transportation plan. In preparing the alternative planning
25 strategy, the metropolitan planning organization:

26 (i) Shall identify the principal impediments to achieving the
27 targets within the sustainable communities strategy.

28 (ii) May include an alternative development pattern for the
29 region pursuant to subparagraphs (B) to (G), inclusive.

30 (iii) Shall describe how the greenhouse gas emission *and vehicle*
31 *miles traveled* reduction targets would be achieved by the
32 alternative planning strategy, and why the development pattern,
33 measures, and policies in the alternative planning strategy are the
34 most practicable choices for achievement of the greenhouse gas
35 emission *and vehicle miles traveled* reduction targets.

36 (iv) An alternative development pattern set forth in the
37 alternative planning strategy shall comply with Part 450 of Title
38 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations,
39 except to the extent that compliance will prevent achievement of

1 the greenhouse gas emission *and vehicle miles traveled* reduction
2 targets approved by the state board.

3 (v) For purposes of the California Environmental Quality Act
4 (Division 13 (commencing with Section 21000) of the Public
5 Resources Code), an alternative planning strategy shall not
6 constitute a land use plan, policy, or regulation, and the
7 inconsistency of a project with an alternative planning strategy
8 shall not be a consideration in determining whether a project may
9 have an environmental effect.

10 (J) (i) Before starting the public participation process adopted
11 pursuant to subparagraph (F), the metropolitan planning
12 organization shall submit a description to the state board of the
13 technical methodology it intends to use to estimate the greenhouse
14 gas emissions from its sustainable communities strategy and, if
15 appropriate, its alternative planning strategy. The state board shall
16 *review and* respond to the metropolitan planning organization in
17 a timely manner with written comments about the technical
18 methodology, including specifically describing any aspects of that
19 methodology it concludes will not yield accurate estimates of
20 greenhouse gas ~~emissions~~; *emissions and vehicle miles traveled*,
21 and suggested remedies. The metropolitan planning organization
22 ~~is encouraged to~~ *shall* work with the state board until the state
23 board concludes that the technical methodology operates
24 accurately.

25 ~~(ii) After~~

26 *(ii) At least 90 days before adopting a sustainable communities*
27 *strategy, a metropolitan planning organization shall submit to the*
28 *state board for review a draft sustainable communities strategy*
29 *or, if one is prepared, a draft alternative planning strategy. The*
30 *state board may within 45 days of receipt of the draft provide*
31 *written comment to the metropolitan planning organization*
32 *identifying issues affecting the strategy's ability to produce*
33 *accurate estimates of greenhouse gas emissions and vehicle miles*
34 *traveled before the state board's evaluation of the final sustainable*
35 *communities strategy or, if one is prepared, the final alternative*
36 *planning strategy. The draft sustainable communities strategy*
37 *shall contain information consistent with subparagraph (B) and*
38 *available modeling results and supporting policies that implement*
39 *strategies to reduce greenhouse gas emissions and vehicle miles*
40 *traveled. The metropolitan planning organization shall consider*

1 *comments it receives from the state board on the draft sustainable*
2 *communities strategy or, if one has been prepared, draft alternative*
3 *planning strategy, and provide the state board with a written*
4 *response to comments in its final sustainable communities strategy*
5 *or, if one is prepared, final alternative planning strategy. The*
6 *responses should indicate and explain how the metropolitan*
7 *planning organization incorporates or rejects particular state*
8 *board comments. To provide more meaningful public disclosure,*
9 *a copy of responses to the state board's comments shall be made*
10 *available to the public on the metropolitan planning organization's*
11 *internet website.*

12 *(iii) Within 60 days of adoption, a metropolitan planning*
13 *organization shall submit a sustainable communities strategy or*
14 *an alternative planning strategy, if one has been adopted, to the*
15 *state board for review, including the quantification of the*
16 *greenhouse gas emission and vehicle miles traveled reductions the*
17 *strategy would achieve and a description of the technical*
18 *methodology used to obtain that result. Review by the state board*
19 *shall be limited to acceptance or rejection of the metropolitan*
20 *planning organization's determination that the strategy submitted*
21 *would, if implemented, would achieve the greenhouse gas emission*
22 *and vehicle miles traveled reduction targets established by the state*
23 *board. In reviewing that determination, the state board may*
24 *consider the reasonable progress toward achieving the region's*
25 *greenhouse gas emission and vehicle miles traveled reduction*
26 *targets based on its review of data supported metrics for the*
27 *strategies used to meet the targets. The state board shall complete*
28 *its review within 60 120 business days.*

29 *(iv) The state board shall reject the metropolitan planning*
30 *organization's determination that the strategy submitted would*
31 *achieve the targets if, based on evidence, it determines that any*
32 *of the following criteria are met: the technical methodology will*
33 *not yield accurate estimates of greenhouse gas emissions and*
34 *vehicle miles traveled; the data or documentation provided to*
35 *support the estimates of greenhouse gas emissions and vehicle*
36 *miles traveled is insufficient for the state board's review; the*
37 *calculations to estimate greenhouse gas emissions and vehicle*
38 *miles traveled do not demonstrate the region achieving greenhouse*
39 *gas emissions and vehicle miles traveled reduction targets for all*
40 *target years; or, the sustainable communities strategy does not*

1 *include strategies that sufficiently demonstrate reductions in*
 2 *greenhouse gas emissions or vehicle miles traveled to achieve the*
 3 *region's greenhouse gas emissions and vehicle miles traveled*
 4 *targets.*

5 ~~(iii)~~

6 (v) If the state board determines that the strategy submitted
 7 ~~would not, if implemented,~~ *not* achieve the greenhouse gas
 8 emission *and vehicle miles traveled* reduction targets, the
 9 metropolitan planning organization shall revise its strategy or adopt
 10 an alternative planning strategy, if not previously adopted, and
 11 submit the strategy for review pursuant to clause ~~(ii)~~ *(iii)*. At a
 12 minimum, the metropolitan planning organization must obtain
 13 state board acceptance that an alternative planning strategy would,
 14 if implemented, achieve the greenhouse gas emission *and vehicle*
 15 *miles traveled* reduction targets established for that region by the
 16 state board.

17 ~~(iv)~~

18 (vi) On or before September 1, 2018, and every four years
 19 thereafter to align with target setting, notwithstanding Section
 20 10231.5, the state board shall prepare a report that assesses progress
 21 made by each metropolitan planning organization in meeting the
 22 regional greenhouse gas emission *and vehicle miles traveled*
 23 reduction targets set by the state board. The report shall include
 24 changes to greenhouse gas emissions in each region and
 25 data-supported metrics for the strategies used to meet the targets.
 26 The report shall also include a discussion of best practices and the
 27 challenges faced by the metropolitan planning organizations in
 28 meeting the targets, including the effect of state policies and
 29 funding. The report shall be developed in consultation with the
 30 metropolitan planning organizations and affected stakeholders.
 31 The report shall be submitted to the Assembly Committee on
 32 Transportation and the Assembly Committee on Natural Resources,
 33 and to the Senate Committee on Transportation, the Senate
 34 Committee on Housing, and the Senate Committee on
 35 Environmental Quality.

36 (vii) *Each city, county, or city and county shall biennially report*
 37 *to its metropolitan planning organization on the number of housing*
 38 *and jobs, and transit supportive infrastructure, existing and*
 39 *planned, that demonstrates implementation of strategies included*
 40 *in the applicable sustainable communities strategy or, if one is*

1 *prepared, alternative planning strategy. The report should include*
2 *both of the following metrics:*
3 *(I) The number of existing and planned housing units and jobs*
4 *within one-half mile of any of the following:*
5 *(ia) A major transit stop, as defined in Section 21064.3 of the*
6 *Public Resources Code.*
7 *(ib) A planned major transit stop included in the applicable*
8 *regional transportation plan, sustainable communities strategy,*
9 *or alternative planning strategy, if any.*
10 *(ic) A high-quality transit corridor, as defined in Section 21155*
11 *of the Public Resources Code.*
12 *(id) A planned high-quality transit corridor in the applicable*
13 *regional transportation plan, sustainable communities strategy,*
14 *or alternative planning strategy, if any.*
15 *(II) The number of existing and planned housing units and jobs*
16 *in areas of the city, county, or city and county that correspond*
17 *with areas the sustainable communities strategy or alternative*
18 *planning strategy identifies as priority geographies for*
19 *accommodating new housing and jobs growth, if any, and identifies*
20 *as having per capita vehicle miles traveled below the regional*
21 *average and at least 15 percent below the regional average.*
22 *(K) Neither a sustainable communities strategy nor an alternative*
23 *planning strategy regulates the use of land, nor, except as provided*
24 *by subparagraph (J), shall either one be subject to any state*
25 *approval. Nothing in a sustainable communities strategy shall be*
26 *interpreted as superseding the exercise of the land use authority*
27 *of cities and counties within the region. Nothing in this section*
28 *shall be interpreted to limit the state board's authority under any*
29 *other law. Nothing in this section shall be interpreted to authorize*
30 *the abrogation of any vested right whether created by statute or*
31 *by common law. Nothing in this section shall require a city's or*
32 *county's land use policies and regulations, including its general*
33 *plan, to be consistent with the regional transportation plan or an*
34 *alternative planning strategy. Nothing in this section requires a*
35 *metropolitan planning organization to approve a sustainable*
36 *communities strategy that would be inconsistent with Part 450 of*
37 *Title 23 of, or Part 93 of Title 40 of, the Code of Federal*
38 *Regulations and any administrative guidance under those*
39 *regulations. Nothing in this section relieves a public or private*

1 entity or any person from compliance with any other local, state,
2 or federal law.

3 (L) Nothing in this section requires projects programmed for
4 funding on or before December 31, 2011, to be subject to the
5 provisions of this paragraph if they (i) are contained in the 2007
6 or 2009 Federal Statewide Transportation Improvement Program,
7 (ii) are funded pursuant to the Highway Safety, Traffic Reduction,
8 Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49
9 (commencing with Section 8879.20) of Division 1 of Title 2), or
10 (iii) were specifically listed in a ballot measure before December
11 31, 2008, approving a sales tax increase for transportation projects.
12 Nothing in this section shall require a transportation sales tax
13 authority to change the funding allocations approved by the voters
14 for categories of transportation projects in a sales tax measure
15 adopted before December 31, 2010. For purposes of this
16 subparagraph, a transportation sales tax authority is a district, as
17 defined in Section 7252 of the Revenue and Taxation Code, that
18 is authorized to impose a sales tax for transportation purposes.

19 (M) A metropolitan planning organization, or a regional
20 transportation planning agency not within a metropolitan planning
21 organization, that is required to adopt a regional transportation
22 plan not less than every five years, may elect to adopt the plan not
23 less than every four years. This election shall be made by the board
24 of directors of the metropolitan planning organization or regional
25 transportation planning agency no later than June 1, 2009, or
26 thereafter 54 months before the statutory deadline for the adoption
27 of housing elements for the local jurisdictions within the region,
28 after a public hearing at which comments are accepted from
29 members of the public and representatives of cities and counties
30 within the region covered by the metropolitan planning
31 organization or regional transportation planning agency. Notice
32 of the public hearing shall be given to the general public and by
33 mail to cities and counties within the region no later than 30 days
34 before the date of the public hearing. Notice of election shall be
35 promptly given to the Department of Housing and Community
36 Development. The metropolitan planning organization or the
37 regional transportation planning agency shall complete its next
38 regional transportation plan within three years of the notice of
39 election.

1 (N) Two or more of the metropolitan planning organizations
2 for Fresno County, Kern County, Kings County, Madera County,
3 Merced County, San Joaquin County, Stanislaus County, and
4 Tulare County may work together to develop and adopt
5 multiregional goals and policies that may address interregional
6 land use, transportation, economic, air quality, and climate
7 relationships. The participating metropolitan planning organizations
8 may also develop a multiregional sustainable communities strategy,
9 to the extent consistent with federal law, or an alternative planning
10 strategy for adoption by the metropolitan planning organizations.
11 Each participating metropolitan planning organization shall
12 consider any adopted multiregional goals and policies in the
13 development of a sustainable communities strategy and, if
14 applicable, an alternative planning strategy for its region.

15 (3) An action element that describes the programs and actions
16 necessary to implement the plan and assigns implementation
17 responsibilities. The action element may describe all transportation
18 projects proposed for development during the 20-year or greater
19 life of the plan. The action element shall consider congestion
20 management programming activities carried out within the region.

21 (4) (A) A financial element that summarizes the cost of plan
22 implementation constrained by a realistic projection of available
23 revenues. The financial element shall also contain
24 recommendations for allocation of funds. A county transportation
25 commission created pursuant to the County Transportation
26 Commissions Act (Division 12 (commencing with Section 130000)
27 of the Public Utilities Code) shall be responsible for recommending
28 projects to be funded with regional improvement funds, if the
29 project is consistent with the regional transportation plan. The first
30 five years of the financial element shall be based on the five-year
31 estimate of funds developed pursuant to Section 14524. The
32 financial element may recommend the development of specified
33 new sources of revenue, consistent with the policy element and
34 action element.

35 (B) The financial element of transportation planning agencies
36 with populations that exceed 200,000 persons may include a project
37 cost breakdown for all projects proposed for development during
38 the 20-year life of the plan that includes total expenditures and
39 related percentages of total expenditures for all of the following:

40 (i) State highway expansion.

- 1 (ii) State highway rehabilitation, maintenance, and operations.
- 2 (iii) Local road and street expansion.
- 3 (iv) Local road and street rehabilitation, maintenance, and
- 4 operation.
- 5 (v) Mass transit, commuter rail, and intercity rail expansion.
- 6 (vi) Mass transit, commuter rail, and intercity rail rehabilitation,
- 7 maintenance, and operations.
- 8 (vii) Pedestrian and bicycle facilities.
- 9 (viii) Environmental enhancements and mitigation.
- 10 (ix) Research and planning.
- 11 (x) Other categories.

12 (C) The metropolitan planning organization or county
13 transportation agency, whichever entity is appropriate, shall
14 consider financial incentives for cities and counties that have
15 resource areas or farmland, as defined in Section 65080.01, for
16 the purposes of, for example, transportation investments for the
17 preservation and safety of the city street or county road system
18 and farm-to-market and interconnectivity transportation needs.
19 The metropolitan planning organization or county transportation
20 agency, whichever entity is appropriate, shall also consider
21 financial assistance for counties to address countywide service
22 responsibilities in counties that contribute toward the greenhouse
23 gas emission *and vehicle miles traveled* reduction targets by
24 implementing policies for growth to occur within their cities.

25 (c) Each transportation planning agency may also include other
26 factors of local significance as an element of the regional
27 transportation plan, including, but not limited to, issues of mobility
28 for specific sectors of the community, including, but not limited
29 to, senior citizens.

30 (d) (1) Except as otherwise provided in this subdivision, each
31 transportation planning agency shall adopt and submit, every four
32 years, an updated regional transportation plan to the California
33 Transportation Commission and the Department of Transportation.
34 A transportation planning agency located in a federally designated
35 air quality attainment area or that does not contain an urbanized
36 area may at its option adopt and submit a regional transportation
37 plan every five years. When applicable, the plan shall be consistent
38 with federal planning and programming requirements and shall
39 conform to the regional transportation plan guidelines adopted by
40 the California Transportation Commission. Before adoption of the

1 regional transportation plan, a public hearing shall be held after
2 the giving of notice of the hearing by publication in the affected
3 county or counties pursuant to Section 6061.

4 (2) (A) Notwithstanding subdivisions (b) and (c), and paragraph
5 (1), inclusive, the regional transportation plan, sustainable
6 communities strategy, and environmental impact report adopted
7 by the San Diego Association of Governments on October 9, 2015,
8 shall remain in effect for all purposes, including for purposes of
9 consistency determinations and funding eligibility for the San
10 Diego Association of Governments and all other agencies relying
11 on those documents, until the San Diego Association of
12 Governments adopts its next update to its regional transportation
13 plan.

14 (B) The San Diego Association of Governments shall adopt and
15 submit its update to the 2015 regional transportation plan on or
16 before December 31, 2021.

17 (C) After the update described in subparagraph (B), the time
18 period for San Diego Association of Governments' updates to its
19 regional transportation plan shall be reset and shall be adopted and
20 submitted every four years.

21 (D) Notwithstanding clause (iv) of subparagraph (A) of
22 paragraph (2) of subdivision (b), the State Air Resources Board
23 shall not update the greenhouse gas emission reduction targets for
24 the region within the jurisdiction of the San Diego Association of
25 Governments before the adoption of the update to the regional
26 transportation plan pursuant to subparagraph (B).

27 (E) The update to the regional transportation plan adopted by
28 the San Diego Association of Governments on October 9, 2015,
29 which will be prepared and submitted to federal agencies for
30 purposes of compliance with federal laws applicable to regional
31 transportation plans and air quality conformity and which is due
32 in October 2019, shall not be considered a regional transportation
33 plan pursuant to this section and shall not constitute a project for
34 purposes of the California Environmental Quality Act (Division
35 13 (commencing with Section 21000) of the Public Resources
36 Code).

37 (F) In addition to meeting the other requirements to nominate
38 a project for funding through the Solutions for Congested Corridors
39 Program (Chapter 8.5 (commencing with Section 2390) of Division
40 3 of the Streets and Highways Code), the San Diego Association

1 of Governments, until December 31, 2021, shall only nominate
2 projects for funding through the Solutions for Congested Corridors
3 Program that are consistent with the eligibility requirements for
4 projects under any of the following programs:

5 (i) The Transit and Intercity Rail Capital Program (Part 2
6 (commencing with Section 75220) of Division 44 of the Public
7 Resources Code).

8 (ii) The Low Carbon Transit Operations Program (Part 3
9 (commencing with Section 75230) of Division 44 of the Public
10 Resources Code).

11 (iii) The Active Transportation Program (Chapter 8
12 (commencing with Section 2380) of Division 3 of the Streets and
13 Highways Code).

14 (G) Commencing January 1, 2020, and every two years
15 thereafter, the San Diego Association of Governments shall begin
16 developing an implementation report that tracks the implementation
17 of its most recently adopted sustainable communities strategy. The
18 report shall discuss the status of the implementation of the strategy
19 at the regional and local level, and any successes and barriers that
20 have occurred since the last report. The San Diego Association of
21 Governments shall submit the implementation report to the state
22 board by including it in its sustainable communities strategy
23 implementation review pursuant to clause (ii) of subparagraph (J)
24 of paragraph (2) of subdivision (b).

25 (e) This section shall remain in effect only until January 1, 2023,
26 and as of that date is repealed.

27 SEC. 2. Section 65080 of the Government Code, as added by
28 Section 2 of Chapter 177 of the Statutes of 2020, is amended to
29 read:

30 65080. (a) Each transportation planning agency designated
31 under Section 29532 or 29532.1 shall prepare and adopt a regional
32 transportation plan directed at achieving a coordinated and balanced
33 regional transportation system, including, but not limited to, mass
34 transportation, highway, railroad, maritime, bicycle, pedestrian,
35 goods movement, and aviation facilities and services. The plan
36 shall be action-oriented and pragmatic, considering both the
37 short-term and long-term future, and shall present clear, concise
38 policy guidance to local and state officials. The regional
39 transportation plan shall consider factors specified in Section 134
40 of Title 23 of the United States Code. Each transportation planning

1 agency shall consider and incorporate, as appropriate, the
2 transportation plans of cities, counties, districts, private
3 organizations, and state and federal agencies.

4 (b) The regional transportation plan shall be an internally
5 consistent document and shall include all of the following:

6 (1) A policy element that describes the transportation issues in
7 the region, identifies and quantifies regional needs, and describes
8 the desired short-range and long-range transportation goals, and
9 pragmatic objective and policy statements. The objective and policy
10 statements shall be consistent with the funding estimates of the
11 financial element. The policy element of transportation planning
12 agencies with populations that exceed 200,000 persons may
13 quantify a set of indicators including, but not limited to, all of the
14 following:

15 (A) Measures of mobility and traffic congestion, including, but
16 not limited to, daily vehicle hours of delay per capita and vehicle
17 miles traveled per capita.

18 (B) Measures of road and bridge maintenance and rehabilitation
19 needs, including, but not limited to, roadway pavement and bridge
20 conditions.

21 (C) Measures of means of travel, including, but not limited to,
22 percentage share of all trips (work and nonwork) made by all of
23 the following:

24 (i) Single occupant vehicle.

25 (ii) Multiple occupant vehicle or carpool.

26 (iii) Public transit including commuter rail and intercity rail.

27 (iv) Walking.

28 (v) Bicycling.

29 (D) Measures of safety and security, including, but not limited
30 to, total injuries and fatalities assigned to each of the modes set
31 forth in subparagraph (C).

32 (E) Measures of equity and accessibility, including, but not
33 limited to, percentage of the population served by frequent and
34 reliable public transit, with a breakdown by income bracket, and
35 percentage of all jobs accessible by frequent and reliable public
36 transit service, with a breakdown by income bracket.

37 (F) The requirements of this section may be met using existing
38 sources of information. No additional traffic counts, household
39 surveys, or other sources of data shall be required.

1 (2) A sustainable communities strategy prepared by each
2 metropolitan planning organization as follows:

3 (A) No later than September 30, 2010, the State Air Resources
4 Board shall provide each affected region with greenhouse gas
5 emission reduction targets for the automobile and light truck sector
6 for 2020 and 2035, respectively. *No later than December 31, 2024,*
7 *the state board shall provide each affected region with additional*
8 *greenhouse gas emission reduction targets for the automobile and*
9 *light truck sector for 2045 and 2050, respectively. No later than*
10 *December 31, 2024, the state board, in furtherance of achieving*
11 *the greenhouse gas emission reduction targets, shall provide each*
12 *affected region with vehicle miles traveled reduction targets for*
13 *2035, 2045, and 2050.*

14 (i) No later than January 31, 2009, the state board shall appoint
15 a Regional Targets Advisory Committee to recommend factors to
16 be considered and methodologies to be used for setting *2020 and*
17 *2035* greenhouse gas emission reduction targets for the affected
18 regions. The committee shall be composed of representatives of
19 the metropolitan planning organizations, affected air districts, the
20 League of California Cities, the California State Association of
21 Counties, local transportation agencies, and members of the public,
22 including homebuilders, environmental organizations, planning
23 organizations, environmental justice organizations, affordable
24 housing organizations, and others. The advisory committee shall
25 transmit a report with its recommendations to the state board no
26 later than September 30, 2009. In recommending factors to be
27 considered and methodologies to be used, the advisory committee
28 may consider any relevant issues, including, but not limited to,
29 data needs, modeling techniques, growth forecasts, the impacts of
30 regional jobs-housing balance on interregional travel and
31 greenhouse gas emissions, economic and demographic trends, the
32 magnitude of greenhouse gas reduction benefits from a variety of
33 land use and transportation strategies, and appropriate methods to
34 describe regional targets and to monitor performance in attaining
35 those targets. The state board shall consider the report before
36 setting the targets.

37 (ii) Before setting the *greenhouse gas emissions and vehicle*
38 *miles traveled reduction* targets for a region, the state board shall
39 exchange technical information with the metropolitan planning
40 organization and the affected air district. ~~The~~ *For purposes of*

1 *setting the greenhouse gas emission reduction targets for 2020*
2 *and 2035, the metropolitan planning organization may recommend*
3 *a target for the region. The metropolitan planning organization*
4 *shall hold at least one public workshop within the region after*
5 *receipt of the report from the advisory committee. The state board*
6 *shall release draft greenhouse gas emission targets for 2020 and*
7 *2035 for each region no later than June 30, 2010, and for*
8 *2045 and 2050, no later than September 30, 2024. The state board*
9 *shall release draft vehicle miles traveled reduction targets for*
10 *2035, 2045, and 2050 for each region no later than September 30,*
11 *2024.*

12 (iii) In establishing these targets, the state board shall take into
13 account greenhouse gas emission *and vehicle miles traveled*
14 reductions that will be achieved by *measures approved or proposed*
15 *by state agencies to reduce greenhouse gas emissions and vehicle*
16 *miles traveled and achieved by* improved vehicle emission
17 standards, changes in fuel composition, and other measures it has
18 approved that will reduce greenhouse gas emissions *or vehicle*
19 *miles traveled* in the affected regions, and prospective measures
20 the state board plans to adopt to reduce greenhouse gas emissions
21 from other greenhouse gas emission sources as that term is defined
22 in subdivision (i) of Section 38505 of the Health and Safety Code
23 and consistent with the regulations promulgated pursuant to the
24 California Global Warming Solutions Act of 2006 (Division 25.5
25 (commencing with Section 38500) of the Health and Safety Code),
26 including Section 38566 of the Health and Safety Code.

27 (iv) The state board shall update the regional greenhouse gas
28 emission *and vehicle miles traveled* reduction targets every eight
29 years consistent with each metropolitan planning organization's
30 timeframe for updating its regional transportation plan under
31 federal law until 2050. The state board may revise the targets every
32 four years based on changes in the factors considered under clause
33 (iii). The state board shall exchange technical information with
34 the Department of Transportation, metropolitan planning
35 organizations, local governments, and affected air districts and
36 engage in a consultative process with public and private
37 stakeholders, before updating these targets.

38 (v) The greenhouse gas emission reduction targets may be
39 expressed in gross tons, tons per capita, tons per household, or in
40 any other metric deemed appropriate by the state board.

(vi) *The vehicle miles traveled reduction targets may be expressed in miles per capita, percent reduction, or in any other metric deemed appropriate by the state board.*

(B) Each metropolitan planning organization shall prepare a sustainable communities strategy, subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to use the most recent planning assumptions considering local general plans and other factors. The sustainable communities strategy shall—~~(i) identify~~ *do all of the following:*

(i) *Identify the general location of uses, residential densities, and building intensities within the region,* ~~(ii) identify region.~~

(ii) *Identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation and employment growth,* ~~(iii) identify growth.~~

(iii) *Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584,* ~~(iv) identify 65584.~~

(iv) *Identify a transportation network to service the transportation needs of the region,* ~~(v) gather region.~~

(v) *Gather and consider the best practically available scientific information regarding resource areas and farmland in the region as defined in subdivisions (a) and (b) of Section 65080.01,* ~~(vi) consider 65080.01.~~

(vi) *Consider the state housing goals specified in Sections 65580 and 65581,* ~~(vii) set 65581.~~

(vii) *Set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions and vehicle miles traveled from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission and vehicle miles traveled reduction targets approved by the state board, and* ~~(viii) allow board.~~

(viii) *Allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506).*

(C) (i) Within the jurisdiction of the Metropolitan Transportation Commission, as defined by Section 66502, the

1 Association of Bay Area Governments shall be responsible for
2 clauses (i), (ii), (iii), (v), and (vi) of subparagraph (B); the
3 Metropolitan Transportation Commission shall be responsible for
4 clauses (iv) and (viii) of subparagraph (B); and the Association of
5 Bay Area Governments and the Metropolitan Transportation
6 Commission shall jointly be responsible for clause (vii) of
7 subparagraph (B).

8 (ii) Within the jurisdiction of the Tahoe Regional Planning
9 Agency, as defined in Sections 66800 and 66801, the Tahoe
10 Metropolitan Planning Organization shall use the Regional Plan
11 for the Lake Tahoe Region as the sustainable communities strategy,
12 provided that it complies with clauses (vii) and (viii) of
13 subparagraph (B).

14 (D) In the region served by the Southern California Association
15 of Governments, a subregional council of governments and the
16 county transportation commission may work together to propose
17 the sustainable communities strategy and an alternative planning
18 strategy, if one is prepared pursuant to subparagraph (I), for that
19 subregional area. The metropolitan planning organization may
20 adopt a framework for a subregional sustainable communities
21 strategy or a subregional alternative planning strategy to address
22 the intraregional land use, transportation, economic, air quality,
23 and climate policy relationships. The metropolitan planning
24 organization shall include the subregional sustainable communities
25 strategy for that subregion in the regional sustainable communities
26 strategy to the extent consistent with this section and federal law
27 and approve the subregional alternative planning strategy, if one
28 is prepared pursuant to subparagraph (I), for that subregional area
29 to the extent consistent with this section. The metropolitan planning
30 organization shall develop overall guidelines, create a public
31 participation plan pursuant to subparagraph (F), ensure
32 coordination, resolve conflicts, make sure that the overall plan
33 complies with applicable legal requirements, and adopt the plan
34 for the region.

35 (E) The metropolitan planning organization shall conduct at
36 least two informational meetings in each county within the region
37 for members of the board of supervisors and city councils on the
38 sustainable communities strategy and alternative planning strategy,
39 if any. The metropolitan planning organization may conduct only
40 one informational meeting if it is attended by representatives of

1 the county board of supervisors and city council members
2 representing a majority of the cities representing a majority of the
3 population in the incorporated areas of that county. Notice of the
4 meeting or meetings shall be sent to the clerk of the board of
5 supervisors and to each city clerk. The purpose of the meeting or
6 meetings shall be to discuss the sustainable communities strategy
7 and the alternative planning strategy, if any, including the key land
8 use and planning assumptions with the members of the board of
9 supervisors and the city council members in that county and to
10 solicit and consider their input and recommendations.

11 (F) Each metropolitan planning organization shall adopt a public
12 participation plan, for development of the sustainable communities
13 strategy and an alternative planning strategy, if any, that includes
14 all of the following:

15 (i) Outreach efforts to encourage the active participation of a
16 broad range of stakeholder groups in the planning process,
17 consistent with the agency's adopted Federal Public Participation
18 Plan, including, but not limited to, affordable housing advocates,
19 transportation advocates, neighborhood and community groups,
20 environmental advocates, home builder representatives,
21 broad-based business organizations, landowners, commercial
22 property interests, and homeowner associations.

23 (ii) Consultation with congestion management agencies,
24 transportation agencies, and transportation commissions.

25 (iii) Workshops throughout the region to provide the public with
26 the information and tools necessary to provide a clear
27 understanding of the issues and policy choices. At least one
28 workshop shall be held in each county in the region. For counties
29 with a population greater than 500,000, at least three workshops
30 shall be held. Each workshop, to the extent practicable, shall
31 include urban simulation computer modeling to create visual
32 representations of the sustainable communities strategy and the
33 alternative planning strategy.

34 (iv) Preparation and circulation of a draft sustainable
35 communities strategy and an alternative planning strategy, if one
36 is prepared, not less than 55 days before adoption of a final regional
37 transportation plan.

38 (v) At least three public hearings on the draft sustainable
39 communities strategy in the regional transportation plan and
40 alternative planning strategy, if one is prepared. If the metropolitan

1 ~~transportation~~ *planning* organization consists of a single county,
2 at least two public hearings shall be held. To the maximum extent
3 feasible, the hearings shall be in different parts of the region to
4 maximize the opportunity for participation by members of the
5 public throughout the region.

6 (vi) A process for enabling members of the public to provide a
7 single request to receive notices, information, and updates.

8 (G) In preparing a sustainable communities strategy, the
9 metropolitan planning organization shall consider spheres of
10 influence that have been adopted by the local agency formation
11 commissions within its region.

12 (H) Before adopting a sustainable communities strategy, the
13 metropolitan planning organization shall quantify the ~~reduction~~
14 *reductions* in greenhouse gas emissions *and vehicle miles traveled*
15 projected to be achieved by the sustainable communities strategy
16 and set forth the difference, if any, between the amount of ~~that~~
17 ~~reduction~~ *those reductions* and the ~~target~~ *targets* for the region
18 established by the state board.

19 (I) If the sustainable communities strategy, prepared in
20 compliance with subparagraph (B) or (D), is unable to reduce
21 greenhouse gas emissions *and vehicle miles traveled* to achieve
22 the greenhouse gas emission *and vehicle miles traveled* reduction
23 targets established by the state board, the metropolitan planning
24 organization shall prepare an alternative planning strategy to the
25 sustainable communities strategy showing how those greenhouse
26 gas emission *and vehicle miles traveled* targets would be achieved
27 through alternative development patterns, infrastructure, or
28 additional transportation measures or policies. The alternative
29 planning strategy shall be a separate document from the regional
30 transportation plan, but it may be adopted concurrently with the
31 regional transportation plan. In preparing the alternative planning
32 strategy, the metropolitan planning organization:

33 (i) Shall identify the principal impediments to achieving the
34 targets within the sustainable communities strategy.

35 (ii) May include an alternative development pattern for the
36 region pursuant to subparagraphs (B) to (G), inclusive.

37 (iii) Shall describe how the greenhouse gas emission *and vehicle*
38 *miles traveled* reduction targets would be achieved by the
39 alternative planning strategy, and why the development pattern,
40 measures, and policies in the alternative planning strategy are the

1 most practicable choices for achievement of the greenhouse gas
2 emission *and vehicle miles traveled* reduction targets.

3 (iv) An alternative development pattern set forth in the
4 alternative planning strategy shall comply with Part 450 of Title
5 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations,
6 except to the extent that compliance will prevent achievement of
7 the greenhouse gas emission *and vehicle miles traveled* reduction
8 targets approved by the state board.

9 (v) For purposes of the California Environmental Quality Act
10 (Division 13 (commencing with Section 21000) of the Public
11 Resources Code), an alternative planning strategy shall not
12 constitute a land use plan, policy, or regulation, and the
13 inconsistency of a project with an alternative planning strategy
14 shall not be a consideration in determining whether a project may
15 have an environmental effect.

16 (J) (i) Before starting the public participation process adopted
17 pursuant to subparagraph (F), the metropolitan planning
18 organization shall submit a description to the state board of the
19 technical methodology it intends to use to estimate the greenhouse
20 gas emissions from its sustainable communities strategy and, if
21 appropriate, its alternative planning strategy. The state board shall
22 *review and* respond to the metropolitan planning organization in
23 a timely manner with written comments about the technical
24 methodology, including specifically describing any aspects of that
25 methodology it concludes will not yield accurate estimates of
26 greenhouse gas ~~emissions~~, *emissions and vehicle miles traveled*,
27 and suggested remedies. The metropolitan planning organization
28 ~~is encouraged to~~ *shall* work with the state board until the state
29 board concludes that the technical methodology operates
30 accurately.

31 ~~(ii) After~~

32 *(ii) At least 90 days before adopting a sustainable communities*
33 *strategy, a metropolitan planning organization shall submit to the*
34 *state board for review a draft sustainable communities strategy*
35 *or, if one is prepared, a draft alternative planning strategy. The*
36 *state board may within 45 days of receipt of the draft provide*
37 *written comment to the metropolitan planning organization*
38 *identifying issues affecting the strategy's ability to produce*
39 *accurate estimates of greenhouse gas emissions and vehicle miles*
40 *traveled before the state board's evaluation of the final sustainable*

1 *communities strategy or, if one is prepared, the final alternative*
2 *planning strategy. The draft sustainable communities strategy*
3 *shall contain information consistent with subparagraph (B) and*
4 *available modeling results and supporting policies that implement*
5 *strategies to reduce greenhouse gas emissions and vehicle miles*
6 *traveled. The metropolitan planning organization shall consider*
7 *comments it receives from the state board on the draft sustainable*
8 *communities strategy or, if one has been prepared, draft alternative*
9 *planning strategy, and provide the state board with a written*
10 *response to comments in its final sustainable communities strategy*
11 *or, if one is prepared, final alternative planning strategy. The*
12 *responses should indicate and explain how the metropolitan*
13 *planning organization incorporates or rejects particular state*
14 *board comments. To provide more meaningful public disclosure,*
15 *a copy of responses to the state board's comments shall be made*
16 *available to the public on the metropolitan planning organization's*
17 *internet website.*

18 *(iii) Within 60 days of adoption, a metropolitan planning*
19 *organization shall submit a sustainable communities strategy or*
20 *an alternative planning strategy, if one has been adopted, to the*
21 *state board for review, including the quantification of the*
22 *greenhouse gas emission and vehicle miles traveled reductions the*
23 *strategy would achieve and a description of the technical*
24 *methodology used to obtain that result. Review by the state board*
25 *shall be limited to acceptance or rejection of the metropolitan*
26 *planning organization's determination that the strategy submitted*
27 *would, if implemented, would achieve the greenhouse gas emission*
28 *and vehicle miles traveled reduction targets established by the state*
29 *board. In reviewing that determination, the state board may*
30 *consider the reasonable progress toward achieving the region's*
31 *greenhouse gas emission and vehicle miles traveled reduction*
32 *targets based on its review of data supported metrics for the*
33 *strategies used to meet the targets. The state board shall complete*
34 *its review within 60 120 business days.*

35 *(iv) The state board shall reject the metropolitan planning*
36 *organization's determination that the strategy submitted would*
37 *achieve the targets if, based on evidence, it determines that any*
38 *of the following criteria are met: the technical methodology will*
39 *not yield accurate estimates of greenhouse gas emissions and*
40 *vehicle miles traveled; the data or documentation provided to*

1 *support the estimates of greenhouse gas emissions and vehicle*
2 *miles traveled is insufficient for the state board's review; the*
3 *calculations to estimate greenhouse gas emissions and vehicle*
4 *miles traveled do not demonstrate the region achieving greenhouse*
5 *gas emissions and vehicle miles traveled reduction targets for all*
6 *target years; or, the sustainable communities strategy does not*
7 *include strategies that sufficiently demonstrate reductions in*
8 *greenhouse gas emissions or vehicle miles traveled to achieve the*
9 *region's greenhouse gas emissions and vehicle miles traveled*
10 *targets.*

11 ~~(iii)~~

12 (v) If the state board determines that the strategy submitted
13 ~~would not, if implemented,~~ *not* achieve the greenhouse gas
14 *emission and vehicle miles traveled* reduction targets, the
15 metropolitan planning organization shall revise its strategy or adopt
16 an alternative planning strategy, if not previously adopted, and
17 submit the strategy for review pursuant to clause ~~(ii)~~ *(iii)*. At a
18 minimum, the metropolitan planning organization must obtain
19 state board acceptance that an alternative planning strategy would,
20 if implemented, achieve the greenhouse gas emission *and vehicle*
21 *miles traveled* reduction targets established for that region by the
22 state board.

23 ~~(iv)~~

24 (vi) On or before September 1, 2018, and every four years
25 thereafter to align with target setting, notwithstanding Section
26 10231.5, the state board shall prepare a report that assesses progress
27 made by each metropolitan planning organization in meeting the
28 regional greenhouse gas emission *and vehicle miles traveled*
29 reduction targets set by the state board. The report shall include
30 changes to greenhouse gas emissions in each region and
31 data-supported metrics for the strategies used to meet the targets.
32 The report shall also include a discussion of best practices and the
33 challenges faced by the metropolitan planning organizations in
34 meeting the targets, including the effect of state policies and
35 funding. The report shall be developed in consultation with the
36 metropolitan planning organizations and affected stakeholders.
37 The report shall be submitted to the Assembly Committee on
38 Transportation and the Assembly Committee on Natural Resources,
39 and to the Senate Committee on Transportation, the Senate

1 Committee on Housing, and the Senate Committee on
2 Environmental Quality.

3 (vii) *Each city, county, or city and county shall biennially report*
4 *to its metropolitan planning organization on the number of housing*
5 *and jobs, and transit supportive infrastructure, existing and*
6 *planned, that demonstrates implementation of strategies included*
7 *in the applicable sustainable communities strategy or, if one is*
8 *prepared, alternative planning strategy. The report should include*
9 *both of the following metrics:*

10 (I) *The number of existing and planned housing units and jobs*
11 *within one-half mile of any of the following:*

12 (ia) *A major transit stop, as defined in Section 21064.3 of the*
13 *Public Resources Code.*

14 (ib) *A planned major transit stop included in the applicable*
15 *regional transportation plan, sustainable communities strategy,*
16 *or alternative planning strategy, if any.*

17 (ic) *A high-quality transit corridor, as defined in Section 21155*
18 *of the Public Resources Code.*

19 (id) *A planned high-quality transit corridor in the applicable*
20 *regional transportation plan, sustainable communities strategy,*
21 *or alternative planning strategy, if any.*

22 (II) *The number of existing and planned housing units and jobs*
23 *in areas of the city, county, or city and county that correspond*
24 *with areas the sustainable communities strategy or alternative*
25 *planning strategy identifies as priority geographies for*
26 *accommodating new housing and jobs growth, if any, and identifies*
27 *as having per capita vehicle miles traveled below the regional*
28 *average and at least 15 percent below the regional average.*

29 (K) Neither a sustainable communities strategy nor an alternative
30 planning strategy regulates the use of land, nor, except as provided
31 by subparagraph (J), shall either one be subject to any state
32 approval. Nothing in a sustainable communities strategy shall be
33 interpreted as superseding the exercise of the land use authority
34 of cities and counties within the region. Nothing in this section
35 shall be interpreted to limit the state board's authority under any
36 other law. Nothing in this section shall be interpreted to authorize
37 the abrogation of any vested right whether created by statute or
38 by common law. Nothing in this section shall require a city's or
39 county's land use policies and regulations, including its general
40 plan, to be consistent with the regional transportation plan or an

alternative planning strategy. Nothing in this section requires a metropolitan planning organization to approve a sustainable communities strategy that would be inconsistent with Part 450 of Title 23 of, or Part 93 of Title 40 of, the Code of Federal Regulations and any administrative guidance under those regulations. Nothing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law.

(L) Nothing in this section requires projects programmed for funding on or before December 31, 2011, to be subject to the provisions of this paragraph if they (i) are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program, (ii) are funded pursuant to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2), or (iii) were specifically listed in a ballot measure before December 31, 2008, approving a sales tax increase for transportation projects. Nothing in this section shall require a transportation sales tax authority to change the funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted before December 31, 2010. For purposes of this subparagraph, a transportation sales tax authority is a district, as defined in Section 7252 of the Revenue and Taxation Code, that is authorized to impose a sales tax for transportation purposes.

(M) A metropolitan planning organization, or a regional transportation planning agency not within a metropolitan planning organization, that is required to adopt a regional transportation plan not less than every five years, may elect to adopt the plan not less than every four years. This election shall be made by the board of directors of the metropolitan planning organization or regional transportation planning agency no later than June 1, 2009, or thereafter 54 months before the statutory deadline for the adoption of housing elements for the local jurisdictions within the region, after a public hearing at which comments are accepted from members of the public and representatives of cities and counties within the region covered by the metropolitan planning organization or regional transportation planning agency. Notice of the public hearing shall be given to the general public and by mail to cities and counties within the region no later than 30 days before the date of the public hearing. Notice of election shall be

1 promptly given to the Department of Housing and Community
2 Development. The metropolitan planning organization or the
3 regional transportation planning agency shall complete its next
4 regional transportation plan within three years of the notice of
5 election.

6 (N) Two or more of the metropolitan planning organizations
7 for Fresno County, Kern County, Kings County, Madera County,
8 Merced County, San Joaquin County, Stanislaus County, and
9 Tulare County may work together to develop and adopt
10 multiregional goals and policies that may address interregional
11 land use, transportation, economic, air quality, and climate
12 relationships. The participating metropolitan planning organizations
13 may also develop a multiregional sustainable communities strategy,
14 to the extent consistent with federal law, or an alternative planning
15 strategy for adoption by the metropolitan planning organizations.
16 Each participating metropolitan planning organization shall
17 consider any adopted multiregional goals and policies in the
18 development of a sustainable communities strategy and, if
19 applicable, an alternative planning strategy for its region.

20 (3) An action element that describes the programs and actions
21 necessary to implement the plan and assigns implementation
22 responsibilities. The action element may describe all transportation
23 projects proposed for development during the 20-year or greater
24 life of the plan. The action element shall consider congestion
25 management programming activities carried out within the region.

26 (4) (A) A financial element that summarizes the cost of plan
27 implementation constrained by a realistic projection of available
28 revenues. The financial element shall also contain
29 recommendations for allocation of funds. A county transportation
30 commission created pursuant to the County Transportation
31 Commissions Act (Division 12 (commencing with Section 130000)
32 of the Public Utilities Code) shall be responsible for recommending
33 projects to be funded with regional improvement funds, if the
34 project is consistent with the regional transportation plan. The first
35 five years of the financial element shall be based on the five-year
36 estimate of funds developed pursuant to Section 14524. The
37 financial element may recommend the development of specified
38 new sources of revenue, consistent with the policy element and
39 action element.

1 (B) The financial element of transportation planning agencies
2 with populations that exceed 200,000 persons may include a project
3 cost breakdown for all projects proposed for development during
4 the 20-year life of the plan that includes total expenditures and
5 related percentages of total expenditures for all of the following:

- 6 (i) State highway expansion.
- 7 (ii) State highway rehabilitation, maintenance, and operations.
- 8 (iii) Local road and street expansion.
- 9 (iv) Local road and street rehabilitation, maintenance, and
10 operation.
- 11 (v) Mass transit, commuter rail, and intercity rail expansion.
- 12 (vi) Mass transit, commuter rail, and intercity rail rehabilitation,
13 maintenance, and operations.
- 14 (vii) Pedestrian and bicycle facilities.
- 15 (viii) Environmental enhancements and mitigation.
- 16 (ix) Research and planning.
- 17 (x) Other categories.

18 (C) The metropolitan planning organization or county
19 transportation agency, whichever entity is appropriate, shall
20 consider financial incentives for cities and counties that have
21 resource areas or farmland, as defined in Section 65080.01, for
22 the purposes of, for example, transportation investments for the
23 preservation and safety of the city street or county road system
24 and farm-to-market and interconnectivity transportation needs.
25 The metropolitan planning organization or county transportation
26 agency, whichever entity is appropriate, shall also consider
27 financial assistance for counties to address countywide service
28 responsibilities in counties that contribute toward the greenhouse
29 gas emission *and vehicle miles traveled* reduction targets by
30 implementing policies for growth to occur within their cities.

31 (c) Each transportation planning agency may also include other
32 factors of local significance as an element of the regional
33 transportation plan, including, but not limited to, issues of mobility
34 for specific sectors of the community, including, but not limited
35 to, senior citizens.

36 (d) (1) Except as otherwise provided in this subdivision, each
37 transportation planning agency shall adopt and submit, every four
38 years, an updated regional transportation plan to the California
39 Transportation Commission and the Department of Transportation.
40 A transportation planning agency located in a federally designated

1 air quality attainment area or that does not contain an urbanized
2 area may at its option adopt and submit a regional transportation
3 plan every five years. When applicable, the plan shall be consistent
4 with federal planning and programming requirements and shall
5 conform to the regional transportation plan guidelines adopted by
6 the California Transportation Commission. Before adoption of the
7 regional transportation plan, a public hearing shall be held after
8 the giving of notice of the hearing by publication in the affected
9 county or counties pursuant to Section 6061.

10 (2) (A) Notwithstanding subdivisions (b) and (c), and paragraph
11 (1), inclusive, the regional transportation plan, sustainable
12 communities strategy, and environmental impact report adopted
13 by the San Diego Association of Governments on October 9, 2015,
14 shall remain in effect for all purposes, including for purposes of
15 consistency determinations and funding eligibility for the San
16 Diego Association of Governments and all other agencies relying
17 on those documents, until the San Diego Association of
18 Governments adopts its next update to its regional transportation
19 plan.

20 (B) The San Diego Association of Governments shall adopt and
21 submit its update to the 2015 regional transportation plan on or
22 before December 31, 2021.

23 (C) After the update described in subparagraph (B), the time
24 period for San Diego Association of Governments' updates to its
25 regional transportation plan shall be reset and shall be adopted and
26 submitted every four years.

27 (D) Notwithstanding clause (iv) of subparagraph (A) of
28 paragraph (2) of subdivision (b), the State Air Resources Board
29 shall not update the greenhouse gas emission reduction targets for
30 the region within the jurisdiction of the San Diego Association of
31 Governments before the adoption of the update to the regional
32 transportation plan pursuant to subparagraph (B).

33 (E) The update to the regional transportation plan adopted by
34 the San Diego Association of Governments on October 9, 2015,
35 which will be prepared and submitted to federal agencies for
36 purposes of compliance with federal laws applicable to regional
37 transportation plans and air quality conformity and which is due
38 in October 2019, shall not be considered a regional transportation
39 plan pursuant to this section and shall not constitute a project for
40 purposes of the California Environmental Quality Act (Division

1 13 (commencing with Section 21000) of the Public Resources
2 Code).

3 (F) In addition to meeting the other requirements to nominate
4 a project for funding through the Solutions for Congested Corridors
5 Program (Chapter 8.5 (commencing with Section 2390) of Division
6 3 of the Streets and Highways Code), the San Diego Association
7 of Governments, until December 31, 2021, shall only nominate
8 projects for funding through the Solutions for Congested Corridors
9 Program that are consistent with the eligibility requirements for
10 projects under any of the following programs:

11 (i) The Transit and Intercity Rail Capital Program (Part 2
12 (commencing with Section 75220) of Division 44 of the Public
13 Resources Code).

14 (ii) The Low Carbon Transit Operations Program (Part 3
15 (commencing with Section 75230) of Division 44 of the Public
16 Resources Code).

17 (iii) The Active Transportation Program (Chapter 8
18 (commencing with Section 2380) of Division 3 of the Streets and
19 Highways Code).

20 (G) Commencing January 1, 2020, and every two years
21 thereafter, the San Diego Association of Governments shall begin
22 developing an implementation report that tracks the implementation
23 of its most recently adopted sustainable communities strategy. The
24 report shall discuss the status of the implementation of the strategy
25 at the regional and local level, and any successes and barriers that
26 have occurred since the last report. The San Diego Association of
27 Governments shall submit the implementation report to the state
28 board by including it in its sustainable communities strategy
29 implementation review pursuant to clause (ii) of subparagraph (J)
30 of paragraph (2) of subdivision (b).

31 (e) This section shall become operative on January 1, 2023.

32 SEC. 3. If the Commission on State Mandates determines that
33 this act contains costs mandated by the state, reimbursement to
34 local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.



Connecting us.

February 24, 2021

The Honorable Gavin Newsom
Governor, State of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: Transit is Essential to Reopening of Schools – Prioritize Frontline Transit Workers in Vaccine Distribution Plan

Governor Gavin Newsom:

On behalf of the California Transit Association, I write to you today to request that your administration amend [current guidance from the California Department of Public Health](#) to clarify that frontline transit workers are eligible for priority access to the COVID-19 vaccine alongside other transportation professionals in the education and childcare sector. The Association represents 85 transit and rail agencies statewide. Currently, the guidance includes for priority access to the vaccine “[a]ny other workers involved in child and/or student care, including school bus drivers and monitors, crosswalk guards, etc.” Without this amendment, frontline transit workers would continue to be ineligible for priority access to the vaccine under the state’s current vaccine distribution plan.

As we communicated to you in our letter dated January 25, since the start of the pandemic, California’s public transit agencies have transported essential workers to their jobs in health care, education, food service and hospitality. Survey data has found that these essential workers cannot work from home and are overwhelmingly people of color and/or low-income, tracking closely with the findings of the ridership surveys our members have throughout the pandemic, which also show that many of today’s riders lack access to a personal automobile. Additionally, public transit agencies have continued to provide critical services, like paratransit service, to seniors and people with disabilities across California, often serving as a lifeline to grocery stores, doctor’s appointments, pharmacies, and recreation. In recent weeks, California’s public transit agencies have also stepped up to provide mobility options to mass vaccination sites, ensuring that communities that have been hardest hit by the pandemic have physical access to these locations and directly advancing your focus on an equitable distribution of the vaccine.

We maintain that, due to their contributions to California during the pandemic and their risk of exposure to the virus, all frontline transit workers deserve priority access to the COVID-19 vaccine, like workers in the healthcare, food and agriculture, education and childcare, and emergency services sector. As we continue to pursue this larger goal with you, we ask that your administration take steps today to ensure that, at the very least, the frontline transit workers that

are called on to support the reopening of schools and the transportation of students are protected from avoidable illness by receiving priority access to the vaccine. We believe fully that there is pathway to achieve this goal – guidance from the California Department of Public Health already identifies “*school bus drivers*” in the list of professions related to the education and childcare sector that will receive priority access to the vaccine. We urge you to amend the guidance to include frontline transit workers in the list. In raising this request to you, I will again communicate that our workers, at public transit agencies statewide, provide millions of trips to students each year.

A snapshot of the number of trips provided and/or breadth of school service is below:

- **Alameda-Contra Costa Transit District** – 1.8 million boardings/year (K-12 students)
- **Long Beach Transit** – 400,000 boardings/year (K-12 students)
- **Omnitrans** – 1.02 million boardings/year (K-12 Students)
- **Orange County Transportation Authority** – 3.7 million boardings/year (K-12 students)
- **San Mateo County Transit District** – 2.4 million boardings/year (K-12 students)
- **San Diego Metropolitan Transit System** – 7.7 million boardings/year (K-12 students)
- **San Francisco Municipal Transportation Agency** – Every middle school and high school in the San Francisco Unified School District is served by at least one Muni route
- **Santa Clara Valley Transportation Authority** – 2.32 million boardings/year (K-12 students)
- **Santa Cruz Metropolitan Transit District** – 484,000 boardings/year (K-12 students)
- **Santa Monica’s Big Blue Bus** – 350,000 boardings/year (K-12 students)

Information, covering additional transit agencies as well as student ridership for college, university and community college students, can be provided to you at your request.

I thank you for your consideration. If you have any questions about this letter, please contact me directly at michael@caltransit.org or at 916-446-4656 x1034.

Sincerely,



Michael Pimentel
Executive Director

cc: Members and Staff, California State Legislature
Nadine Burke, MD, MPH, Surgeon General, State of California
Erica S. Pan, MD, MPH, Acting State Public Health Officer, Department of Public Health
David Kim, Secretary, California State Transportation Agency
Members, Vaccine Drafting Guidelines Workgroup, California Department of Public Health
Members, Community Advisory Vaccine Committee, California Department of Public Health



Orange County Transportation Authority Legislative Matrix

2021 State Legislation Session
March 18, 2021

BILL NO. / AUTHOR	COMMENTARY	STATUS	OCTA POSITION / OTHER AGENCY POSITIONS
BILLS WITH POSITIONS			
► AB 1499 (Daly – D) Transportation: Design-Build: Highways	Extends statewide design-build authority related to the state highway system indefinitely.	INTRODUCED: 02/19/2021 LOCATION: Assembly STATUS: 02/19/2021 INTRODUCED.	Staff Recommends: Support Support: Self-Help Counties Coalition (co- sponsor), Professional Engineers in California Government (co-sponsor)

BILL NO. / AUTHOR	COMMENTARY	STATUS	OCTA POSITION / OTHER AGENCY POSITIONS
<p>► SB 261 (Allen – D) Regional Transportation Plans: Sustainable Communities</p>	<p>Requires that the sustainable communities strategy be developed to additionally achieve greenhouse gas emission reduction targets for the automobile and light truck sector for 2045 and 2050 and vehicle miles traveled reduction targets for 2035, 2045, and 2050 established by the California Air Resources Board.</p>	<p>INTRODUCED: 01/27/2021 LAST AMEND: 04/11/2019 LOCATION: Senate Environmental Quality Committee</p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with</p> <p>02/22/2021 In SENATE. Joint Rule 55 suspended.</p>	<p>Staff Recommends: OPPOSE UNLESS AMENDED</p>

BILLS BEING MONITORED

AB 5	<p>AUTHOR: Fong [R] TITLE: Greenhouse Gas Reduction Fund: High Speed Rail INTRODUCED: 12/07/2020 LOCATION: Assembly Transportation Committee SUMMARY: Suspends the appropriation to the High-Speed Rail Authority for the 2021-22 and 2022-23 fiscal years and requires the transfer of those amounts from moneys collected by the State Air Resources Board to the General Fund. Specifies that the transferred amounts shall be available to support K-12 education and to offset any funding reduction for K-12 education. STATUS: 01/11/2021 To ASSEMBLY Committees on TRANSPORTATION and NATURAL RESOURCES. CATEGORY: Rail and Transit</p>
AB 11	<p>AUTHOR: Ward [D] TITLE: Climate Change: Regional Coordinating Groups INTRODUCED: 12/07/2020 LAST AMEND: 01/21/2021 LOCATION: Assembly Natural Resources Committee SUMMARY: Requires the Strategic Growth Council to establish up to 12 regional climate change coordinating groups to develop and work on climate adaptation for their communities. Authorizes the regional climate change coordinating groups to engage in certain activities to address climate change. Requires the regional climate change authorities to annually submit to the council a report on their activities. STATUS: 01/21/2021 From ASSEMBLY Committee on NATURAL RESOURCES with author's amendments. 01/21/2021 In ASSEMBLY. Read second time and amended. Re-referred to Committee on NATURAL RESOURCES. CATEGORY: Environment</p>
AB 29	<p>AUTHOR: Cooper [D] TITLE: State Bodies: Meetings INTRODUCED: 12/07/2020 LOCATION: Assembly Governmental Organization Committee SUMMARY: Requires that the notice of a meeting of a state body include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body that are in connection with a matter subject of discussion or consideration at the meeting. STATUS: 01/11/2021 To ASSEMBLY Committee on GOVERNMENTAL ORGANIZATION. CATEGORY: Miscellaneous</p>

AB 43	AUTHOR: Friedman [D] TITLE: Traffic Safety INTRODUCED: 12/07/2020 LOCATION: Assembly Transportation Committee SUMMARY: <p>Requires the California Department of Transportation to convene a committee of external design experts to advise on revisions to the Highway Design Manual. Requires the California Traffic Safety Program to include a traffic safety monitoring program that identifies and addresses locations with pedestrian- and bicyclist-related crashes, upon appropriation of state funds for this purpose.</p> STATUS: 01/11/2021 To ASSEMBLY Committee on TRANSPORTATION. CATEGORY: Planning
AB 50	AUTHOR: Boerner Horvath [D] TITLE: Climate Adaptation Center and Regional Support Network INTRODUCED: 12/07/2020 LOCATION: Assembly Natural Resources Committee SUMMARY: <p>Establishes the Climate Adaptation Center and Regional Support Network in the Ocean Protection Council to provide local governments facing sea level rise challenges with information and scientific expertise necessary to proceed with sea level rise mitigation.</p> STATUS: 01/11/2021 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Environment
AB 51	AUTHOR: Quirk [D] TITLE: Regional Climate Adaptation Planning Groups INTRODUCED: 12/07/2020 LOCATION: Assembly Natural Resources Committee SUMMARY: <p>Requires the Strategic Growth Council, by July 1, 2022, to establish guidelines for the formation of regional climate adaptation planning groups. Requires the council, by July 1, 2023, and in consultation with certain state entities, to develop criteria for the development of regional climate adaptation plans.</p> STATUS: 01/11/2021 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Planning

AB 67	AUTHOR: Petrie-Norris [D] TITLE: Sea Level Rise: Working Group: Economic Analysis INTRODUCED: 12/07/2020 LOCATION: Assembly Natural Resources Committee SUMMARY: <p>Requires a state agency to take into account the current and future impacts of sea level rise when planning, designing, building, operating, maintaining, and investing in infrastructure located in the coastal zone or otherwise vulnerable to flooding from sea level rise or storm surges, or when otherwise approving the allocation of state funds for those purposes.</p> STATUS: 01/11/2021 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Environment
AB 72	AUTHOR: Petrie-Norris [D] TITLE: Environmental Protection: Coastal Adaptation Projects INTRODUCED: 12/07/2020 LOCATION: Assembly Natural Resources Committee SUMMARY: <p>Enacts the Coastal Adaptation Permitting Act of 2021. Requires the Natural Resources Agency to explore, and authorize it to implement, options within the agency's jurisdiction to establish a more coordinated and efficient regulatory review and permitting process for coastal adaptation projects.</p> STATUS: 01/11/2021 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Environment
AB 95	AUTHOR: Low [D] TITLE: Employees: Bereavement Leave INTRODUCED: 12/07/2020 LOCATION: Assembly Labor and Employment Committee SUMMARY: <p>Enacts the Bereavement Leave Act of 2021. Requires an employer with 25 or more employees to grant an employee up to 10 business days of unpaid bereavement leave upon the death of a spouse, child, parent, sibling, grandparent, grandchild, or domestic partner, in accordance with certain procedures, and subject to certain exclusions. Requires an employer with fewer than 25 employees to grant up to 3 business days of leave.</p> STATUS: 01/11/2021 To ASSEMBLY Committee on LABOR AND EMPLOYMENT. CATEGORY: Employment Terms & Conditions

AB 96	AUTHOR: O'Donnell [D] TITLE: Clean Truck, Bus, and Off-Road Vehicle and Technology INTRODUCED: 12/07/2020 LOCATION: Assembly Transportation Committee SUMMARY: Extends the requirement that 20 percent of funding be made available to support early commercial deployment of existing zero- and near-zero-emission heavy-duty truck technology until December 31, 2026. The bill would further require at least 20 percent of that funding support early commercial deployment of existing near-zero-emission heavy-duty truck technology. STATUS: 01/11/2021 To ASSEMBLY Committees on TRANSPORTATION and NATURAL RESOURCES. CATEGORY: Funding
AB 108	AUTHOR: Cunningham [R] TITLE: Governor's Emergency Orders and Regulations: Approval INTRODUCED: 12/16/2020 LOCATION: Assembly Emergency Management Committee SUMMARY: Permits an order or regulation, or an amendment or rescission thereof, issued pursuant to specified California Emergency Services Act provisions 60 or more days after the proclamation, to take effect only if approved by a concurrent resolution of the Legislature. STATUS: 01/11/2021 To ASSEMBLY Committee on EMERGENCY MANAGEMENT. CATEGORY: Emergency Service Response
AB 111	AUTHOR: Boerner Horvath [D] TITLE: San Diego Association of Governments: LOSSAN Rail INTRODUCED: 12/17/2020 LOCATION: Assembly Transportation Committee SUMMARY: Appropriates \$5 million from the General Fund to the San Diego Association of Governments to conduct a study of higher speed and safety alternatives for the Los Angeles-San Diego-San Luis Obispo passenger rail corridor in the County of San Diego. Requires the San Diego Association of Governments to conduct the study, and requires the San Diego Association of Governments to submit a report to the Legislature and specified committees of the Legislature summarizing the results of the study. STATUS: 01/11/2021 To ASSEMBLY Committee on TRANSPORTATION. CATEGORY: Rail and Transit

AB 117	AUTHOR: Boerner Horvath [D] TITLE: Air Quality Improvement Program: Electric Bicycles INTRODUCED: 12/18/2020 LOCATION: Assembly Transportation Committee SUMMARY: <p>Specifies projects providing incentives for purchasing electric bicycles as projects eligible for funding under the Air Quality Improvement Program. Requires the State Air Resources Board, by July 1, 2022, to establish and implement and administer, until January 1, 2028, the Electric Bicycle Rebate Pilot Project to provide rebates for purchases of electric bicycles.</p> STATUS: 01/11/2021 To ASSEMBLY Committees on TRANSPORTATION and NATURAL RESOURCES. CATEGORY: Funding
AB 123	AUTHOR: Gonzalez [D] TITLE: Paid Family Leave: Weekly Benefit Amount INTRODUCED: 12/18/2020 LOCATION: Assembly Insurance Committee SUMMARY: <p>Revises the formula for determining benefits available pursuant to the family temporary disability insurance program, for periods of disability commencing after January 1, 2022, by redefining the weekly benefit amount to be equal to 90 percent of the wages paid to an individual for employment by employers during the quarter of the individual's disability base period in which these wages were highest, divided by 13, but not exceeding the maximum workers' compensation disability indemnity weekly benefit amount.</p> STATUS: 01/11/2021 To ASSEMBLY Committee on INSURANCE. CATEGORY: Employment Terms & Conditions
► AB 237	AUTHOR: Gray [D] TITLE: Public Employment: Unfair Practices: Health Protection INTRODUCED: 01/12/2021 LAST AMEND: 03/01/2021 LOCATION: Assembly Public Employment and Retirement Committee SUMMARY: <p>Makes it an unfair practice for a covered employer, as defined, to fail or refuse to maintain or pay for continued health care or other medical coverage for an enrolled employee or their enrolled dependents, for the duration of the enrolled employee's participation in the authorized strike, at the level and under the conditions that coverage would have been provided if the employee had continued to work in their position for the duration of the strike.</p> STATUS: 03/01/2021 From ASSEMBLY Committee on PUBLIC EMPLOYMENT AND RETIREMENT With author's amendments. 03/01/2021 In ASSEMBLY. Read second time and amended. Re-referred to Committee on PUBLIC EMPLOYMENT AND RETIREMENT. CATEGORY: Employment Terms & Conditions

AB 261	AUTHOR: Seyarto [R] TITLE: Authorized Emergency Vehicles INTRODUCED: 01/15/2021 LOCATION: Assembly Transportation Committee SUMMARY: Permits an authorized emergency vehicle to operate on an HOV lane if specified conditions are met, including, among others, that the vehicle is being driven while responding to, or returning from, an urgent or emergency call and the driver of the vehicle determines that the use of the HOV lane will likely improve the arrival time of the authorized emergency vehicle and its delivery of essential public safety services. STATUS: 01/28/2021 To ASSEMBLY Committee on TRANSPORTATION. CATEGORY: Planning
AB 273	AUTHOR: Irwin [D] TITLE: Cannabis: Advertisements: Highways INTRODUCED: 01/19/2021 LOCATION: Assembly Business and Professions Committee SUMMARY: Relates to highway advertisements for cannabis. Prohibits a licensee from advertising or marketing on a billboard or similar advertising device visible from an interstate highway or on a State highway within California. STATUS: 01/28/2021 To ASSEMBLY Committee on BUSINESS AND PROFESSIONS. CATEGORY: Miscellaneous
AB 284	AUTHOR: Rivas, R. [D] TITLE: Global Warming Solutions Act of 2006: Climate Goal INTRODUCED: 01/21/2021 LOCATION: Assembly Natural Resources Committee SUMMARY: Requires the State Air Resources Board, when updating the scoping plan and in collaboration with the Natural Resources Agency and other relevant state agencies and departments, to take specified actions by a certain date, including, among others, identifying a 2045 climate goal, with interim milestones, for the state's natural and working lands. STATUS: 01/28/2021 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Environment

AB 294	AUTHOR: Santiago [D] TITLE: Vehicle Tow and Storage Act INTRODUCED: 01/21/2021 LOCATION: Assembly Transportation Committee SUMMARY: Establishes the Vehicle Towing and Storage Board in the Department of Consumer Affairs and would empower the board to, among other things, regulate and resolve disputes involving vehicle towing businesses. Requires the board to maintain a public database on its internet website on vehicle towing businesses. Requires a business to obtain a Vehicle Tow and Storage Permit and pay an annual fee before operating a tow truck or tow vehicle in California. STATUS: 01/28/2021 To ASSEMBLY Committees on TRANSPORTATION and BUSINESS AND PROFESSIONS. CATEGORY: Miscellaneous
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► AB 302	AUTHOR: Ward [D] TITLE: San Diego Metropolitan Transit Development Board INTRODUCED: 01/25/2021 LOCATION: <i>Assembly Local Government Committee</i> SUMMARY: Expands to any city within the County of San Diego the authority of the San Diego Metropolitan Transit Development Board to enter into contracts to license or regulate transportation services and to regulate vehicle safety and driver qualifications for passenger jitney service. STATUS: 02/12/2021 To ASSEMBLY Committee on LOCAL GOVERNMENT. CATEGORY: Rail and Transit
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AB 339	AUTHOR: Lee [D] TITLE: State and Local Government: Open Meetings INTRODUCED: 01/28/2021 LOCATION: Assembly SUMMARY: Requires all meetings of the Legislature, including gatherings using teleconference technology, to include an opportunity for all persons to attend via a call-in option or an internet-based service option that provides closed captioning services and requires both a call-in and an internet-based service option to be provided to the public. Requires all meetings to provide the public with an opportunity to comment on proposed legislation, and requires translation services to be provided, as specified. STATUS: 01/28/2021 INTRODUCED. CATEGORY: Audits, Records, Reports, and Litigation
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<p>► AB 343</p>	<p>AUTHOR: Fong [R] TITLE: California Public Records Act Ombudsperson INTRODUCED: 01/28/2021 LOCATION: <i>Assembly Accountability and Administrative Review Committee</i> SUMMARY: Establishes, within the California State Auditor's Office, the California Public Records Act Ombudsperson. Requires the California State Auditor to appoint the Ombudsperson subject to certain requirements. Requires the Ombudsperson to receive and investigate requests for review, determine whether the denials of original requests complied with the California Public Records Act, and issue written opinions of its determination. STATUS: 02/12/2021 <i>To ASSEMBLY Committees on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW and JUDICIARY.</i> CATEGORY: Audits, Records, Reports, and Litigation</p>
<p>► AB 346</p>	<p>AUTHOR: Seyarto [R] TITLE: Privacy: Breach INTRODUCED: 01/28/2021 LOCATION: <i>Assembly Privacy and Consumer Protection Committee</i> SUMMARY: Relates to the Information Practices Act which requires an agency, which includes a local agency, that owns or licenses computerized data that includes personal information to disclose expeditiously and without unreasonable delay a breach in the security of the data to a resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Makes this requirement applicable if the information is accessed by an unauthorized person. STATUS: 02/12/2021 <i>To ASSEMBLY Committee on PRIVACY AND CONSUMER PROTECTION.</i> CATEGORY: Miscellaneous</p>
<p>► AB 349</p>	<p>AUTHOR: Holden [D] TITLE: Department of Transportation: Contracting INTRODUCED: 01/28/2021 LOCATION: <i>Assembly Transportation Committee</i> SUMMARY: Clarifies that the Department of Transportation's requirement that it publish a notice of a project on its internet website does not affect the department's authority to use existing resources for outreach efforts for events to promote small business enterprises, including, but not limited to, those owned by women, minorities, disabled veterans, LGBT, and other disadvantaged groups, trainings to improve diversity, and resources for relationship development events. STATUS: 02/12/2021 <i>To ASSEMBLY Committee on TRANSPORTATION.</i> CATEGORY: Miscellaneous</p>

► AB 361	<p>AUTHOR: Rivas, R. [D]</p> <p>TITLE: Open Meetings: Local Agencies: Teleconferences</p> <p>INTRODUCED: 02/01/2021</p> <p>LOCATION: <i>Assembly Local Government Committee</i></p> <p>SUMMARY: Authorizes a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting for the purpose of declaring or ratifying a local emergency, during a declared state or local emergency, when state or local health officials have imposed or recommended measures to promote social distancing, and during a declared local emergency.</p> <p>STATUS: 02/12/2021 <i>To ASSEMBLY Committee on LOCAL GOVERNMENT.</i></p> <p>CATEGORY: <i>Audits, Records, Report, and Litigation</i></p>
► AB 363	<p>AUTHOR: Medina [D]</p> <p>TITLE: Carl Moyer Air Quality Standards Attainment Program</p> <p>INTRODUCED: 02/01/2021</p> <p>LOCATION: <i>Assembly Transportation Committee</i></p> <p>SUMMARY: Relates to the Carl Moyer Memorial Air Quality Standards Attainment Program. Requires the Air Resources Board, by January 1, 2023, to adopt an online application process for the submission of grant applications under the program. Requires the Board and local air districts administering the program to use the online application process. Requires the state board, by January 1, 2023, to review the program and to submit to the Legislature a report on the review.</p> <p>STATUS: 02/12/2021 <i>To ASSEMBLY Committee on TRANSPORTATION.</i></p> <p>CATEGORY: <i>Environment</i></p>
► AB 371	<p>AUTHOR: Jones-Sawyer [D]</p> <p>TITLE: <i>Shared Mobility Devices: Insurance and Tracking</i></p> <p>INTRODUCED: 02/01/2021</p> <p>LOCATION: <i>Assembly Privacy and Consumer Protection Committee</i></p> <p>SUMMARY: <i>Requires a shared mobility service provider to affix to each shared mobility device a tactile sign containing raised characters and accompanying Braille to identify the device for the purpose of tracking and reporting. Specifies that the required insurance for shared mobility providers shall apply to any personal injury or property damage suffered by a pedestrian when the injury involves, in whole or in part, the negligent conduct of the shared mobility device owner or user.</i></p> <p>STATUS: 02/12/2021 <i>To ASSEMBLY Committees on PRIVACY AND CONSUMER PROTECTION and JUDICIARY.</i></p> <p>CATEGORY: <i>Miscellaneous</i></p>

► AB 455	<p>AUTHOR: Bonta [D] TITLE: Bay Bridge Fast Forward Program INTRODUCED: 02/08/2021 LOCATION: Assembly Transportation Committee SUMMARY: <i>Requires the Bay Area Toll Authority, in consultation with the Metropolitan Transportation Commission, Department of Transportation, and certain transit entities, to identify, plan, and deliver a comprehensive set of operational, transit, and infrastructure investments for the San Francisco-Oakland Bay Bridge corridor, which would be known collectively as the Bay Bridge Fast Forward Program.</i> STATUS: 02/18/2021 To ASSEMBLY Committees on TRANSPORTATION and LOCAL GOVERNMENT. CATEGORY: Rail and Transit</p>
► AB 459	<p>AUTHOR: Mathis [R] TITLE: Vehicles: Registration Fees: Exceptions INTRODUCED: 02/08/2021 LOCATION: Assembly Transportation Committee SUMMARY: <i>Extends a prorated discount on vehicle registration fees, as specified, to a partially disabled veteran, as defined.</i> STATUS: 02/18/2021 To ASSEMBLY Committees on TRANSPORTATION and MILITARY AND VETERANS AFFAIRS. CATEGORY: Funding</p>
► AB 512	<p>AUTHOR: Holden [D] TITLE: Surplus Unimproved Property: City of Los Angeles INTRODUCED: 02/09/2021 LOCATION: Assembly Housing and Community Development Committee SUMMARY: <i>Requires the Department of Transportation to offer to sell specified unimproved properties in the City of Los Angeles, City of Pasadena, and City of South Pasadena at the original acquisition price paid by the department to a housing-related entity for affordable housing purposes.</i> STATUS: 02/18/2021 To ASSEMBLY Committee on HOUSING AND COMMUNITY DEVELOPMENT. CATEGORY: Surplus Land</p>
► AB 513	<p>AUTHOR: Bigelow [R] TITLE: Employment: Telecommuting Employees INTRODUCED: 02/09/2021 LOCATION: Assembly Labor and Employment Committee SUMMARY: <i>Authorizes an employee working from home to receive legally required notices and postings electronically and sign certain documents electronically. The bill would also require that a working from home employee's wages due at the time of separation of employment be deemed to have been paid on the date that the wages are mailed to the employee.</i> STATUS: 02/18/2021 To ASSEMBLY Committee on LABOR AND EMPLOYMENT. CATEGORY: Employment Terms & Conditions</p>

<p>► AB 585</p>	<p>AUTHOR: Rivas [D] TITLE: Climate Change: Extreme Heat and Community Resilience INTRODUCED: 02/11/2021 LOCATION: Assembly Natural Resources Committee SUMMARY: <i>Establishes the Extreme Heat and Community Resilience Program to coordinate the state's efforts to address extreme heat and to facilitate the implementation of regional and state climate change planning into effective projects through the awarding of competitive grants to eligible entities for implementation of those projects. Requires the Office of Planning and Research to administer the program. Establishes the Extreme Heat and Community Resilience Fund in the State Treasury.</i> STATUS: 02/18/2021 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Environment</p>
<p>► AB 604</p>	<p>AUTHOR: Daly [D] TITLE: Road Maintenance and Rehabilitation Account INTRODUCED: 02/11/2021 LOCATION: Assembly Transportation Committee SUMMARY: <i>Continuously appropriates interest earnings derived from revenues deposited in the Road Maintenance and Rehabilitation Account to the Department of Transportation for maintenance of the state highway system or for purposes of the State Highway Operation and Protection Program.</i> STATUS: 02/18/2021 To ASSEMBLY Committee on TRANSPORTATION. CATEGORY: Funding</p>
<p>► AB 654</p>	<p>AUTHOR: Reyes [D] TITLE: COVID-19: Exposure: Notification INTRODUCED: 02/12/2021 LOCATION: Assembly Labor and Employment Committee SUMMARY: <i>Requires the State Department of Public Health to make workplace and industry information received from local public health departments available on its internet website in a manner that, among other things, allows the public to track the number of COVID-19 cases and outbreaks by both workplace and industry.</i> STATUS: 02/25/2021 To ASSEMBLY Committee on LABOR AND EMPLOYMENT. CATEGORY: Employment Terms & Conditions</p>

► AB 660	<p>AUTHOR: Cooper [D]</p> <p>TITLE: Dept. of Motor Vehicles: Records: Pull-Notice System</p> <p>INTRODUCED: 02/12/2021</p> <p>LOCATION: Assembly Communications and Conveyance Committee</p> <p>SUMMARY: <i>Relates to existing law which requires an employer of a driver of certain vehicles to obtain a report from DMV that shows the driver's current record. Expands the applicability of these provisions, including the pull-notice system, to include drivers of vehicles operated in the service of a delivery network company, a transportation network company, a charter-party carrier, as defined, or operated for compensation in fulfillment of deliveries.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committees on COMMUNICATIONS AND CONVEYANCE and TRANSPORTATION.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► AB 680	<p>AUTHOR: Burke [D]</p> <p>TITLE: Greenhouse Gas Reduction Fund: Just Transition Act</p> <p>INTRODUCED: 02/12/2021</p> <p>LOCATION: Assembly Labor and Employment Committee</p> <p>SUMMARY: <i>Enacts the California Just Transition Act, which would require the Labor and Workforce Development Agency to work with the State Air Resources Board to update, by July 1, 2023, the funding guidelines for administering agencies to ensure that all applicants to grant programs funded by the Greenhouse Gas Reduction Fund meet specified standards, including fair and responsible employer standards and inclusive procurement policies.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committees on LABOR AND EMPLOYMENT and NATURAL RESOURCES.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► AB 703	<p>AUTHOR: Rubio [D]</p> <p>TITLE: Open Meetings: Local Agencies: Teleconferences</p> <p>INTRODUCED: 02/12/2021</p> <p>LOCATION: Assembly Labor and Employment Committee</p> <p>SUMMARY: <i>Removes the requirements of the Ralph M. Brown Act particular to teleconferencing and allows for teleconferencing subject to existing provisions regarding the posting of notice of an agenda and the ability of the public to observe the meeting and provide public comment.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on LOCAL GOVERNMENT.</p> <p>CATEGORY: Public Meetings</p>
► AB 712	<p>AUTHOR: Calderon [D]</p> <p>TITLE: Local Agency Public Construction Act: Change Orders</p> <p>INTRODUCED: 02/12/2021</p> <p>LOCATION: Assembly Local Government Committee</p> <p>SUMMARY: <i>Relates to the Local Agency Public Construction Act change orders. Authorizes the board of supervisors and the board of directors of a district, as applicable, at the time the board delegates authority under a contract, to implement appropriate measures to prevent fraud and ensure accountability for that delegated authority.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on LOCAL GOVERNMENT.</p> <p>CATEGORY: Public Works</p>

► AB 761	<p>AUTHOR: Chen [R]</p> <p>TITLE: County Employees' Retirement: Personnel: Orange County</p> <p>INTRODUCED: 02/16/2021</p> <p>LOCATION: Assembly Public Employment and Retirement Committee</p> <p>SUMMARY: <i>Authorizes the board of retirement for Orange County to appoint an administrator, assistant administrators, a chief investment officer, subordinate investment officers, senior management employees, legal counsel, and other specified employees. Provides that the personnel appointed pursuant to these provisions would not be county employees subject to county civil service and merit system rules, and instead would be employees of the retirement system.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on PUBLIC EMPLOYMENT AND RETIREMENT.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► AB 786	<p>AUTHOR: Cervantes [D]</p> <p>TITLE: California Transportation Commission: Director</p> <p>INTRODUCED: 02/16/2021</p> <p>LOCATION: Assembly Transportation Committee</p> <p>SUMMARY: <i>Requires the Executive Director of the California Transportation Commission to be appointed by the Governor, subject to confirmation by the Senate, and subject to removal at the discretion of the Governor.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on TRANSPORTATION.</p> <p>CATEGORY: Miscellaneous</p>
► AB 811	<p>AUTHOR: Rivas [D]</p> <p>TITLE: LA County Metropolitan Transportation Authority</p> <p>INTRODUCED: 02/16/2021</p> <p>LOCATION: Assembly Local Government Committee</p> <p>SUMMARY: <i>Relates to existing law which authorizes the Los Angeles County Metropolitan Transportation Authority to award a contract after a finding, by a 2/3 vote of the members of the authority, that awarding the contract will achieve for the authority, among other things, certain private sector efficiencies in the integration of design, project work, and components. Eliminates the requirement to make the finding by a 2/3 vote of the members of the authority in order to award contracts under these provisions.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committees on LOCAL GOVERNMENT and TRANSPORTATION.</p> <p>CATEGORY: Public Works</p>

► AB 819	<p>AUTHOR: Levine [D]</p> <p>TITLE: Environmental Quality Act: Notices and Documents</p> <p>INTRODUCED: 02/16/2021</p> <p>LOCATION: Assembly Natural Resources Committee</p> <p>SUMMARY:</p> <p><i>Requires the lead agency under CEQA and the project applicant to post notices to persons who have filed a written request for notices on their internet website. Requires a lead agency to submit to the State Clearinghouse, in electronic form, specified environmental review documents for all projects and would require the lead agency and project applicant to post those documents on their internet website.</i></p> <p>STATUS:</p> <p>02/25/2021 To ASSEMBLY Committee on NATURAL RESOURCES.</p> <p>CATEGORY: Environment</p>
► AB 823	<p>AUTHOR: Gray [D]</p> <p>TITLE: High-Speed Rail Authority: Combustion Engines</p> <p>INTRODUCED: 02/16/2021</p> <p>LOCATION: Assembly Transportation Committee</p> <p>SUMMARY:</p> <p><i>Prohibits the High-Speed Rail Authority from directly or indirectly using local, state, federal, or any other public or private funding to purchase, lease, operate, or maintain a passenger or freight train powered by a diesel engine or other type of fossil fuel combustion engine, and from enabling such a train to operate on authority-owned rail infrastructure designed for speeds in excess of 125 miles per hour, except as specified.</i></p> <p>STATUS:</p> <p>02/25/2021 To ASSEMBLY Committee on TRANSPORTATION.</p> <p>CATEGORY: Rail and Transit</p>
► AB 833	<p>AUTHOR: Quirk-Silva [D]</p> <p>TITLE: State Government: Grants: Administrative Costs</p> <p>INTRODUCED: 02/16/2021</p> <p>LOCATION: Assembly Accountability and Administrative Review Committee</p> <p>SUMMARY:</p> <p><i>Requires any state grants to a local government to include a maximum allocation of funds that may be expended for administrative costs, as defined, and would prohibit a local government from expending more than 5 percent of grant funds for administrative costs, except as provided. Specifies that it is not intended to affect federal funding.</i></p> <p>STATUS:</p> <p>02/25/2021 To ASSEMBLY Committee on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.</p> <p>CATEGORY: Planning</p>

► AB 845	<p>AUTHOR: Rodriguez [D]</p> <p>TITLE: Disability Retirement: COVID-19: Presumption</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Public Employment and Retirement Committee</p> <p>SUMMARY: Creates a presumption, applicable to the retirement systems that the Public Employees' Pension Reform Act of 2013 (PEPRA) regulates and to specified members in those systems, that would be applied to disability retirements on the basis, in whole or in part, of a Coronavirus 2019-related illness. Requires, in this circumstance, that it be presumed the disability arose out of, or in the course of, the member's employment.</p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on PUBLIC EMPLOYMENT AND RETIREMENT.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► AB 859	<p>AUTHOR: Irwin [D]</p> <p>TITLE: Mobility Devices: Personal Information</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Privacy and Consumer Protection Committee</p> <p>SUMMARY: Authorizes a public agency, defined as a state or local public entity that issues a permit to an operator for mobility services or that otherwise regulates an operator, to require an operator to periodically submit to the public agency anonymized trip data and the operator's mobility devices operating in the geographic area under the public agency's jurisdiction and provide specified notice of that requirement to the operator.</p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on PRIVACY AND CONSUMER PROTECTION.</p> <p>CATEGORY: Miscellaneous</p>
► AB 878	<p>AUTHOR: Dahle [R]</p> <p>TITLE: Wildlife Resources: Natural Community Conservation Plan</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Water, Parks and Wildlife Committee</p> <p>SUMMARY: Relates to Wildlife resources, natural community conservation plans and public review and comment. Expands the time for public review and comment on a proposed planning agreement from 21 calendar days to 21 business days.</p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on PRIVACY AND CONSUMER PROTECTION.</p> <p>CATEGORY: Planning</p>

► AB 885	<p>AUTHOR: Quirk [D]</p> <p>TITLE: Bagley-Keene Open Meeting Act: Teleconferencing</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Governmental Organization Committee</p> <p>SUMMARY: <i>Requires a state body that elects to conduct a meeting or proceeding by teleconference to make the portion that is required to be open to the public both audibly and visually observable. Extends the above requirements of meetings of multimember advisory bodies that are held by teleconference to meetings of all multimember state bodies.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on GOVERNMENTAL ORGANIZATION.</p> <p>CATEGORY: Public Meetings</p>
► AB 893	<p>AUTHOR: Davies [R]</p> <p>TITLE: Emergency Regulations: Department of Public Health</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Accountability and Administrative Review Committee</p> <p>SUMMARY: <i>Requires the Division of Occupational Safety and Health or the State Department of Public Health, within 14 calendar days of the release of a federal recommendation that conflicts with an emergency regulation related to Coronavirus issued by the division or the department, to review the conflicting emergency regulation and make a determination to either amend the regulation or submit a report to the Legislature on the decision not to amend the regulation, as specified.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.</p> <p>CATEGORY: Emergency Response Services</p>
► AB 897	<p>AUTHOR: Mullin [D]</p> <p>TITLE: Office of Planning and Research: Regional Climate</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Natural Resources Committee</p> <p>SUMMARY: <i>Requires the Office of Planning and Research to provide technical assistance to eligible entities developing regional climate networks and plans. Requires, by July 1, 2022, the Office to make recommendations to certain policy committees of the Legislature on developing state support for the work of regional climate networks, as prescribed, and the potential sources of financial assistance and options for distributing state funds to support the creation and implementation of plans.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on ACCOUNTABILITY AND ADMINISTRATIVE REVIEW.</p> <p>CATEGORY: Environment</p>

<p>► AB 906</p>	<p>AUTHOR: Carrillo [D] TITLE: Zero-Emission Trucks: Tax and Fee Exemptions INTRODUCED: 02/17/2021 LOCATION: Assembly Revenue and Taxation Committee SUMMARY: <i>Exempts from sales and use taxes, on and after January 1, 2022, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, fuel for the operation of a zero-emission medium- or heavy-duty truck that is the subject of a lease entered into after July 1, 2022, with specified characteristics.</i> STATUS: 02/25/2021 To ASSEMBLY Committees on REVENUE AND TAXATION and TRANSPORTATION. CATEGORY: Funding</p>
<p>► AB 908</p>	<p>AUTHOR: Frazier [D] TITLE: Natural Resources Agency: Statewide Natural Resources INTRODUCED: 02/17/2021 LOCATION: Assembly Natural Resources Committee SUMMARY: <i>Requires the Natural Resources Agency, to the extent a specified appropriation is made, to prepare a comprehensive, statewide inventory of the natural resources of the state and establish treatment measures necessary to protect those resources, and to post its initial inventory on its internet website on or before January 1, 2023, with annual updates on or before January 1 of each year thereafter.</i> STATUS: 02/25/2021 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Environment</p>
<p>► AB 909</p>	<p>AUTHOR: Frazier [D] TITLE: Wildfire Risk Assessment Map INTRODUCED: 02/17/2021 LOCATION: Assembly Natural Resources Committee SUMMARY: <i>Requires the Department of Forestry and Fire Protection, in consultation with the California Fire Science Consortium and the Department of Insurance to develop a fire risk assessment map for the state that quantifies the risks of wildfire for a parcel of land for a time span of 50 years. Requires the department to annually update the wildfire risk assessment map.</i> STATUS: 02/25/2021 To ASSEMBLY Committee on NATURAL RESOURCES. CATEGORY: Environment</p>

► AB 917	<p>AUTHOR: Bloom [D]</p> <p>TITLE: Vehicles: Video Imaging of Parking Violations</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Transportation Committee</p> <p>SUMMARY: <i>Extends the authorization to enforce parking violations in specified transit-only traffic lanes through the use of video imaging to any public transit operator in the state. Expands the authorization to enforce parking violations to include violations occurring at transit stops and stations.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committees on TRANSPORTATION and PRIVACY AND CONSUMER PROTECTION.</p> <p>CATEGORY: Rail and Transit</p>
► AB 919	<p>AUTHOR: Grayson [D]</p> <p>TITLE: Construction Defects: Actions: Statute of Limitations</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Judiciary Committee</p> <p>SUMMARY: <i>Shortens the timeframe in which an action may be brought, for underlying construction projects using a skilled and trained workforce, to no more than 5 years after substantial completion of the improvement but no later than the date the notice of completion is recorded.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on JUDICIARY.</p> <p>CATEGORY: Public Works</p>
► AB 926	<p>AUTHOR: Mathis [R]</p> <p>TITLE: Fire Prevention: Local Assistance Grant Program</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Natural Resources Committee</p> <p>SUMMARY: <i>Relates to existing law which requires the Department of Forestry and Fire Protection to establish a local assistance grant program for fire prevention activities in the state. Requires that the eligible activities include, among other things, fire prevention activities. Adds roadside vegetation management and projects to create and increase defensible space for critical infrastructure, as provided, to the eligible activities.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on NATURAL RESOURCES.</p> <p>CATEGORY: Environment</p>

► AB 950	<p>AUTHOR: Ward [D]</p> <p>TITLE: Department of Transportation: Sales of Excess Property</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Assembly Housing and Community Development Committee</p> <p>SUMMARY: <i>Authorizes the Department of Transportation to sell its excess real property to the city, county, or city and county where the real property is located if the city, county, or city and county agrees to use the real property for the sole purpose of implementing affordable housing, as specified. Exempts these transfers and sales from the California Environmental Quality Act.</i></p> <p>STATUS: 02/25/2021 To ASSEMBLY Committee on HOUSING AND COMMUNITY DEVELOPMENT.</p> <p>CATEGORY: Surplus Land</p>
► AB 983	<p>AUTHOR: Garcia [D]</p> <p>TITLE: Public Contracts: Construction Projects: Community Work</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Authorizes a public entity to use, enter into, or require contractors to enter into, a community workforce agreement for specified construction projects, including projects related to renewable energy and installation of emission controls in refineries.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Public Works</p>
► AB 984	<p>AUTHOR: Rivas [D]</p> <p>TITLE: Vehicle Identification and Registration</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Authorizes the use of alternative devices intended to serve in lieu of license plates authorized by the department pursuant to the pilot program, as specified. Requires the Department of Motor Vehicles to establish a program authorizing an entity to issue alternatives to stickers, tabs, license plates, and registration cards under specified conditions that include approval of the alternative devices by the Department of the California Highway Patrol.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>

► AB 992	<p>AUTHOR: Cooley [D]</p> <p>TITLE: Hybrid/Zero-Emission Truck and Bus Voucher Incentive</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Requires the state board to ensure that a person or entity that purchases a hybrid or zero-emission truck or bus for purposes of placing that vehicle on a peer-to-peer truck sharing platform for use by various operators is eligible for financial assistance under the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project established as a part of the Air Quality Improvement Program.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>
► AB 1028	<p>AUTHOR: Seyarto [R]</p> <p>TITLE: Telework Flexibility Act</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Concerns the Telework Flexibility Act. Authorizes any nonexempt employee working from home who is not under the physical control of the employer to choose when to take any meal or rest period during the workday, if the employer has not already scheduled a meal or rest period within the requirements of the law. Requires an employer to notify the employee of this right one time, when the employee begins working from home.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► AB 1035	<p>AUTHOR: Salas [D]</p> <p>TITLE: Transportation: Road Maintenance and Rehabilitation</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Deletes the condition in that requirement imposed on the department and those cities and counties to use advanced technologies and material recycling techniques to the extent possible. Requires those cities and counties to apply standard specifications that allow for the use of recycled materials at or above the level allowed in the Department of Transportations' most recently published standard specifications for recycled base and subbase materials.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>

► AB 1037	<p>AUTHOR: Grayson [D]</p> <p>TITLE: Infrastructure Construction: Digital Construction</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Requires an infrastructure project that receives any state funding to deploy digital construction technologies, as defined, to reduce waste, inefficiency, rework, cost overruns, and embodied carbon, and to improve delivery times and project quality.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>
► AB 1041	<p>AUTHOR: Wicks [D]</p> <p>TITLE: Leave Issues</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Expands the population that an employee can take leave to care for to include any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► AB 1047	<p>AUTHOR: Daly [D]</p> <p>TITLE: Road Repair and Accountability Act of 2017: Reporting</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Requires the Transportation Agency to oversee the development and implementation of a comprehensive one-stop reporting interface available to the public through an internet website maintained by the agency. Requires the interface to provide timely fiscal information regarding the development and implementation status of each transportation program or project funded, at least in part, by revenues from the Road Repair and Accountability Act of 2017.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>
► AB 1049	<p>AUTHOR: Davies [R]</p> <p>TITLE: Public Transportation Account: Loan Repayment</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Provides that the Budget Act of 2013 and the Budget Act of 2014 require the Controller, upon the order of the Director of Finance, to transfer specified amounts totaling up to a specific amount as loans from the Public Transportation Account to the High-Speed Passenger Train Bond Fund. Requires \$54 million from these loans to be repaid to the Public Transportation Account.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>

► AB 1069	<p>AUTHOR: Lackey [R]</p> <p>TITLE: Zero-Emission Passenger Vehicles</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Establishes a goal of the state for 60 percent of new zero-emission passenger vehicles sold in the state for noncommercial private use to be purchased by or on behalf of persons from an underrepresented community. Prohibits the State Air Resources Board from pursuing strategies to implement any goal for zero-emission passenger vehicle sales established by statute or executive order unless those strategies are also designed to achieve the goal established by this bill simultaneously.</i></p> <p>STATUS:</p> <p>02/18/2021 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>
► AB 1074	<p>AUTHOR: Gonzalez [D]</p> <p>TITLE: Employment: Rehiring and Retention: Displaced Workers</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Requires an employer to offer its laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with specified timelines and procedures. Prohibits an employer from refusing to employ, terminating, reducing compensation, or taking other adverse action against any person for seeking to enforce their rights under these provisions.</i></p> <p>STATUS:</p> <p>02/18/2021 INTRODUCED.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► AB 1091	<p>AUTHOR: Berman [D]</p> <p>TITLE: Santa Clara Valley Transportation Authority: Board</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Reforms the governance structure of the Santa Clara Valley Transportation Authority. Reduces the size of the VTA board from 12 voting members to 9 voting members: 5 members appointed by the Santa Clara County Board of Supervisors, 2 members appointed by the City of San Jose, and 2 members appointed by the remaining cities in Santa Clara County.</i></p> <p>STATUS:</p> <p>02/18/2021 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>

► AB 1110	<p>AUTHOR: Rivas [D] TITLE: Zero-Emission Vehicles: Clean Fleet Program INTRODUCED: 02/18/2021 LOCATION: Assembly SUMMARY: <i>Establishes the California Clean Fleet Accelerator Program, administered by the Department of General Services (DGS). Requires the Governor's Office of Business and Economic Development (GO-Biz), in consultation with specified state agencies and regional and local entities, to develop a nonmandatory master service agreement to solicit bids from eligible vendors for standardized, bulk purchase options for the acquisition of zero-emission fleet vehicles by a public agency.</i> STATUS: 02/18/2021 INTRODUCED. CATEGORY: Funding</p>
► AB 1116	<p>AUTHOR: Friedman [D] TITLE: High-Speed Rail Authority: Oversight INTRODUCED: 02/18/2021 LOCATION: Assembly SUMMARY: <i>Requires the Legislative Analyst's Office, for the purpose of reviewing the planning, financing, expenditures, and other elements of the statewide high-speed rail system, to review any materials submitted to the High-Speed Rail Authority and documents the authority requests from contractors, consultants, or external parties, as specified, and to provide recommendations to the policy and budget committees of the Legislature regarding the statewide high-speed rail system.</i> STATUS: 02/18/2021 INTRODUCED. CATEGORY: Rail and Transit</p>
► AB 1147	<p>AUTHOR: Friedman [D] TITLE: Regional Transportation Plan: Electric Bicycles INTRODUCED: 02/18/2021 LOCATION: Assembly SUMMARY: <i>Expressly authorizes transportation planning agencies with a population over 200,000 persons to also use as part of their policy element the percentage share of trips made by bicycling using an electric bicycle.</i> STATUS: 02/18/2021 INTRODUCED. CATEGORY: Planning</p>

► AB 1154	<p>AUTHOR: Patterson [R]</p> <p>TITLE: Environmental Quality Act: Exemption: Egress Route</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Exempts from California Environmental Quality Act egress route projects undertaken by a public agency that are specifically recommended by the State Board of Forestry and Fire Protection that improve the fire safety of an existing subdivision if certain conditions are met. Requires the lead agency to hold a noticed public meeting to hear and respond to public comments before determining that a project is exempt.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Environment</p>
► AB 1157	<p>AUTHOR: Lee [D]</p> <p>TITLE: Local Transportation Funds: Transit Assistance Program</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Relates to existing law which requires local transportation agencies to report to the Controller by specified date of each year the public transportation operators within its jurisdiction that are eligible to claim specified local transportation funds. The bill would instead require local transportation agencies to report this information within 7 months after the end of each fiscal year.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>
► AB 1179	<p>AUTHOR: Carrillo [D]</p> <p>TITLE: Employer Provided Benefit: Backup Childcare</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Requires an employer to provide an employee who works in California for the same employer for 30 or more days within a year from the commencement of employment, with up to 60 hours of paid backup childcare benefits, to be accrued and used as provided. Defines backup childcare as childcare provided by a qualified backup childcare provider to the employee's child when the employee's regular childcare provider cannot be utilized.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Employment Terms & Conditions</p>

► AB 1189	<p>AUTHOR: Bloom [D]</p> <p>TITLE: Transportation: Indirect Cost of Recovery: Wildlife</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Prohibits the Department of Transportation from charging for administration indirect cost recovery, as outlined in the department's Indirect Cost Recovery Proposal, for any wildlife crossing project that receives private funding for more than 50 percent of the project cost, and would require the department to charge these projects for functional overhead.</i></p> <p>STATUS: 02/18/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>
► AB 1209	<p>AUTHOR: McCarty [D]</p> <p>TITLE: Transportation Planning: Green Means Go Grant Program</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Requires the Sacramento Area Council Of Government, upon appropriation by the Legislature, to develop and administer the Green Means Go Grant and Loan Program to award competitive grants and revolving loans to cities, counties, and special districts within the Sacramento region for qualifying projects within and benefitting green zones, as defined.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>
► AB 1218	<p>AUTHOR: McCarty [D]</p> <p>TITLE: Motor Vehicle Greenhouse Gas Emissions Standards</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Declares that, to help achieve the states climate and air quality goals and mandates, it is the goal of the state that 100 percent of new passenger and light-duty vehicle sales are zero-emission vehicles by 2035. Requires, on and after January 1, 2023, total passenger vehicles and light-duty vehicles sold by a manufacturer in the state in a calendar year to meet specified greenhouse gas emissions standards pursuant to a tiered plan.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Environment</p>
► AB 1226	<p>AUTHOR: McCarty [D]</p> <p>TITLE: Capitol Corridor Rail Line: Capital Improvements</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Appropriates an unspecified amount from the General Fund without regard to fiscal years to the Capitol Corridor Joint Powers Authority to invest in capital improvements for the Capitol Corridor.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Rail and Transit</p>

► AB 1235	<p>AUTHOR: Patterson [R]</p> <p>TITLE: High-Speed Rail: Legislative Oversight</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: Creates the Joint Legislative High-Speed Rail Oversight Committee consisting of 3 Members of the Senate and 3 Members of the Assembly to provide ongoing and independent oversight of the high-speed rail project by performing specified duties, and would require the committee to make recommendations to the appropriate standing policy and budget committees of both houses of the Legislature to guide decisions concerning the states programs, policies, and investments related to high-speed rail.</p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Rail and Transit</p>
► AB 1255	<p>AUTHOR: Bloom [D]</p> <p>TITLE: Fire prevention: Department of Forestry</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: Relates to fire prevention. Concerns Department of Forestry and Fire Protection. Concerns grant programs. Requires the department, in coordination with the Secretary of the Natural Resources Agency, to facilitate regional, habitat specific, and area specific approaches to fire risk reduction, prevention, and restoration of projects that improve community safety, protect sites and structures, restore burned habitat, reduce catastrophic wildfires, and protect natural resources.</p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Environment</p>
► AB 1260	<p>AUTHOR: Chen [R]</p> <p>TITLE: California Environmental Quality Act: Exemptions</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: Exempts further from the requirements of CEQA, projects by a public transit agency to construct or maintain infrastructure to charge or refuel zero-emission trains.</p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Environment</p>
► AB 1291	<p>AUTHOR: Frazier [D]</p> <p>TITLE: State Bodies: Open Meetings</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: Requires a state body, when it limits time for public comment, to provide at least twice the allotted time to a member of the public who utilizes translating technology to address the state body.</p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Public Meetings</p>

► AB 1296	<p>AUTHOR: Kamlager [D]</p> <p>TITLE: South Coast Air Quality Management District</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Increases the number of members of the South Coast Air Quality Management District board to 15 members by adding 2 environmental justice appointees, one appointed by the Senate Committee on Rules and one appointed by the Speaker of the Assembly.</i></p> <p>STATUS:</p> <p>02/19/2021 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>
► AB 1312	<p>AUTHOR: Rodriguez [D]</p> <p>TITLE: Vehicular Fuels: Renewable and Clean Hydrogen</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Allows a green hydrogen production facility and distribution credit against the personal income and corporate income taxes for each taxable year to a qualified taxpayer for qualified building or qualified distribution costs. Decreases the credit as the amount of green hydrogen produced on average per day in the state increases and would decrease the hydrogen infrastructure credit as the number of public hydrogen fueling stations in operation in the state increases.</i></p> <p>STATUS:</p> <p>02/19/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>
► AB 1337	<p>AUTHOR: Lee [D]</p> <p>TITLE: Transportation: Transit District Policing</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Provides that a member of a transit district's police department whose primary duty is the enforcement of the law in or about properties, facilities, or vehicles upon which the district owes policing responsibilities to a local government is also a peace officer whose authority extends to any place in the state. Specifies that a person who enters or remains upon any property, facilities, or vehicles upon which the applicable transit entity owes policing responsibilities to a local government pursuant to an operations and maintenance agreement or similar interagency agreement without permission, or whose entry, presence, or conduct upon that property interferes with, interrupts, or hinders the safe and efficient operation of the transit-related facility, is guilty of a misdemeanor.</i></p> <p>STATUS:</p> <p>02/19/2021 INTRODUCED.</p> <p>CATEGORY: Rail and Transit</p>

► AB 1382	<p>AUTHOR: Patterson [R]</p> <p>TITLE: Department of Motor Vehicles: Electronic Transactions</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Requires the Department of Motor Vehicles to establish a virtual field office allowing the electronic completion of transactions that require manual review by the department. Permits the department to allow transactions to be conducted through the virtual field office. Makes conforming changes.</i></p> <p>STATUS:</p> <p>02/19/2021 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>
► AB 1384	<p>AUTHOR: Gabriel [D]</p> <p>TITLE: Resiliency Through Adaptation, Economic Vitality</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Requires the Strategic Growth Council to develop and coordinate a strategic resiliency framework that makes recommendations and identifies actions that are necessary to prepare the state for the most significant climate change impacts modeled for certain years. Requires agencies identified in the framework to coordinate with regional entities and engage vulnerable communities who have been impacted by climate change.</i></p> <p>STATUS:</p> <p>02/19/2021 INTRODUCED.</p> <p>CATEGORY: Environment</p>
► AB 1395	<p>AUTHOR: Muratsuchi [D]</p> <p>TITLE: Greenhouse Gases: Carbon Neutrality</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Declares the policy of the state to achieve carbon neutrality as soon as possible, but no later than 2045, and to achieve and maintain net negative greenhouse gas emissions thereafter. Requires the State Air Resources Board to develop a framework for implementation and accounting that tracks progress toward achieving carbon neutrality.</i></p> <p>STATUS:</p> <p>02/19/2021 INTRODUCED.</p> <p>CATEGORY: Environment</p>
► AB 1401	<p>AUTHOR: Friedman [D]</p> <p>TITLE: Residential And Commercial Development: Parking</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY:</p> <p><i>Relates to residential and commercial development. Relates to parking requirements. Prohibits a local government from imposing a minimum parking requirement, or enforcing a minimum parking requirement, on residential, commercial, or other development if the development is located on a parcel that is within one-half mile walking distance of public transit, as defined, or located within a low-vehicle miles traveled area, as defined.</i></p> <p>STATUS:</p> <p>02/19/2021 INTRODUCED.</p> <p>CATEGORY: Planning</p>

<p>► AB 1408</p>	<p>AUTHOR: Petrie-Norris [D] TITLE: Coastal Resources: Coastal Development Permits INTRODUCED: 02/19/2021 LOCATION: Assembly SUMMARY: <i>Authorizes a city or county, at the request of an applicant for a coastal development permit, to waive or reduce the permit fee for specified projects. Authorizes the applicant, if a city or county rejects a fee waiver or fee reduction request, to submit the coastal development permit application directly to the California Coastal Commission.</i> STATUS: 02/19/2021 INTRODUCED. CATEGORY: Environment</p>
<p>► AB 1447</p>	<p>AUTHOR: Cooley [D] TITLE: Rural California Infrastructure Act INTRODUCED: 02/19/2021 LOCATION: Assembly SUMMARY: <i>Establishes the Rural California Infrastructure Act to award grants to specified local agencies to fund rural infrastructure projects, as defined. Creates the Rural California Infrastructure Committee, consisting of 7 appointed members, to establish, by July 1, 2022, an application process for the grants and to award the grants, beginning on January 1, 2023, and every 2 years thereafter, in accordance with specified priorities.</i> STATUS: 02/19/2021 INTRODUCED. CATEGORY: Miscellaneous</p>
<p>► AB 1453</p>	<p>AUTHOR: Muratsuchi [D] TITLE: Environmental Justice: Just Transition Commission INTRODUCED: 02/19/2021 LOCATION: Assembly SUMMARY: <i>Establishes the Just Transition Advisory Commission, consisting of specified members, in the Labor and Workforce Development Agency and would require the commission, through a public process, to develop and adopt, on or before January 1, 2024, the Just Transition Plan that contains recommendations to transition the state's economy to a climate-resilient and low-carbon economy.</i> STATUS: 02/19/2021 INTRODUCED. CATEGORY: Employment Terms & Conditions</p>

► AB 1463	<p>AUTHOR: O'Donnell [D]</p> <p>TITLE: California Global Warming Solutions Act of 2006</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Requires the State Air Resources Board to recognize as a method to generate credits under the Low Carbon Fuel Standard regulations the use of renewable natural gas or biogas that both displaces the existing use of natural gas and reduces the carbon intensity of fuels.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Environment</p>
► AB 1471	<p>AUTHOR: Villapudua [D]</p> <p>TITLE: Public Utilities Commission</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>States that when selecting and confirming members of the Public Utilities Commission, the Governor and the Senate should consider achieving regional diversity by selecting candidates with a permanent residence in northern California, the central valley, and southern California.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>
► AB 1510	<p>AUTHOR: Garcia [D]</p> <p>TITLE: Unauthorized Workers: Essential Worker</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Relates to unauthorized workers. Requires the Employment Development Department to determine the extent of labor shortages in the state's essential critical infrastructure workforce sectors and provide that information to specified federal government entities. Requires the department to convene a working group to address the issues relating to a work permit program for unauthorized persons who are essential critical infrastructure workforce employees to work and live in the state.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► AB 1523	<p>AUTHOR: Gallagher [D]</p> <p>TITLE: Greenhouse Gases</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Revises the California Global Warming Solutions Act of 2006 by designating the State Air Resources Board with the responsibility of regulating vehicular sources of emissions of greenhouse gases and each district with the responsibility of regulating all sources, other than vehicular sources, of emissions of greenhouse gases within its jurisdiction.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Environment</p>

▶ AB 1539	<p>AUTHOR: Levine [D]</p> <p>TITLE: Transportation Electrification: Electric Vehicle</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Requires that the Electric Vehicle Infrastructure Training Program courses remain available in an online format indefinitely. Requires not later than March 1, 2022, that the Electric Vehicle Infrastructure Training Program offer certification testing in an online format. Requires the Energy Commission to periodically review the reasonableness of the fees or charges assessed by the Electric Vehicle Infrastructure Training Program and set the fees or charges accordingly.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>
ACA 1	<p>AUTHOR: Aguiar-Curry [D]</p> <p>TITLE: Local Government Financing: Affordable Housing</p> <p>INTRODUCED: 12/07/2020</p> <p>LOCATION: Assembly</p> <p>SUMMARY: Creates an additional exception to the 1 percent ad valorem tax rate limit on real property that would authorize a city, county, or special district to levy an ad valorem tax to service bonded indebtedness incurred to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing, if the proposition proposing the tax is approved by 55 percent of the voters of the city or county, and the proposition includes accountability requirements.</p> <p>STATUS: 12/07/2020 INTRODUCED.</p> <p>CATEGORY: Miscellaneous</p>
▶ ACA 5	<p>AUTHOR: Voepel [D]</p> <p>TITLE: Motor Vehicles: Fuel Taxes, Sales and Use Taxes</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Assembly</p> <p>SUMMARY: <i>Relates to motor vehicle fuel taxes. Restricts the expenditure of all interest earned and other increment derived from the investment of those tax revenues and any proceeds from the lease or sale of real property acquired. Require the transfer and restrict the expenditure of revenues from taxes imposed by the state on motor fuels that are attributable.</i></p> <p>STATUS: 02/19/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>

► SB 10	<p>AUTHOR: Wiener [D]</p> <p>TITLE: Planning and Zoning: Housing Development: Density</p> <p>INTRODUCED: 12/07/2020</p> <p>LAST AMEND: 02/24/2021</p> <p>LOCATION: Senate Housing Committee</p> <p>SUMMARY: Authorizes a local government to pass an ordinance to zone any parcel for up to 10 units of residential density per parcel, at a height specified in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, as those terms are defined. Requires the Department of Housing and Community Development to determine jobs-rich areas and publish a map of those areas on a certain frequency.</p> <p>STATUS: 02/24/2021 <i>From SENATE Committee on HOUSING with author's amendments.</i> 02/24/2021 <i>In SENATE. Read second time and amended. Re-referred Committee on HOUSING.</i></p> <p>CATEGORY: Housing</p>
SB 30	<p>AUTHOR: Cortese [D]</p> <p>TITLE: Building Decarbonization</p> <p>INTRODUCED: 12/07/2020</p> <p>LOCATION: Senate Governmental Organization Committee</p> <p>SUMMARY: Prohibits a state agency from designing or constructing a state facility that is connected to the natural gas grid. Requires the State Energy Resources Conservation and Development Commission to develop the California State Building Decarbonization Plan that will lead to the operational carbon-neutrality of all state-owned buildings by January 1, 2035.</p> <p>STATUS: 01/28/2021 <i>To SENATE Committee on GOVERNMENTAL ORGANIZATION.</i></p> <p>CATEGORY: Environment</p>
► SB 44	<p>AUTHOR: Allen [D]</p> <p>TITLE: California Environmental Quality Act: Judicial Review</p> <p>INTRODUCED: 12/07/2020</p> <p>LAST AMEND: 03/01/2021</p> <p>LOCATION: Senate Environmental Quality Committee</p> <p>SUMMARY: Establishes specified procedures for the administrative and judicial review of the environmental review and approvals granted for environmental leadership transit project, as defined, undertaken by a public agency.</p> <p>STATUS: 03/01/2021 <i>From SENATE Committee on ENVIRONMENTAL QUALITY with author's amendments.</i> 03/01/2021 <i>In SENATE. Read second time and amended. Re-referred to Committee on ENVIRONMENTAL QUALITY.</i></p> <p>CATEGORY: Environment</p>

► SB 66	<p>AUTHOR: Allen [D]</p> <p>TITLE: California Council on the Future of Transportation</p> <p>INTRODUCED: 12/07/2020</p> <p>LOCATION: Senate Transportation Committee</p> <p>SUMMARY: Requires the Secretary of Transportation to establish an advisory committee, the California Council on the Future of Transportation, to provide the Governor and the Legislature with recommendations for changes in state policy to ensure that as autonomous vehicles are deployed, they enhance the state's efforts to increase road safety, promote equity, and meet public health and environmental objectives.</p> <p>STATUS: 02/25/2021 Re-referred to SENATE Committee on TRANSPORTATION.</p> <p>CATEGORY: Miscellaneous</p>
SB 83	<p>AUTHOR: Allen [D]</p> <p>TITLE: California Infrastructure and Economic Development Bank</p> <p>INTRODUCED: 12/15/2020</p> <p>LOCATION: Senate Natural Resources and Water Committee</p> <p>SUMMARY: Creates the Sea Level Rise Revolving Loan Program within the I-Bank to provide low-interest loans to local jurisdictions for the purchase of coastal properties in their jurisdictions identified as vulnerable coastal property. Requires the California Coastal Commission in consultation with the State Lands Commission, and any other applicable state, federal, and local entities, as specified to determine criteria and guidelines for the identification of eligible vulnerable coastal properties.</p> <p>STATUS: 01/28/2021 To SENATE Committees on NATURAL RESOURCES AND WATER and GOVERNANCE AND FINANCE.</p> <p>CATEGORY: Funding</p>
SB 214	<p>AUTHOR: Bates [R]</p> <p>TITLE: Neighborhood Electric Vehicles: County of Orange</p> <p>INTRODUCED: 01/12/2021</p> <p>LOCATION: Senate Transportation Committee</p> <p>SUMMARY: Repeals the sunset date, thereby indefinitely extending the County of Orange's authority to establish an NEV (Neighborhood Electric Vehicle) transportation plan for the Ranch Plan Planned Community.</p> <p>STATUS: 01/28/2021 To SENATE Committee on TRANSPORTATION.</p> <p>CATEGORY: Planning</p>

SB 216	AUTHOR: TITLE: INTRODUCED: LOCATION:	Dodd [D] Contractors: Workers' Compensation Insurance: Coverage 01/12/2021 Senate Business, Professions & Economic Development Committee
	SUMMARY: Requires concrete contractors holding a C-8 license, warm-air heating, ventilation and air-conditioning (HVAC) contractors holding a C-20 license, or tree service contractors holding a D-49 license to also obtain and maintain workers' compensation insurance even if that contractor has no employees. STATUS: 01/28/2021 CATEGORY:	To SENATE Committee on BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT. Employment Terms & Conditions
SB 231	AUTHOR: TITLE: INTRODUCED: LOCATION: SUMMARY:	McGuire [D] Department of Transportation: Transfer of Property 01/19/2021 Senate Transportation Committee
	Authorizes the Department of Transportation, upon terms, standards, and conditions approved by the California Transportation Commission, to transfer the Blues Beach property located in the unincorporated community of Westport in the County of Mendocino to a qualified nonprofit corporation, which the bill would define as a nonprofit corporation that is organized by one or more California Native American tribes for the purpose of environmental protection. STATUS: 01/28/2021 CATEGORY:	To SENATE Committee on TRANSPORTATION. Miscellaneous
► SB 266	AUTHOR: TITLE: INTRODUCED: LOCATION: SUMMARY:	Newman [D] State Park System: Chino Hills State Park: Expansion 01/28/2021 <i>Senate Natural Resources and Water Committee</i>
	Requires the Department of Parks and Recreations to provide assistance acquiring and accepting land immediately adjacent to, and that expands, Chino Hills State Park, by transferring 3 specified properties into the state park system. STATUS: 02/22/2021 02/22/2021 CATEGORY:	<i>In SENATE. Article IV. Section 8(a) of the Constitution dispensed with.</i> <i>In SENATE. Joint Rule 55 suspended.</i> Miscellaneous

► SB 270	<p>AUTHOR: Durazo [D] TITLE: Public Employment: Labor Relations: Employee Data INTRODUCED: 01/28/2021 LOCATION: Senate Labor, Public Employment and Retirement Committee SUMMARY: Authorizes an exclusive representative to file a charge of an unfair labor practice with the Public Employment Relations Board, as specified, alleging a violation of the specified requirements only if specified conditions are met, including that the exclusive representative gives written notice of the alleged violation and that the public employer fails to cure the violation, as specified. STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended. CATEGORY: Employment Terms & Conditions</p>
► SB 304	<p>AUTHOR: Archuleta [D] TITLE: Contractors: Exemptions INTRODUCED: 02/03/2021 LOCATION: Senate Business, Professions & Economic Development Committee SUMMARY: Increases the maximum aggregate contract price eligible for a specified exemption from the Contractors State License Law to a specified amount, and makes other nonsubstantive changes. STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended. CATEGORY: Employment Terms & Conditions</p>
► SB 336	<p>AUTHOR: Ochoa Bogh [R] TITLE: Public Health: COVID-19 INTRODUCED: 02/08/2021 LOCATION: Senate Health Committee SUMMARY: Provides that before the State Department of Public Health or a local health official takes measures to prevent the spread of COVID-19, as defined, they publish the measures for 72 hours on their internet website and reach out to local organizations representing local business interests. STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended. 02/22/2021 To SENATE Committee on HEALTH. CATEGORY: Emergency Response Services</p>

<p>► SB 339</p>	<p>AUTHOR: Wiener [D] TITLE: Vehicles: Road Usage Charge Pilot Program INTRODUCED: 02/08/2021 LOCATION: Senate Transportation Committee SUMMARY: <i>Extends the operation of specified provisions until a specified date concerning a requirement of the Chair of the California Transportation Commission to create a Road Usage Charge (RUC) Technical Advisory Committee in consultation with the Secretary of Transportation. Implements a pilot program to identify and evaluate issues related to the collection of revenue for a road charge program, as specified.</i> STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended. 02/22/2021 To SENATE Committee on TRANSPORTATION. CATEGORY: Funding</p>
<p>► SB 372</p>	<p>AUTHOR: Leyva [D] TITLE: Medium- and Heavy-Duty Fleet Purchasing Program INTRODUCED: 02/10/2021 LOCATION: Senate Rules Committee SUMMARY: <i>Requires an unspecified agency to establish a program to make financing tools and nonfinancial supports available to the operators of medium- and heavy-duty vehicle fleets to enable those operators to transition their fleets to zero-emission vehicles.</i> STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended. 02/22/2021 To SENATE Committee on RULES. CATEGORY: Funding</p>
<p>► SB 378</p>	<p>AUTHOR: Gonzalez [D] TITLE: Local Government: Broadband Infrastructure Development INTRODUCED: 02/10/2021 LOCATION: Senate Governance and Finance Committee SUMMARY: <i>Authorizes a provider of fiber facilities to determine the method of the installation of fiber. Prohibits a local agency from prohibiting, or unreasonably discriminating in favor of or against the use of, aerial installations, open trenching or boring, or microtrenching, but would authorize a local agency to prohibit aerial deployment of fiber where no aboveground utilities exist due to Electric Tariff Rule 20 or other existing underground requirements.</i> STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended. 02/22/2021 To SENATE Committees on GOVERNANCE AND FINANCE and ENERGY, UTILITIES AND COMMERCE. CATEGORY: Broadband</p>

► SB 415	<p>AUTHOR: Melendez [R]</p> <p>TITLE: Transportation Finance: Motor Vehicle Fuel Tax</p> <p>INTRODUCED: 02/12/2021</p> <p>LOCATION: Senate Transportation Committee</p> <p>SUMMARY: <i>Relates to existing law which requires a portion of the net revenues from the tax on motor vehicle fuel to be apportioned monthly among counties and cities pursuant to a specified formula, which includes a requirement that the base sum be computed using a specified metric. Requires the base sum to be calculated, rather than computed, using that metric and that the calculation of the apportionment be disclosed and made available to the public.</i></p> <p>STATUS: 02/25/2021 To SENATE Committee on TRANSPORTATION.</p> <p>CATEGORY: Funding</p>
► SB 439	<p>AUTHOR: Archuleta [D]</p> <p>TITLE: Renewable Hydrogen</p> <p>INTRODUCED: 02/16/2021</p> <p>LOCATION: Senate Energy, Utilities and Communications Committee</p> <p>SUMMARY: <i>Authorizes gas corporation that serves an area that will host the 2028 Olympics to identify and propose a renewable hydrogen project, as defined, or multiple projects, in cooperation with the United States Olympic Paralympic Committee, the City of Los Angeles, or the County of Los Angeles to achieve described purposes.</i></p> <p>STATUS: 02/25/2021 To SENATE Committee on ENERGY, UTILITIES AND COMMUNICATIONS.</p> <p>CATEGORY: Environment</p>
► SB 499	<p>AUTHOR: Leyva [D]</p> <p>TITLE: General Plan: Land Use Element: Adverse Health Impact</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Senate Governance and Finance Committee</p> <p>SUMMARY: <i>Prohibits the land use element from designating land uses that have the potential to significantly degrade local air, water, or soil quality or to adversely impact health outcomes in disadvantaged communities to be located, or to materially expand, within or adjacent to a disadvantaged community or a racially and ethnically concentrated area of poverty.</i></p> <p>STATUS: 02/25/2021 To SENATE Committees on GOVERNANCE AND FINANCE and ENVIRONMENTAL QUALITY.</p> <p>CATEGORY: Planning</p>

<p>► SB 500</p>	<p>AUTHOR: Min [D] TITLE: Autonomous Vehicles: Zero Emissions INTRODUCED: 02/17/2021 LOCATION: Senate Transportation Committee SUMMARY: <i>Requires an autonomous vehicle operating on a public road to be a zero-emission vehicle. Defines zero-emission vehicle to mean a vehicle that produces no emissions of criteria pollutants, toxic air contaminants, and greenhouse gases when stationary or operating, as determined by the State Air Resources Board.</i> STATUS: 02/25/2021 To SENATE Committee on TRANSPORTATION. CATEGORY: Environment</p>
<p>► SB 527</p>	<p>AUTHOR: Melendez [R] TITLE: Greenhouse Gas Reduction Fund: High-Speed Rail INTRODUCED: 02/17/2021 LOCATION: Senate Environmental Quality Committee SUMMARY: <i>Eliminates the continuous appropriation of 25 percent of the annual proceeds of Greenhouse Gas Reduction Fund to the High-Speed Rail Authority on a specified date. Transfers 25 percent of the annual proceeds of the Greenhouse Gas Reduction Fund to the Salton Sea Restoration Fund.</i> STATUS: 02/25/2021 To SENATE Committees on ENVIRONMENTAL QUALITY and TRANSPORTATION and NATURAL RESOURCES AND WATER. CATEGORY: Funding</p>
<p>► SB 548</p>	<p>AUTHOR: Eggman [D] TITLE: Tri-Valley-San Joaquin Valley Regional Rail Authority INTRODUCED: 02/18/2021 LOCATION: Senate SUMMARY: <i>Gives to the Tri-Valley-San Joaquin Valley Regional Rail Authority the power to enter into design-build contracts, as specified, and would exempt the authority from provisions that preclude the inclusion of long-term maintenance and operations obligations in a design-build contract.</i> STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended. CATEGORY: Rail and Transit</p>

► SB 551	<p>AUTHOR: Stern [D]</p> <p>TITLE: California Electric Vehicle Authority</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Establishes the California Electric Vehicle Authority within the Governor's office. Requires the authority to coordinate activities among state agencies to advance electric vehicle and zero-emission charging infrastructure deployment as well as ensure related equity, workforce development, economic development, and other needs are addressed, as specified.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Planning</p>
► SB 563	<p>AUTHOR: Allen [D]</p> <p>TITLE: Second Neighborhood Infill Finance and Transit Improve</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Makes the enhanced infrastructure financing plan adoption process dependent on the percentage of the combined number of registered voters in the area and landowners who file a protest and on the vote of that population.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Planning</p>
► SB 580	<p>AUTHOR: Hueso [D]</p> <p>TITLE: Department of Transportation: Highways and Roads</p> <p>INTRODUCED: 02/18/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Authorizes the Department of Transportation to conduct a study to assess the feasibility, cost effectiveness, and life-cycle environmental benefits of including recycled plastics in asphalt used as a paving material in the construction, maintenance, or rehabilitation of a highway or road.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Environment</p>

► SB 589	AUTHOR:	<i>Hueso [D]</i>
	TITLE:	<i>Air Pollution: Alternative Vehicles and Infrastructure</i>
	INTRODUCED:	<i>02/18/2021</i>
	LOCATION:	<i>Senate</i>
	SUMMARY:	<i>Requires the State Energy Resources Conservation and Development Commission to identify workforce development and training resources needed to meet specified goals concerning reducing emissions of greenhouse gases.</i>
	STATUS:	
	<i>02/22/2021</i>	<i>In SENATE. Article IV. Section 8(a) of the Constitution dispensed with.</i>
	<i>02/22/2021</i>	<i>In SENATE. Joint Rule 55 suspended.</i>
	CATEGORY:	<i>Environment</i>

► SB 598	AUTHOR:	<i>Pan [D]</i>
	TITLE:	<i>Sacramento Regional Transit District: Employee Relation</i>
	INTRODUCED:	<i>02/18/2021</i>
	LOCATION:	<i>Senate</i>
	SUMMARY:	<i>Grants Public Employment Relations Board jurisdiction to enforce these labor provisions applicable to the Sacramento Regional Transit District and would require employers and employees to adjudicate complaints of specified labor violations before PERB as an unfair labor practice.</i>
	STATUS:	
	<i>02/22/2021</i>	<i>In SENATE. Article IV. Section 8(a) of the Constitution dispensed with.</i>
	<i>02/22/2021</i>	<i>In SENATE. Joint Rule 55 suspended.</i>
	CATEGORY:	<i>Employment Terms & Conditions</i>

► SB 604	AUTHOR:	<i>Hueso [D]</i>
	TITLE:	<i>Natural Resources: The Nature and Parks Career Pathway</i>
	INTRODUCED:	<i>02/18/2021</i>
	LOCATION:	<i>Senate</i>
	SUMMARY:	<i>Establishes the Nature and Parks Career Pathway and Community Resiliency Act of 2021, which would require state conservancies and the Wildlife Conservation Board to establish independent grant programs to fund climate mitigation, adaptation, or resilience, natural disaster, and other climate emergency projects, as specified.</i>
	STATUS:	
	<i>02/22/2021</i>	<i>In SENATE. Article IV. Section 8(a) of the Constitution dispensed with.</i>
	<i>02/22/2021</i>	<i>In SENATE. Joint Rule 55 suspended.</i>
	CATEGORY:	<i>Employment Terms & Conditions</i>

► SB 606	AUTHOR:	Gonzalez [D]
	TITLE:	Workplace Safety: Citations: Employer Retaliation
	INTRODUCED:	02/18/2021
	LOCATION:	Senate
	SUMMARY:	<i>Requires the Division of Occupational Safety and Health to issue a citation to an egregious employer, as defined, for each willful violation concerning employer retaliations for reporting a workplace safety incident and each employee exposed to that violation would be required to be considered a separate violation for purposes of the issuance of fines and penalties, as provided.</i>
	STATUS:	
	02/22/2021	In SENATE. Article IV. Section 8(a) of the Constitution dispensed with.
	02/22/2021	In SENATE. Joint Rule 55 suspended.
	CATEGORY:	Employment Terms & Conditions

► SB 623	AUTHOR:	Newman [D]
	TITLE:	Electronic Toll and Transit Fare Collection Systems
	INTRODUCED:	02/18/2021
	LOCATION:	Senate
	SUMMARY:	<i>Authorizes those operators to provide instead only the information specified in functional specifications and standards adopted by the Department of Transportation, in cooperation with the Golden Gate Bridge, Highway and Transportation District and operators of toll facilities in this state on federal-aid highways for purposes of interstate interoperability.</i>
	STATUS:	
	02/22/2021	In SENATE. Article IV. Section 8(a) of the Constitution dispensed with.
	02/22/2021	In SENATE. Joint Rule 55 suspended.
	CATEGORY:	Miscellaneous

► SB 624	AUTHOR:	Hueso [D]
	TITLE:	Environmental Equity and Outdoor Access Act
	INTRODUCED:	02/18/2021
	LOCATION:	Senate
	SUMMARY:	<i>Establishes the Environmental Equity and Outdoor Access Act, which sets forth the State's commitment to ensuring all Californians can benefit from, and have meaningful access to, the State's rich cultural and natural resources.</i>
	STATUS:	
	02/22/2021	In SENATE. Article IV. Section 8(a) of the Constitution dispensed with.
	02/22/2021	In SENATE. Joint Rule 55 suspended.
	CATEGORY:	Environment

► SB 640	<p>AUTHOR: Becker [D]</p> <p>TITLE: Transportation Financing: Jointly Proposed Projects</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Authorizes cities and counties to jointly submit to the Transportation Commission a list of proposed projects to be funded by the cities and counties' apportionments of funds in the Road Maintenance and Rehabilitation Account. Requires that funds apportioned jointly to cities and counties for this purpose be available for expenditure for 3 full fiscal years after the apportionment.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Funding</p>
► SB 643	<p>AUTHOR: Archuleta [D]</p> <p>TITLE: Fuel Cell Electric Vehicle Fueling Infrastructure</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Requires the State Air Resources Board, in consultation with the Energy Commission and the Public Utilities Commission, to prepare a statewide assessment of the fuel cell electric vehicle fueling infrastructure and fuel production needed to support the adoption of zero-emission trucks, buses, and off-road vehicles at levels necessary for the state to meet specified goals and requirements relating to vehicular air pollution.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Planning</p>
► SB 662	<p>AUTHOR: Archuleta [D]</p> <p>TITLE: Energy: Transportation Sector: Green Hydrogen</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Requires the State Air Resources Board to develop and implement regulations to require that, by December 31, 2024, on a statewide basis, not less than 44 percent of the hydrogen produced or dispensed in California for motor vehicles be green hydrogen, as defined.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Environment</p>

► SB 704	<p>AUTHOR: Gonzalez [D]</p> <p>TITLE: Occupational Safety and Health</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Requires every employer to furnish and use safety devices and safeguards, and to adopt and use practices that are reasonably adequate to render the employment and place of employment safe and healthful.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Employment Terms & Conditions</p>
► SB 760	<p>AUTHOR: Bates [R]</p> <p>TITLE: State Highways: State Route 241: Reduction</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Deletes from the state highway system the portion of State Route 241 from State Route 5 south of the City of San Clemente to Oso Parkway east of the City of Mission Viejo.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Planning</p>
► SB 761	<p>AUTHOR: Bates [R]</p> <p>TITLE: Public Resources: City of San Clemente</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Prohibits certain governmental entities from constructing, funding, or operating, or from taking property to construct, fund, or operate, a new major thoroughfare in the City of San Clemente in an area that is subject to a conservation easement or that is protected as open space under a local initiative. Provides that these provisions do not apply to State Route 5 and lands immediately adjacent to State Route 5 or the extension of Los Patrones.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Planning</p>

► SB 771	<p>AUTHOR: Becker [D]</p> <p>TITLE: Sales And Use Tax Law: Zero Emissions Vehicle Exemption</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Provides an exemption from taxes imposed on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Funding</p>
► SB 779	<p>AUTHOR: Stern [D]</p> <p>TITLE: Advance Mitigation Program</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Authorizes funds in the Advance Mitigation Account to be used to modify or remove wildlife connectivity barriers not covered by existing regulatory programs. Expands purposes for which a continuously appropriated account may be used. Makes an appropriation.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Funding</p>
► SB 792	<p>AUTHOR: Glazer [D]</p> <p>TITLE: Sales and Use Tax: Retailers: Reporting</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Requires a retailer whose annual sales of tangible personal property transacted online exceeded a certain dollar amount for the previous calendar year to track and report to the department the city or ZIP code where the purchaser resides for each sale within the state that is transacted online, as specified.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Funding</p>

► SB 793	<p>AUTHOR: Wiener [D]</p> <p>TITLE: Vehicles: Road Usage Charge Pilot Program</p> <p>INTRODUCED: 02/19/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Extends the operation of provisions requiring the Chair of the California Transportation Commission to create a Road Usage Charge (RUC) Technical Advisory Committee in consultation with the Secretary of Transportation until January 1, 2024.</i></p> <p>STATUS: 02/22/2021 In SENATE. Article IV. Section 8(a) of the Constitution dispensed with. 02/22/2021 In SENATE. Joint Rule 55 suspended.</p> <p>CATEGORY: Funding</p>
► SCA 4	<p>AUTHOR: Wilk [R]</p> <p>TITLE: Legislature: 2-year Budget</p> <p>INTRODUCED: 02/17/2021</p> <p>LOCATION: Senate</p> <p>SUMMARY: <i>Limits the Legislature, in the first year of the regular session, to considering or acting upon only the Budget Bill and related bills, and up to 5 bills introduced by each of the standing committees of the Legislature, as specified. Requires the Governor to submit to the Legislature a budget for the ensuing 2 fiscal years within the first 10 days of the first calendar year of the biennium of the legislative session.</i></p> <p>STATUS: 02/17/2021 INTRODUCED.</p> <p>CATEGORY: Funding</p>



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors

From: Andrea West, Interim Clerk of the Board



Subject: Federal Legislative Status Report

Legislative and Communications Committee Meeting of February 18, 2021

Present: Directors Bartlett, Delgleize, Hennessey, Hernandez, Murphy, Sidhu, and Wagner

Absent: None

Committee Vote

Following the discussion, no action was taken on this receive and file information item.

Staff Recommendation

Receive and file as an information item.



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors

From: Andrea West, Interim Clerk of the Board

(A)

Subject: Federal Legislative Status Report

Legislative and Communications Committee Meeting of February 18, 2021

Present: Directors Bartlett, Delgleize, Hennessey, Hernandez, Murphy, Sidhu, and Wagner

Absent: None

Committee Vote

Following the discussion, no action was taken on this receive and file information item.

Staff Recommendation

Receive and file as an information item.



March 18, 2021

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Legislative Status Report

For

Overview

The Orange County Transportation Authority regularly updates the Legislative and Communications Committee on policy issues directly impacting its programs, projects, and operations. An update is provided on Congressional action to enact the President's \$1.9 trillion stimulus funding package. An overview is provided of two transportation-related hearings, one on the reauthorization of federal transportation programs and the other on maintaining equity in transportation safety enforcement.

Recommendation

Receive and file as an information item.

Discussion

Economic Stimulus Negotiations

As an update on information previously reported to the Legislative and Communications Committee last month, Congress and the Administration have continued to work on the President's \$1.9 trillion economic stimulus package to facilitate a robust federal response to the ongoing coronavirus (COVID-19) pandemic. On February 26, 2021, the House passed legislation mirroring many of the President's proposals, including supplemental unemployment insurance, direct stimulus payments, assistance for state and local governments, and funding for a national vaccination program, testing, and contact tracing. On March 6, 2021, the Senate passed by a vote of 50 to 49 a version of the House bill with minor amendments. On March 10, 2021, the House voted on the stimulus package again in order to concur to the Senate's amendments, approving the final bill language by a vote of 220 to 211. The President signed the economic relief package into law on March 11, 2021.

Of note to the Orange County Transportation Authority (OCTA), the latest stimulus legislation includes approximately \$30.5 billion in emergency transit funding. Similar to previous stimulus proposals, the bill provides a large majority of emergency transit funding through Federal Transit Administration (FTA) formula programs. Within the \$30.5 billion in FTA funding, approximately \$26 billion would flow through the Urbanized Area Formula Grants program (Section 5307). The bill makes this funding available for operating expenses for public transit agencies to prevent, prepare for, and respond to the COVID-19 pandemic. The bill language provides direction that funding shall be used for payroll reimbursement, including for private providers of public transportation, operating costs to maintain service due to lost revenue, and administrative leave of operations or contractor personnel.

This stimulus bill does include three notable differences from previous stimulus legislation. First, the transit funding is only available until September 30, 2024, whereas the previous stimulus bills had not put an obligation deadline on FTA funds. Second, the bill only appropriates funding through Urbanized Area Formula Grants program (Section 5307) without making any reference to the FTA State of Good Repair Grants program (Section 5337). This stimulus bill marks the first time that emergency transit funding has been appropriated through just one FTA program. Third, the bill language attempts to direct funding to agencies with the greatest need. The bill also contains language limiting any urbanized area from receiving more than 132 percent of their 2018 operating costs, when combining this funding “otherwise made available to such urbanized area for similar activities to prevent, prepare for, and respond to” COVID-19. This language differs from previous stimulus legislation in that it does not tie the operating cost limitation to any specific legislation, instead using the broader reference to previously-enacted funding. The complexity of this language makes it difficult to estimate exactly how much funding OCTA will receive from this funding formula, but OCTA will continue to work with FTA and the Southern California Association of Governments to determine how this funding will benefit Orange County.

Included as part of the \$30.5 billion in transit funding, the bill provides \$1.675 billion in supplemental funding for the Capital Investment Grants (CIG) program, notably \$1.425 billion for CIG New Starts projects. The bill language directs this funding to all CIG projects with full funding grant agreements not yet open for revenue service as part of the federal response to COVID-19. While the bill language does not specifically call out the OC Streetcar project, the project is expected to receive an additional funding allocation. Per estimates prepared by transportation stakeholders, OCTA is expected to receive approximately \$9.4 million. Additionally, the bill language states that this additional CIG funding “shall be provided notwithstanding any calculation of the maximum amount of Federal financial assistance for the project.” Given the complexities of the bill language, staff is working with stakeholders and other

CIG project sponsors to ensure that this additional funding expediently benefits all CIG projects facing the ongoing challenges of the COVID-19 pandemic.

Also included as part of the \$30.5 billion in transit funding, the bill provides \$50 million for the FTA Enhanced Mobility of Seniors and Individuals with Disabilities program (Section 5310). The bill also calls for the creation of a \$2.2 billion competitive program awarding additional transit funding specifically to maintain operations and avoid layoffs and furloughs. This new competitive program would be based on financial need, requiring that applicants have expended 90 percent of the funds available for COVID-19 response made available last year.

As with previous stimulus discussions, staff continues its work with transportation agency partners and stakeholders to advocate for the interests of transit agencies as Congress drafts economic recovery legislation. The American Public Transit Association sent a letter, included as Attachment A, supporting the \$30.5 billion in emergency transit funding as a critical part of the COVID-19 response. Similarly, the California Transit Association (CTA) worked with stakeholders from across the State to send a letter, included as Attachment B, similarly supporting this additional funding. As was the case with previous advocacy efforts, the CTA correspondence reiterated that California should receive its equitable share of this funding so that transit agencies of all sizes across the State can benefit from the additional operational support.

Transportation Hearings

On February 24, 2021, the Senate Environment and Public Works Committee held a hearing entitled, "Building Back Better: Investing in Transportation While Addressing Climate Change, Improving Equity, and Fostering Economic Growth and Innovation." As the title of this hearing suggests, much of the conversation focused on efforts to reauthorize surface transportation programs expiring on September 30, 2021, given the Administration's ambitious policy agenda, specifically when it comes to equity and climate change. After this hearing, both House and Senate leaders indicated a desire to introduce surface transportation reauthorization legislation in the coming months, with both chambers aiming to prepare such legislation for floor consideration by Memorial Day.

At the hearing, Senators and witnesses spent a majority of time discussing the different ways in which federal transportation programs can be implemented to achieve the new Administration's wide-ranging policy goals. One of the most important themes in the questioning was whether federal funding should be delivered via existing formula programs, set-asides within formula programs, or competitive grant programs. The Senators and witnesses discussed whether flexibility in formula programs or putting conditions on competitive grant awards would be the best way to achieve the new Administration's policy goals, with no real consensus emerging from the discussion. Many of the Senators and

witnesses also brought up the need to streamline the environmental approval process, including calls to codify the One Federal Decision policy aimed at reducing the number of federal agencies issuing environmental approvals and limiting the timeframe for federal agencies to make such approvals. Senator Alex Padilla (D-California) asked the witnesses how federal funding can be used to make infrastructure more resilient from the impacts of severe weather events and how highway investments have displaced residents of certain low-income neighborhoods.

Also on February 24, 2021, the House Transportation and Infrastructure Committee's Subcommittee on Highways and Transit held a hearing entitled, "Examining Equity in Transportation Safety Enforcement." With equity becoming an increasingly important issue to the Administration, this hearing focused on the equity implications of the most prevalent methods utilized to enforce traffic safety laws, specifically interactions between law enforcement and users of publicly-funded roads and highways. Witnesses discussed how the National Highway Traffic Safety Administration (NHTSA) traffic fatality estimates facilitate the need to combat risky driving behavior without exacerbating discrimination and racial profiling.

One theme from this hearing was the use of NHTSA's Racial Profiling Prohibition Grants program, specifically the effectiveness of this program funding in ensuring the equitable enforcement of traffic laws. While NHTSA awards grants when Congress appropriates funding for the program, Congress does not provide funding for the Racial Profiling Prohibition Grants program every year. Moreover, the witnesses noted that grant awards are usually not very significant, allowing for only certain states and localities to make use of this funding in their communities. Representative Julia Brownley's (D-Thousand Oaks) questioning highlighted that California does not pursue these grants funds because the award amounts are so nominal. There were also questions focusing on the insufficient data available to assess equity disparities, including the role that funding uncertainty plays in exacerbating gaps in traffic enforcement efforts. Finally, there were also discussions about the implications of new technologies and trends, such as virtual reality simulations, bus-only lanes, and micro-mobility, in keeping road and highway users safe.

Summary

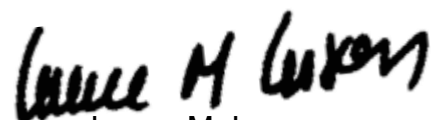
An update is provided regarding an additional round of federal funding in response to the economic impacts of the ongoing COVID-19 pandemic. Summaries are also provided for two transportation hearings, one on surface transportation reauthorization legislation and another on maintaining equity in the transportation enforcement efforts.

Attachments

- A. Letter from Paul P. Skoutelas, President and CEO, American Public Transit Association, to The Honorable Richard C. Shelby, United States Senate, dated March 2, 2021
- B. Letter from CTA and Stakeholders to the President and Congressional Leaders, dated February 26, 2021
- C. Potomac Partners DC, Monthly Legislative Report – February 2021

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AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

March 2, 2021

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APTA.COM

The Honorable Richard C. Shelby
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

Dear Senator Shelby,

On behalf of America's public transportation industry, which directly employs more than 435,000 workers and supports millions of private-sector jobs, **we write to strongly support H.R. 1319, the "American Rescue Plan Act of 2021". This bill, as passed by the U.S. House of Representatives, provides \$30.5 billion in critical COVID-19 emergency funding to help public transit agencies continue to provide a lifeline to essential workers, ensure Americans can get to vaccine distribution sites, and advance communities' efforts across the country to rebuild our nation's economy.**

The COVID-19 pandemic has driven home the essential role that public transit plays every day, bringing healthcare professionals to the frontlines, delivering groceries and medicine to at-risk populations, and connecting essential workers to their places of work. To help the national effort to vaccinate Americans, many agencies are providing free rides to vaccination sites and, in some cases, transit facilities have become vaccination clinics.¹ Transit workers are truly performing heroic services for their communities during this precarious and uncertain time.

All the while, the pandemic has significantly increased public transit operating costs and slashed principal sources of transit operations funding, including agency farebox, state and local tax revenues, state and local funding, and other revenues.

We greatly appreciate your work to enact the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136) and the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act) (P.L. 116-260). This COVID-19 emergency funding provided critical, immediate relief and helped to prevent some of the most drastic outcomes,

The Honorable Richard C. Shelby

March 2, 2021

Page 2

such as layoffs, furloughs, and cuts to service. However, public transit agencies need additional funding to continue to provide essential services throughout the ongoing crisis.

Based on an independent economic analysis² of COVID-19 impacts on public transit funding needs, APTA estimates that public transit agencies face \$39.3 billion of additional costs and revenue losses, in addition to the emergency public transit funding provided in 2020.

If Congress and the Administration do not provide significant additional COVID-19 emergency transit funding, many public transit agencies will be forced to cut service and lay off or furlough employees. According to a January 2021 APTA survey of public transit agencies, four in 10 agencies will have to consider additional service cuts to close their budget gaps.³ Similarly, 22 percent of agencies will be forced to consider implementing additional layoffs.⁴

These funds are also critical to maintain the manufacturing and supply chain for public transportation agencies and limit the enormous economic damage to these businesses caused by the pandemic. According to a January 2021 APTA survey of public transit industry businesses, 76 percent of businesses have seen a reduction in their transit industry business because of COVID-19, and nearly four in 10 businesses (38 percent) will be forced to consider additional layoffs.⁵ Moreover, one of every five businesses (22 percent) are concerned that they may go out of business due to the pandemic.⁶

We strongly support the \$30.5 billion of emergency public transit funding provided in the American Rescue Plan Act of 2021. We also greatly appreciate that the bill distributes these funds in a manner that ensures that all public transit agencies can continue to be a lifeline for our essential workers, ensure Americans can get to vaccine distribution sites, and advance our communities' efforts to rebuild from the economic fallout of the pandemic.

Thank you for your consideration.

Sincerely,



Paul P. Skoutelas
President and CEO

¹ <https://www.apta.com/news-publications/press-releases/releases/public-transit-connecting-the-nation-to-covid-19-vaccines/>

² EBP US, Inc., *The Impact of the COVID-19 Pandemic on Public Transit Funding Needs in the U.S.*, January 27, 2021, <https://www.apta.com/wp-content/uploads/APTA-COVID-19-Funding-Impact-2021-01-27.pdf>.

³ American Public Transportation Association, *COVID-19 Pandemic Threatens Public Transit Jobs and Service*, January 2021, at <https://www.apta.com/wp-content/uploads/APTA-Survey-Brief-Agency-Jan-2021.pdf>.

⁴ *Id.*

⁵ American Public Transportation Association, *COVID-19 Pandemic Threatens Public Transit Businesses*, January 2021, at <https://www.apta.com/wp-content/uploads/APTA-Survey-Brief-Business-Jan-2021.pdf>.

⁶ *Id.*



February 26, 2021

President Joseph R. Biden Jr.
United States of America
1600 Pennsylvania Avenue, NW
Washington, DC 20500

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
H-232, U.S. Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
United States House of Representatives
H-204, U.S. Capitol
Washington, DC 20515

The Honorable Charles E. Schumer
Majority Leader
United States Senate
S-221, U.S. Capitol
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
S-230, U.S. Capitol
Washington, DC 20510

President Biden, Speaker Pelosi, Leader Schumer, Leader McCarthy and Leader McConnell:

Our coalition of transportation, labor, business, infrastructure, environmental and social justice leaders thank you for your strong support for transit agencies nationwide throughout the COVID-19 pandemic. The emergency funding provided to transit agencies by Congress last year has helped stave off the most severe service reductions and workforce layoffs, which would have devastated the communities that have continued to rely on transit service during today's public health crisis.

We strongly support H.R. 1319, the "American Rescue Plan Act of 2021," which provides more than \$30 billion in new operational funding to transit agencies nationwide. **This funding level will address the operating needs faced by the industry into 2023. Moreover, as you finalize the next round of emergency relief, we urge you to continue to ensure that California receives its fair share of total funding so that transit agencies of all sizes throughout our state can benefit from the additional operational support.**

This funding is vital to transit agencies operating in rural, urban and suburban settings as they continue to grapple with steep declines in ridership and revenues due to the pandemic-induced economic downturn.

A viable public transit network is necessary to help support essential and frontline workers as well as communities disproportionately hurt by the pandemic, to protect strong and healthy communities, avoid the loss of thousands of good-paying local jobs, and to support a balanced economic recovery.

Surveys have found that the majority of Californians who continue to rely on transit during the pandemic, are using the service to get to work, are overwhelmingly low-income and/people of color, and lack access to a personal vehicle. Reduced transit service disproportionately harms these communities, making it more difficult for them to provide for their families and threatening the health of local economies.

Transit agencies themselves have significant impacts on local economies. The California Transit Association estimates that more than 35,000 Californians are directly employed by transit agencies, but many agencies are considering or have already made cuts to personnel due to the severe budget shortfalls.

Without additional funding for transit operations, service and workforce cuts that were avoided last year will proceed this year. Moreover, transit agencies will delay capital improvement projects and transit vehicle procurements, and defer payments to contractors. These cuts will compromise the condition of transit assets, undermine the role of California's transit agencies in meeting our state's environmental goals, slow the deployment of zero-emission buses, and result in job losses in construction as well as domestic and California-based manufacturing.

The emergency funding we request today would establish funding certainty to better allow transit agencies to navigate the crisis.

Ensuring California's public transit agencies can continue to provide essential service and invest in capital projects is critical to a balanced economic recovery, our quality of life, and to achieving our state's ambitious environmental goals.

Please help us save local public transit.

Sincerely,

Michael Pimentel, Executive Director
California Transit Association

Tim Elder, President
National Federation of the Blind California

Michael Quigley, Executive Director
California Alliance for Jobs

Shane Gusman, Director
California Teamsters Public Affairs Council

Bill Higgins, Executive Director
California Association of Councils of Government (CALCOG)

Shane Gusman, Legislative Advocate
California Conference Board of the Amalgamated Transit Union

Kiana Valentine, Executive Director
Transportation California

Rick L. Callender, President
California – Hawaii State Conference NAACP

Louie Costa, Director
**California State Legislative Board
SMART-Transportation Division**

Denny Zane, Executive Director
MoveLA

Eileen Wenger Tutt, Executive Director
California Electric Transportation Coalition

Colin Fiske, Executive Director
Coalition for Responsible Transportation Priorities

Jason Baker, Vice President, Transportation, Housing & Community Development
Silicon Valley Leadership Group

Ruben Guerra, President and Chair
Latin Business Association

Gwen Litvak, Senior Vice President
Bay Area Council

Jonathon Kass, Interim Transportation Policy Director
SPUR

Jessica Lall, President & CEO
Central City Association – Los Angeles

John Hake, Executive Director
Rebuild SoCal Partnership

Dr. Tecoy Porter, President
National Action Network Sacramento

Barbara Leslie, Chamber President/CEO
Oakland Chamber of Commerce

Jack Swearengen, Chair
Friends of SMART

Darnell Grisby, Executive Director
TransForm

Glenda Marsh, Steering Committee
Sacramento Metro Advocates for Rail and Transportation

Rev. Jonathan Moseley, Western Regional Director
National Action Network – Los Angeles

Jacklyn Montgomery, Executive Director
California Association for Coordinated Transportation (CalACT)

Richard Marcantonio, Managing Attorney
Public Advocates, inc.

Jay King, President
California Black Chamber of Commerce

Adrian Martinez, Staff Attorney, Right to Zero
Earthjustice

Alberto Ayala, PhD, MSE, Executive Director and Air Pollution Control Officer
Sacramento Metropolitan Air Quality Management District

Michael Lawson, President & CEO
Los Angeles Urban League

Colin Parent, Executive Director & General Counsel
Circulate San Diego

Stuart Waldman, President
Valley Industry & Commerce Association

Brandon Black, Director of Public Policy
Sacramento Metro Chamber of Commerce

Laura Raymond, Director
Alliance for Community Transit Los Angeles

Barry Broome, President & CEO
Greater Sacramento Economic Council

Brian Ling, Executive Director
Sonoma County Alliance

Pat Fong Kushida, President & CEO
Sacramento Asian Pacific Chamber of Commerce

Bill Manis, President & CEO
San Gabriel Valley Economic Partnership

Dave Campbell, Advocacy Director
Bike East Bay

CC: California Congressional Delegation
The Honorable Peter DeFazio, Chair, Committee on Transportation and Infrastructure, United States House of Representatives
The Honorable Sherrod Brown, Chair, Committee on Banking, Housing, and Urban Affairs, United States Senate
Pete Buttigieg, Secretary, United States Department of Transportation
Nuria Fernandez, Acting Administrator, Federal Transit Administration
The Honorable Gavin Newsom, Governor, State of California
The Honorable Lena Gonzalez, Chair, Senate Transportation Committee, California State Senate
The Honorable Laura Friedman, Chair, Assembly Transportation Committee, California State Assembly
David Kim, Secretary, California State Transportation Agency, State of California
Members, Executive Committee, California Transit Association
Members, Federal Legislative Committee, California Transit Association
Members, COVID-19 Transit Crisis Relief Task Force, California Transit Association



Monthly Legislative Report – February 2021

February Advocacy Meeting Summary

Congressman Alan Lowenthal (D-CA) – We have been in contact with Congressman Lowenthal’s senior staff to discuss FY22 appropriations, including request submission procedures, and key deadlines. We also discussed the process for providing Surface Transportation Reauthorization and/or Infrastructure bill input and the role of community project funding in any T&I Committee authorizing legislation. We also discussed funding in the American Rescue Plan for the CIG program and language that would include extra funding for projects with FFGAs and funding allocations prior to 2019.

Congressman Lou Correa (D-CA) – We have been in communication with Congressman Correa’s senior staff to discuss FY22 appropriations, funding requests, priority projects, and the limited return to earmarks. We discussed providing input on the Surface Transportation Reauthorization and the possibility for a larger infrastructure package this summer. We also discussed additional funding for the OC Streetcar in the American Rescue Plan.

Congresswoman Katie Porter (D-CA) – We have been communicating with senior staff in Congresswoman Porter’s office this month to discuss support for language that would provide additional funding for transit in the American Rescue Plan. We also discussed the FY22 appropriations process, request deadlines, and submission procedures.

Congressman Mike Levin (D-CA) – We have been in communication with Congressman Levin’s office regarding the American Rescue Plan and opportunities to include additional funding for transit. We also discussed deadlines for FY22 appropriations requests and the procedures for Community Project Funding (earmarks).

Congresswoman Michelle Steel (R-CA) – We have been in communication with Congresswoman Steel’s senior staff to discuss amendment language for the House Transportation and Infrastructure Committee markup of the American Rescue Plan to include additional funding for CIG projects with FFGAs before FY2019.

Congresswoman Young Kim (R-CA) – We have been in communication with Congresswoman Kim’s senior staff to discuss FY22 appropriations and deadlines for requests. We also discussed her letter with Congressman Correa requesting FEMA’s coordination with the City of Anaheim to establish a vaccination site.

Senator Alex Padilla (D-CA) – We have been in communication with Senator Padilla’s transportation staff to discuss the surface transportation reauthorization bill. We also discussed the cost and time benefits of streamlining specific process and permitting

procedures. Senator Padilla's office has also asked for programmatic input and requests for the upcoming surface transportation reauthorization through their office's web portal.

Congressman Pete Aguilar (D-CA) – We met with Congressman Aguilar and his staff to discuss FY22 appropriations and request procedures. We discussed support for increasing funding for transit and the potential for earmarks.

Congresswoman Norma Torres (D-CA) – We communicated with Congresswoman Torres' office to discuss the Rules Committee meeting to consider the American Rescue Plan and opportunities for members to submit amendments.

House Appropriations: Transportation, Housing and Urban Development – We have been in contact with professional staff in the Majority and Minority regarding FY22 appropriations, and the process for submitting funding and language requests at the committee level. We also discussed new funding for transit in the regular appropriations process.

House Transportation and Infrastructure Committee – We have been in communication with Chairman DeFazio and his senior staff to discuss the upcoming surface transportation authorization process. We discussed conversations between the White House and Committee leaders regarding the outlook for a large infrastructure bill this summer and financing mechanisms being considered. We also discussed the timeline for hearings and a full committee markup of the Highway Bill.

Senate Banking Committee – We continue to communicate with senior staff to discuss possible timeline for a Surface Transportation Reauthorization bill, and the Chairman's priorities.

Community Project Funding (Earmarks)

On Friday night, February 26th, House Appropriations Chairwoman Rosa DeLauro (D-CT) announced that her Committee will be accepting member requests for specific projects in the appropriations bills for the upcoming fiscal year. The Committee has released a Fact Sheet on the reforms and parameters of the new process (available [HERE](#)), and key highlights are included below:

- Earmarks will only be allowed for state or local governmental grantees and eligible non-profits
- Overall earmark spending will be limited to 1 percent of overall discretionary spending, or \$15 billion, or whichever is lower
- Earmarks will be capped at 1 percent of each bill, and each subcommittee will decide and must comply with the full committee cap
- Each member will be allowed a maximum of ten requests across all appropriations bills per fiscal year, and there is no guarantee that they will get any/all of those requests

- The Senate will not have a cap
- The House will only make six programs available for earmarking, which will be the accounts that have historically carried the greatest number of earmarks
- Members will have to provide evidence of a community support and certify that neither they, nor their family members, have a financial interest in the project.
- There will be increased transparency, including an online submission process, public database of all requests, and increased vetting by Subcommittees as well as auditing of a sample of enacted projects conducted by the Government Accountability Office.

According to the House Appropriations Committee staff, the requests will adhere to strict transparency standards, which will require members to post their requests online and verify that they have no personal financial stake, as well as provide evidence of a community support. There will also be a public database of all requests, and increased vetting by subcommittees as well as auditing of a sample of enacted projects conducted by the Government Accountability Office to ensure they comply with Senate Rule 44 and committee standards.

Senate Appropriations Ranking Member Richard Shelby (R-AL) and House Rules Ranking Member Tom Cole (R-OK) have both informally backed a controlled return to a transparent process. However, Minority Leader Mitch McConnell (R-KY) suggested last week that an overwhelming majority of the Republican conference is opposed to earmarking, and they will not plan on submitting requests even as Democrats' plan to reinstate them is becoming increasingly likely.

Additional guidelines are expected to be released in the coming months, including submission deadlines, standardized request process/forms, the accounts and program eligibility, as well as project eligibility requirements. In the interim, the following descriptors will be helpful in defining priorities within the community:

- General project description
- Demonstration of community engagement and need
- Rough estimate of project's total cost
- State or local match
- Identified stakeholders and support within the community

American Rescue Plan & Budget Reconciliation

In the early morning hours of Saturday, February 27th, the House passed the coronavirus relief budget reconciliation bill in a party-line vote of [219-212](#). The only Democrats who joined all Republicans voting "Nay" were Reps. Golden (ME) and Schrader (OR). Earlier that week, the House Budget Committee held a markup of the full relief bill (the *American Rescue Plan Act*; [H.R. 1319](#)) comprised of the various sections drafted by House Committees. Following the markup, Budget Committee Chairman John Yarmuth (D-KY) released a Manager's Amendment (available [here](#)) making changes to the bill. The

manager's amendment was approved and includes sections from the House Foreign Affairs, Science, and Natural Resources Committees to the bill, adding approximately \$11.8 billion in new spending to the measure. While most of the other modifications included in the Manager's package make technical and administrative changes, more substantial changes to the bill include the following:

- Redirects \$1.8 billion reserved for testing and mitigation activities in "congregate settings" to the general testing, tracing, and mitigation fund.
- Provides an additional \$1.2 billion in direct assistance to low-income renters.
- Provides an additional \$425 million to transit agencies for capital investment grants.

The Manager's Amendment makes changes to SEC. 7006 – Federal Transit Administration Grants to strike and replace the original language. The manager's amendment language adds a little over \$400 million in funding for FTA grants and programs.

Most notably, the manager's amendment also includes the following language which will qualify the OC Streetcar for an additional \$9.4 million:

(ii) ALLOCATION.

Of the amounts made available in subparagraph (A)(i), \$175,000,000 shall be provided to each recipient for all projects with existing full funding grant agreements that received an allocation only prior to fiscal year 2019, except that projects open for revenue service are not eligible to receive a grant under this subparagraph and no project may receive more than 40 percent of the amounts provided under this clause. The Administrator of the Federal Transit Administration shall proportionally distribute funds in excess of such percent to recipients for which the percent of funds does not exceed 40 percent. Funds shall be provided proportionally based on the non-capital investment grant share of the amount allocated.

On Thursday, Senate Parliamentarian Elizabeth MacDonough ruled that the minimum wage increase was in violation of the Senate's "Byrd Rule" as its effect on the federal budget is "merely incidental" to the underlying intent of the provision. The ruling came after Senators from both parties met MacDonough to argue their case for whether or not the proposed minimum wage increase qualified for inclusion in the reconciliation package.

Following MacDonough's ruling on Thursday, both Senate Finance Committee Chairman Ron Wyden (D-OR) and Senate Budget Committee Chairman Bernie Sanders (D-VT) both indicated they would pursue alternative plans to increase the minimum wage in the reconciliation bill. Chairman Wyden indicated his plan would involve imposing a five percent penalty "on a big corporations' total payroll if any workers earn less than a certain amount," while incentivizing small businesses to raise wages by providing them with an "income tax credit equal to 25 percent of wages, up to \$10,000 per year per employer."

With moderate Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) publicly opposing a \$15 minimum wage, and with a lack of Republican support, the path forward for the minimum wage increase faces an uphill battle in the evenly divided Senate.

The Orange County House Delegation submitted a letter to House Speaker Pelosi (D-CA) and Minority Leader McCarthy (R-CA) on February 10th requesting direct aid to localities regardless of population size. The letter highlighted how no cities within Orange County qualified for CARES Act's 500,000 population threshold for direct aid. The full letter can be found [HERE](#).

INFRA Grant Opportunity

The Department of Transportation opened the application process for the Infrastructure for Rebuilding America (INFRA) grant program this month. Applications are due on Friday, March 19th. The funding for this year's grants totals approximately \$889 million. For the first time, the USDOT seeks INFRA projects that address climate change and environmental justice. Projects will be evaluated on whether they were planned as part of a comprehensive strategy to address climate change, or whether they support strategies to reduce greenhouse gas emissions such as deploying zero-emission-vehicle infrastructure or encouraging modal shift and a reduction in vehicle-miles-traveled. Racial equity will also be considered as a selection criterion, to the extent that project sponsors have completed equity-focused community outreach, and projects are designed to benefit underserved communities. The Department will also consider whether the project is located in a federally designated community development zone, including:

- Qualified Opportunity Zones
- Empowerment Zones
- Promise Zones
- Choice Neighborhoods.

According to information in the grant notice, USDOT seeks projects that apply innovative technology, delivery, or financing methods with proven outcomes to deliver projects in a cost-effective manner. The Department will make awards under the INFRA program to both large and small projects. For a large project, the INFRA grant must be at least \$25 million. For a small project, the grant must be at least \$5 million. Additional resources can be found [HERE](#).

Senate Power Sharing Agreement

After nearly a month of negotiations between Senate Majority Leader Chuck Schumer (D-NY) and Minority Leader Mitch McConnell (R-KY), the full Senate adopted a power sharing resolution (S. Res. 28) outlining the rules and procedures for the evenly split Senate. As anticipated, the final power-sharing agreement is almost identical to the power-sharing agreement made in 2001, the last time there was an even split in the Senate, with Democrats chairing Senate committees with equal party representation amongst committee members. The final agreement also provides for equal committee

budgets, committee staff, and office space between the parties. It also includes procedures where both parties can seek to discharge bills and nominations that deadlock in committee. Additionally, the power-sharing resolution as adopted limits Majority Leader Schumer's ability to "fill the amendment tree," a procedural tool used to prevent the offering of amendments.

Pete Buttigieg Confirmed as DOT Secretary

On February 2nd, Pete Buttigieg was confirmed by the full Senate as Secretary of Transportation by a vote of 86-13. On the same day, the Department of Transportation announced a new list of key staff:

- **Priyal Amin**, Deputy White House Liaison
- **Dalia Batuuka**, Special Assistant for Advance
- **Tristan Brown**, Deputy Administrator, Pipeline and Hazardous Materials Safety Administration
- **Alexis Gonzaludo**, Special Assistant to the Secretary
- **Nick Hornedo**, Digital Communications Manager
- **Chris Meagher**, Deputy Director of Public Affairs
- **Arlando Teller**, Deputy Assistant Secretary for Tribal Affairs
- **Andrew Wishnia**, Deputy Assistant Secretary for Climate Policy

Emergency Order Requiring Face Mask Use in Railroad Operations

On March 1st, the Federal Railroad Administration (FRA) published an emergency order requiring face mask use on all freight and passenger rail operations. The order is pursuant to [Executive Order 13998](#). The FRA has authority under the FRA's safety jurisdiction under the Federal railroad safety laws. [49 U.S.C. 20101](#), 20103. Any violation of this E.O. may subject the person (a railroad carrier) committing the violation to a civil penalty of up to \$118,826 for each day the violation continues. [49 U.S.C. 21301](#) and [86 FR 1751](#) (Jan. 11, 2021). Any individual (railroad personnel) who willfully violates a provision stated in this order is subject to civil penalties under [49 U.S.C. 21301](#). In addition, any individual (railroad personnel) whose violation of this order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under [49 U.S.C. 20111](#). FRA may, through the Attorney General, also seek injunctive relief to enforce this Order. [49 U.S.C. 20112](#). This EO will remain in effect until the CDC modifies or rescinds the national state of emergency. The full order can be found [HERE](#).

High Speed Rail Corridor Development Act of 2021

On February 5th, Rep. Costa (D-CA) introduced [H.R. 867](#) – *High Speed Rail Corridor Development Act of 2021*. The bill would prioritize high speed rail grant applicants that provide a greater non-federal share of cost compared to other project applications. The bill would also set aside half of the authorized funds for projects with less than a 50 percent federal share. The bill would authorize \$8 billion for each year FY22-FY25.

The bill has four Democratic cosponsors and has been referred to the House Transportation and Infrastructure Subcommittee on Railroads.

Passenger Rail Liability Cap Increase

On February 25th, the Department of Transportation released a notice that the Rail Passenger Transportation Liability Cap has been adjusted (raised) from \$294,278,983 to \$322,864,228. More information from the notice is included below:

Docket Number: [DOT-OST-2009-0092](#)

The Department of Transportation is publishing the inflation adjusted index factors for the rail passenger transportation liability cap under [49 U.S.C. 28103](#)(a)(2), as directed by section 11415 of the FAST Act. The index methodology ensures that the aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident is based on current dollars and is adjusted for inflation from the \$200,000,000 cap that went into effect on December 2, 1997.

Under the FAST Act, the index is adjusted to the date of enactment of the FAST Act using the Bureau of Labor Statistics Consumer Price Index—All Urban Consumers.

The index was based on the liability cap established on December 2, 1997, and the last full month prior to the enactment of the FAST Act on December 4, 2015. The FAST Act also directs the Secretary to update the liability cap every fifth year after the date of enactment. The table below shows the Index and inflator the Federal Railroad Administration used to calculate an inflation adjusted amount of \$322,864,228.

Month	Index	Inflator	Liability cap
December 1997	161.30	1.00	\$200,000,000
October 2020	260.39	1.61	322,864,228

Passenger Liability Cap Inflation Adjusted Index and Inflation Factor

The adjustment of the rail passenger transportation liability cap to \$322,864,228 shall be effective 30 days after February 22, 2021.

LOCAL Infrastructure Act

On February 25th, Senators Roger Wicker (R-MS) introduced S. 479 – *Lifting Our Communities through Advance Liquidity for Infrastructure Act* ([LOCAL Infrastructure Act](#)). This legislation would repeal the amendments made by Sec. 13532 of OL 115-97, reinstating Advance Refunding Bonds. A brief summary as prepared by the office of Senator Wicker is included below:

- State and local governments issue their debt as municipal bonds to fund education, health care, infrastructure, and other capital improvement projects important to the overall economic well-being of local communities.
- Typically, municipal bonds are federally tax-exempt.
- When interest rates fall, municipalities may seek to refinance their outstanding bonds at a lower rate.
- Advance refunding allows state and local governments the one-time option to refinance outstanding municipal bonds to more favorable borrowing rates or terms. This tool provides state and local governments greater flexibility to generate savings.
- The advance refunding of bonds saved state and local governments billions of dollars over previous decades, which in turn saved money for local taxpayers.
- Since the repeal of advance refunding, there has been a significant drop in the refinancing of municipal bonds even though interest rates continue to trend downward.
- The elimination of advance refunding has imposed substantial financial costs on states and local governments.
- Reinstatement of advance refunding does not require any direct appropriation of federal dollars.

The federal tax-exempt debt could be refinanced only once, but local communities would be able to take advantage of the lower interest rates to generate additional savings on existing bonds. Local governments could reinvest these savings to fund infrastructure, education, health care, or other capital improvement projects. Senator Dianne Feinstein (D-CA) is a cosponsor of the legislation.

Senate EPW Hearing: Building Back Better: Investing in Transportation while Addressing Climate Change, Improving Equity, and Fostering Economic Growth and Innovation

On February 24th, the Senate Environment and Public Works Committee held a hearing on infrastructure and climate change. During his opening statements, Chairman Tom Carper (D-DE) discussed his goal to improve the nation's highways and create new jobs, lift up our communities, build a more sustainable economy, and improve the nation's air quality. Maryland Governor Larry Hogan endorsed permitting and process streamlining as well as a two-year goal for the completion of environmental reviews. Michigan Governor Gretchen Whitmer discussed the need for a federal approach to infrastructure that prioritized equity and climate action. Both Governors supported a bipartisan process for the upcoming surface transportation reauthorization. An ongoing issue of discussion was the long-term effectiveness of the gas tax in regard to the increase in electric vehicles.

Witnesses:

- Governor Gretchen Whitmer of Michigan
- Governor Larry Hogan of Maryland

- Mayor Michael Hancock of Denver, Colorado
- Victoria Sheehan, President of American Association of State Highway and Transportation Officials (AASHTO) and Commissioner of the New Hampshire Department of Transportation.

Note: Unlike in the House, a surface transportation reauthorization bill is covered by multiple committees of jurisdiction in the Senate. The Senate EPW Committee has jurisdiction covering the construction and maintenance of highways, environmental regulations, and bridges. Public Transit and Railroads are covered by the Senate Banking and Senate Commerce Committees respectively, and funding mechanisms (e.g., the federal gas tax) fall under the jurisdiction of the Senate Finance Committee.



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors
From: Andrea West, Interim Clerk of the Board *Andrea West*
Subject: Local Transportation Fund Claims for Fiscal Year 2021-22

Finance and Administration Committee Meeting of March 10, 2021

Present: Directors Goodell, Harper, Hennessey, Hernandez, Jones, and Muller
Absent: None

Committee Vote

Following the roll call vote, this item was declared passed 6-0 by the Members present.

Committee Recommendation

Adopt Orange County Transit District Resolution No. 2021- 013 authorizing the filing of Local Transportation Fund claims, in the amounts of \$152,727,401 to support public transportation and \$8,094,904 for community transit services.



March 10, 2021

To: Finance and Administration Committee
From: Darrell E. Johnson, Chief Executive Officer
Subject: Local Transportation Fund Claims for Fiscal Year 2021-22

Overview

The Orange County Transit District is eligible to receive funding from the Local Transportation Fund for providing public transportation services throughout Orange County. In order to receive these funds, the Orange County Transit District, as the public transit and community transit services operator, must file claims with the Orange County Transportation Authority, the transportation planning agency for Orange County.

Recommendation

Adopt Orange County Transit District Resolution No. 2021-013 authorizing the filing of Local Transportation Fund claims, in the amounts of \$152,727,401 to support public transportation and \$8,094,904 for community transit services.

Background

The Transportation Development Act (TDA) of 1971 established a funding source dedicated to transit and non-transit related projects. The funding source consists of two parts: the Local Transportation Fund (LTF), which is derived from a 1/4 cent of the current retail sales tax in Orange County, and the State Transit Assistance Fund, which is generated from the sales tax on diesel and funded through the Public Transportation Account.

The LTF revenues are collected by the California Department of Tax and Fee Administration and returned monthly to local jurisdictions based on the volume of sales during each month. In Orange County, the LTF receipts are deposited in the Orange County LTF account at the Orange County Treasury and administered by the Orange County Auditor-Controller. LTF receipts are distributed by the Orange County Auditor-Controller among the various administrative, planning, and program apportionments as specified in the TDA.

Discussion

Section 6630 of the California Code of Regulations requires Orange County Transit District (OCTD) to file a claim with the Orange County Transportation Authority (OCTA) in order to receive an allocation from the LTF for providing public transportation services (Article 4 claims).

Since OCTA has previously designated the OCTD as the consolidated transportation service agency for Orange County, the OCTD is also required to file a claim with OCTA in order to receive an allocation from the LTF for operating community transit services (Article 4.5 claims). The estimated total amount of these Articles 4 and 4.5 claims for fiscal year 2021-22 equals \$160,822,306.

Summary

The LTF provides funds to the OCTD for public transit services. In order to receive these funds, the OCTD must file the appropriate LTF claims with OCTA. Staff recommends the OCTA Board of Directors adopt the OCTD Resolution No. 2021-013 to authorize the filing of these claims.

Attachment

- A. Resolution of the Orange County Transit District, Authorizing the Filing of Local Transportation Fund Claims

Prepared by:

Sam Kaur
Department Manager,
Revenue Administration
(714) 560-5889

Approved by:

Andrew Oftelie
Chief Financial Officer,
Finance and Administration
(714) 560-5637

**RESOLUTION OF THE
ORANGE COUNTY TRANSIT DISTRICT**

**AUTHORIZING THE FILING OF
LOCAL TRANSPORTATION FUND CLAIMS**

WHEREAS, the Orange County Local Transportation Fund was created by the Transportation Development Act (SB 325:1971) to aid in meeting the public transportation and community transit needs that exist in Orange County; and

WHEREAS, the Orange County Transit District is submitting transportation claims for funds from the Orange County Local Transportation Fund; and

WHEREAS, the Orange County Transportation Authority has the authority to review claims and allocate such funds in accordance with the California Code of Regulations and the California Transportation Development Act.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Orange County Transit District hereby requests the Orange County Transportation Authority to allocate funds to the Orange County Transit District for the purpose of providing the support of a public transportation system as described under the California Transportation Development Act, Article 4, and for funding community transit services as described under the California Transportation Development Act, Article 4.5.

BE IT FURTHER RESOLVED that the Orange County Transit District agrees to provide the Orange County Transportation Authority with such information as may be necessary to support these transportation claims.

ADOPTED, SIGNED AND APPROVED this 22nd day of March 2021.

AYES:

NOES:

ABSENT:

ATTEST:


Andrea West
Interim Clerk of the Board

Andrew Do, Chairman
Orange County Transit District



March 22, 2021

To: Members of the Board of Directors

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Approval to Release Invitation for Bids for Battery Chargers for 40-Foot Plug-In Battery-Electric Buses

Overview

The Orange County Transportation Authority Board of Directors approved the purchase of ten battery-electric buses for use as a pilot for operation of OC Bus fixed-route service. Charging the buses will require a combination of electrical infrastructure provided by Southern California Edison through the Charge Ready Program and battery chargers secured through a separate procurement. Staff is requesting Board of Directors' approval to release an invitation for bids for battery chargers necessary to support the battery-electric bus pilot.

Recommendation

Approve the release of Invitation for Bids 0-2731 for battery chargers for 40-foot plug-in battery-electric buses.

Discussion

On October 8, 2020, the Orange County Transportation Authority (OCTA) Board of Directors (Board) approved the purchase of ten battery-electric buses (BEB) as a pilot for operation of OC Bus fixed-route service. Two of the pilot buses are projected to arrive in August 2021. To support the charging of these vehicles, OCTA is working with Southern California Edison (SCE) to provide electrical infrastructure at the Garden Grove Base. In addition to the equipment being provided by SCE, OCTA is required to provide the BEB chargers. The chargers will consist of ten, 150-kilowatt battery chargers that will provide power to ten depot charging stations. The chargers can supply power evenly or sequentially to the charging stations. This allows each bus to be intelligently charged in a manner tailored to the power and logistical needs of each bus. Once installed and connected to the SCE equipment, the chargers will provide the power, interface, and connection to the BEBs. In addition to the hardware components,

training for both charging station operators and the facilities technicians who will maintain the equipment is included.

Procurement Approach

OCTA's procurement policies and procedures require that the Board approve all invitation for bids (IFB) over \$1,000,000. Staff is requesting approval from the Board to release IFB 0-2731 for the battery chargers for 40-foot plug-in battery-electric buses (Attachment A).

The IFB will be released upon Board approval. The award will be made to the lowest responsive and responsible bidder in accordance with state law.

Fiscal Impact

The project is included in OCTA's Proposed Fiscal Year 2020-21 Budget, Maintenance Department, Account No. 2114-9022-D2108-OUV, and is funded through the Low Carbon Transit Operations Program.

Summary

Board of Directors' approval is requested to release Invitation for Bids 0-2731 for battery chargers for 40-foot plug-in battery-electric buses.

Attachment

- A. Draft Invitation for Bids (IFB) 0-2731, Battery Chargers for 40-Foot Plug-In Battery-Electric Buses

Prepared by:



Dayle Withers
Department Manager, Maintenance
714-560-5538

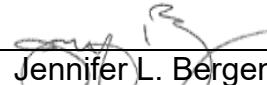
Approved by:



Cliff Thorne
Director, Maintenance and Motorist
Services
714-560-5975



Pia Veasaper
Director, Contracts Administration and
Materials Management
714-560-5619



Jennifer L. Bergener
Chief Operating Officer, Operations/
Deputy Chief Executive Officer
714-560-5462

DRAFT INVITATION FOR BIDS (IFB) 0-2731

**BATTERY CHARGERS FOR
40-FOOT PLUG-IN
BATTERY-ELECTRIC
BUSES**



**ORANGE COUNTY TRANSPORTATION AUTHORITY
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
(714) 560-6282**

Key IFB Dates

Issue Date:	March 23, 2021
Pre-Bid Conference Date:	March 30, 2021
Question Submittal Date:	April 1, 2021
Bid Submittal Date:	April 13, 2021

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March 23, 2021

**SUBJECT: NOTICE OF INVITATION FOR BIDS (IFB)
IFB 0-2731: "BATTERY CHARGERS FOR
40-FOOT PLUG-IN BATTERY-ELECTRIC BUSES "**

TO: ALL BIDDERS

**FROM: CONTRACTS ADMINISTRATION AND MATERIALS
MANAGEMENT DEPARTMENT**

The Orange County Transportation Authority (Authority) invites bids from qualified contractors to provide battery chargers for 40-foot plug-in battery-electric buses

The budget for this project is \$1,406,072 for a six-month term.

Bids must be received in the Authority's office at or before 11:00 a.m. on April 13, 2021.

Bidders are advised that due to current health concerns, bid openings will be held via teleconference instead of in-person. Bidders delivering bids at the Authority's office will be able to call in and listen to the public bid opening via teleconference at the following call-in number:

(714) 558-5200, 820238# (1)	English (United States)
(714) 560-5666, 820238# (1)	English (United States)

Conference ID: 820238

Callers are requested to dial in and mute the call.

The bid opening will begin promptly at 11:00 a.m. Callers are requested to dial in and mute the call. Bids are still to be submitted per the instructions of IFB 0-2731. Attendees are required to complete the sign-in sheet on Exhibit G to this IFB and email it to the undersigned at sding@octa.net no later than noon **April 13, 2021**.

Bids are still to be submitted per the instructions of IFB 0-2731.

Bids delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority
Contracts Administration and Materials Management
600 South Main Street, (Lobby Receptionist)
Orange, California 92868
Attention: Sue Ding, Sr. Contract Administrator**

Bids delivered using the U.S. Postal Service shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management
P.O. Box 14184
Orange, California 92863-1584
Attention: Sue Ding, Sr. Contract Administrator**

Note: The Authority utilizes a third-party delivery service; therefore, anticipate a 48-hour delay in delivery of proposals mailed to the P.O. Box listed above. Proposals are considered received once time stamped at the Authority's physical address.

Bids and amendments received after the date and time specified above will be returned to the bidders unopened.

Bidders interested in obtaining a copy of this IFB may do so by downloading the IFB from CAMM NET at <https://cammnet.octa.net>.

All bidders interested in doing business with the Authority are required to register their business on-line at CAMM NET. The website can be found at <https://cammnet.octa.net>. From the site menu, click on CAMM NET to register.

To receive all further information regarding this IFB, bidders and sub-contractors must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Fuel & Lubricants; Equipment

Maintenance Services -
Equipment

Professional Consulting
Professional Services

Commodity:

Fuel & Lubricant Equipment

Fuel Management Systems

Fuel & Lubricant Equipment -
Service

Alternative Fuels Consulting
Fuel Management Services

A pre-bid conference will be held on March 30, 2021, at 10:00 a.m., via a Skype Teleconference Meeting. All prospective bidders are encouraged to join the pre-bid conference by calling either of the following numbers:

Join by phone

(714) 558-5200, 820238# (1)	English (United States)
(714) 560-5666, 820238# (1)	English (United States)

Conference ID: 820238

Callers are requested to dial in and mute the call.

Bidders are encouraged to subcontract with small businesses to the maximum extent possible.

All bidders will be required to comply with all applicable equal opportunity laws and regulations.

The award of this contract is subject to receipt of federal, state and/or local funds adequate to carry out the provisions of the agreement including the project specifications.

SECTION I: INSTRUCTIONS TO BIDDERS

SECTION I. INSTRUCTIONS TO BIDDERS

A. PRE-BID CONFERENCE/SITE VISIT

A pre-bid conference will be held on March 30, 2021, at 10:00 a.m., via a Skype Teleconference Meeting. All prospective bidders are encouraged to join the pre-bid conference by calling either of the following numbers:

Join by phone

(714) 558-5200, 820238# (1)	English (United States)
(714) 560-5666, 820238# (1)	English (United States)

Conference ID: 820238

Callers are requested to dial in and mute the call.

B. EXAMINATION OF BID DOCUMENTS

By submitting a bid, bidder represents that it has thoroughly examined and become familiar with the work required under this IFB and that it is capable of performing quality work to achieve the Authority's objectives.

C. ADDENDA

Any Authority changes to the requirements will be made by written addendum to this IFB. Any written addenda issued pertaining to this IFB shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this IFB as the result of oral instructions. Bidders shall acknowledge receipt of addenda in their bids. Failure to acknowledge receipt of Addenda may cause the bid to be deemed non-responsive to this IFB and be rejected.

D. AUTHORITY CONTACT

All questions and/or contacts with Authority staff regarding this IFB are to be directed to the following Contract Administrator:

Sue Ding, Sr. Contract Administrator
 Contracts Administration and Materials Management Department
 550 South Main Street
 P.O. Box 14184
 Orange, CA 92863-1584
 Phone: 714.560.5631, Fax: 714.560.5792
 Email: sding@octa.net

Commencing on the date of the issuance of this IFB and continuing until award of the contract or cancellation of this IFB no proposer, subcontractor, lobbyist or agent hired by the proposer shall have any contact or communications regarding this IFB with any Authority's staff; member of the evaluation committee for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this IFB. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any proposer, subcontractor, lobbyist or agent hired by the proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of the Authority.

E. CLARIFICATIONS

1. Examination of Documents

Should a bidder require clarifications of this IFB, the bidder shall notify the Authority in writing in accordance with Section D. Should it be found that the point in question is not clearly and fully set forth, the Authority will issue a written addendum clarifying the matter which will be sent to all firms registered on CAMM NET under the commodity codes specified in this IFB.

2. Preference for Materials

In accordance with the California Public Contract Code Section 3400, reference to any equipment, material, article or patented process, by trade name, make, or catalog number, shall not be construed as limiting competition. In those cases where the specifications call for a designated material, product, or service by specific brand or trade name and there is only one brand or trade name listed, the item involves a unique or novel product application required to be used in the public interest or is the only brand or trade name known to the Authority.

Where the specifications or drawings identify any material, product or service by one or more brand names, whether or not "or equal" is added, and the bidder wishes to propose the use of another item as being equal, approval shall be requested as set forth below.

3. Submitting Requests

- a. All questions, clarifications, requests for approved equals, including questions that could not be specifically answered at the pre-bid conference must be put in writing and must be received via email to sding@octa.net by the Authority no later than **5:00 p.m., on April 1, 2021**.

- b. Requests for clarifications, questions and comments must be clearly labeled, "IFB 0-2731 Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirements. The burden of proof as to the equality, substitutability, and compatibility of proposed alternates or equals shall be upon the bidder, who shall furnish all necessary information at no cost to the Authority. The Authority shall be the sole judge as to the equality, substitutability, and compatibility of proposed alternates or equals.
- d. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
 - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
 - (2) Personal Delivery: Contracts Administration and Materials Management Department, 600 South Main Street, Lobby Receptionist, Orange, California 92868.
 - (3) Facsimile: (714) 560-5792.
 - (4) Email: sding@octa.net

4. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than five (5) calendar days before the scheduled date of bid opening. Bidders may download responses from CAMM NET at <https://cammmnet.octa.net>, or request responses be sent via U.S. Mail by emailing the request to Sue Ding, Sr. Contract Administrator.

To receive email notification of Authority responses when they are posted on CAMM NET, bidders and their subcontractors must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Fuel & Lubricants; Equipment

Maintenance Services -
Equipment

Commodity:

Fuel & Lubricant Equipment

Fuel Management Systems

Fuel & Lubricant Equipment -
Service

Professional Consulting
Professional Services

Alternative Fuels Consulting
Fuel Management Services

Inquiries received after **5:00 p.m. on, April 1, 2021**, will not be responded to.

F. BRAND NAMES

It should be understood that specifying a brand name, components, and/or equipment in this IFB shall not relieve the bidder from their responsibility to produce the product in accordance with the performance warranty and contractual requirements. The bidder is responsible for notifying the Authority of any inappropriate brand name, component, and/or equipment substitute for consideration by the Authority.

Brand names and model number, when used, are for the purpose of identifying a standard of requirement and are not to be construed as restricting the procurement to those brand names and model numbers called out.

G. SUBMISSION OF BIDS

Bidder is responsible for ensuring third-party deliveries arrive at the time and place as indicated in this IFB.

1. Date and Time

Bids must be received in the Authority's office at or before 11:00 a.m. on April 13, 2021.

Bids received after the above-specified date and time will be returned to bidders unopened.

Bids will be publicly opened in the Authority's Administration and Contracts office at the submission time indicated above.

Bidders are advised that due to current health concerns, bid openings will be held via teleconference instead of in-person. Bidders delivering bids at the Authority's office will be able to call in and listen to the public bid opening via teleconference at the following call-in number:

(714) 558-5200, 820238# (1)

English (United States)

(714) 560-5666, 820238# (1)

English (United States)

Conference ID: 820238

Callers are requested to dial in and mute the call.

The bid opening will begin promptly at 11:00 a.m. Callers are requested to dial in and mute the call. Bids are still to be submitted per the instructions of IFB 0-2568. Attendees are required to complete the sign-in sheet on Exhibit G to this IFB and email it to the undersigned at sding@octa.net no later than noon **April 13, 2021**.

2. Address

Bids delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority
Contracts Administration and Materials Management (Camm)
600 South Main Street, (Lobby Receptionist)
Orange, California 92868
Attention: Sue Ding, Sr. Contract Administrator**

Or bids delivered using the U.S. Postal Services shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management (Camm)
P.O. Box 14184
Orange, California 92863-1584
Attention: Sue Ding, Sr. Contract Administrator**

Note: The Authority utilizes a third-party delivery service; therefore, anticipate a 48-hour delay in delivery of proposals mailed to the P.O. Box listed above. Proposals are considered received once time stamped at the Authority's physical address.

3. Identification of Bids

Bidder shall submit its bid in a sealed package, addressed as shown above, bearing the bidder's name and address and clearly marked as follows:

**"IFB No. 0-2731 Battery Chargers for 40-Foot Plug-In
Battery-Electric Buses"**

Bidder shall be entirely responsible for any consequences, including disqualification of the bid, resulting from any inadvertent opening of unsealed or improperly identified packages. It is the bidder's sole responsibility to see that its bid is received as required.

4. Acceptance of Bids

- a. The Authority reserves the right to postpone bid openings for its own convenience.
- b. Bids received and opened by Authority are public information and must be made available to any person upon request.
- c. Submitted bids are not to be copyrighted.

H. PRE-CONTRACTUAL EXPENSES

The Authority shall not, in any event, be liable for any pre-contractual expenses incurred by bidder in the preparation of its bid. Bidder shall not include any such expenses as part of its bid.

Pre-contractual expenses are defined as expenses incurred by bidder in:

- 1. Preparing a bid in response to this IFB;
- 2. Submitting that bid to the Authority;
- 3. Negotiating with the Authority any matter related to this bid; or
- 4. Any other expenses incurred by bidder prior to date of award, if any, of the Agreement.

I. JOINT BIDS

Where two or more firms desire to submit a single bid in response to this IFB, they should do so on a prime-subcontractor basis rather than as a joint venture. The Authority intends to contract with a single firm and not with multiple firms doing business as a joint venture.

J. TAXES

Bids are subject to State and Local sales taxes. However, the Authority is exempt from the payment of Federal Excise and Transportation Taxes. Contractor is responsible for payment of all taxes for any goods, services, processes, and operations incidental to or involved in the contract.

K. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator responsible for this procurement. Any protests filed by a bidder in connection with this IFB must be submitted in accordance with the Authority's written procedures.

L. DELIVERY

The items described herein are to be delivered to the following facility:

Garden Grove Base

11790 Cardinal Circle, Garden Grove, CA 92843

M. CASH DISCOUNTS

Cash/payment discounts will not be considered in the evaluation of bids.

N. APPENDICES

Information considered by bidder to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Bidders are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials; appendices should be relevant and brief.

O. HAZARDOUS SUBSTANCES**1. CAL-OSHA Requirements**

All flammable, corrosive, toxic, or reactive materials being bid must have a complete CAL-OSHA Safety Data Sheet (SDS) accompanying the submitted bid.

2. South Coast Air Quality Management District (SCAQMD)

All materials (paints, coatings, inks, solvents, and adhesives) shall comply with the volatile organic compounds (VOC) content requirements of the applicable SCAQMD rules.

3. Notice of Hazardous Substances

Title 8, California Code of Regulations, Section 5194 (e) (c), states that the employer must inform any contractor employers with employees working in the employer's workplace of the hazardous substances to which their employees may be exposed while performing their work. In compliance with this requirement, the Authority hereby gives notice to all bidders that the following general categories of hazardous substances are present on the Authority's premises:

- Adhesives, sealant, patching, and coating products
- Antifreezes, coolants
- Cleaners, detergents
- Paints, thinners, solvents

- Pesticides, Petroleum products (diesel and unleaded fuel, oil products)
- Printing, photocopying materials
- Propane Welding materials/compressed gases (e.g., acetylene, oxygen, nitrogen)

More specific information may be obtained from the Authority's Safety and Benefits office at (714) 560-5854, and from Safety Data Sheets (SDS) for individual products.

4. Hazardous Waste Labels

Containers containing hazardous substances must be labeled with the following information:

- Identity of hazardous substance-chemical name, not manufacturer or trade name;
- Appropriate health warning relative to health and physical hazard; and
- Name and address of manufacturer or other responsible party. All containers containing hazardous substances may be rejected unless containers are properly labeled. Containers of 55 gallons or larger must have either weather resistant labels or the information should be painted directly on the containers.

P. CONTRACT AWARD

Any contract awarded as a result of this IFB, will be awarded to the lowest responsive and responsible bidder and shall be on a lump sum basis, in accordance with the requirements in this IFB. However, Authority reserves the right to award its total requirements to one bidder, or to apportion those requirements among several bidders, as the Authority may deem to be in its best interests.

Q. AUTHORITY'S RIGHTS

1. The Authority reserves the right to accept or reject any and all bids, or any item or part thereof, or to waive any informalities or irregularities in bids.
2. The Authority reserves the right to withdraw or cancel this IFB at any time without prior notice. The Authority makes no representations that any contract will be awarded to any bidder responding to this IFB.
3. The Authority reserves the right to issue a new IFB for the project.
4. The Authority reserves the right to postpone the bid opening for its own convenience.
5. Each bid will be received with the understanding that acceptance by the Authority of the bid to provide the goods and services described herein

shall constitute a contract between the bidder and Authority which shall bind the bidder on its part to furnish and deliver at the prices given and in accordance with conditions of said accepted bid and specifications.

6. The Authority reserves the right to investigate the qualifications of any bidder, and/or require additional evidence of qualifications to perform the work.

R. PUBLIC RECORDS AND INFORMATION

Bids received by Authority are considered public information and will be made available to the public if requested to do so.

S. FORMS

1. Status of Past and Present Contracts Form

Bidder is required to complete and sign the form entitled "Status of Past and Present Contracts" provided in this IFB and submit as part of the bid. Bidder shall identify the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Bidder shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of the bid.

A separate form must be completed for each identified contract. Each form must be signed by the Bidder confirming that the information provided is true and accurate. Bidder is required to submit one copy of the completed form(s) as part of its bid.

2. List of Subcontractors Form

Bidder shall complete Exhibit F, which lists all subcontractors performing work in excess of one half of one percent (1/2 of 1%) of the bid amount per the instructions set forth in Section I "Instructions to Bidders".

3. Bid Opening Sign-In Sheet

Bidders are advised that an *optional* teleconference for the bid opening on April 13, 2021, at 11:00 a.m. is available. Attendees are advised to complete the sign-in sheet on Exhibit G to this IFB and email it to sdling@octa.net no later than noon April 13, 2021.

SECTION II: KEY CONTRACTUAL TERMS

SECTION II. KEY CONTRACTUAL TERMS

The following terms and conditions are highlighted to make bidders aware of the contractual parameters of this procurement.

A. ACCEPTANCE OF ORDER

Bidder will be required to accept a written Agreement or Purchase Order in accordance with and including as a part thereof the published notice of Invitation For Bids, the requirements, conditions and specifications, with no exceptions other than those specifically listed in the written Agreement or Purchase Order.

B. CHANGES

By written notice or order, Authority may, from time to time, make changes including but not limited to drawings, designs, specifications, delivery schedules, property and services furnished by Authority. If any such change causes an increase or decrease in price of this Agreement or Purchase Order or in the time required for its performance, the bidder shall promptly notify Authority thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be negotiated. However, nothing in this clause shall excuse the bidder from proceeding immediately with the Agreement or Purchase Order as changed.

C. INVOICE AND PAYMENT

A separate invoice shall be issued for each shipment. Unless otherwise specified in the Agreement or Purchase Order, no invoice shall be issued prior to shipment of goods. Payment due dates, including discount period, will be computed from date of receipt of goods or of correct invoice (whichever is later) to date Authority check is mailed. Any discount taken will be taken on full amount of invoice, unless other charges are itemized and discount thereon is specifically disallowed.

D. WARRANTIES

1. Bidder warrants to Authority that, for a period of one year following Authority's inspection and acceptance of each item delivered hereunder, each item shall conform to the requirements hereof and will be free from defects. In addition to other remedies, which may be available, the Authority may, at its option, return any nonconforming or defective items to bidder and/or require correction or replacement of said item at the location of the item when the defect is discovered, all at bidder's risk and expense. If Authority does not require correction or replacement of nonconforming or defective items, bidder shall repay such portion of the payment specified herein or such additional amount as is equitable under the circumstances. Authority's rights hereunder are in addition to, but not limited by, bidder's standard warranties. Inspection and acceptance of items by Authority, or

payment therefore, shall not relieve bidder of its obligations hereunder.

2. Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.

E. INSURANCE

- a. BIDDER shall procure and maintain insurance coverage during the entire term of this Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. BIDDER shall provide the following insurance coverage:
 1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury Liability, and Property Damage with a minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate;
 2. Automobile Liability Insurance to include owned, hired and non-owned autos with a combined single limit of \$1,000,000.00 each accident;
 3. Workers' Compensation with limits as required by the State of California including a waiver of subrogation in favor of AUTHORITY, its officers, directors, employees or agents; and
 4. Employers' Liability with minimum limits of \$1,000,000.00.
- b. Proof of such coverage, in the form of a certificate of insurance, with the AUTHORITY, its officers, directors, employees and agents, designated as additional insureds as required by contract. In addition, provide an insurance policy blanket additional insured endorsement. Both documents must be received by AUTHORITY prior to commencement of any work. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the effective date of this Agreement. Such insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY. Furthermore, AUTHORITY reserves the right to request certified copies of all related insurance policies.
- c. BIDDER shall include on the face of the certificate of insurance the Agreement or Purchase Order Number C-0-2731; and, the Senior Contract Administrator's Name, Sue Ding.
- d. BIDDER shall also include in each subcontract the stipulation that subcontractors shall maintain insurance coverage in the amounts required from BIDDER as provided in this Agreement.
- e. BIDDER shall be required to immediately notify AUTHORITY of any modifications or cancellation of any required insurance policies.

F. EXCESS REPROCUREMENT LIABILITY

Bidder shall be liable to Authority for all expenses incurred by Authority in reprocurring elsewhere the same or similar items or services offered by bidder hereunder, should bidder fail to perform or be disqualified for failure to meet the terms and conditions set forth herein.

G. PACKING AND SHIPPING

All items shall be prepared for shipment and packed to prevent damage or deterioration and shipped at the lowest transportation rates in compliance with carrier tariffs. All shipments to be forwarded on one day, via one route, shall be consolidated. Each container shall be consecutively numbered, and marked with the herein Agreement or Purchase Order and part numbers. Container and Agreement or Purchase Order numbers shall be indicated on bill of lading. Two copies of packing slips, showing Agreement or Purchase Order number, shall be attached to No. 1 container of each shipment. Items sold F.O.B. origin shall be shipped prepaid. No charges will be paid by Authority for preparation, packing, crating, cartage or freight.

H. TITLE AND RISK OF LOSS

Unless otherwise provided in the Agreement or Purchase Order, bidder shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this Agreement or Purchase Order at the F.O.B. point specified herein, and upon such delivery title shall pass from bidder and bidder's responsibility for loss or damage shall cease, except for loss or damage resulting from bidder's negligence. Passing of title upon such delivery shall not constitute acceptance of the item by Authority.

I. NEW MATERIALS

Except as to any supplies and components which this Agreement or Purchase Order specifically provides need not be new, the bidder represents that the supplies and components to be provided under this Agreement or Purchase Order are new and of recent manufacture (not used or reconditioned or recycled, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this Agreement or Purchase Order, the bidder believes that the furnishing of supplies or components which are not new is necessary or desirable, bidder shall notify the Authority immediately, in writing, including the reasons therefore and proposing any consideration which will flow to the Authority if authorization to use such supplies is granted.

J. INSPECTION AND ACCEPTANCE

All items are subject to final inspection and acceptance by Authority at destination. Final inspection will be made within a reasonable time after receipt of items hereunder.

Payment will be made within a reasonable time after inspection and formal acceptance of the equipment by the Authority.

K. INDEMNIFICATION

Bidder shall indemnify, defend and hold harmless Authority, its officers, directors, employees and agents from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct by bidder, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement or Purchase Order.

L. INFRINGEMENT INDEMNITY

In lieu of any other warranty by Authority or bidder against infringement, statutory or otherwise, it is agreed that bidder shall defend at its expense any suit against Authority based on a claim that any item furnished under this Agreement or Purchase Order or the normal use or sale thereof infringes any United States Letters Patent or copyright, and shall pay costs and damages finally awarded in any such suit, provided that bidder is notified in writing of the suit and given authority, information and assistance at bidder's expense for the defense of the suit. Bidder, at no expense to Authority, shall obtain for Authority the right to use and sell said item, or shall substitute an equivalent item acceptable to Authority and extend this patent indemnity thereto.

M. SUBCONTRACTORS AND ASSIGNMENTS

Neither this Agreement nor Purchase Order, nor any interest herein, nor any claim hereunder, may be assigned by the bidder either voluntarily or by operation of law, nor may all or substantially all of this Agreement or Purchase Order be further subcontracted by the bidder without the prior written consent of the Authority. No consent shall be deemed to relieve the bidder of its obligations to comply fully with the requirements hereof.

N. DISPUTES

This Agreement or Purchase Order shall be construed and all disputes hereunder shall be settled in accordance with the laws of the State of California. Pending final resolution of a dispute hereunder, bidder shall proceed diligently with the performance of this Agreement or Purchase Order.

O. NOTICE OF LABOR DISPUTE

Whenever bidder has knowledge that any actual or potential labor dispute may delay this Agreement or Purchase Order, bidder shall immediately notify and submit all relevant information to Authority. Bidder shall insert the substance of this entire clause in any subcontract hereunder, as to which a labor dispute may

delay this Agreement or Purchase Order.

P. AUDIT AND INSPECTION OF RECORDS

Bidder and/or subcontractors shall provide Authority, or other agents of Authority, such access to bidder's and/or subcontractor's accounting books, records, payroll documents and facilities as Authority deems necessary to examine, audit, and inspect all books, records, work data, documents and activities directly related hereto. Bidder shall maintain books, records, data and documents according to generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during bidder's performance hereunder and for a period of four (4) years from the date of final payment by Authority hereunder.

Q. PROHIBITED INTEREST

The bidder covenants that, for the term of this agreement, no member, director, officer or employee of the Authority during his/her tenure in office or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

R. RIGHTS IN DATA

Bidder agrees that all data including, but not limited to, drawings, tapes, software, photo prints and other graphic information required to be furnished under this Agreement or Purchase Order, together with any other information presented orally, shall be furnished with unlimited rights and as such, shall be free from proprietary restriction except as elsewhere authorized in this Agreement or Purchase Order. Bidder further agrees that all such data are owned by Authority and that bidder shall have no interest or claim thereto, and that said data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

S. FEDERAL, STATE AND LOCAL LAWS

Bidder warrants that in the performance of this Agreement or Purchase Order it shall comply with all applicable federal, state, and local laws and ordinances and all lawful orders, rules and regulations.

T. EQUAL EMPLOYMENT OPPORTUNITY

If awarded an Agreement or Purchase Order resulting from this IFB, bidder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The bidder shall take affirmative action to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship.

U. TERMINATION

Authority may terminate this Agreement for its convenience at any time, in whole or part, by giving successful bidder written notice thereof. Upon termination, the Authority may pay the successful bidder allowable costs incurred to date of termination, and those costs deemed reasonably necessary by the Authority to effect such termination. In addition, the Authority may pay the successful bidder a percentage of profit, which relates to Agreement work, accomplished to date of termination, which shall be the date of notice of termination.

The Authority may terminate the Agreement if a federal or state proceeding for the relief of debtors is undertaken by or against the successful bidder or if the successful bidder makes an assignment for the benefit of creditors, or in the event the successful bidder breaches the terms or violates the conditions of the Agreement, and does not within ten (10) days thereafter, cure such breach or violation, the Authority may immediately terminate the Agreement for default. The successful bidder shall be liable for any and all costs incurred by the Authority as a result of such default, including but not limited to reprocurement costs of the same or similar services defaulted by the successful bidder under this Agreement.

V. CONFLICT OF INTEREST

All bidders responding to this IFB must avoid organizational conflicts of interest, which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, a bidder is unable, or potentially unable to render impartial assistance or advice to the Authority; a bidder's objectivity in performing the work identified in the Project Specifications is or might be otherwise impaired; or a bidder has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the bidder's bid.

W. CODE OF CONDUCT

All bidders agree to comply with the Authority's Code of Conduct as it relates to Third-Party contracts, which is hereby referenced and by this reference is incorporated herein. All bidders agree to include these requirements in all of its subcontracts.

SECTION III: PROJECT SPECIFICATIONS

PROJECT SPECIFICATIONS

Battery Chargers for 40-Foot Plug-In Battery-Electric Buses

1. Overview

The Orange County Transportation Authority (OCTA) intends to procure battery chargers to be used to recharge the batteries of ten (10), 40-foot battery-electric buses, equipped with 438KWh of battery storage. OCTA intends to deploy these buses, and chargers at the OCTA Garden GroveBase location.

2. Requirements

2.1. General

The intent of this specification is to describe OCTA's expectations of the requested deliverables without necessarily describing each individual item, connector, product, features, attributes, functionality, interface, etc., in all-inclusive detail; therefore, the Contractor must comply with the requirements as stated in this project specifications document and submit its bid accordingly.

2.2. Legal

All provided product and work shall comply with all applicable federal, state, local regulations, and accepted industry practices typical for this type of work/deliverables. The successful bidder shall not be allowed to subcontract more than fifteen percent (15%) of the total contractual award. In the event of any conflict between the requirements of this specification and any applicable legal requirement, the legal requirement shall prevail. Technical requirements that exceed the legal requirements are not considered to conflict.

2.3. Southern California Edison

OCTA is partnering with Southern California Edison (SCE) and their Charge Ready Program. As such, the only battery chargers that will be permitted are those approved by SCE, capable of delivering a minimum 150 Kilowatts (KW) of energy.

2.4. Material/workmanship

All components provided/supplied shall be new and of Original Equipment Manufacturer (OEM). In no case shall used, reconditioned, or obsolete parts be accepted. Unless otherwise specified, the dimensions of all parts

shall be in accordance with current standards, i.e., Society of Automotive Engineers (SAE) or the metric equivalent. All parts shall conform in material, design and workmanship to industry standards and shall meet or exceed all UL (Underwriters Laboratories) and/or Intertek ETL (Electrical Testing Labs) safety certifications and standards. No advantages shall be taken by the Contractor in the omission of any parts or details that make the battery chargers complete and ready for service, even though such parts or details are not mentioned in this Project Specifications.

Workmanship throughout shall conform to the highest standard of commercially accepted practice for this class of work/product/deliverables and shall result in a neat and finished appearance. Exposed metal surfaces that are susceptible to corrosion shall be properly prepared and coated with protective coating to insure against corrosion or deterioration during the operational life expectancy of the equipment. Chargers shall be equipped with emergency stop and, normal on & off switching provisions having clear, visual, or audible indicators of the charger's status indicating if the chargers are "Active/On or Non-Active/Off".

2.5. AC/DC ARC FLASH RISK ASSESSMENT

Bidders must provide in their bid submittals, a charger's AC/DC Arc Flash Risk Assessment including the personal protective equipment (PPE) category required for personnel operating the units. Refer to Section 5. Submittal. It shall be the operator's responsibility to properly identify the Arc Flash Category level and PPE needed

2.6. OEM Parts

OCTA requires the use of OEM parts when available. Any substitutions for OEM parts with another manufacturer's part must be identified and be formally approved by OCTA before issuing the contract.

2.7. Schedule

All hardware shall be delivered within ninety (90) days of award of agreement.

Training shall be delivered within one hundred twenty (120) days of award of agreement.

3. Specification

3.1. Type

The battery chargers shall be ABB HVC150C with individual depot charge boxes with pedestals or approved equal. The battery chargers shall be OCPP 2.0 Certified.

3.2. Quantity

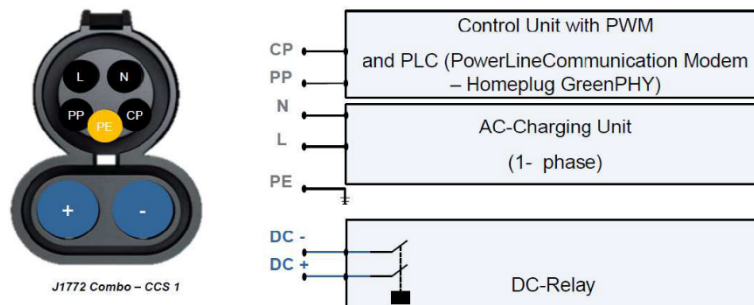
Ten (10) HVC150C chargers, and ten (10) depot charge boxes with pedestals and all required parts and accessories.

3.3. Intended Use

The battery chargers are intended for OCTA's New Flyer Xcelsior heavy-duty bus platform, configured with a 438 kWh, Xalt Energy Storage System (ESS), in compliance to both SAE J3105 and OppCharge charging standards. The battery chargers shall be equipped with intelligent, programmable controllers capable of adjusting energy throughput to reduce cost based on demand charges.

The buses shall be charged using Direct Current (DC) CCS Type 1 compliant equipment based on, SAE J1772 and SAE J3068 standards and, rapid charging, using OppCharge compliant fast charging equipment. Bus builder is working to have full compliance with SAE J3105 standard.

Bus charging can be initiated from either the charger user panel or the bus but, will only begin once all programmed safety conditions are met. The bus monitors battery State of Charge (SOC), temperature and other parameters during charging and determines the maximum charge rate to be pulled from the charger. Alternatively, a low power charge can be selected at the charger panel.



3.4 Bus Specification

Brand:	New Flyer
Fuel :	Battery Powered Buses
Battery Manufacturer:	XALT Energy Storage System
Battery Capacity:	438 KW
Connector Interface:	SAE J1772 standard
Model Number:	C40LFR
Length:	40'
Axle type:	MAN V8-65L Front, 14,870 Lbs. & MAN HP-1352-B Rear, 27,760 Lbs.
Axle Ratio:	544:1

4. Logistics

4.1. Location

Contractor shall be responsible for delivering all components provided to the Garden Grove Base location:

Garden Grove Base, Maintenance
11790 Cardinal Circle
Garden Grove, CA 92843

4.2. Damage

If any abnormalities, damage, missing components, and any others are detected by OCTA personnel after the delivery of the chargers, the Contractor shall be responsible for correcting all discrepancies found during the OCTA's initial inspection at the OCTA facility. If the charger(s) requires to be sent out for repairs, then the Contractor shall be solely responsible for all packaging, shipping chargers, scheduling, fees, etc. Contractor assumes all liabilities and risks associated with component delivery, storage, proper licensing and insurance for drivers and companies used to transfer components, to and from OCTA's properties.

Contractor shall exclusively be responsible for all damages, liabilities, risks and others, and excludes OCTA, OCTA property, OCTA personnel, representatives, agents and others of any liabilities, damages and/or risks associated with the delivery of these components to the specified OCTA Location.

4.3. Service

If the chargers fail to properly operate after installation in the OCTA facility, or within the warranty period, the Contractor shall be responsible to perform the needed repairs at the OCTA facility, within twenty-four (24) hours after receipt of the notification of failure. Labor required to remove and install a defective component, shall be billed back to the Contractor. If the charger(s) requires to be sent out for repairs, then the Contractor shall be solely responsible for all packaging, shipping chargers, scheduling, fees, etc.

4.4. Warranty

All-inclusive warranty, without exceptions, on all provided components shall be for thirty-six (36) months. Warranty shall commence after each charger's installation and, after the in-service start up. All warranty services shall be provided by the Contractor, on site at OCTA's location where the chargers shall be installed. Contractor shall correct any, and all defects under the warranty provisions. After correcting the defect, the Contractor shall undertake all reasonably steps designed to prevent the occurrence of the same defect in all other chargers, or components impacted by the identified defect. The charger's in-service/operation dates shall be considered after their installation and, it shall be used as the start of the warranty. OCTA shall provide proof of in-service/operation start date.

4.5. Training

Contractor shall coordinate and schedule all training sessions with OCTA's Maintenance Training Section. Trainings may be held onsite or virtually as requested by OCTA. Additionally, Contractor shall be responsible for providing all manuals, study guides, audio visuals, materials, printouts and, all others required to provide the requested content on a class-room environment.

4.5.1. Operator Training

Five (5) sessions of three (3) hours each, intended for OCTA's personnel responsible for operating, connecting, and disconnecting the chargers to the buses. Training shall include detailed safety guidelines, personnel protective equipment required, modes of operation and any others associated with this level of activities.

4.5.2. Maintenance Training

Five (5) training sessions of three (3) hours each, intended for OCTA's Facility Maintenance personnel responsible for servicing, maintaining, daily operational checkups and all other tasks

associated with daily, routine, or periodic maintenance and servicing functions.

4.6. Diagnostic Tools.

Contractor shall provide an itemized, and detailed list of tools, peripherals, interfaces, and any others required to perform diagnostics, status reviews, troubleshooting and any others associated with the maintenance and upkeep of the chargers and its software-based control system.

5. Submittal

Contractor/Bidder must provide the following information as part of their bid:

1. Contractor's statement indicating its intention to meet all requirements listed in the scope of work including the expected delivery timeline using as a reference the notice to proceed.
2. AC/DC Arc Flash Risk Assessment for the charger's operation, servicing, and maintenance.
3. Applicable MSDS.
4. Production schedule, including manufacturing phases and delivery timeline to OCTA. All hardware shall be delivered within ninety (90) days of award of agreement. Training shall be delivered within one hundred twenty (120) days of award of agreement.
5. Manuals; four (4) Complete, separate sets of manuals including Servicing, Operating, Maintenance, Safety Guidelines, Software (or App) Operation, wireless interface, configuration changes, etc.
6. A clearly outlined and detailed list of components to be provided by the Contractor, e.g., charger, mounting pedestal, cable management provisions, software, interfaces, etc., including firm-fixed pricing, tax included, for all components, parts, systems, etc. to be provided in compliance with OCTA specs.
7. Complete, and detailed warranty statement.
8. Detailed list of diagnostic tools and peripherals required to inspect, service and maintain the chargers and its operational control system.

SECTION IV: BID PACKAGE

SECTION IV. BID PACKAGE

The bidder should complete all the forms identified below. The bid must not contain exceptions to or deviations from the terms or requirements of this IFB.

EXHIBIT A. BID FORM

The bidder must complete the Bid Form. In addition to providing the lump sum bid, the bidder affirms that the Bid Form statements are true and correct.

EXHIBIT B. PRICE SUMMARY

EXHIBIT C. INFORMATION REQUIRED OF BIDDER

Bidder must provide all the information requested in this form.

EXHIBIT A: BID FORM

BID FORM

INVITATION FOR BIDS NUMBER:	0-2731
DESCRIPTION:	BATTERY CHARGERS FOR 40-FOOT PLUG-IN BATTERY- ELECTRIC BUSES
BIDDER'S NAME AND ADDRESS	_____ _____ _____ _____
NAME OF AUTHORIZED REPRESENTATIVE	_____
TELEPHONE NUMBER	_____
FAX NUMBER	_____
EMAIL ADDRESS	_____
I acknowledge receipt of IFB and Addenda Numbers:	_____
AUTHORIZED SIGNATURE TO BIND BID:	_____
PRINT SIGNER'S NAME AND TITLE:	_____ _____
DATE SIGNED:	_____

Effective June 1, 2021 until November 30, 2021, for the Authority's requirements as specified in Section III, entitled "Project Specifications."

Prices quoted shall remain firm for the term of the Purchase Order.

All freight costs to be included in the bidder's price as the terms shall be F.O.B. destination.

Deliveries will be made to the following addresses:

- 11790 Cardinal Circle, Garden Grove, CA 92843

Enter the price for each of the items described in the Project Specifications, Section III. Prices shall include direct costs, indirect costs, standby time, and profits. The Authority's intention is to award a firm-fixed unit price contract.

Cash discount allowable ____%____ days: unless otherwise stated, payment terms are: Net 30 days. Cash/payment discounts will not be considered in the evaluation of bids.

This bid shall be in effect for 120 days after the bid close date.

EXHIBIT B: PRICE SUMMARY

PRICE SUMMARY SHEET

Enter below the firm-fixed price for each item described in Section III, Project Specifications. Prices shall include direct costs, indirect costs, shipping and handling, profits, and any other costs specified in the Project Specifications.

Description	Unit Price	Q'ty	Extended Price
150 KW Battery Charger, including all required provisions.	\$ _____	10	\$ _____
Depot Charge Box with Pedestal	\$ _____	10	\$ _____
Diagnostics tools and troubleshooting equipment and interfaces. Bidder to include detailed list with itemized pricing. The OCTA reserves the right to select any, all or none of the items provided under this category.	\$ _____	1 set	\$ _____
City of Garden Grove Sales Tax Rate (for Taxable items)	8.75%		\$ _____
Operator Training Hours: Training shall include all manuals, study guides, audio visuals, materials, printouts and, all others required to provide the requested content on a class-room environment.	\$ _____	15	\$ _____
Maintenance Training Hours: Training shall include all manuals, study guides, audio visuals, materials, printouts and, all others required to provide the requested content on a class-room environment.	\$ _____	15	\$ _____
TOTAL PRICE:			\$ _____

EXHIBIT C: INFORMATION REQUIRED OF BIDDER

INFORMATION REQUIRED OF BIDDER

The bidder is required to supply the following information. Additional sheets may be attached if necessary.

1. Name of Bidder: _____
2. Business Address: _____
3. Telephone () _____ Fax () _____ E-Mail: _____
4. Type of Firm - Individual, Partnership or Corporation: _____
5. Corporation organized under the laws of state of: _____
6. Contractor's License No.: _____ Class _____ Years of Experience: ____
7. Expiration Date of License: _____
8. Is your firm a certified small business in California? Yes ____ No ____
9. List the names and addresses of all owners of the firm or names and titles of all officers of the corporation:
10. List at least three project references for services rendered in the last two years:

Type of Service/Product	Date Completed	Name and Address of Owner	Contact Name and Phone Number	Total Cost

EXHIBIT D: SAFETY SPECIFICATIONS

LEVEL 2 STANDARD HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

PART I – GENERAL

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC), requirements of this safety specification, project site requirements, and bus yard safety rules as well as all federal, state, and local regulations pertaining to scope of work or agreements with the Authority. Additionally, manufacturer requirements are considered incorporated by reference as applicable to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor or its subcontractors may be reason for termination of scope or agreements with the Authority, at the sole discretion of the Authority.

C. INJURY AND ILLNESS PREVENTION PROGRAM

The Contractor shall comply with CCR Title 8, Section with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

D. SUBSTANCE ABUSE PREVENTION PROGRAM

Contractor shall comply with the Policy or Program of the Company's Substance Abuse Prevention Policy that complies with the most recent Drug Free Workplace Act. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

E. HAZARD COMMUNICATION PROGRAM

- 1. Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of SDS for all applicable products used, if any. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.
- 2. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.

F. STORM WATER POLLUTION PREVENTION PLAN

1. The Contractor shall protect property and water resources from fuels and similar products throughout the duration of the contract. Contractor shall comply with Storm Water Pollution Prevention Plan (SWPPP) requirements. The program or plan if required by scope shall be provided to the Authority's Project Manager, upon request, within 72 hours.

G. DESIGNATED HEALTH, SAFETY, ENVIRONMENTAL (HSE) REPRESENTATIVE

1. Upon contract award, the contractor within 10 business days shall designate a health and safety representative and provide a resume and qualifications to the Authority project manager, upon request, within 72 hours.
2. This person shall be a Competent or Qualified Individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards, and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.
3. The Contractor's HSE Representative is subject to acceptance by the Authority Project Manager, and the HSEC Department. All contact information of the HSE Representative (name, phone, and fax and pager/cell phone number) shall be provided to the Authority Project Manager, upon request, within 72 hours.
4. The Contractor's HSE Representative shall hold a current certification from the Board of Certified Safety Professionals (BCSP) and have five years of demonstrated construction/scope experience enforcing HSE compliance on construction, industrial or similar project scopes. The designated HSE Representative shall participate in any required HSE related submittals. The Authority reserves the right to allow for an exception and to modify these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and HSEC Department Manager.
5. Competent Individual means an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees and/or property, and who has authorization to take prompt corrective measures to eliminate them.
6. Qualified Individual means an individual who by possession of a recognized degree, certificate, certification or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems relating to the subject matter, the work, or the Project.

H. SCOPE PLANNING

Prior to any scope work activity or task, the Contractor shall evaluate the hazards of the scope of work and the work environment to ensure proper control measures are identified for employee public and property protection measures to prevent incidents. This evaluation shall be implemented by developing a written site specific Job Hazard Analysis (JHA) or similar tool designed for planning the work to prevent incidents. The plan shall be provided to the Authority's Project Manager, upon request, within 72 hours.

I. ORIENTATION

1. The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects. The safety orientation at a minimum shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 or 3 reflective vests, designated smoking, eating, and parking areas, traffic speed limit and routing, cell phone policy, and barricade requirements. When required by scope, additional orientation shall include fall protection, energy isolation/lock-out/tag-out (LOTO), confined space, hot work permit, security requirements, and similar project safety requirements.
2. Copies of orientation documents shall be provided to the Authority Project Manager within 72 hours upon request.

J. TRAFFIC & PARKING

The Contractor shall ensure that all Contractor vehicles, including those of their subcontractors, suppliers, vendors and employees are parked in designated parking areas, personal vehicles shall be parked in the employee parking lot, work vehicles required in the maintenance area of a bus base shall be identified by company name and/or logo, covered by the company insurance, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots. Vehicles without appropriate company name and logo are considered personal vehicles and not allowed in the maintenance area of the bus base.

K. GENERAL PROVISIONS

1. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with Authority's HSEC requirements, CCR Title 8 Standards, and recognized safe work practices.
2. The Contractor shall immediately notify the Authority's Project Manager whenever local, state or federal regulatory agency personnel are identified as being onsite.

3. The Authority HSEC requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be pre-planned and performed, and safe conditions shall be maintained during the course of this work scope.
4. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
5. The Contractor shall instruct all its employees, and all associated subcontractors under contract with the Contractor who work on Authority property in the recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.
6. California Code of Regulations (CCR) Title 8 Standards are minimum requirements, and each Contractor is encouraged to exceed minimum requirements. When the Contractor safety requirements exceed statutory standards, the more stringent requirements shall be achieved for the safeguard of the public and workers.

1.2 ENVIRONMENTAL REQUIREMENTS

- A. The Contractor shall comply with Federal, State, county, municipal, and other local laws and regulations pertaining to the environment, including noise, aesthetics, air quality, water quality, contaminated soils, hazardous waste, storm water, and resources of archaeological significance. Expense of compliance with these laws and regulations is considered included in the agreement. Contractor shall provide water used for dust control, or for pre-wetting areas to be paved, as required; no payment will be made by OCTA for this water.
- B. The Contractor shall prevent pollution of storm drains, rivers, streams, irrigation ditches, and reservoirs with sediment or other harmful materials. Fuels, oils, bitumen, calcium chloride, cement, or other contaminants that would contribute to water pollution shall not be dumped into or placed where they will leach into storm drains, rivers, streams, irrigation ditches, or reservoirs. If operating equipment in streambeds or in and around open waters, protect the quality of ground water, wetlands, and surface waters.
- C. The Contractor shall protect adjacent properties and water resources from erosion and sediment damage throughout the duration of the contract. Contractor shall comply with applicable NPDES permits and Storm Water Pollution Prevention Plan (SWPPP) requirements.

- D. Contractor shall comply with all applicable EPA, Cal EPA, Cal Recycle, DTSC, SCAQMD, local, state, county and city standards, rules and regulations for hazardous and special waste handling, recycling and/ disposal. At a minimum, Contractor shall ensure compliance where applicable with SCAQMD Rule 1166, CCR Title 8, Section 5192, 29 CFR Subpart 1910.120, 49 CFR Part 172, Subpart H, 40 CFR Subpart 265.16 and CCR Title 22 Section 6625.16. Contractor shall provide OCTA a schedule of all hazardous waste and special or industrial waste disposal dates in advance of transport date. Only authorized OCTA personnel shall sign manifests for OCTA generated wastes. Contractor shall ensure that only current registered transporters are used for disposal of hazardous waste and industrial wastes. The Contractor shall obtain approval from OCTA for the disposal site locations in advance of scheduled transport date.

1.3 INCIDENT NOTIFICATION AND INVESTIGATION

- A. The Authority shall be promptly notified of any of the following types of incidents including but not limited to:
1. Damage incidents of property (incidents involving third party, contractor or Authority property damage);
 2. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration), a minor injury, and near miss incidents;
 3. Incidents impacting the environment, i.e. spills or releases on Authority property.
- B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the public that arise from the performance of Authority contract work. An immediate verbal notice followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- C. A final written incident investigative report shall be submitted within seven (7) calendar days and include the following information. The Current Status of anyone injured, photos of the incident area, detailed description of what happened, Investigative photos of the existing conditions and area around the injury/incident scene, the contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of task planning documentation, copy of the Physician's first report of injury, copy of Cal/OSHA 300 log of work related injuries and illnesses, the Cal/OSHA 301 Injury Illness Incident Report, and corrective actions initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report provided to OCTA.
- D. A Serious Injury, Serious Incident, OSHA Recordable Injury/Illness, or a Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within

seven (7) calendar days of the incident. This review shall require a company senior executive, company program or project manager from the Contractors' organization to participate and present the incident review as determined by the OCTA Project Manager. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors that lead to the incident, a root cause analysis (using 5 whys and fishbone methods), and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.

1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement. A serious injury also includes a lost workday or reassignment or restricted injury case as determined by the Physician's first report of injury or Cal/OSHA definitions.
2. Serious Incident: includes but not limited to property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, Metrolink, FTA, FRA etc.) notification or representation.
3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.
4. Significant Near Miss Incident: includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

1.4 PERSONAL PROTECTIVE EQUIPMENT

Contractors, and all associated subcontractors, vendors and suppliers are required to provide their own personal protective equipment (PPE), including eye, head, foot, and hand protection, respirators, reflective safety vests, and all other PPE required to perform their work safely on Authority projects.

1.5 LANGUAGE REQUIREMENTS

The Contractor for safety reasons shall ensure employees that do not read, or understand English, shall have a bilingual supervisor or foreman when on the Authority property or projects.

1.6 WARNING SIGNS AND DEVICES

The Contractor shall provide signs, signals, and/or warning devices to be visible when and where a hazard exists. Signs, signals, and/or warning devices shall be removed when the hazard no longer exists.

1.7 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Construction Industry Institute (CII)
- E. Board of Certified Safety Professionals (BCSP)
- F. OCTA Yard Safety Rules

END OF SECTION

EXHIBIT E: STATUS OF PAST AND PRESENT CONTRACTS FORM

STATUS OF PAST AND PRESENT CONTRACTS FORM

On the form provided below, Offeror/Bidder shall list the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract.

A separate form must be completed for each contract. Offeror/Bidder shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value. Offeror/Bidder shall also provide a brief summary and the current status of the litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations. If the contract was terminated, list the reason for termination.

Offeror/Bidder shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of the bid. Each form must be signed by an officer of the Offeror/Bidder confirming that the information provided is true and accurate.

Project city/agency/other:	
Contact Name:	Phone:
Project Award Date:	Original Contract Value:
Term of Contract:	
(1) Litigation, claims, settlements, arbitrations, or investigations associated with contract:	
(2) Summary and Status of contract:	
(3) Summary and Status of action identified in (1):	
(4) Reason for termination, if applicable:	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Name

Signature

Title

Date

EXHIBIT F: LIST OF SUBCONTRACTORS

LIST OF SUBCONTRACTORS

List only the subcontractors which will perform work or labor or render services to the Bidder in excess of one-half of one percent of the Bidder's total bid amount. Do not use alternative subcontractors for the same work. (Use additional sheets if necessary.)

Name & Address Under Which Subcontractor is Licensed	License Number	Specific Description of Work to be Rendered	Type	Dollar Amount
				\$
				\$
				\$
				\$
				\$
				\$
				\$

TOTAL VALUE OF SUBCONTRACTED WORK	\$
--	----

Bidder's Name: _____

EXHIBIT G: BID OPENING SIGN-IN REGISTRATION



IFB 0-2731
EXHIBIT G

BID OPENING REGISTRATION

IFB #: 0-2731

Date: April 13, 2021, 11 a.m.

Title: **BATTERY CHARGERS FOR 40-FOOT PLUG-IN
BATTERY-ELECTRIC BUSES**

Company Name	Attendee's Name	Email Address
Attendee's Signature:	<hr/>	



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors

From: Andrea West, Interim Clerk of the Board *Andrea West*

Subject: Bus Operations Performance Measurements Report for the Second Quarter of Fiscal Year 2020-21

Transit Committee Meeting of March 11, 2021

Present: Directors Do, Jones, Sarmiento, Shaw, and Sidhu
Absent: Director Chaffee

Committee Vote

Following the discussion, no action was taken on this receive and file information item.

Staff Recommendation

Receive and file as an information item.



March 11, 2021

To: Transit Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Bus Operations Performance Measurements Report for the Second Quarter of Fiscal Year 2020-21

Overview

The Orange County Transportation Authority operates fixed-route bus and demand-response paratransit service throughout Orange County and into neighboring counties. The established measures of performance for these services assess the safety, courtesy, reliability, and overall quality of the services. This report summarizes the year-to-date performance of these services through the second quarter of fiscal year 2020-21.

Recommendation

Receive and file as an information item.

Background

The Orange County Transportation Authority (OCTA) operates a countywide network of 58 routes, including local, community, rail connector, and express bus routes serving over 5,000 bus stops. Fixed-route bus (OC Bus) service operates in a 798 square-mile area, serving more than three million residents in 34 cities and unincorporated areas, with connections to transit services in Orange, Los Angeles, and Riverside counties. OCTA provides these services through both directly operated fixed-route (DOFR) and contracted fixed-route service (CFR). OCTA also provides OC ACCESS, a federally mandated paratransit service, which is a shared-ride program available for people unable to use the OC Bus service because of functional limitations. Performance measures for both OC Bus and OC ACCESS services are summarized and reported quarterly (Attachment A).

In response to a significant decline in ridership as the result of the coronavirus (COVID-19) pandemic, OC Bus service was modified to operate on a

Sunday-only schedule seven days a week effective March 23, 2020. To support ridership returning to the system, at the service change in June 2020, a Saturday schedule was implemented six days a week. To provide some connectivity beyond the core service area, eight additional routes that typically only operate on weekdays were also included in the June 2020 service plan, with a total of 50 of the 58 total routes currently being operated. To further address the return of ridership and ensure social distancing is possible while on-board buses, particularly on routes with the heaviest passenger loads, trippers operating on key segments of these routes continue to be deployed as needed to provide additional capacity throughout the second quarter of the new fiscal year (FY).

Discussion

This report provides an update on the performance of the OC Bus and OC ACCESS services by presenting the current trends and comparisons with OCTA-established performance standards for transit system safety, courtesy, and reliability. OCTA counts preventable vehicle accidents to evaluate system safety, customer complaints to assess courtesy, and uses both on-time performance (OTP) and miles between road calls (MBRC) to measure service reliability.

This report includes performance through the second quarter, including the months of October, November, and December in FY 2020-21. The performance during the second quarter continues to reflect the impact of the COVID-19 pandemic in many of the metrics.

- Safety – DOFR OC Bus service performed below the accident frequency standard of one preventable accident per 100,000 service miles. To address this trend, OCTA Operations staff continue to focus on and stress the safety in the bus loading/unloading zones where most of the accidents are occurring. CFR OC Bus service and OC ACCESS service both performed above standard.
- Customer Service – Customer service is measured by evaluating the number of valid customer complaints received compared to boardings. Through the second quarter, all modes of service performed above the respective standards.
- Reliability – The OTP for OC Bus and OC ACCESS through the second quarter was above standard and continues to perform well, primarily a result of a decrease in local traffic and lower traffic volumes overall due to the COVID-19 pandemic. The OTP for DOFR and CFR was

84.3 percent and 80.7 percent, respectively. The OTP for OC ACCESS was 98.4 percent, 4.4 percent above the standard.

The MBRC for DOFR OC Bus Service and OC ACCESS exceeded the standard while CFR OC Bus came in below standards for MBRC.

The report also includes:

- An assessment of the efficiency of OCTA transit operations based on industry standards for ridership, productivity, farebox recovery, and cost per revenue vehicle hour;
- A review of contractor performance for CFR and OC ACCESS services;
- A route-level performance evaluation that includes subsidy per boarding, revenue per boarding, and resource allocation (buses); and
- A status on the initiatives implemented under the OC Bus 360° Program, including OC Flex and the College Pass Program.

Summary

Through the second quarter of FY 2020-21, the performance of OC Bus service exceeded the performance in the areas of courtesy and reliability as measured by OTP, but fell below the performance standard for safety (DOFR) and reliability with respect to MBRC (CFR). OC ACCESS performed above standard for all measures of safety, courtesy, and reliability. OCTA staff continues to focus on continuous improvement in safety as detailed in the report. In addition to tracking the established key performance indicators, staff will continue to manage the service contracts pursuant to contract requirements and work to identify other strategies to improve overall system performance.

Attachment

- A. Bus Operations Performance Measurements Report, Second Quarter,
Fiscal Year 2020-21

Prepared by:



Johnny Dunning, Jr.
Department Manager, Scheduling and
Bus Operations Support
(714) 560-5710

Approved by:



Beth McCormick
Executive Director, Operations
(714) 560-5964



Jennifer L. Bergener
Chief Operating Officer, Operations/
Deputy Chief Executive Officer
(714) 560-5462

Bus Operations Performance Measurements Report



Second Quarter
Fiscal Year 2020-21

About This Report

The Orange County Transportation Authority (OCTA) operates a countywide network of 58 routes including local, community, rail connector, and express bus routes serving over 5,000 bus stops known as OC Bus. OCTA also operates paratransit service (OC ACCESS), a shared-ride program available for people unable to use the standard OC Bus service because of functional limitations. OC Bus service is provided through both direct operations by OCTA referred to as directly operated fixed-route (DOFR) and contracted operations referred to as contracted fixed-route (CFR) service. The OC ACCESS service is a contract-operated demand-response service required by the Americans with Disabilities Act that is complementary to the fixed-route service and predominately accounts for the overall paratransit services operated by OCTA. These services make up the bus transit system and are evaluated by the performance measurements summarized in this report.

This report tracks bus system safety, as measured by vehicle accidents; courtesy, as measured by customer complaints; and reliability, as measured by on-time performance (OTP) and miles between road calls (MBRC). Along with these metrics, industry-standard measurements are tracked to assess OCTA bus operations; these measurements include ridership, productivity, farebox recovery ratio (FRR), and cost per revenue vehicle hour (RVH). Graphs accompany the details of each indicator showing the standards or goals and the values for the current reporting period. The following sections provide performance information for OC Bus service, DOFR and CFR, and OC ACCESS service.

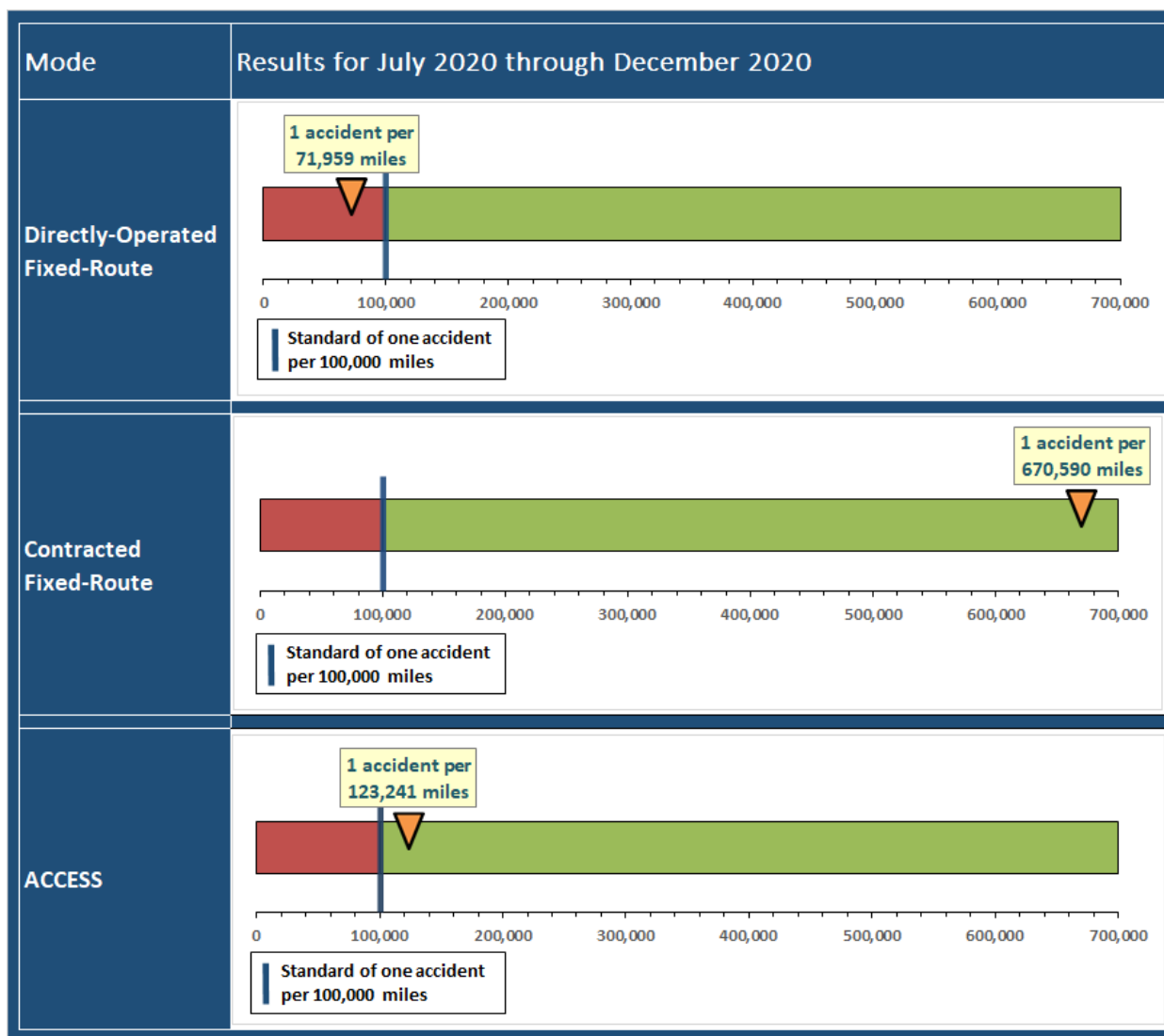
It is important to note that OCTA implemented a reduced service schedule for OC Bus on March 23, 2020 in direct response to the coronavirus (COVID-19) pandemic. The impact that the COVID-19 pandemic has had on both OC Bus and OC ACCESS continues to be significant as reflected in the performance to be discussed in this report.

FY2020-21 Q2 SUMMARY

- **Safety:**
 - DOFR - ▼
 - CFR - ▲
 - OC ACCESS - ▲
- **Courtesy:**
 - DOFR - ▲
 - CFR - ▲
 - OC ACCESS - ▲
- **On-Time Performance (OTP):**
 - DOFR - ▲
 - CFR - ▲
 - OC ACCESS - ▲
- **Miles Between Road Calls (MBRC):**
 - DOFR - ▲
 - CFR - ▼
 - OC ACCESS - ▲

Safety: Preventable Vehicle Accidents

OCTA is committed to the safe delivery of the OC Bus service. The safety standard for DOFR, CFR, and OC ACCESS services is no more than one vehicle accident per 100,000 miles. Preventable vehicle accidents are defined as incidents when physical contact occurs between vehicles used for public transit and other vehicles, objects, or pedestrians, and where a coach operator failed to do everything reasonable to prevent the accident. Through the second quarter of fiscal year (FY) 2020-21, CFR and OC ACCESS continued to perform above the safety standard while DOFR did not meet the standard of operating over 100,000 miles between preventable accidents.

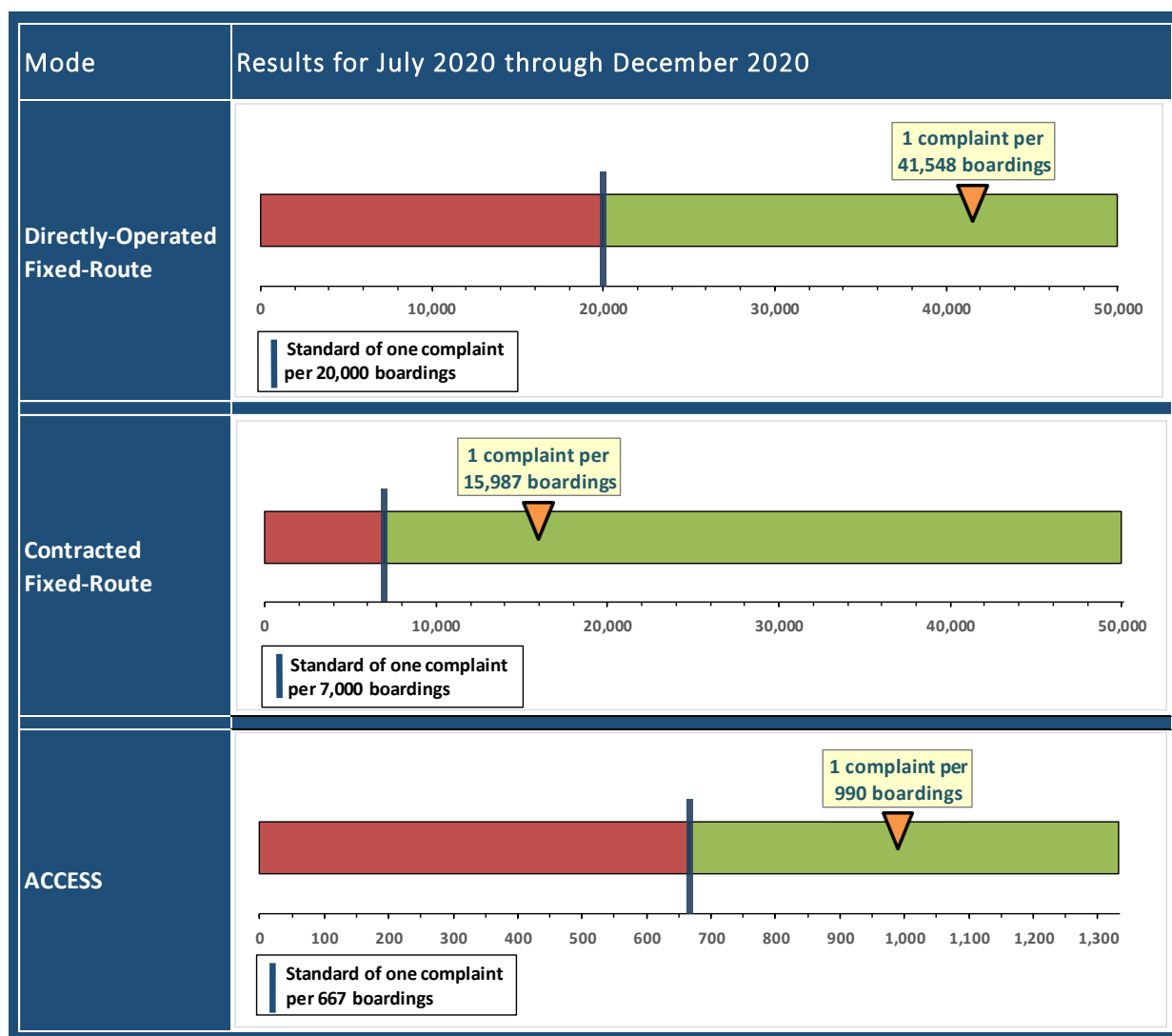


DOFR OC Bus has continued to perform below the accident frequency standard; however the number of preventable accidents did decrease compared to the same time last year. To address this accident frequency, OCTA Operations staff will continue to focus on and stress the importance of safety, conduct safety-related campaigns, and promote the safe driving award program. During the past quarter, training continued to focus on safety in the bus loading/unloading zones which is where most of the accidents are occurring.

Courtesy: Customer Complaints

OCTA strives to achieve a high level of customer satisfaction in the delivery of OC Bus services. The performance standard for customer satisfaction is courtesy as measured by the number of valid complaints received. Customer complaints are the count of incidents when a rider reports dissatisfaction with the service. The standard adopted by OCTA for DOFR OC Bus is no more than one customer complaint per 20,000 boardings; the standard for CFR OC Bus service is no more than one complaint per 7,000 boardings; and the contractual standard for OC ACCESS is no more than one complaint per 667 boardings.

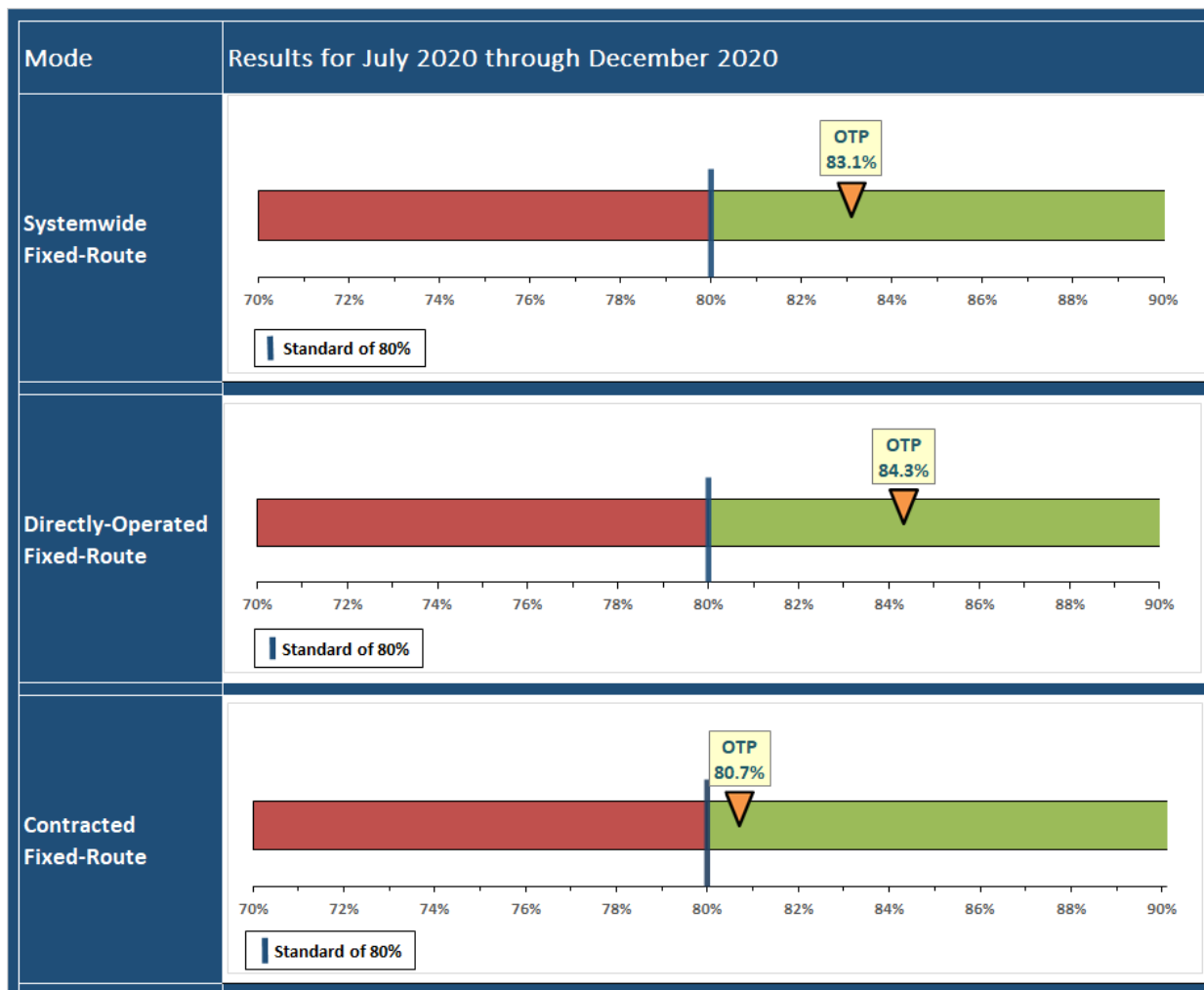
Through the second quarter of FY 2020-21, all modes of service continue to perform well, exceeding the courtesy standard with less than one valid complaint per 20,000, 7,000, and 667 boardings, respectively.



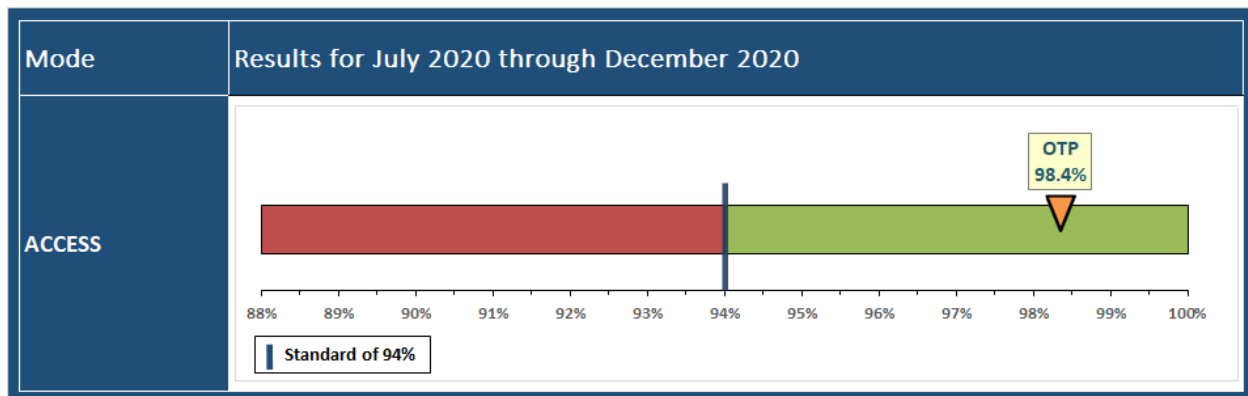
Reliability: On-Time Performance

Reliability is vital to a successful transportation network. Reliability for OCTA is measured in part by OTP. OTP is a measure of performance which evaluates the schedule adherence of a bus operating in revenue service according to a published schedule. Schedule adherence is tracked by monitoring the departure of vehicles from time points, which are designated locations on a route used to control vehicle spacing as shown in the published schedule. For OC Bus service, a trip is considered on-time if it departs the scheduled time point from zero minutes before up to no more than five minutes after the time as printed on the bus route schedule. OCTA's fixed-route system standard for OTP is 80 percent. For OC ACCESS service, OTP is a measure of performance evaluating a revenue vehicle's adherence to a scheduled pick-up time for transportation on a demand response trip. A trip is considered on time if the vehicle arrives within a 30-minute window. The OC ACCESS OTP standard is 94 percent.

The OTP for OC Bus and OC ACCESS services exceeded the standard during the second quarter of FY 2020-21. Systemwide OTP was 83.1 percent, 0.3 percent lower compared to last quarter. DOFR and CFR both performed above standard despite the rate decreases of 0.1 percent and 0.8 percent from last quarter, respectively. The return to front-door boarding was one of the reasons for the slight decrease in OTP.



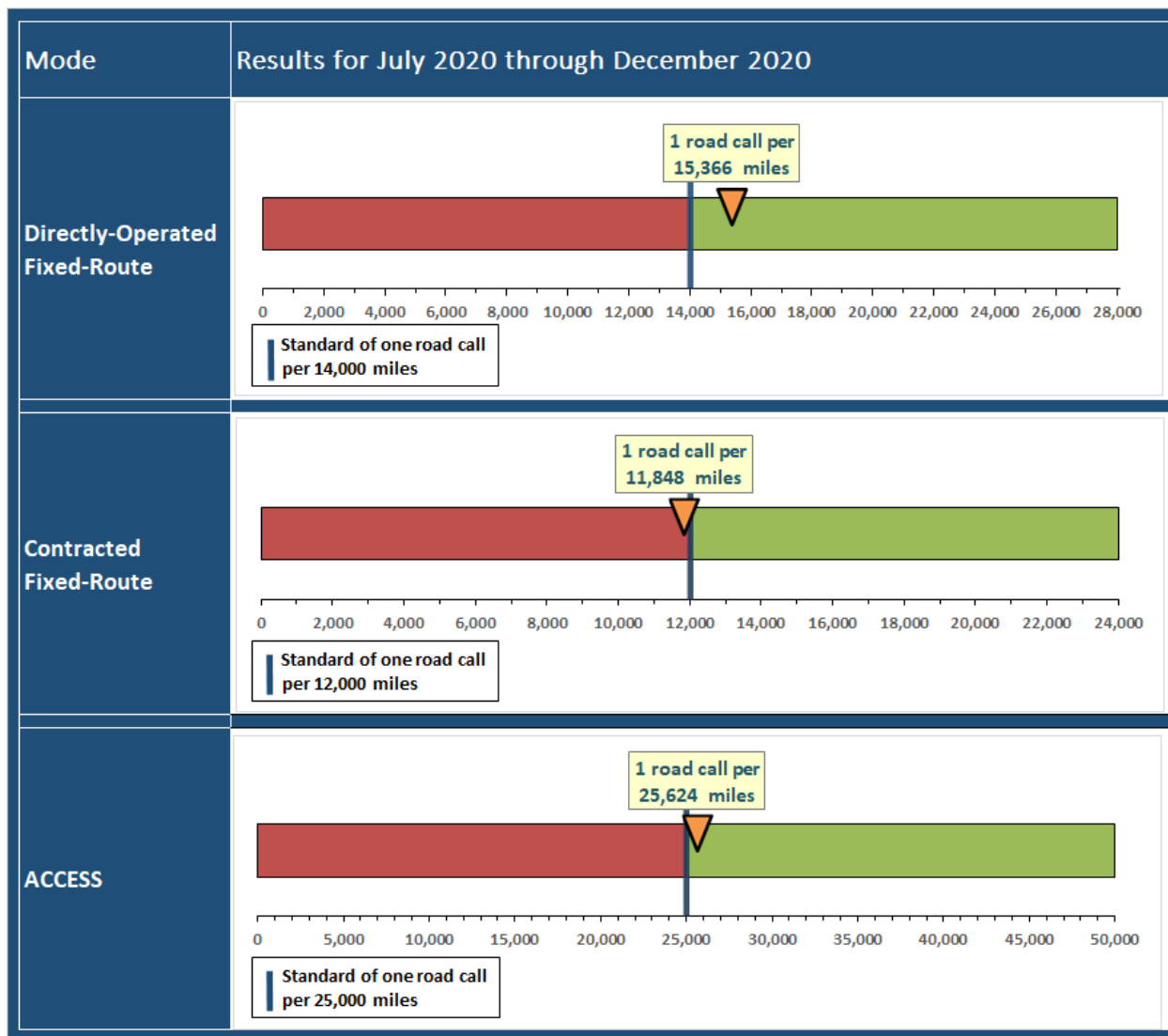
The OTP for OC ACCESS also came in above standard with a rate of 98.4 percent, 0.5 percent below the rate reported last quarter and 4.4 percent above the standard.



The cumulative improvement in OTP continue to be a result of the changes in travel patterns and traffic volumes related to the COVID-19 pandemic.

Reliability: Miles Between Road Calls

MBRC is a vehicle reliability performance indicator that measures the average distance in miles that a transit vehicle travels before failure of a vital component forces removal of the vehicle from service. OCTA has adopted standards for the MBRC for DOFR, CFR, and OC ACCESS services. These standards vary to align with the specific type of service being provided and account for the variability inherent to each of these services including the vehicles assigned. The specific standards as adopted by OCTA are 14,000 MBRC for DOFR OC Bus service; 12,000 MBRC for CFR OC Bus service; and 25,000 MBRC for OC ACCESS.

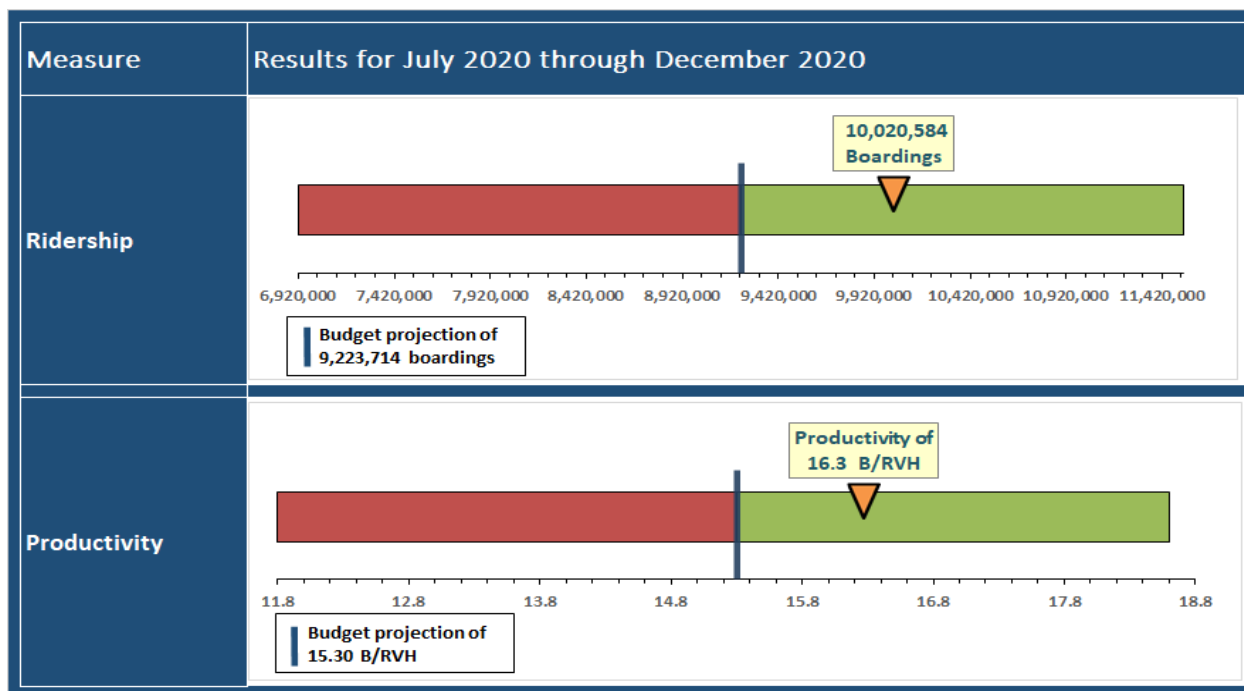


Through the second quarter of FY 2020-21, DOFR OC Bus Service and OC ACCESS both exceeded the MBRC standard while CFR OC Bus was below the standard. MBRC for CFR were slightly below the standard primarily due to a known engine control module prone to failure and short on supply and major engine failures that led to valid road calls. Staff is currently working with the manufacturer to resolve these issues. OCTA staff will continue to monitor performance in this area and work with the contractor to improve overall performance.

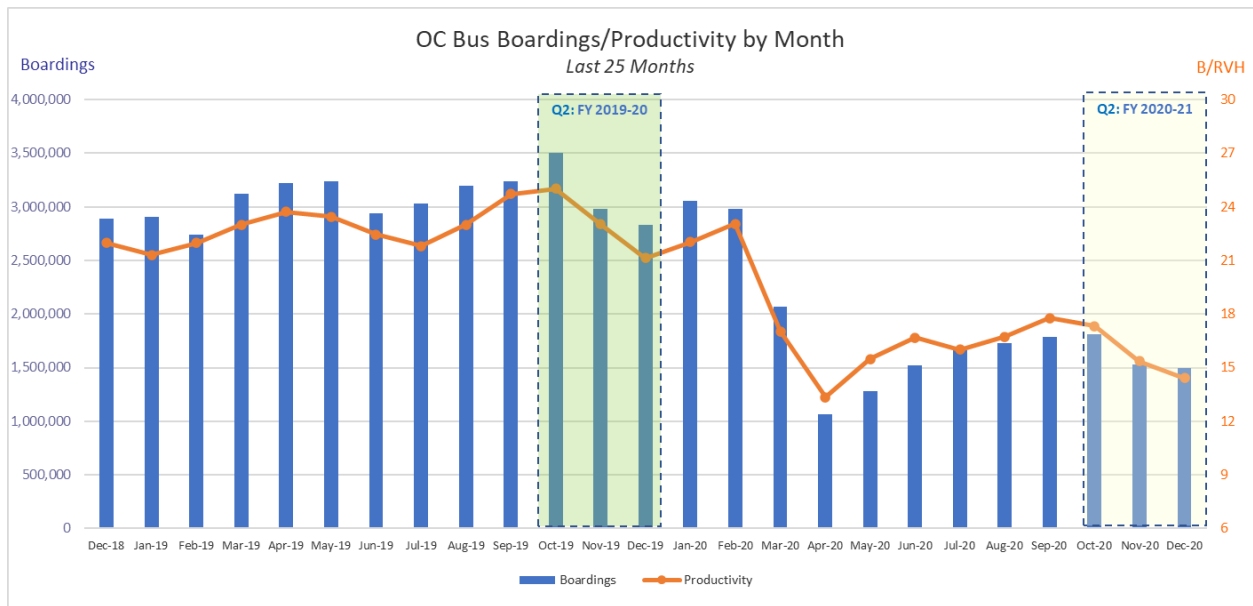
Ridership and Productivity – OC Bus

Ridership (or boardings) is the number of rides taken by passengers using public transit and is influenced by the level of service provided, weather, the economy, and seasonal variations in demand. Productivity is an industry measure that counts the average number of boardings for each revenue vehicle hour that is operated. An RVH is any 60-minute increment of time that a vehicle is available for passengers within the scheduled hours of service, excluding deadhead (a non-revenue movement of a transit vehicle to position it for service). Boardings per RVH (B/RVH) is calculated by taking the boardings and dividing it by the number of RVH operated.

Although lower when compared to ridership in FY 2019-20, through the second quarter of FY 2020 -21, both ridership and productivity for OC Bus service were higher than budgeted projections.



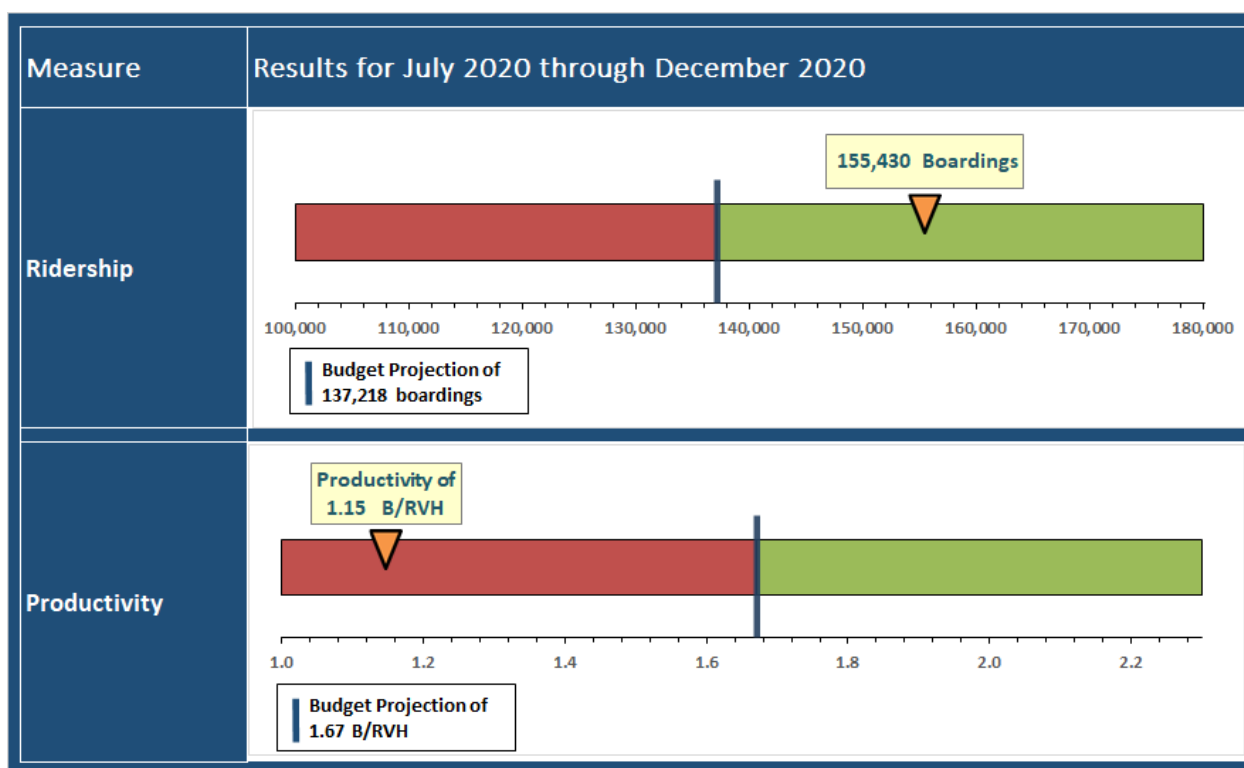
The ridership and productivity for the first quarter, as shown on the following chart, reveals an upward trend as we continue through the pandemic. The pandemic continues to significantly impact travel patterns. Average weekday ridership through September was over 60,000, 50 percent of the average weekday ridership before the stay-at-home orders went into effect. Ridership and productivity levels are expected to remain below pre-COVID-19 levels until well after the travel restrictions are lifted.



Ridership and Productivity – OC ACCESS

(Primary Service Provider)

Through the second quarter of FY 2020-21, total ridership of 155,000 for OC ACCESS is trending above budgeted projections by 13.2 percent while productivity of 1.15 B/RVH is below the 1.67 B/RVH projection by 31 percent. As with the fixed-route service, ridership and productivity for OC ACCESS continues to be impacted by the pandemic. With recommendations in place that persons 65 years of age or older or those with underlying health issues stay home, as well as the closure of many adult day programs, many individuals who typically use OC ACCESS service continue to make fewer trips, resulting in the drop in average daily ridership of 80 percent. Additionally, productivity has been impacted by the requirement for social distancing on OC ACCESS vehicles, as shared rides continue to be limited.



Contractor Performance: Fixed-Route

Per Agreement No. C-4-1737 between OCTA and First Transit, Inc., additional measures are tracked to ensure the CFR OC Bus service meets specified standards for safety, customer service, and reliability. When the contractor's monthly performance exceeds the standard as set forth in the agreement, financial incentives are paid to the contractor; conversely, when the monthly performance of the contractor is below the standard as set forth in the agreement, penalties are assessed and are paid to OCTA by the contractor.

Through the second quarter of FY 2020-21, the overall performance of the contracted OC Bus service as determined by the performance categories outlined in the contract was below standard for OTP, an unreported accident, road calls, and missed trips.

Table 1 provides the penalties and incentives assessed to the contractor by quarter for FY 2020-21. The incentives paid in the second quarter relate to courtesy and accident frequency ratio, which totaled \$21,600. The total penalties assessed to the contractor during the quarter total \$25,400 resulting in a net payment to OCTA of \$3,800, bringing the year-to-date total \$8,300.

Table 1:	Performance Categories	FY21 Q1	FY21 Q2	FY21 Q3	FY21 Q4	FYTD 21
Penalties	On-Time Performance	\$ (1,000)	\$ (3,000)	\$ -	\$ -	\$ (4,000)
	Valid Complaints: Per 7,000 boardings	\$ -	\$ -	\$ -	\$ -	\$ -
	Unreported Accident	\$ (5,000)	\$ (5,000)	\$ -	\$ -	\$ (10,000)
	Accident Frequency Ratio	\$ -	\$ -	\$ -	\$ -	\$ -
	Key Positions	\$ -	\$ -	\$ -	\$ -	\$ -
	CHP Terminal Inspections	\$ -	\$ -	\$ -	\$ -	\$ -
	Reports	\$ -	\$ -	\$ -	\$ -	\$ -
	Preventive Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
	Road Calls	\$ (2,900)	\$ (400)	\$ -	\$ -	\$ (3,300)
	Vehicle Damage: Per vehicle per day	\$ -	\$ -	\$ -	\$ -	\$ -
	Missed Trips	\$ (16,000)	\$ (17,000)	\$ -	\$ -	\$ (33,000)
	Total	\$ (24,900)	\$ (25,400)	\$ -	\$ -	\$ (50,300)
Incentives	On-Time Performance	\$ -	\$ -	\$ -	\$ -	\$ -
	Valid Complaints: Per 7,000 boardings	\$ 10,400	\$ 6,600	\$ -	\$ -	\$ 17,000
	Accident Frequency Ratio	\$ 10,000	\$ 15,000	\$ -	\$ -	\$ 25,000
	Total	\$ 20,400	\$ 21,600	\$ -	\$ -	\$ 42,000
Prior Periods Adjustment	Accident Frequency Ratio	\$ -	\$ -	\$ -	\$ -	\$ -
	Complaints	\$ -	\$ -	\$ -	\$ -	\$ -
	Missed Trips	\$ -	\$ -	\$ -	\$ -	\$ -
	Total	\$ -	\$ -	\$ -	\$ -	\$ -
All	Total	\$ (4,500)	\$ (3,800)	\$ -	\$ -	\$ (8,300)

Contractor Performance: OC ACCESS

(Primary Service Provider)

Per Agreement No. C-2-1865 between OCTA and MV Transportation, Inc., additional measures are tracked to ensure OC ACCESS meets the standards for safety, customer service, and reliability. When the contractor's monthly performance exceeds the standard as set forth in the agreement, financial incentives are paid to the contractor; conversely, when the monthly performance of the contractor is below the standard as set forth in the agreement, penalties are assessed and must be paid to OCTA by the contractor.

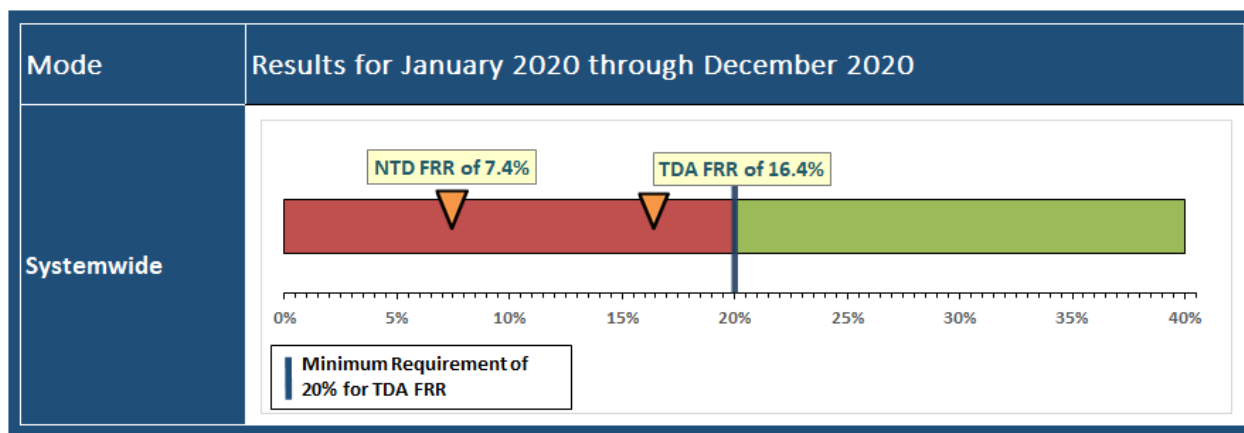
As presented in this report, the overall performance of the contractor providing OC ACCESS service through the second quarter of FY 2020-21 is above standard with respect to courtesy, safety, and on-time performance. Table 2 below lists, by quarter, the penalties and incentives assessed to the OC ACCESS contractor as established in the agreement. Through the second quarter, incentives related to excessively late trips totaled \$30,000. The penalties totaled \$111,500 for performance in passenger productivity, call center hold times, and an unreported accident. Due to the circumstances of the COVID-19 pandemic, the incentive for excessively late trips and the penalties related to passenger productivity and call center hold times were waived resulting in a net payment to OCTA of \$31,000 in the second quarter.

Table 2:	Performance Categories	FY21 Q1	FY21 Q2	FY21 Q3	FY21 Q4	FYTD 21
Penalties	Passenger Productivity	\$ (30,000)	\$ (30,000)	\$ -	\$ -	\$ (60,000)
	On-Time Performance	\$ -	\$ -	\$ -	\$ -	\$ -
	Customer Comments	\$ -	\$ -	\$ -	\$ -	\$ -
	Call Center Hold Times	\$ (10,000)	\$ (31,000)	\$ -	\$ -	\$ (41,000)
	Excessively Late Trips	\$ -	\$ -	\$ -	\$ -	\$ -
	Missed Trips	\$ -	\$ -	\$ -	\$ -	\$ -
	Unreported Accident	\$ (5,000)	\$ (5,000)	\$ -	\$ -	\$ (10,000)
	Preventive Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
	Road calls	\$ (500)	\$ -	\$ -	\$ -	\$ (500)
	Reports	\$ -	\$ -	\$ -	\$ -	\$ -
	Key Positions	\$ -	\$ -	\$ -	\$ -	\$ -
	CHP Terminal Inspections	\$ -	\$ -	\$ -	\$ -	\$ -
	Vehicle Damage	\$ -	\$ -	\$ -	\$ -	\$ -
	Fare Variance	\$ -	\$ -	\$ -	\$ -	\$ -
	Total	\$ (45,500)	\$ (66,000)	\$ -	\$ -	\$ (111,500)
Incentives	Passenger Productivity	\$ -	\$ -	\$ -	\$ -	\$ -
	On-Time Performance	\$ -	\$ -	\$ -	\$ -	\$ -
	Excessively Late Trips	\$ 15,000	\$ 15,000	\$ -	\$ -	\$ 30,000
	Missed Trips	\$ -	\$ -	\$ -	\$ -	\$ -
	Total	\$ 15,000	\$ 15,000	\$ -	\$ -	\$ 30,000
Adjustment	Unreported Accident (Prior Period)	\$ -	\$ -	\$ -	\$ -	\$ -
	Waived Penalties	\$ 40,000	\$ 35,000	\$ -	\$ -	\$ 75,000
	Waived Incentives	\$ (15,000)	\$ (15,000)	\$ -	\$ -	\$ (30,000)
	Total	\$ 25,000	\$ 20,000	\$ -	\$ -	\$ 45,000
All	Total	\$ (5,500)	\$ (31,000)	\$ -	\$ -	\$ (36,500)

Farebox Recovery Ratio

FRR is a measure of the proportion of operating costs recovered by passenger fares, calculated by dividing the farebox revenue by total operating expenses. A minimum FRR of 20 percent for all service is required by the Transportation Development Act for transit agencies to receive the state sales tax available for public transit purposes. To normalize seasonal fluctuations, data shown below reflects actuals over the last 12 months from January 2020 through December 2020.

Based on the National Transit Database definition in which only passenger fares are included under revenue, FRR did not meet the 20 percent goal. However, as a result of the passage of SB 508 (Chapter 716, Statutes of 2015), OCTA was able to adjust the FRR to include local funds. SB 508 states, “If fare revenues are insufficient to meet the applicable ratio of fare revenues to operating cost required by this article, an operator may satisfy that requirement by supplementing its fare revenues with local funds. As used in this section, “local funds” are any non-federal or non-state grant funds or other revenue generated by, earned by, or distributed to an operator.” After incorporating property tax revenue, advertising revenue, and Measure M fare stabilization, the adjusted FRR was 16.4 percent, a decrease of 0.7 percent from the previous quarter and a 5.9 percent drop from the same quarter last year. Because of statewide impacts to the farebox as a result of the COVID-19 pandemic, last year the Governor signed AB 109 (Chapter 17, Statutes of 2020), which removed all financial penalties for failing to meet the 20 percent FRR requirement until January 1, 2022. Governor Newsom’s proposed FY 2021-22 budget includes a proposed extension until January 1, 2023.

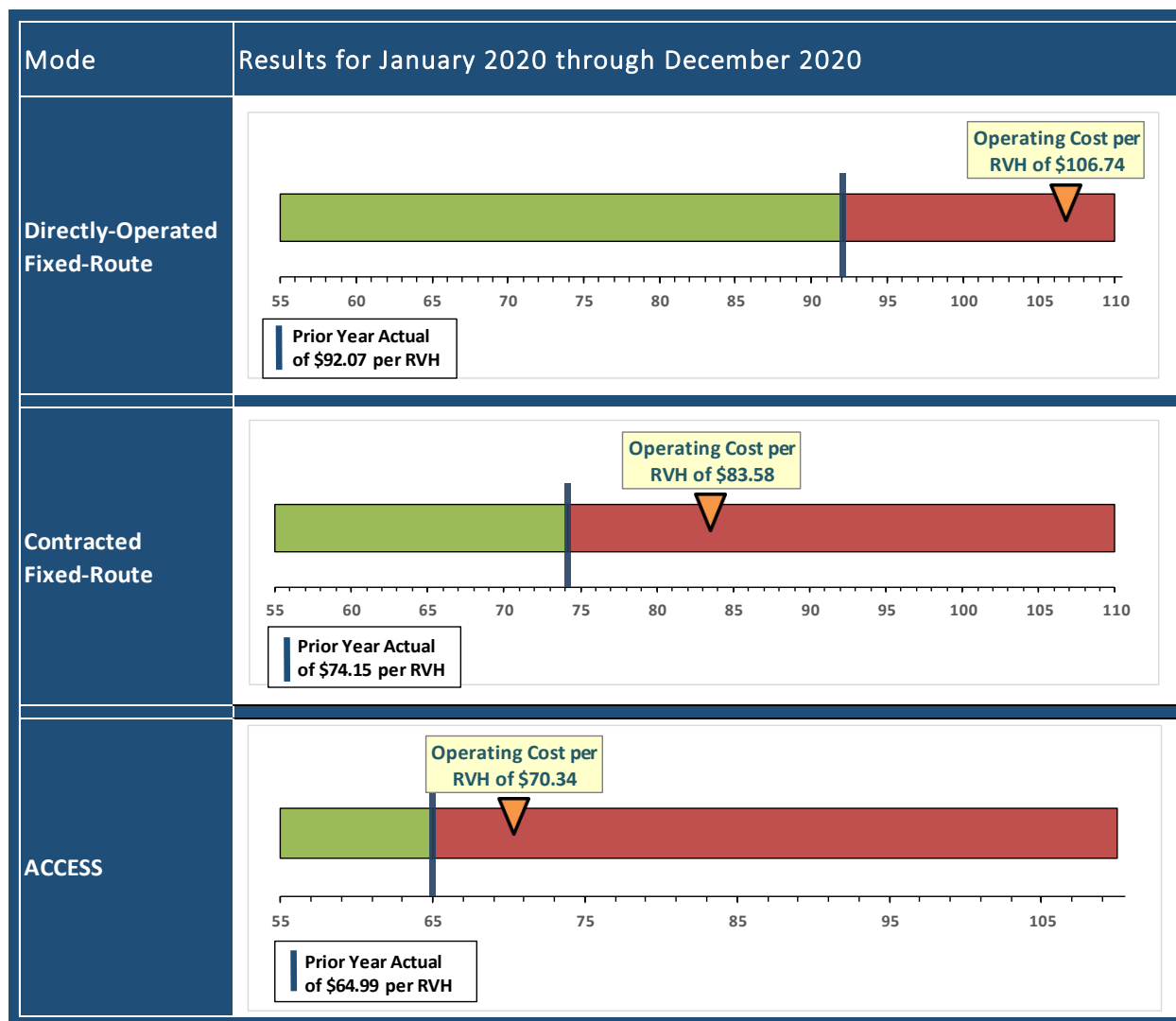


Note:

- National Transit Database (NTD) FRR consists of only passenger fares
- Transportation Development Act (TDA) FRR includes passenger fares, property tax revenue, advertising revenue and Measure M fare stabilization

Operating Cost per Revenue Vehicle Hour

Cost per RVH is one of the industry standards used to measure the cost efficiency of transit service. It is derived by dividing actual operating expenses by RVH that is scheduled for the reporting period. To provide a more comparable illustration, all metrics below are calculated based on direct operating cost, which excludes capital, general administrative, and other overhead costs. DOFR cost includes labor costs for coach operator and maintenance employees. It also includes consumables such as replacement parts, fuel, and tires. CFR and OC ACCESS cost includes contracted costs (net of assessed penalties and incentives) and costs incurred by OCTA for maintenance, parts, and fuel for the contracted fleet.



Similar to the FRR, the statistics above depict actuals over the last 12 months. The difference in cost per RVH from the prior period was a 15.9 percent increase in DOFR, 12.7 percent increase in CFR, and 8.2 percent increase in OC ACCESS. All modes operated at a higher cost per RVH when compared to the prior 12-months. This is primarily due to a decrease in service hours and efficiency, all related to the COVID-19 pandemic. The current 12-month period includes ten months which were impacted by COVID-19. This translates to lower RVH provided without a proportional reduction in staffing levels.

CFR cost per RVH increased as a result of a contract amendment that was approved in June 2019, which increased the cost per RVH paid to the contractor. This increase in cost per RVH included an adjustment to wages for CFR coach operators to help address attrition issues. The increase in cost per RVH was also impacted by lower actuals in the prior period due to a larger than anticipated number of missed trip penalties assessed to the contractor.

OC ACCESS cost per RVH also increased as a result of annual contractual changes in both fixed and variable rate coupled with the impact of the COVID-19 pandemic.

Performance Evaluation by Route

Continuing efforts are underway to better understand, evaluate, and improve route performance. Performance evaluation is important because it provides:

- A better understanding of where resources are being applied;
- A measure of how well services are being delivered;
- A measure of how well these services are used; and
- An objective basis for decisions regarding future service changes and service deployment.

The tables on the following pages summarize route-level performance through the second quarter. The first two tables present the route-level performance sorted by routes with the highest net subsidy per boarding to routes with a lower net subsidy per boarding, and the remaining two tables present the same information sorted by routes that have the highest boardings to routes with a lower level of boardings.

A route guide listing all of the routes and their points of origins and destinations is provided after the route-level performance tables. Route types are grouped by route numbers as follows:

- **Routes 1 to 99** - Local routes include two sub-categories:
 - **Major:** These routes operate as frequent as every 15 minutes during peak times. Major routes operate seven days a week throughout the day. Together, the Major routes form a grid on arterial streets throughout the highest transit propensity portions of the OC Bus service area, primarily in northern parts of the county.
 - **Local:** These routes operate on arterials within the grid created by the Major routes, but at lower frequencies. Local routes also operate in parts of Orange County with lower transit demand. Most Local routes operate seven days per week; however, some operate on weekdays only.
- **Routes 100 to 199:** Community routes to connect pockets of transit demand with major destinations and offer local circulation. Routes tend to be less direct than Local routes, serving neighborhoods and destinations off the arterial grid. Approximately half of Community routes operate seven days per week.
- **Routes 200 to 299:** Intra-county express routes operate on weekdays only at peak times and connect riders over long distances to destinations within Orange County, using freeways to access destinations. **(Did not operate during Q2 FY 2020-21)**
- **Routes 400 to 499:** Stationlink routes are rail feeder services designed to connect Metrolink stations to nearby employment destinations. These routes have relatively short alignments, with schedules tied to Metrolink arrivals and departures. They operate during weekday peak hours only, in the peak direction, from the station to destinations in the morning and the reverse in the evening.
- **Routes 500 to 599:** Bravo! routes are limited-stop services operated with branded vehicles. **(only Route 543 operated during Q2 FY 2020-21)**
- **Routes 600 to 699:** *Seasonal or Temporary routes (these are not included on the following charts) such as the OC Fair Express.* **(Did not operate during Q2 FY 2020-21)**
- **Routes 700 to 799:** Inter-county express routes that operate on weekdays only at peak times and connects riders over long distances to destinations outside of Orange County, often using freeways to access destinations. **(Did not operate during Q2 FY 2020-21)**



OCTA Operating Statistics By Route for Local and Community Services (Sorted by Subsidy per Boarding)
Fiscal Year 2020-21

Route	Zone	Farebox	Subsidy per Boarding	Direct Subsidy	Indirect Subsidy	"Capital Subsidy" Per Boarding	Revenue per Boarding	Boardings	CostVSH	Direct CostVSH	CostVSM	BoardVSH	VSH	Bus Count		
														40 FT	32 FT	60 FT
085	S	1.3%	\$ 34.00	\$ 18.85	\$ 13.08	\$ 2.07	\$ 0.42	17,958	\$ 143.78	\$ 86.70	\$ 11.48	4.44	4,040	2	-	-
167	C	0.3%	32.99	18.36	12.45	2.18	0.09	34,166	143.26	86.46	11.92	4.64	7,368	4	-	-
862	C	1.1%	32.08	19.91	10.08	2.09	0.34	17,822	170.01	103.56	17.66	5.60	3,180	2	-	-
178	C	0.7%	29.49	16.57	11.23	1.69	0.19	21,979	142.75	86.44	11.49	5.10	4,309	2	-	-
123	N	0.4%	26.76	14.99	10.16	1.61	0.11	46,136	142.53	86.56	10.35	5.64	8,175	4	-	-
086	C	1.2%	24.44	13.47	9.34	1.63	0.27	34,240	142.82	86.55	11.03	6.19	5,534	3	-	-
087	S	1.5%	24.05	13.23	9.18	1.64	0.34	22,659	145.27	87.31	9.83	6.39	3,548	2	-	-
082	S	1.8%	20.86	11.55	8.01	1.30	0.37	14,282	144.68	86.99	10.53	7.26	1,967	1	-	-
177	S	2.6%	20.68	11.49	7.78	1.41	0.51	26,325	142.31	86.42	11.06	7.20	3,659	2	-	-
076	C	0.8%	20.57	11.45	7.69	1.43	0.16	26,071	150.14	91.51	12.85	7.78	3,350	2	-	-
153	N	1.7%	19.21	10.88	7.37	0.96	0.32	38,864	142.69	86.43	11.24	7.68	5,060	2	-	-
079	C	(0.4)%	17.84	10.03	6.96	0.85	(0.07)	65,777	143.92	86.55	12.75	8.51	7,734	3	-	-
091	S	3.7%	17.15	9.50	6.59	1.06	0.62	105,610	146.24	87.45	10.16	8.76	12,062	6	-	-
001	S	2.2%	15.78	9.02	6.06	0.70	0.34	185,650	154.98	95.53	10.91	10.05	18,465	7	-	-
083	C	1.3%	15.48	8.91	5.98	0.59	0.20	159,028	164.67	101.90	8.65	10.91	14,573	5	-	-
143	N	1.9%	15.13	8.59	5.82	0.72	0.28	51,653	143.45	86.53	11.77	9.76	5,290	2	-	-
129	N	3.3%	14.68	8.19	5.55	0.94	0.47	59,141	148.31	87.60	11.24	10.43	5,668	3	-	-
059	C	2.0%	14.40	8.01	5.56	0.83	0.28	90,058	158.64	89.46	14.52	11.45	7,863	4	-	-
090	S	3.4%	13.72	7.75	5.38	0.59	0.46	63,338	149.37	88.13	9.32	10.99	5,761	2	-	-
026	N	1.7%	12.86	7.13	4.95	0.78	0.21	71,629	145.26	86.76	12.43	11.83	6,056	3	-	-
037	N	1.5%	11.96	6.70	4.50	0.76	0.17	243,583	190.17	115.88	15.98	16.72	14,571	11	-	-
025	N	2.8%	11.89	6.63	4.60	0.66	0.33	84,330	146.00	87.15	11.60	12.64	6,670	3	-	-
050	N	1.7%	11.78	6.66	4.47	0.65	0.19	387,963	175.53	107.09	14.94	15.51	25,014	13	-	-
056	N	1.4%	11.50	6.48	4.35	0.67	0.16	111,529	153.45	93.39	13.93	13.97	7,982	4	-	-
071	N	2.5%	11.12	6.26	4.34	0.52	0.27	179,795	149.08	87.71	11.48	13.71	13,118	5	-	-
053	C	1.7%	10.92	6.36	4.27	0.29	0.19	637,968	236.12	142.59	24.97	21.82	29,237	10	-	-
070	C	1.4%	10.89	6.03	4.19	0.67	0.14	221,536	152.44	88.47	11.94	14.71	15,056	8	-	-
089	S	4.3%	10.68	5.94	4.12	0.62	0.46	90,034	155.74	88.80	12.12	14.81	6,078	3	-	-
038	N	3.4%	10.31	5.69	3.95	0.67	0.34	234,834	162.49	90.45	11.98	16.29	14,414	8	-	-
033	N	1.5%	10.17	5.64	3.91	0.62	0.15	59,593	142.75	86.46	11.23	14.71	4,052	2	-	-
055	C	3.7%	10.15	5.84	3.92	0.39	0.38	382,672	162.69	98.83	14.89	16.05	23,841	8	-	-
060	C	1.3%	9.74	5.57	3.74	0.43	0.12	721,810	187.23	113.91	15.68	19.83	36,400	16	-	-
066	C	2.4%	9.73	5.56	3.73	0.44	0.23	595,026	209.71	127.07	20.45	22.02	27,017	15	-	-
046	N	2.7%	9.67	5.47	3.80	0.40	0.25	139,119	148.99	87.45	13.03	15.64	8,896	3	-	-
057	C	2.0%	9.66	5.48	3.68	0.50	0.18	830,258	179.93	109.35	16.86	19.26	43,110	-	16	-
543	N	0.8%	9.64	5.41	3.64	0.59	0.07	190,178	153.68	93.55	13.97	16.85	11,287	6	-	-
030	N	3.8%	9.53	5.17	3.58	0.78	0.35	142,841	154.51	88.86	11.67	16.98	8,410	6	-	-
054	N	1.8%	9.50	5.38	3.61	0.51	0.17	271,038	155.91	94.97	13.49	17.03	15,919	9	-	-
029	N	3.4%	9.40	5.30	3.56	0.54	0.31	704,706	161.38	98.27	15.71	17.59	40,064	1	-	14
047	C	2.9%	9.17	5.23	3.51	0.43	0.26	589,366	175.58	106.89	14.61	19.48	30,250	13	-	-
072	C	2.5%	8.83	5.02	3.37	0.44	0.22	128,082	153.14	93.64	11.49	17.80	7,198	3	-	-
035	N	2.0%	8.81	4.93	3.42	0.46	0.17	202,707	148.01	87.35	12.52	17.38	11,661	5	-	-
043	N	2.3%	8.75	4.98	3.35	0.42	0.19	637,470	165.95	100.74	16.38	19.46	32,757	15	-	-
042	N	2.8%	8.17	4.56	3.17	0.44	0.22	398,342	152.52	88.19	13.36	19.19	20,762	10	-	-
064	C	2.2%	8.17	4.66	3.13	0.38	0.17	659,499	177.18	107.13	19.34	22.23	29,668	14	-	-

(1) Total bus count (295) is based on PM weekday equipment requirements.

(2) C under Zone is Central County, N is North County and S is South County.



OCTA Operating Statistics By Route for Stationlink Service (Sorted by Subsidy per Boarding)
Fiscal Year 2020-21

Route	Zone	Farebox	Subsidy per Boarding	Direct Subsidy	Indirect Subsidy	"Capital Subsidy" Per Boarding	Revenue per Boarding	Boardings	CostVSH	Direct CostVSH	CostVSM	BoardVSH	VSH	Bus Count		
														40 FT	32 FT	60 FT
463	C	1.1%	\$ 86.30	\$ 40.69	\$ 27.44	\$ 18.17	\$ 0.73	4,096	\$ 191.79	\$ 96.52	\$ 17.58	2.79	1,471	4	-	-
473	C	1.5%	51.21	25.24	17.02	8.95	0.64	4,158	197.89	96.77	17.32	4.61	901	2	-	-
480	C	2.1%	40.66	19.35	13.05	8.26	0.70	4,508	192.11	96.72	15.53	5.80	777	2	-	-
453	N	2.2%	35.76	17.41	11.74	6.61	0.67	5,632	204.86	98.75	31.24	6.87	820	2	-	-
472	C	3.0%	31.93	14.03	9.46	8.44	0.73	6,616	170.59	92.21	15.10	7.04	939	3	-	-

(1) Total bus count (295) is based on PM weekday equipment requirements.

(2) C under Zone is Central County, N is North County and S is South County.



OCTA Operating Statistics By Route for Local and Community Services (Sorted by Boardings)
Fiscal Year 2020-21

Route	Zone	Farebox	Subsidy per Boarding	Direct Subsidy	Indirect Subsidy	"Capital Subsidy" Per Boarding	Revenue per Boarding	Boardings	CostVSH	Direct CostVSH	CostVSM	BoardVSH	VSH	Bus Count		
														40 FT	32 FT	60 FT
057	C	2.0%	\$ 9.66	\$ 5.48	\$ 3.68	\$ 0.50	\$ 0.18	830,258	\$ 179.93	\$ 109.35	\$ 16.86	19.26	43,110	-	-	16
060	C	1.3%	9.74	5.57	3.74	0.43	0.12	721,810	187.23	113.91	15.68	19.83	36,400	16	-	-
029	N	3.4%	9.40	5.30	3.56	0.54	0.31	704,706	161.38	98.27	15.71	17.59	40,064	1	-	14
064	C	2.2%	8.17	4.66	3.13	0.38	0.17	659,499	177.18	107.13	19.34	22.23	29,668	14	-	-
053	C	1.7%	10.92	6.36	4.27	0.29	0.19	637,968	236.12	142.59	24.97	21.82	29,237	10	-	-
043	N	2.3%	8.75	4.98	3.35	0.42	0.19	637,470	165.95	100.74	16.38	19.46	32,757	15	-	-
066	C	2.4%	9.73	5.56	3.73	0.44	0.23	595,026	209.71	127.07	20.45	22.02	27,017	15	-	-
047	C	2.9%	9.17	5.23	3.51	0.43	0.26	589,366	175.58	106.89	14.61	19.48	30,250	13	-	-
042	N	2.8%	8.17	4.56	3.17	0.44	0.22	398,342	152.52	88.19	13.36	19.19	20,762	10	-	-
050	N	1.7%	11.78	6.66	4.47	0.65	0.19	387,963	175.53	107.09	14.94	15.51	25,014	13	-	-
055	C	3.7%	10.15	5.84	3.92	0.39	0.38	382,672	162.69	98.83	14.89	16.05	23,841	8	-	-
054	N	1.8%	9.50	5.38	3.61	0.51	0.17	271,038	155.91	94.97	13.49	17.03	15,919	9	-	-
037	N	1.5%	11.96	6.70	4.50	0.76	0.17	243,583	190.17	115.88	15.98	16.72	14,571	11	-	-
038	N	3.4%	10.31	5.69	3.95	0.67	0.34	234,834	162.49	90.45	11.98	16.29	14,414	8	-	-
070	C	1.4%	10.89	6.03	4.19	0.67	0.14	221,536	152.44	88.47	11.94	14.71	15,056	8	-	-
035	N	2.0%	8.81	4.93	3.42	0.46	0.17	202,707	148.01	87.35	12.52	17.38	11,661	5	-	-
543	N	0.8%	9.64	5.41	3.64	0.59	0.07	190,178	153.68	93.55	13.97	16.85	11,287	6	-	-
001	S	2.2%	15.78	9.02	6.06	0.70	0.34	185,650	154.98	95.53	10.91	10.05	18,465	7	-	-
071	N	2.5%	11.12	6.26	4.34	0.52	0.27	179,795	149.08	87.71	11.48	13.71	13,118	5	-	-
083	C	1.3%	15.48	8.91	5.98	0.59	0.20	159,028	164.67	101.90	8.65	10.91	14,573	5	-	-
030	N	3.8%	9.53	5.17	3.58	0.78	0.35	142,841	154.51	88.86	11.67	16.98	8,410	6	-	-
046	N	2.7%	9.67	5.47	3.80	0.40	0.25	139,119	148.99	87.45	13.03	15.64	8,896	3	-	-
072	C	2.5%	8.83	5.02	3.37	0.44	0.22	128,082	153.14	93.64	11.49	17.80	7,198	3	-	-
056	N	1.4%	11.50	6.48	4.35	0.67	0.16	111,529	153.45	93.39	13.93	13.97	7,982	4	-	-
091	S	3.7%	17.15	9.50	6.59	1.06	0.62	105,610	146.24	87.45	10.16	8.76	12,062	6	-	-
059	C	2.0%	14.40	8.01	5.56	0.83	0.28	90,058	158.64	89.46	14.52	11.45	7,863	4	-	-
089	S	4.3%	10.68	5.94	4.12	0.62	0.46	90,034	155.74	88.80	12.12	14.81	6,078	3	-	-
025	N	2.8%	11.89	6.63	4.60	0.66	0.33	84,330	146.00	87.15	11.60	12.64	6,670	3	-	-
026	N	1.7%	12.86	7.13	4.95	0.78	0.21	71,629	145.26	86.76	12.43	11.83	6,056	3	-	-
079	C	(0.4)%	17.84	10.03	6.96	0.85	(0.07)	65,777	143.92	86.55	12.75	8.51	7,734	3	-	-
090	S	3.4%	13.72	7.75	5.38	0.59	0.46	63,338	149.37	88.13	9.32	10.99	5,761	2	-	-
033	N	1.5%	10.17	5.64	3.91	0.62	0.15	59,593	142.75	86.46	11.23	14.71	4,052	2	-	-
129	N	3.3%	14.68	8.19	5.55	0.94	0.47	59,141	148.31	87.60	11.24	10.43	5,668	3	-	-
143	N	1.9%	15.13	8.59	5.82	0.72	0.28	51,653	143.45	86.53	11.77	9.76	5,290	2	-	-
123	N	0.4%	26.76	14.99	10.16	1.61	0.11	46,136	142.53	86.56	10.35	5.64	8,175	4	-	-
153	N	1.7%	19.21	10.88	7.37	0.96	0.32	38,864	142.69	86.43	11.24	7.68	5,060	2	-	-
086	C	1.2%	24.44	13.47	9.34	1.63	0.27	34,240	142.82	86.55	11.03	6.19	5,534	3	-	-
167	C	0.3%	32.99	18.36	12.45	2.18	0.09	34,166	143.26	86.46	11.92	4.64	7,368	4	-	-
177	S	2.6%	20.68	11.49	7.78	1.41	0.51	26,325	142.31	86.42	11.06	7.20	3,659	2	-	-
076	C	0.8%	20.57	11.45	7.69	1.43	0.16	26,071	150.14	91.51	12.85	7.78	3,350	2	-	-
087	S	1.5%	24.05	13.23	9.18	1.64	0.34	22,659	145.27	87.31	9.83	6.37	3,548	2	-	-
178	C	0.7%	29.49	16.57	11.23	1.69	0.19	21,979	142.75	86.44	11.49	5.10	4,309	2	-	-
085	S	1.3%	34.00	18.85	13.08	2.07	0.42	17,958	143.78	86.70	11.48	4.44	4,040	2	-	-
862	C	1.1%	32.08	19.91	10.08	2.09	0.34	17,822	170.01	103.56	17.66	5.60	3,180	2	-	-
082	S	1.8%	20.86	11.55	8.01	1.30	0.37	14,282	144.68	86.99	10.53	7.26	1,967	1	-	-

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OCTA Operating Statistics By Route for Stationlink Service (Sorted by Boardings)
Fiscal Year 2020-21

Route	Zone	Farebox	Subsidy per Boarding	Direct Subsidy	Indirect Subsidy	"Capital Subsidy" Per Boarding	Revenue per Boarding	Boardings	CostVSH	Direct CostVSH	CostVSM	BoardVSH	VSH	Bus Count		
														40 FT	32 FT	60 FT
472	C	3.0%	\$ 31.93	\$ 14.03	\$ 9.46	\$ 8.44	\$ 0.73	6,616	\$ 170.59	\$ 92.21	\$ 15.10	7.04	939	3	-	-
453	N	2.2%	35.76	17.41	11.74	6.61	0.67	5,632	204.86	98.75	31.24	6.87	820	2	-	-
480	C	2.1%	40.66	19.35	13.05	8.26	0.70	4,508	192.11	96.72	15.53	5.80	777	2	-	-
473	C	1.5%	51.21	25.24	17.02	8.95	0.64	4,158	197.89	96.77	17.32	4.61	901	2	-	-
463	C	1.1%	86.30	40.69	27.44	18.17	0.73	4,096	191.79	96.52	17.58	2.79	1,471	4	-	-

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Route Reference Table

Route	Route Description	Main Street	Route Category
1	Long Beach - San Clemente	via Pacific Coast Hwy	LOCAL
25	Fullerton - Huntington Beach	via Knott Ave/ Goldenwest St	LOCAL
26	Fullerton - Yorba Linda	via Commonwealth Ave/ Yorba Linda Blvd	LOCAL
29	La Habra - Huntington Beach	via Beach Blvd	LOCAL
30	Cerritos - Anaheim	via Orangethorpe Ave	LOCAL
33	Fullerton - Huntington Beach	via Magnolia St	LOCAL
35	Fullerton - Costa Mesa	via Brookhurst St	LOCAL
37	La Habra - Fountain Valley	via Euclid St	LOCAL
38	Lakewood - Anaheim Hills	via Del Amo Blvd/ La Palma Ave	LOCAL
42	Seal Beach - Orange	via Seal Beach Blvd/ Los Alamitos Blvd/ Lincoln Ave	LOCAL
43	Fullerton - Costa Mesa	via Harbor Blvd	LOCAL
46	Long Beach - Orange	via Ball Road/ Taft Ave	LOCAL
47	Fullerton - Balboa	via Anaheim Blvd/ Fairview St	LOCAL
50	Long Beach - Orange	via Katella Ave	LOCAL
53	Anaheim - Irvine	via Main St	LOCAL
54	Garden Grove - Orange	via Chapman Ave	LOCAL
55	Santa Ana - Newport Beach	via Standard Ave/ Bristol St/ Fairview St/ 17th St	LOCAL
56	Garden Grove - Orange	via Garden Grove Blvd	LOCAL
57	Brea - Newport Beach	via State College Blvd/ Bristol St	LOCAL
59	Anaheim - Irvine	via Kraemer Blvd/ Glassell St/ Grand Ave/ Von Karman Ave	LOCAL
60	Long Beach - Tustin	via Westminster Ave/ 17th St	LOCAL
64	Huntington Beach - Tustin	via Bolsa Ave/ 1st St	LOCAL
66	Huntington Beach - Irvine	via McFadden Ave/ Walnut Ave	LOCAL
70	Sunset Beach - Tustin	via Edinger Ave	LOCAL
71	Yorba Linda - Newport Beach	via Tustin Ave/ Red Hill Ave/ Newport Blvd	LOCAL
72	Sunset Beach - Tustin	via Warner Ave	LOCAL
76	Huntington Beach - John Wayne Airport	via Talbert Ave/ MacArthur Blvd	LOCAL
79	Tustin - Newport Beach	via Bryan Ave/ Culver Dr/ University Ave	LOCAL
82	Foothill Ranch - Rancho Santa Margarita	via Portola Pkwy/ Santa Margarita Pkwy	LOCAL
83	Anaheim - Laguna Hills	via 5 Fwy/ Main St	LOCAL
85	Mission Viejo - Laguna Niguel	via Marguerite Pkwy/ Crown Valley Pkwy	LOCAL
86	Costa Mesa - Mission Viejo	via Alton Pkwy/ Jeronimo Rd	LOCAL
87	Rancho Santa Margarita - Laguna Niguel	via Alicia Pkwy	LOCAL
89	Mission Viejo - Laguna Beach	via El Toro Rd/ Laguna Canyon Rd	LOCAL
90	Tustin - Dana Point	via Irvine Center Dr/ Moulton Pkwy/ Golden Lantern St	LOCAL
91	Laguna Hills - San Clemente	via Paseo de Valencia/ Camino Capistrano/ Del Obispo St	LOCAL
123	Anaheim - Huntington Beach	via Malvern Ave/ Valley View/ Bolsa Chica	COMMUNITY
129	La Habra - Anaheim	via La Habra Blvd/ Brea Blvd/ Birch St/ Kraemer Blvd	COMMUNITY
143	La Habra - Brea	via Whittier Blvd/ Harbor Blvd/ Brea Blvd/ Birch St	COMMUNITY
153	Brea - Anaheim	via Placentia Ave	COMMUNITY
167	Orange - Irvine	via Irvine Ave/ Hewes St/ Jeffrey Rd	COMMUNITY
177	Foothill Ranch - Laguna Hills	via Lake Forest Dr/ Muirlands Blvd/ Los Alisos Blvd	COMMUNITY
178	Huntington Beach - Irvine	via Adams Ave/ Birch St/ Campus Dr	COMMUNITY
453	Orange Transportation Center - St. Joseph's Hospital	via Chapman Ave/ Main St/ La Veta Ave	STATIONLINK
463	Santa Ana Regional transportation Center - Hutton Centre	via Grand Ave	STATIONLINK
472	Tustin Metrolink Station - Irvine Business Complex	via Edinger Ave/ Red Hill Ave/ Campus Dr/ Jamboree Rd	STATIONLINK
473	Tustin Metrolink Station - U.C.I.	via Edinger Ave/ Harvard Ave	STATIONLINK
480	Irvine Metrolink Station - Lake Forest	via Alton Pkwy/ Bake Pkwy/ Lake Forest Dr	STATIONLINK
543	Fullerton Transportation Center - Santa Ana	via Harbor Blvd	BRAVO
862	Downtown Santa Ana Shuttle	via Civic Center Dr	COMMUNITY

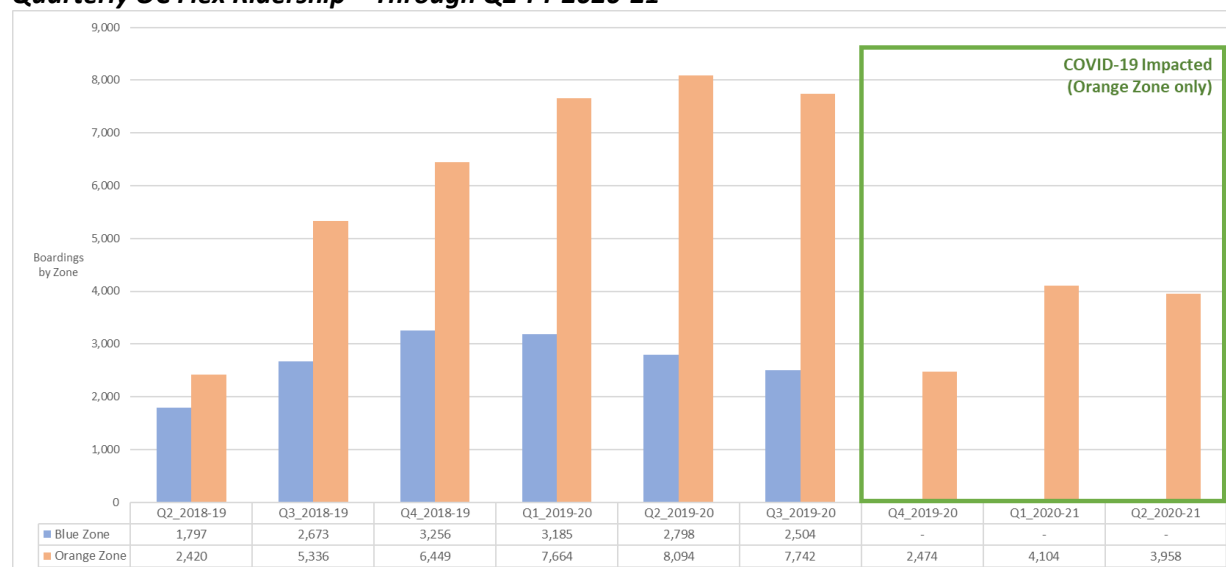
OC Bus 360° Initiatives

OC Flex Pilot Program

OC Flex service launched in October 2018 in two zones under a pilot program. The OCTA Board of Directors (Board) approved five primary goals and performance metrics to evaluate the pilot program. Upon approval of the pilot program, the Board directed staff to provide updates on the performance metrics as part of quarterly Bus Operations Performance Measurements Report.

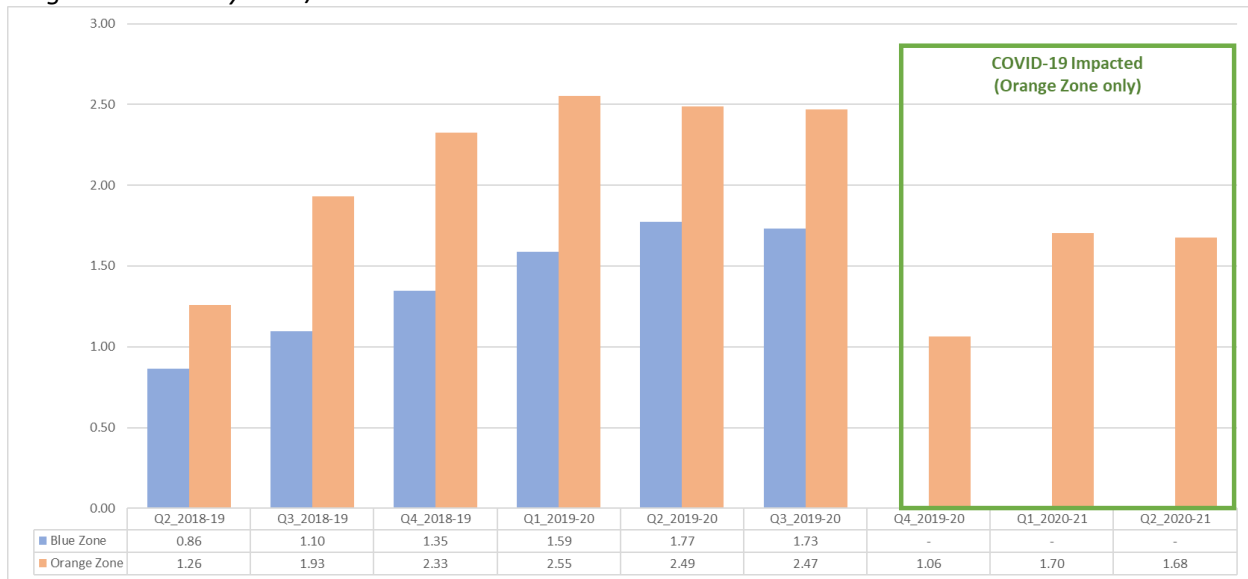
For the second quarter of FY 2020-21, ridership in the Orange Zone, as well as other metrics, were trending favorably despite the continued impacts of the pandemic. Service in the Blue Zone remained suspended. To allow time for the pilot in the Orange Zone to recover from the impacts of the pandemic before deciding on the future use of microtransit in Orange County, the Board approved an extension of the pilot program in the Orange Zone through December 2021.

Quarterly OC Flex Ridership – Through Q2-FY 2020-21



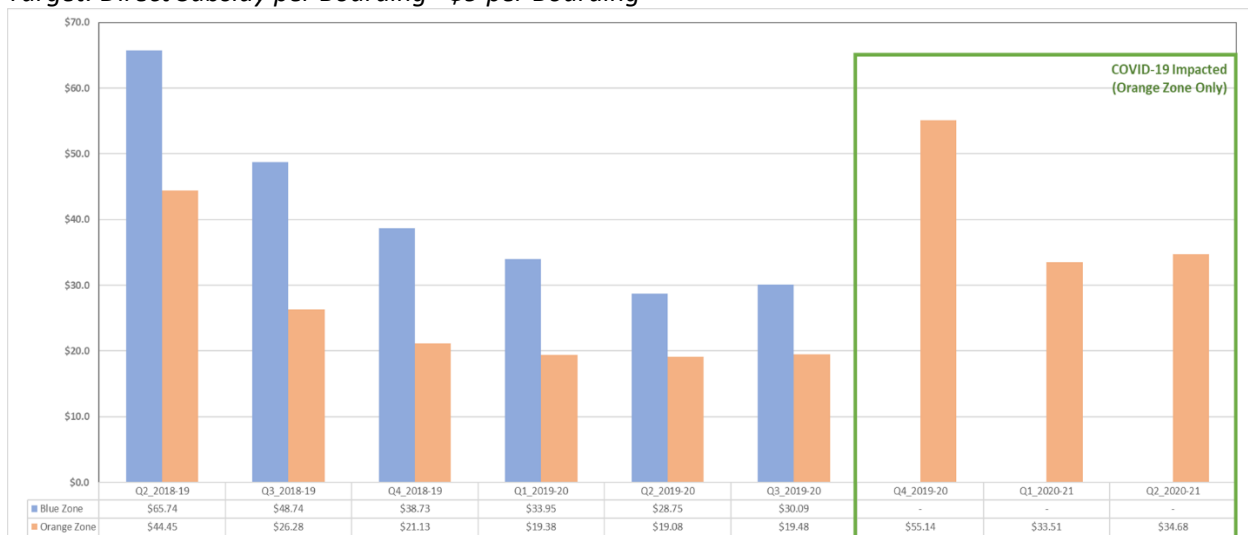
OC Flex Productivity (Boarding/Revenue Vehicle Hour) – Through Q2-FY 2020-21

Target: Productivity – 6 B/RVH



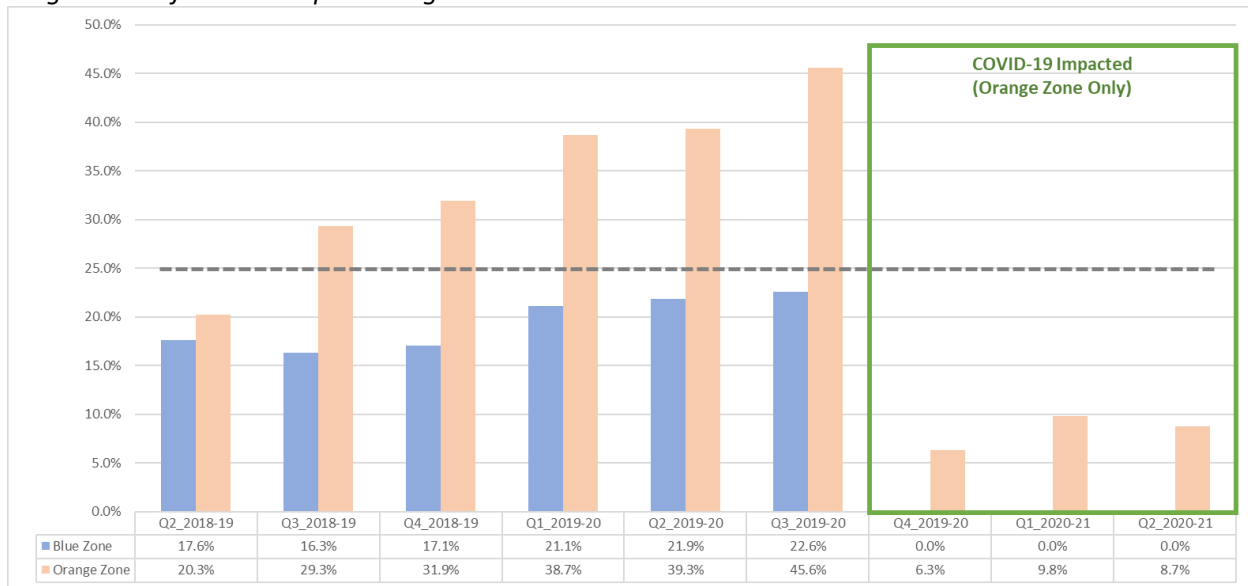
Quarterly OC Flex Direct Subsidy per Boarding – Through Q2-FY 2020-21

Target: Direct Subsidy per Boarding - \$9 per Boarding



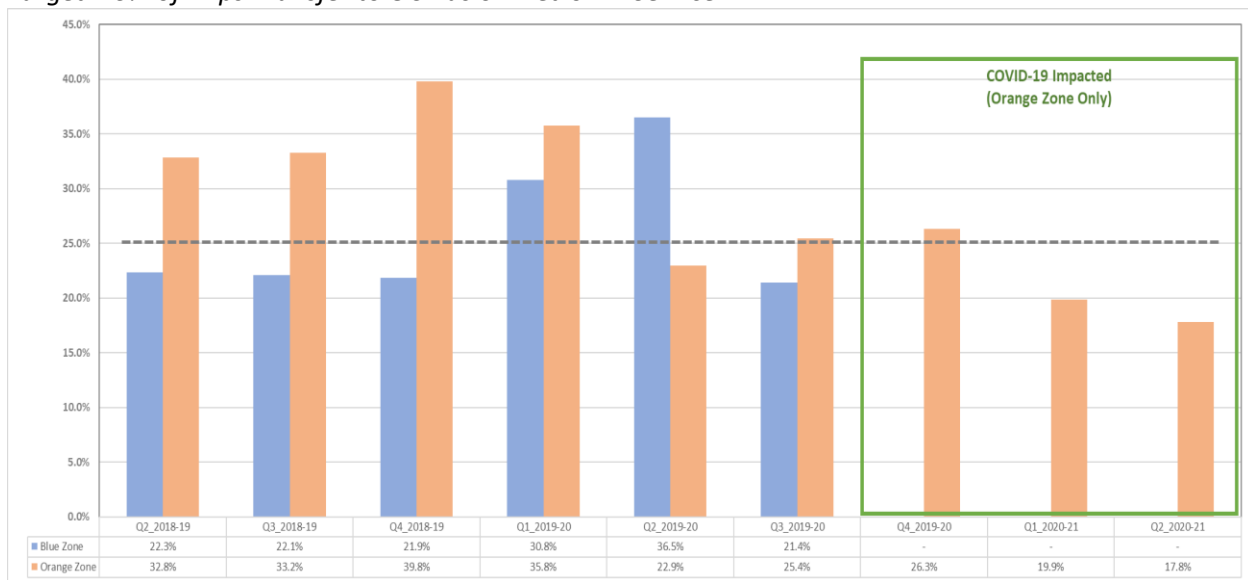
OC Flex Shared Trips – Through Q2-FY 2020-21

Target: 25% of Booked Trips Sharing a Vehicle



OC Flex Connecting Trips (Transfers) – Through Q2-FY 2020-21

Target: 25% of Trips Transfer to OC Bus or Metrolink Service



College Pass Program

The College Pass Program started in August 2017 with students from Santa Ana College and continuing education students from Santa Ana College and Santiago Canyon College. OCTA has continued to work with schools interested in joining the program, including Santiago Canyon College (August 2018), as well as Golden West and Fullerton colleges (fall 2019).

Despite challenges from COVID-19 during the last quarter, OCTA welcomed Saddleback College to the College Pass Program. In addition, existing programs with Santa Ana College and continuing education were extended as they approached the end of their three-year long pilot programs.


Looking towards spring 2021, OCTA continues to work with other interested colleges to expand the College Pass Program with college-provided funding or student fees and available Low Carbon Transit Operations Program grant funds.



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors

From: Andrea West, Interim Clerk of the Board 

Subject: Agreement for Public Communications and Community Outreach Consultant Services for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

Legislative and Communications Committee Meeting of March 18, 2021

Present: Directors Bartlett, Delgleize, Hennessey, Hernandez, Murphy, Sidhu, and Wagner

Absent: None

Committee Vote

A substitute motion was made and following the roll call vote, this item was declared passed 7-0 by the Members present.


Committee Recommendation

Defer this item to the next regularly scheduled meeting of the Legislative and Communications Committee on April 15, 2021.



March 18, 2021

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Agreement for Public Communications and Community Outreach Consultant Services for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

Overview

On April 27, 2020, the Board of Directors approved the release of a request for proposals for public outreach consulting services during the pre-construction and construction phases of the State Route 55 Improvement Project between Interstate 405 and Interstate 5. Proposals were received in accordance with the Orange County Transportation Authority's procurement procedures for professional and technical services. Board of Directors' approval is requested to execute an agreement for these services.

Recommendations

- A. Approve the selection of Costin Public Outreach Group, as the firm to provide public outreach consulting services for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2104 between the Orange County Transportation Authority and Costin Public Outreach Group, in the amount of \$1,684,990 for a five-year initial term, effective through September 30, 2025, with an option term of up to 36 months, to provide public outreach consulting services for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.

Discussion

The Orange County Transportation Authority (OCTA), in cooperation with the California Department of Transportation (Caltrans), is improving State Route 55 (SR-55) between Interstate 405 (I-405) and Interstate 5 (I-5). The \$474 million SR-55 Improvement Project (Project) is adding one regular lane and one

high-occupancy vehicle lane in each direction, as well as auxiliary lanes between several interchanges. SR-55 is the major freeway route connecting Orange County to Riverside and San Bernardino counties. The corridor is also a major route for accessing key business centers, John Wayne Airport, and the beach cities. The four-mile Project includes improvements at five under- and over-crossings, constructing retaining walls and soundwalls, reconfiguring on- and off-ramps, and reconstructing a channel. The Project recently completed final design. Right-of-way (ROW) is anticipated to be certified in mid-2021 and the Project advertised for construction in winter 2021. Construction is scheduled to begin in mid-2022.

Consultant services are needed to develop and execute public communications and outreach support during the pre-construction and construction phases. More than 15,000 residential and commercial parcels are located within a half-mile of the Project area. Extensive outreach efforts are needed to communicate major activities to residents, business owners, and motorists, as well as key stakeholders such as local agencies and trucking and tourism industries. Activities include long- and short-term freeway, ramp, and local street closures, demolition and reconstruction work, and wall construction.

These consultant services will aid OCTA and Caltrans with the development and delivery of day-to-day communications and share public information messages that help the public understand temporary construction impacts as well as the value and benefits of investments in Orange County's transportation network. The selected consultant will implement a comprehensive SR-55 public outreach program using traditional methods and leveraging innovative tools to generate public awareness of the project, identify key issues, build upon stakeholder ascertainment, and ensure the community is aware of the activities that will affect them.

The consultant will use various outreach tools and methods to reach businesses, residents, and those beyond the project area. These include virtual and in-person meetings with stakeholders, email newsletters, neighborhood meetings, an interactive closures and detours map, text alerts, and a Project website and hotline. In addition, the consultant will build on the Project's social media presence. The consultant will build relationships with diverse and disadvantaged communities and develop strategies to eliminate or address communication obstacles such as language barriers and access to the internet. The consultant also will develop a variety of print and digital collateral and video graphics that will feature strong visual storytelling. Special event planning and execution of a groundbreaking ceremony, milestone celebrations, and a dedication event will be included in the communications plan.

Procurement Approach

The procurement was handled in accordance with OCTA's Board of Directors (Board)-approved procedures for professional and technical services. Various factors were considered in the award for professional and technical services. Award is recommended to the firm offering the most comprehensive overall proposal considering such factors as prior experience with similar projects, staffing and project organization, work plan, as well as cost and price.

On April 27, 2020, the Board authorized the release of Request for Proposals (RFP) 0-2104, which was issued electronically on CAMM NET. The project was advertised in a newspaper of general circulation on April 27 and May 4, 2020. A pre-proposal conference took place on May 5, 2020 with 12 attendees representing eight firms. Three addenda were issued to make available the pre-proposal conference registration sheet and presentation, as well as respond to written questions related to the RFP.

On May 27, 2020, six proposals were received. An evaluation committee consisting of OCTA staff from Contracts Administration and Materials Management, Public Outreach, Capital Programs departments, as well as external evaluators from the City of Santa Ana and Caltrans met to review the proposals received.

The proposals were evaluated based on the following Board-approved evaluation criteria and weightings:

- | | |
|-------------------------------------|------------|
| • Qualifications of the Firm | 20 percent |
| • Staffing and Project Organization | 30 percent |
| • Work Plan | 30 percent |
| • Cost and Price | 20 percent |

Several factors were considered in developing the evaluation criteria weightings. Qualifications of the firm was weighted at 20 percent as the consulting firm had to demonstrate direct public outreach experience on complex transportation projects during the construction phase. Staffing and project organization was weighted at 30 percent as the proposing firm had to present an experienced team with a blend of senior and junior level staff having adequate availability, as well as experience performing outreach services on large construction projects. Work plan was also weighted at 30 percent as the plan had to consider the unique needs of a corridor primarily composed of commercial and industrial businesses that also serves motorists commuting from the Inland Empire to

Orange County as well as recreational trips. Additionally, the project team had to demonstrate an understanding of the project scope and challenges and level of effort required. Cost and price was weighted at 20 percent to ensure the outreach program is delivered efficiently and that OCTA receives value for the services provided.

The evaluation committee utilized a best-value selection process for this RFP. The best-value determination is based on a 100-point scale. The RFP required proposing firms to submit a separate price proposal in a sealed package. In order to focus on the technical aspects of the proposals, the evaluation committee first evaluated the written proposals on technical merit based on the weighted criteria for qualifications of the firm, staffing and project organization, as well as work plan, which represented a maximum of 80 points of the total proposal score. Once the technical scores of the short-listed firms were determined, the sealed price proposals were then opened. The pricing score represented a maximum of 20 points of the total proposal score.

On June 11, 2020, the evaluation committee reviewed the proposals based only on the technical evaluation criteria and short-listed the three most qualified firms listed below in alphabetical order:

Firm and Location

Costin Public Outreach Group (CPOG)
Corona, California

McCormick-Busse, Inc. doing business as MBI Media (MBI)
Covina, California

Westbound Communications, Inc. (Westbound)
Orange, California

The interviews took place virtually on June 17, 2020 and consisted of a presentation to demonstrate the firms' understanding of OCTA's requirements. The firms' project managers and key team members had an opportunity to present each teams' qualifications and respond to the evaluation committee's questions. Questions were related to the level of effort required for this Project, managing time and resource commitments, potential challenges, and handling crisis communications. In addition, each team was asked specific clarification questions related to its proposal.

After considering the responses to the questions asked during the interviews, the evaluation committee reviewed the preliminary ranking and made adjustments to individual scores. However, CPOG remained the highest-ranked firm with the highest overall score.

Based on the evaluation of the written technical proposals and the information obtained from the interviews, the evaluation committee recommends CPOG for consideration of the award. The following is a brief summary of the proposal evaluation results.

Qualifications of the Firm

CPOG was founded in 2013 and has offices in the cities of Corona and Huntington Beach. The firm has six employees. CPOG demonstrated experience leading the development and implementation of public outreach programs for freeway projects during the construction phase, which include the San Bernardino Express Lanes Project and State Route 210 Lane Addition and Base Line Interchange Project for the San Bernardino County Transportation Authority, as well as the District 7 I-5 On-Call Public Awareness Campaign for Caltrans. One of the proposed subcontractors, Hill International, Inc., is the prime contractor that provided public outreach services for OCTA on the I-5 Central County Improvement Project during the final design and the construction phases. CPOG proposed additional subcontractors to provide diverse community outreach, video and photography, social media support, and translation support services.

MBI was founded in 1989 and has 23 employees. The firm is headquartered in the City of Covina. The firm has experience providing public outreach for complex freeway projects, such as the I-405 Improvement Project and the SR-55 between I-5 and State Route 91 (SR-91) Improvement Project for OCTA, the SR-91 Corridor Improvement Project for the Riverside County Transportation Commission (RCTC), and the US 101 Improvement Project for Ventura County Transportation Commission. Although MBI has worked on similar construction projects, the firm has primarily served in a subcontractor capacity. The projects in which MBI performed as the prime consultant were during the environmental phase. One of their proposed subcontractors, Kleinfelder Construction Services, Inc. (Kleinfelder), is the prime contractor currently providing public outreach services for the I-405 Improvement Project.

Westbound was founded in 2003 and is headquartered in the City of Orange with offices in the cities of Long Beach and Riverside. The firm has 17 employees. Westbound demonstrated experience in leading public outreach programs for

various capital improvement projects during the construction phase, which include the Gerald Desmond Bridge Replacement Project for the Port of Long Beach, State Route 57 Northbound Widening Project for OCTA, and the 91 Steer Clear Project for RCTC. The firm also served as the public outreach lead for the contractor team for RCTC's SR-91 Corridor Improvement Project. Westbound proposed several subcontractors to provide additional support related to graphic design, videography, photography, printing, research, and website and mobile application development.

Staffing and Project Organization

CPOG proposed a project team with extensive experience. The proposed project manager is the firm's founder and has 26 years of public outreach and stakeholder engagement experience. CPOG proposed four community liaisons with experience providing public outreach during the construction phase, as well as familiarity with the project corridor and stakeholders. The proposed dedicated community liaison has 12 years of experience. The dedicated community liaison has worked on multiple OCTA freeway projects in various phases, including participating in design meetings for this corridor and planning for a Public Hearing for the neighboring SR-55 segment between I-5 and SR-91. Additionally, the proposed lead community liaison will bring another level of understanding and knowledge of the area from her recent experience working on the I-5 Central County Improvements Project at the northern end of the project limits. CPOG's project team includes four bilingual Latino and Asian community liaisons with freeway construction experience to engage underserved and traditionally hard-to-reach populations. The proposed subcontractor, Lazar, is also available to provide additional translation and interpretation support, if needed.

The project team is proposed with ample availability for the Project. During the interview, the project team members discussed their roles and approach for developing and implementing the public outreach program. The project team's presentation and responses to the evaluation committee's questions demonstrated their understanding of the project corridor and stakeholders, as well as the activities and challenges specific to the Project, such as ROW and temporary construction easements (TCE).

MBI proposed a project team with relevant experience. The proposed project manager has 18 years of project management experience and has been with the firm for almost 20 years. The firm proposed three community liaisons for this effort. One of the proposed community liaisons is from Kleinfelder and is currently serving as the project manager on the I-405 Improvement Project,

which demonstrates the individual's experience providing public outreach for a complex construction project. However, the other two community liaisons proposed have limited experience leading public outreach efforts during the construction phase. The project team is proposed with sufficient availability for this effort. During the interview, the project team presented its approach, as well as responded to the evaluation committee's questions, which demonstrated a general knowledge of the project area and stakeholders.

Westbound proposed a knowledgeable and experienced project team. The proposed project manager has more than 25 years of public relations and communications experience and has been with the firm for four years. The firm proposed three community liaisons with each assigned to provide outreach to specific stakeholder groups rather than all three proposed to support outreach efforts for any given group or task. The community liaison for the Hispanic market has more than 20 years of experience providing public outreach services for several freeway construction projects and has been with the firm for 14 years. The other two proposed community liaisons have limited freeway construction outreach experience. During the interview, the project team discussed their roles and approach to leading the public outreach program. The team's presentation and responses to the evaluation committee's questions demonstrated their understanding of the diverse communities along the corridor and the importance of strategically communicating with those stakeholders. However, the project team's availability was not specified in the proposal nor was it clarified after being asked by the evaluation committee during the interview.

Work Plan

CPOG presented a comprehensive work plan that addressed all the elements of the scope of work. The firm detailed its approach for the public outreach program, which includes expanding the project database through stakeholder ascertainties, refreshing the project branding, developing messages that convey the Project's benefits, planning and coordinating community meetings, posting electronic construction notices, and establishing a project helpline. CPOG demonstrated an understanding of the project area and the key stakeholders affected by the Project.

In addition, the firm discussed its approach to engaging with diverse communities along the project corridor. The firm has a "boots-on-the-ground" approach to reach diverse communities including, but not limited to seniors, low-income, and monolingual populations. CPOG recognizes that with Latino ethnicity percentages of more than 80 percent in Santa Ana and 40 percent in Tustin, their approach to deliver project information must be sensitive to their

communications and cultural needs. The firm indicated the importance of an overall communications program that shares information in the language spoken, in a correct and respectful manner and in compliance with Title VI requirements.

The firm demonstrated an understanding of the impacts of ROW, TCEs, as well as pre- and post-construction surveys, and discussed how it will provide related public outreach support. CPOG identified potential issues and proposed solutions, such as coordinating temporary lodging for impacted stakeholders, providing advanced notification of freeway closures, and implementing safety message boards and signages. The firm also proposed enhancements, such as providing utility relocation outreach, developing a construction safety awareness program, and virtual events.

MBI addressed each element of the scope of work in its work plan, such as conducting stakeholder ascertainties, developing a comprehensive public outreach plan, enhancing the Project's identity and branding, developing collateral materials, implementing an interactive map, and updating the project website. Although the firm discussed its approach and understanding of the key stakeholders, the firm did not elaborate on how it will communicate and provide outreach to businesses and residents directly impacted by ROW acquisitions and TCEs. MBI discussed how it will mitigate potential issues, such as developing communication specifically to stakeholders directly impacted by the construction activities, including residents living close to the project corridor, first responders, and schools. As an enhancement, the firm proposed to leverage digital and virtual strategies by using digital platforms, such as Microsoft Teams and Zoom, to conduct public meetings and respond to public inquiries.

Westbound demonstrated a clear understanding of the scope of work in its work plan. The firm discussed its approach and elaborated on its outreach strategies, such as developing a message that connects constituents and stakeholders, leverage existing relationships to engage the impacted communities, providing on-call availability at all times, using visuals to communicate the need and benefits of the Project, and utilizing digital outreach tools. Westbound detailed how it will complete various outreach activities by providing examples and identifying related deliverables. Westbound demonstrated an understanding of the project area and key stakeholders in its discussion of creating project advocates, coordinating community meetings, outreach to local businesses and apartment complexes along the corridor. The firm did not specify any special issues or problems anticipated for this Project. The firm proposed various enhancements, such as a text message system for updates, live camera feed to

show real-time progress, in-person construction tours, and interactive architectural visualization.

Cost and Price

Pricing scores were based on a formula which assigned the highest score to the firm with the lowest weighted average hourly rate and scored the other proposals' weighted average hourly rate based on its relation to the lower weighted average hourly rate. Although MBI proposed the lowest weighted average hourly rate, CPOG ranked second lowest in pricing and the firm's proposed hourly rates are deemed fair and reasonable.

Procurement Summary

Based on the evaluation of written proposals, the firms' qualifications, and the information obtained from the interviews, the evaluation committee recommends the selection of CPOG as the top-ranked firm to provide public outreach consulting services for the SR-55 Improvement Project between I-405 and I-5. CPOG delivered a thorough and comprehensive proposal and an interview that was responsive to all the requirements of the RFP.

Fiscal Impact

The SR-55 Improvement Project between I-405 and I-5 was approved in OCTA's Fiscal Year 2020-21 Budget, External Affairs, Account No. 0017-7519-FF101-TYP. The Project is funded by a combination of federal, state, and local Measure M2 funds.

Summary

Staff is recommending the Board of Directors authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2104 between the Orange County Transportation Authority and Costin Public Outreach Group, in the amount of \$1,684,990, for a five-year initial term, with an option term of up to 36 months, to provide public outreach consulting services for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.

Attachments

- A. Review of Proposals, RFP 0-2104 Public Outreach for State Route 55 Improvement Project
- B. Proposal Evaluation Criteria Matrix (Short-Listed Firms), RFP 0-2104 Public Outreach for State Route 55 Improvement Project
- C. Contract History for the Past Two Years, RFP 0-2104 Public Outreach for State Route 55 Improvement Project

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Review of Proposals
RFP 0-2104 Public Outreach for State Route 55 Improvement Project
 Presented to Legislative and Communications Committee - March 18, 2021
6 firms proposed, 3 firms were interviewed, 1 firm is being recommended

Overall Ranking	Proposal Score	Firm & Location	Sub-Contractors	Evaluation Committee Comments	Weighted Average Hourly Rate
1	87	Costin Public Outreach Group Corona, California	AJ Design Become Intertwined Hill International, Inc. Lazar Translating & Interpreting The Sierra Group	Highest-ranked firm overall. Experience providing public outreach for complex construction projects. Proposed a subcontractor currently leading the outreach efforts for the Interstate 5 Central County Improvement Project. Proposed project team has extensive, relevant experience. Proposed project manager has 26 years of experience. Proposed four community liaisons with relevant experience and knowledge of the project corridor. Proposed dedicated community liaison has 12 years of experience. Detailed approach for developing and implementing public outreach program. Demonstrated an understanding of the project corridor and key stakeholders. Discussed specific activities related to the Project, such as right-of-way, temporary construction easements, and utility relocation. Presented approach and answered questions during the interview. Received positive responses from references. Proposed competitive hourly rates.	\$128
2	79	McCormick-Busse, Inc. dba MBI Media Covina, California	Kleinfelder Construction Services AJ Design	Experience providing public outreach support for freeway construction projects as a subcontractor. Proposed a subcontractor currently leading the outreach efforts for the Interstate 405 (I-405) Improvement Project. Proposed project team has limited freeway construction experience. Proposed project manager has 18 years of experience. One of the proposed community liaisons is the project manager for the I-405 Improvement Project. Discussed approach and addressed all elements of the scope of work. Demonstrated a general knowledge of the project corridor and stakeholders. Presented approach and answered questions during the interview. Received positive responses from references. Proposed lowest weighted average hourly rate.	\$110
2	79	Westbound Communications, Inc. Orange, California	Geographics Media 360 Alcorn Photography Sir Speedy Printing Public Values Rief Media	Experience leading public outreach programs for complex construction projects, including several freeway construction projects. Proposed a knowledgeable and experienced project team. Proposed project manager has 25 years of experience. Proposed three community liaisons assigned to specific stakeholder groups. Proposed community liaison for Hispanic market has 20 years of construction-related outreach experience. Detailed approach and strategies for developing and implementing outreach program. Demonstrated an understanding of the project corridor and key stakeholders. Emphasized the importance of strategic communications with diverse communities. Presented approach and answered questions during the interview. Received positive responses from references. Proposed competitive hourly rates.	\$152

Evaluation Panel:

Internal:

Contracts Administration and Materials Management (1)

Public Outreach (2)

Capital Programs (1)

External:

City of Santa Ana (1)

California Department of Transportation (1)

Proposal Criteria

Qualifications of the Firm

Staffing and Project Organization

Work Plan

Cost and Price

Weight Factors

20%

30%

30%

20%

PROPOSAL EVALUATION CRITERIA MATRIX (Short-Listed Firms)
RFP 0-2104 Public Outreach for State Route 55 Improvement Project

Costin Public Outreach Group							Weights	Overall Score
Evaluator Number	1	2	3	4	5	6		
Qualifications of Firm	4.5	4.5	4.5	4.5	4.5	5.0	4	18.3
Staffing/Project Organization	4.5	4.5	4.5	4.0	4.0	4.0	6	25.5
Work Plan	4.5	4.5	4.5	4.0	4.5	4.0	6	26.0
Cost and Price	4.3	4.3	4.3	4.3	4.3	4.3	4	17.2
Overall Score	89.2	89.2	89.2	83.2	86.2	85.2		87

McCormick-Busse, Inc. dba MBI Media							Weights	Overall Score
Evaluator Number	1	2	3	4	5	6		
Qualifications of Firm	3.5	3.5	3.5	3.5	4.0	4.0	4	14.7
Staffing/Project Organization	4.0	3.5	3.5	4.0	3.5	4.0	6	22.5
Work Plan	4.0	4.0	3.5	3.5	3.5	3.5	6	22.0
Cost and Price	5.0	5.0	5.0	5.0	5.0	5.0	4	20.0
Overall Score	82.0	79.0	76.0	79.0	78.0	81.0		79

Westbound Communications, Inc.							Weights	Overall Score
Evaluator Number	1	2	3	4	5	6		
Qualifications of Firm	4.0	4.5	4.5	4.5	4.5	4.0	4	17.3
Staffing/Project Organization	4.0	3.5	4.0	3.5	4.0	4.0	6	23.0
Work Plan	4.0	4.0	4.0	4.0	4.0	4.0	6	24.0
Cost and Price	3.6	3.6	3.6	3.6	3.6	3.6	4	14.4
Overall Score	78.4	77.4	80.4	77.4	80.4	78.4		79

Range of score for non-short-listed firms was 34 to 51.

CONTRACT HISTORY FOR THE PAST TWO YEARS
RFP 0-2104 Public Outreach for State Route 55 Improvement Project

Prime and Subconsultants	Contract No.	Description	Contract Start Date	Contract End Date	Subconsultant Amount	Total Contract Amount
Costin Public Outreach Group Contract Type: Subconsultants: N/A	None	N/A	N/A	N/A	\$	-
Sub Total \$						-
McCormick-Busse, Inc. dba MBI Media						
Contract Type: Time-and-Expense Subconsultants: N/A	C-9-1052	Public Outreach for South Orange County Multimodal Transportation Plan Study	August 12, 2019	June 30, 2021	N/A	\$ 199,694
Sub Total \$						199,694
Westbound Communications, Inc.						
Contract Type: Time-and-Expense Subconsultants: Arellano Associates Lista Design Sir Speedy Printing The Walking Man	C-4-1829	Public Outreach for State Route 91 Improvement Project	December 17, 2014	June 30, 2019	N/A	\$ 199,620
Sub Total \$						199,620



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors

From: Andrea West, Interim Clerk of the Board *Andrea West*

Subject: Transportation Infrastructure Finance and Innovation Loan Interest Rate Reset Form of Financing Documents

Finance and Administration Committee Meeting of March 10, 2021

Present: Directors Goodell, Harper, Hennessey, Hernandez, Jones, and Muller

Absent: None

Committee Vote

Following the roll call vote, this item was declared passed 6-0 by the Members present.

Committee 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 for up to \$628.9 million, the substantially final form of the Second Supplemental Indenture by and between the Orange County Transportation Authority and the Trustee, and the substantially final form of the Loan Pay off and Termination Agreement between the Orange County Transportation Authority and the United States Department of Transportation.
- B. Authorize the Chief Executive Officer to negotiate and execute a final Transportation Infrastructure Finance and Innovation Act Loan Agreement, Second Supplemental Indenture, and Loan Payoff and Termination Agreement.



Committee Recommendations (Continued)

- C. Authorize the Chairman, Vice Chairman, Chief Executive Officer, Chief Financial Officer, Director of Finance and Administration, and Department Manager of Treasury and Public Finance to sign all documents related to the Transportation Infrastructure Finance and Innovation Act loan, including the Transportation Infrastructure Finance and Innovation Act Loan Agreement, the Second Supplemental Indenture, Loan Pay off and Termination Agreement, and any certificates, notices, receipts, or agreements in connection with the foregoing.



March 10, 2021

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Transportation Infrastructure Finance and Innovation Loan Interest Rate Reset Form of Financing Documents

Overview

On October 26, 2020, the Orange County Transportation Authority Board of Directors directed staff to proceed with pursuing an interest rate reset of the Orange County Transportation Authority's 2017 Transportation Infrastructure Finance and Innovation Act Loan for up to \$628.9 million for the Interstate 405 Improvement Project. The form of the financing documents for the proposed transaction is presented for 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 for up to \$628.9 million, the substantially final form of the Second Supplemental Indenture by and between the Orange County Transportation Authority and the Trustee, and the substantially final form of the Loan Pay-off and Termination Agreement between the Orange County Transportation Authority and the United States Department of Transportation.
- B. Authorize the Chief Executive Officer to negotiate and execute a final Transportation Infrastructure Finance and Innovation Act Loan Agreement, Second Supplemental Indenture, and Loan Payoff and Termination Agreement.
- C. Authorize the Chairman, Vice Chairman, Chief Executive Officer, Chief Financial Officer, Director of Finance and Administration, and Department Manager of Treasury and Public Finance to sign all documents related to the Transportation Infrastructure Finance and Innovation Act loan, including the Transportation Infrastructure Finance

and Innovation Act Loan Agreement, the Second Supplemental Indenture, Loan Pay-off and Termination Agreement, and any certificates, notices, receipts, or agreements in connection with the foregoing.

Background

Transportation Infrastructure Finance and Innovation Act Overview

The Transportation Infrastructure Finance and Innovation Act (TIFIA) of 1998 established a federal credit program for eligible transportation projects. The program is designed to leverage limited federal resources and stimulate capital market investment in transportation infrastructure by providing credit assistance to projects of national or regional significance. TIFIA is administered by the Build America Bureau (Bureau) on behalf of the Secretary of Transportation.

2017 TIFIA Loan

On July 26, 2017, the Orange County Transportation Authority (OCTA) and the United States (U.S.) Department of Transportation (DOT) Bureau Credit Programs Office (Bureau) executed a TIFIA loan for up to \$628.9 million (2017 TIFIA Loan) as a direct borrowing for the Interstate 405 (I-405) Improvement Project (Project).

The 2017 TIFIA Loan is non-recourse debt issued on a senior lien basis secured solely by net toll revenues of the 405 Express Lanes, which are estimated to open in 2023. Annual debt service payments are not required until five years after substantial completion, and interest-only payments are required for the first five years (years six through ten after substantial completion). Principal payments for the loan commence in year ten after substantial completion. As of June 30, 2020, OCTA has drawn \$287 million on the 2017 TIFIA Loan.

TIFIA Loan Reset Approval Process and Timeline

In August 2020, as a result of historically low U.S. Treasury rates, OCTA staff requested a meeting with the Bureau to explore options to lower the 2017 TIFIA Loan's 2.91 percent interest rate. It is expected that savings could be achieved if the 2017 Loan is replaced with a new TIFIA Loan (2021 TIFIA Loan), by resetting the 2.91 percent interest rate based on current 30-year U.S. Treasury bond yields. If successful, it is anticipated that the current interest rate of 2.91 percent could be reduced, resulting in debt service savings. Based on current U.S. Treasury bond yields, it is anticipated that a new TIFIA loan will result in net present value savings of approximately 14 percent,

or approximately \$90 million. This savings is less than what was anticipated and reported to the Board of Directors (Board) in October 2020. At that time, net present value savings was anticipated to be 25 percent or approximately \$190 million. The decrease in savings is due to rising 30-year U.S. Treasury bond yields. Yields on 30-year U.S. Treasury bonds have increased from approximately 1.4 percent in October 2020 to approximately 2.2 percent in March 2021. Fees and expenses for the transaction are estimated at \$755,000 and are necessary to cover the costs for credit ratings, financial advisory services, bond counsel, and Bureau costs.

Following several successful discussions with the Bureau, OCTA was invited to submit a Letter of Interest (LOI) requesting to reset the 2.91 percent interest on the 2017 TIFIA Loan. OCTA submitted a detailed LOI in August 2020, and in early October 2020, the Bureau approved the LOI and moved OCTA to the due diligence phase of the process. During this phase, the Bureau performed a detailed credit review of the Project's ability to repay the loan and invited OCTA to begin drafting an informal application while the Bureau conducted its procurement for outside legal counsel.

Following Board direction to pursue an interest rate reset, in November 2020, OCTA submitted an informal application to the Bureau. Also, in November 2020, the Bureau notified OCTA that Nixon Peabody LLP, was selected as the Bureau's legal counsel for the proposed transaction. Once draft legal documents were provided to OCTA in late January 2021, OCTA and the Bureau began weekly conference calls starting in early February 2021 to monitor the progress of the TIFIA loan.

As part of the Bureau's due diligence process, two investment grade ratings are required prior to closing. In late January 2021, OCTA provided preliminary ratings information to Kroll Bond Rating Agency, and Moody's Investor Services (Rating Agencies), and in late February 2021, OCTA conducted detailed rating agency presentations. During these conference calls, OCTA provided detailed information covering the TIFIA loan, funding and financial plan updates, current project status, and estimated timeline to close.

On February 10, 2021, the Bureau received approval from their Credit Review Team (CRT) for the Project, and OCTA was invited to submit a formal application. OCTA submitted the formal application on February 11, 2021, which was approved by CRT with a recommendation to move forward to the Council on Credit and Finance (CCF) for approval and submission to the Secretary of Transportation, who makes the final determination on approving the 2021 TIFIA Loan. Based on the estimated timeline provided by the Bureau, OCTA is targeting a financial close for the 2021 TIFIA Loan in late March 2021.

Discussion

Approval of Financing Documents

In order to proceed with the 2021 TIFIA Loan, OCTA is required to execute financing documents with third parties. A listing of the documents is provided below with an accompanying description:

- Form of the TIFIA Loan Agreement (Loan Agreement) - Agreement between the U.S. DOT and OCTA, for up to \$628.93 million, for the I-405 Improvement Project. The Loan Agreement describes the terms, conditions, repayment provisions, events of default, and reporting requirements for the 2021 TIFIA Loan. See Attachment A.
- Form of the TIFIA Loan Pay-off and Termination Agreement (Termination Agreement) - Agreement between the U.S. DOT and OCTA. The Termination Agreement specifies the terms, conditions, and prepayment provisions for terminating the 2017 TIFIA Loan agreement prior to entering into the new 2021 TIFIA Loan. See Attachment B.
- Form of the Second Supplemental Indenture (Indenture) - Agreement between OCTA and the Trustee for the benefit of the bondholders, including TIFIA. The Indenture specifies the terms and conditions for issuing any potential future 405 Express Lanes bond obligations on a parity basis with the 2021 TIFIA Loan, the maturity of the 2021 TIFIA Loan, and the protective covenants and other terms. The Indenture also describes the legal obligation of OCTA and the powers of the trustee. See Attachment C.

Next Steps

If the Board approves the form of the financing documents for the proposed transaction, then in order to close the 2021 TIFIA Loan by the end of March 2021, OCTA will need to provide two investment grade ratings to the Bureau (expected be released by the Rating Agencies within 14 days of financial close). Also, the Bureau will need to obtain approval from the CCF. If approved by the CCF, then the Secretary will make the final determination on awarding the 2021 TIFIA loan.

Additionally, pursuant to the Termination Agreement, OCTA will need to initiate the cancellation process for the existing 2017 TIFIA Loan by paying off the existing loan. OCTA would repay \$287 million, the total TIFIA loan disbursements, plus capitalized interest, prior to closing the 2021 TIFIA Loan.

Simultaneously with the closing of the 2021 TIFIA Loan, OCTA would be able to submit a reimbursement request, supported by prior eligible project expenditures, for the \$287 million in order to be reimbursed.

Summary

The form of the financing documents for the 2021 Transportation Infrastructure Finance and Innovation Act loan for the Interstate 405 Improvement Project are presented for approval.

Attachments

- A. United States Department of Transportation TIFIA Loan Agreement, For Up to \$628,930,000 with Orange County Transportation Authority for the I-405 Improvement Project
- B. Second Supplemental Indenture between Orange County Transportation Authority and U.S Bank National Association as Trustee
- C. I-405 Improvement Project TIFIA Loan Pay-off and Termination Agreement

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**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

For Up to \$628,930,000

With

ORANGE COUNTY TRANSPORTATION AUTHORITY

For the

**I-405 IMPROVEMENT PROJECT
(TIFIA – [NUMBER])**

Dated as of [], 2021

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SCHEDULE I – Project Budget

SCHEDULE II – Construction Schedule

SCHEDULE 14(f) – Litigation

SCHEDULE 14(u) – Insurance

EXHIBIT A – Form of TIFIA Bond

EXHIBIT B – Anticipated TIFIA Loan Disbursement Schedule

EXHIBIT C – Non-Debarment Certification

EXHIBIT D – Requisition Procedures

EXHIBIT E – Compliance With Laws

EXHIBIT F-1 – FHWA Oversight Agreement

EXHIBIT F-2 – Project Management Plan

EXHIBIT G – TIFIA Debt Service

EXHIBIT H – TIFIA Debt Service Structure

EXHIBIT I – Opinions Required from Counsel to Borrower

EXHIBIT J – Reserved

EXHIBIT K – Form of Certificate of Trustee

EXHIBIT L – Form of Borrower’s Officer’s Certificate

EXHIBIT M – Form of Certificate of Substantial Completion

EXHIBIT N – Certification Regarding Lobbying

EXHIBIT O – Reporting Subawards and Executive Compensation

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, on July 26, 2017, the TIFIA Lender and the Borrower entered into a TIFIA Loan Agreement (the “**Original TIFIA Loan Agreement**”) for a loan in an amount not to exceed \$628,930,000 (the “**Original TIFIA Loan**”).

WHEREAS, the Borrower has prepaid all outstanding amounts under the Original TIFIA Loan Agreement, and has requested to cancel all remaining loan commitments thereunder and terminate the Original Loan Agreement and the bond issued with respect to the Original Loan Agreement, and, substantially concurrently therewith, enter into this Agreement; and

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$628,930,000 (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 [] (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) [\$253,768,869] pay-as-you-go funds pursuant to the Sales Tax Act, (b) [\$892,390,232] aggregate amount of proceeds from the sale 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 State funds, and (d) approximately [\$53,419,000] of federal and State grants.¹

“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.²

“Additional Senior Bonds” means any borrowings or indebtedness permitted under Section 17(a) (*Indebtedness*) and under the Master Indenture, which Additional Senior Bonds 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 Bonds are necessary for such completion or compliance, as applicable, and that the proceeds from such Additional Senior Bonds, 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 Bonds 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 Bonds will be used to refinance Senior Lien Bonds, (i) such Additional Senior Bonds must receive an Investment Grade Rating at the time of issuance and (ii) Annual Debt Service on Outstanding Senior Lien Bonds for each Borrower Fiscal Year after the issuance of such Additional Senior Bonds shall not exceed Annual Debt Service on Outstanding Senior Lien Bonds for each Borrower Fiscal Year prior to the issuance of such Additional Senior Bonds; and

¹ NTD: Borrower to update amounts.

² NTD: Borrower to provide final copies of the Additional Project Contracts that were entered into between the 2017 effective date and the 2021 effective date. Certain agreements will be listed as part of the Principal Project Contracts definition.

(c) if the proceeds of the Senior Lien Bonds will be used for any purpose other than the completion bonds as described in paragraph (a) above or the refinancing of Senior Lien Bonds 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 Lien Bonds, 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 Bonds shall not result in a downgrade of the lower of (A) the then-existing credit ratings of the Senior Lien Bonds, and (B) the credit ratings of the Senior Lien Bonds, as of the Effective Date, and (z) repayment of the principal amount of such Additional Senior Bonds 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 twelve (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 (3) months preceding the month of calculation, or if SIFMA Index is no longer published, at an interest rate equal to seventy-five percent (75%) of the average one month LIBOR rate (in U.S. dollars) during that three (3) month period, or if the one (1) 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 (1) month LIBOR rate (in U.S. dollars) during the three (3) months preceding the month of calculation, or if the one (1) 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) 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; and

(vi) any payment obligation under a Secured 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.

“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*).

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“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 Lien Bonds, 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 Lien Bonds 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 2.01 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, Washington, D.C., the State of Minnesota 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 Secured Obligation secured by a Credit Facility, the office where draws are to be made on a provider of a Credit Facility 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 as of 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, as such agreement is amended and supplemented.³

“**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, as such agreement is amended and supplemented.⁴

“**Construction Contractor**” means OC 405 Partners, a Joint Venture, a joint venture, comprised of OHL USA Incorporated, a corporation organized and existing under the laws of the State of Delaware, and Astaldi Construction Company, a corporation organized and existing under the laws of the State of Florida, and any successor thereto.

“**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 submitted pursuant to Section 22(a)(iii)(B) (*Financial Plan*).

³ NTD: Borrower to confirm if there have been any material amendments. If yes, please provide copies.

⁴ NTD: Borrower to confirm if there have been any material amendments. If yes, please provide copies.

“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.⁵

“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 2021 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 with an Acceptable Credit Rating 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

⁵ NTD: Borrower to confirm if there have been any material amendments since 2017. If yes, please provide copies.

the Debt Service Payment Commencement Date shall be the Semi-Annual Payment Date immediately preceding the fifth (5th) anniversary of the Substantial Completion Date.

“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.

“Electronic Signature” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to Title 2.5 of the California Civil Code, as amended from time to time.

“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 May 18, 2017, 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.

“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.

“Final Maturity Date” means June 1, 2058, 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*).

“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., a *sociedad anónima* organized and existing under the laws of Spain, and Astaldi S.P.A., a *società per azioni* organized and existing under the laws of Italy.

“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 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 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 Parsons Transportation Group Inc. 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.

“Independent Engineer’s Report” means the Engineer’s Technical Report for the I-405 Improvement Project dated March 03, 2017 issued by the Independent Engineer.

“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 one (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, provided, that if LIBOR shall cease to be published, the index to be used in its place shall be that index which the Borrower as provided

in the Master Indenture, determines most closely replicates such index, as set forth in a certificate of the Borrower's Authorized Representative filed with the Trustee].⁶

"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 Financial Plan; (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 Financial Plan; (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 Financial Plan; 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 Financial Plan.

⁶ NTD: Borrower to confirm this definition does not need to be revised.

“Master Indenture” means the Master Indenture between the Borrower and the Trustee, dated as of June 1, 2017, as supplemented or amended by any Supplemental Indenture as defined in the Master Indenture, including without limitation the Second Supplemental Indenture.⁷

“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 Record of Decision for the Project issued by Caltrans on May 15, 2015, 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 4.04(e) 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.

⁷ NTD: Borrower confirm that there have been no supplements since closing. If yes, please provide copies.

“OCTA Cooperative Agreement- OCSD” means that certain Cooperative Agreement for Interstate 405 Improvement Project, made and entered into on August 30, 2016, 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, 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 twelve (12) 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 or Caltrans.

“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 USA PATRIOT Act, also known as Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all related regulations.

“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 Bonds 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 4.02 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), and (c) 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 Lien Bonds Fund, Subordinate Obligations Fund, Senior Lien Bonds 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 [\$1,910,508,101] 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.⁸

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

“Projected Substantial Completion Date” means October 3, 2023, 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, as such agreement is amended and supplemented.⁹

“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.

“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 and the Principal Project Contracts.

⁸ NTD: Borrower to update amount.

⁹ NTD: Borrower to confirm if there have been any material amendments. If yes, please provide copies.

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

“Reserve Accounts” means the Senior Lien Bonds 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*).

“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.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

“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.

“[Second Supplemental Indenture]” means the Second Supplemental Indenture, by and between the Borrower and the Trustee, dated as of _____, 2021, relating to the TIFIA Bond.¹⁰

“Secretary” means the United States Secretary of Transportation.

¹⁰NTD: Borrower to confirm that the new TIFIA Bonds will be issued pursuant to the Second Supplemental Indenture.

“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 Lien Bonds 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, and any other Bondholders.

“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 Lien Bonds, Annual Debt Service on such Senior Lien Bonds.

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

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

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

“Senior Lien Bonds Prepayment Account” has the meaning provided in the Master Indenture.

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

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

“Senior Lien Bonds Reserve Requirement” for any Senior Lien Bond other than the TIFIA Bond, 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 those Senior Lien Bonds.

“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 Lien Bonds, less amounts held in the TIFIA Debt Service Reserve Account and in the debt service reserve account of Additional Senior Bonds on such Calculation Date.

“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.

“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 Borrower.

“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.

“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 Lien Bond delivered by the Borrower in substantially the form of **Exhibit A**, issued by the Borrower to the TIFIA Lender pursuant to the Second 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 Reserve Account” has the meaning provided in the Second Supplemental Indenture; the TIFIA Debt Service Reserve Account is an account within the Senior Lien Bonds 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 \$628,930,000 (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 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 Caltrans/OCTA Toll Operating Agreement (Including Real Property Lease) Interstate 405 Express Lanes in Orange County, dated March 3, 2017, 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, as such agreement is amended and supplemented.¹¹

“**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.

¹¹ NTD: Borrower to confirm if there have been any material amendments. If yes, please provide copies.

“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 for such Calculation Period and (b) Subordinate Debt Service 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 Lien Bonds; (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 Lien Bonds (taking into account discounts, premiums and transaction costs) on the basis of semi-annual compounding of interest.

“Trustee” means U.S. Bank National Association.

“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 Rebate Fund, 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 Rebate Fund, 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 4.02 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 Lien Bond multiplied by the ratio of (i) the principal amount of the applicable Senior Lien Bonds then Outstanding to (ii) the aggregate of the Outstanding Senior Lien Bonds, 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 \$628,930,000. 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. Subject to clause (d) of this Section 4, if the TIFIA Lender shall 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. In no event shall disbursements be made more than once each month.

(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.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 13 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender’s ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

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; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (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) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (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) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date the Outstanding TIFIA Loan Balance and any interest accrued thereon (at the Default Rate) but unpaid 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.¹²

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 Lien Bonds.

(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".

(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;

¹² NTD: Section 7(b) is under review by the Bureau.

(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, to the Senior Lien Bonds Interest Account, the sum of (A)(1) in the case of Outstanding Senior Lien Bonds with Semi-Annual Payment Dates, one-sixth (1/6) of the amount of the interest payable on such Senior Lien Bonds on the next Semi-Annual Payment Date; (2) in the case of Outstanding Senior Lien Bonds with quarterly Interim Payment Dates, one-third (1/3) of the amount of the interest payable on such Senior Lien Bonds on the next quarterly Interim Payment Date; and (3) in the case of Outstanding Senior Lien Bonds with monthly Interim Payment Dates, the amount of interest payable on such Senior Lien Bonds on the next monthly Interim 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 a Payment Date or the last Monthly Funding Date before a 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 Payment Date; 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;

(iv) Fourth, commencing twelve (12) months before the first annual principal Payment Date (including any mandatory sinking fund redemption date) or six (6) months before the first principal Semi-Annual 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 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, only the principal portion of TIFIA Mandatory Debt Service shall be set aside pursuant to this Fourth clause;

(v) 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 the Master 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 (12) 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;

(vi) Sixth, to the Senior Lien Bonds 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 Payment Dates, one-sixth (1/6) of the interest payable on such Subordinate Obligations on the next Semi-Annual Payment Date; (2) in the case of Outstanding Subordinate Obligations with quarterly Interim Payment Dates, one-third (1/3) of the amount of the interest payable on such Subordinate Obligations on the next quarterly Interim Payment Date; and (3) in the case of Outstanding Subordinate Obligations with monthly Interim Payment Dates, the interest payable on such Subordinate Obligations on the next month Interim 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 a Payment Date or the last Monthly Funding Date before a 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 Payment Date;

(viii) Eighth, commencing twelve (12) months before the first annual principal Payment Date (including any mandatory sinking fund redemption date) or six (6) months before the first principal Semi-Annual 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 principal Semi-Annual Payment Dates, one-sixth (1/6) of the principal redemptions due on such Subordinate Obligations on the next principal Semi-Annual 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 Borrower 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 Borrower 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 one hundred percent (100%) of the amount of principal of and interest on the TIFIA Loan due and payable as of such date as set forth on **Exhibit 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 shown 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 Lien Bonds 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 Senior Lien Bonds Fund 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 Senior Lien Bonds Fund 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 Senior Lien Bonds Fund.

(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. 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 \$628,930,000 (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

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 Bonds described in clause (b) of the definition of Additional Senior Bonds and the Annual Debt Service after the issuance of such Additional Senior Bonds;

(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 (12) 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 Section 4.17 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 minimum principal amounts of \$1,000,000), at any time or from time-to-time, without penalty or premium. 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, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower intends to pay concurrently with such prepayment, if any. 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 \$446,000,000, 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 \$446,000,000;

(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 regional transportation plan adopted by the Southern California Association of Governments, (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 July 13, 2017, 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 delivered to the TIFIA Lender an original fully executed counterpart (or a certified copy) of the Independent Engineer's Report, accompanied by a letter from the Independent Engineer, dated as of July 17, 2017, certifying that conclusions in the Independent Engineer's Report are valid and that the Independent Engineer's Report may be relied upon by the TIFIA Lender.

(xii) 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.

(xiii) 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).

(xiv) 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 Lien Bonds 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.

(xv) 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.

(xvi) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) 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.

(xvii) 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.

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

(xix) 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).

(xx) 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.

(xxi) 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.

(xxii) 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.

(xxiii) 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.

(xxiv) 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).

(xxv) 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.

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

(xxvii) 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).

(xxviii) The Borrower shall have duly executed and delivered to the TIFIA Lender a termination letter, in form and substance satisfactory to the TIFIA Lender,

relating to the termination of the Original Loan Agreement and the Original TIFIA Loan and the cancellation of the bond issued with respect to the Original Loan Agreement.

(xxix) 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 Lien Bonds 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 Project 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)(xx) (*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 such Requisition has not been expressly denied by the TIFIA Lender.

(xii) The Borrower shall have paid in full all invoices received from the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) 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 Lien Bonds. 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 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 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)(iv) (*Conditions Precedent to Effectiveness*). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. The Borrower is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.

(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 regional transportation plan 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.

(i) None of the Borrower, any other Borrower Related Party, nor, to the knowledge of the Borrower, any Principal Project Party is a Sanctioned Person.

(ii) None of the Borrower, any other Borrower Related Party, nor, to the knowledge of the Borrower, any Principal Project Party 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; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or any Principal Project Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the TIFIA Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(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 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 bonds, the Borrower is not required to file tax returns with any Governmental Authority.

(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 Project 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 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(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 most recently submitted Financial Plan (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 5.07 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 \$1,000,000, 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 \$1,000,000 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 \$100,000,000 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 Lien Bonds 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. Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 13(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 C.F.R. § 180.335; (2) any other notification required pursuant to 2 C.F.R. § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 C.F.R. § 200.113, and the Borrower shall require its subcontractors to provide it notice of any such violation; 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) Additional Projects. The Borrower shall obtain the prior written approval of the TIFIA Lender for any Additional Project.

(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 2022, 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 Lien Bonds, 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 Lien Bonds Reserve Fund in an amount equal to the applicable Senior Lien Bonds Reserve Requirement in accordance with the provisions of this Agreement and the applicable Indenture Documents. Amounts in the Senior Lien Bonds Reserve Fund shall be made available to ensure the timely payment of Senior Debt Service on the Senior Lien Bonds.

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 the proceeds of a Borrower loan, the source of which will be any legally available source of funds that is not part of the Trust Estate and repayment of the Borrower loan will be from any legally available source of funds that is not part of the Trust Estate. 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. Any deficiency in the Senior Lien Bonds Reserve Fund or the Subordinate Obligations Reserve Fund resulting from the withdrawal of moneys therein shall be replenished within twelve (12) months of such withdrawal.

(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 Senior Lien Bonds Fund (or any other debt service account with respect to a Senior Lien Bond) or in any debt service account in respect of Senior Lien Bonds 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 Senior Lien Bonds Fund (or any other debt service account with respect to a Senior Lien Bond) or in any debt service account for Senior Lien Bonds 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 and Transfers from the Project Fund after the Final Completion Date. Commencing on the Substantial Completion Date and thereafter on each Monthly Funding Date, 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 4.04(f) of the Master Indenture, to the extent that on the Final Completion Date (as defined in the Construction Agreement) there shall remain any funds on deposit in the Project Fund (or any account thereof), 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 Lien Bonds Reserve Fund up to the Senior Lien Bonds 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 it 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) or 8(d)(ix) (*Security and Priority; Flow of Funds*), pursuant to Sections 4.03, 4.08, 4.09 and 4.10 of the Master Indenture, the Trustee shall transfer funds (i) first, with respect to the Senior Lien Bonds, from the following Funds and Accounts and in the following order of priority, from the Pledged Account, the Distribution Lock-up Fund, the Senior Lien Reserve Fund, the Operation and Maintenance Reserve Fund, and the Major Maintenance Reserve Fund to the Senior Lien Bonds Fund; provided, however, that if there are insufficient funds in the Pledged Account, the Distribution Lock-up Fund, the Senior Debt Service Reserve Fund, the Operation and Maintenance Reserve Fund, and the Major Maintenance Reserve Fund to fully replenish all such deficiencies, the amounts on deposit in the Pledged Account, the Distribution Lock-up Fund, the Operation and Maintenance Reserve Fund and the Major Maintenance Reserve Fund shall be applied *pro rata* based on the Outstanding principal amount of Senior Lien Bonds, and (ii) second, with respect to the Subordinate Obligations, from the following Funds and Accounts and in the following order of priority, from the Pledged Account, the Distribution Lock-up Fund, the Subordinate Obligations Reserve Fund, the Operation and Maintenance Reserve Fund and the Major 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 Operation and Maintenance Reserve Fund and the Major Maintenance Reserve Fund to fully replenish all such deficiencies, the amounts on deposit in the Pledged Account, the Distribution Lock-up Fund, the Operation and Maintenance Reserve Fund and the Major 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 4.04(e) 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 Project:

(i) 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.

(ii) 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.

(z) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit O** hereto.

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 Permitted Debt, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness of any kind; provided that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Trust Estate, including Permitted Debt, without the prior written consent of the TIFIA Lender, following the occurrence, and during the continuation, of an Event of Default.

(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 Bonds," 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 Lien Bonds 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 Lien Bonds 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 Lien Bonds and the TIFIA Bond, provided that such prepayment or redemption shall be made pro rata among the Senior Lien Bonds 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%); provided, however, if such Restricted Payment is to be made on or prior to the fourth (4th) Calculation Date following the fifth (5th) anniversary

of Substantial Completion, the Senior Debt Service Coverage Ratio, Total Debt Service Coverage Ratio and Senior Loan Life Coverage Ratio shall be calculated based upon the Debt Service due on the second anniversary of the Debt Service Payment Commencement Date;

(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%); and

(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.

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 Lien Bonds 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 16(i) (*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 Senior Lien Bonds 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 most recently submitted Financial Plan, 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 most recently submitted Financial Plan.

(f) 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 thirty (30) days prior to the effective date thereof.

(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 16(i) (*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; provided, however, that the Borrower may prepay the TIFIA Loan in whole or in part with the proceeds of a validly issued Federal credit instrument pursuant to, and in accordance with, Section 10 (*Prepayment*).

(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 most recently submitted Financial Plan; 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:

(i) shall not violate (A) any applicable Anti-Money Laundering Laws, (B) any applicable Sanctions, (C) Anti-Corruption Laws or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(ii) shall not use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents;

(iii) shall procure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the TIFIA Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the TIFIA Lender or any Principal Project Party); or

(iv) shall not make a payment, directly or indirectly, to any Principal Project Party that has violated any of the laws referenced in Section 17(l)(i) (*OFAC Compliance*) or that is a Sanctioned Person.

(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 ten percent (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 ten percent (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 Project 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) or (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 Lien Bonds, in the following order of priority: the Pledged Account, Distribution Lock-up Fund, the Senior Debt Service Reserve Fund, the Operation and Maintenance Reserve Fund and the Major 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 Subordinate Obligations Reserve Fund, the Operation and Maintenance Reserve Fund and the Major 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, advisor or representative of the TIFIA Lender (each such Person being herein referred to as an “**Indemnitee**”) against, and hold each Indemnitee 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 Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee 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 Indemnitee, 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 Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee 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 Indemnitee. Any Indemnitee 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 Indemnitee 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 Indemnitee. 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 Indemnitee 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, failure to replenish a withdrawal from the Senior Lien Bonds Reserve Fund within twelve (12) months of the date of such withdrawal as required by Section 16(l)(i) shall be an immediate Event of Default hereunder and no additional cure period applies.

(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*).

(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 Lien Bonds. Any acceleration shall occur of the maturity of any Senior Lien Bond, or any such Senior Lien Bond 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 Lien Bond 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 Lien Bonds, 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 Lien Bonds.

(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) Initial Funding of Required Amounts. The Borrower shall fail to deposit into any of the Funds or Accounts described in clauses (i) and (ii), of Section 16(l) one hundred percent (100%) of the initial required minimum balance on or prior to the date as of which such required minimum balance must be initially funded in accordance with Section 16(l) (*Project Accounts; Permitted Investments*) and the applicable Indenture Documents.

(xii) 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.

(xiii) 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*), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and/or (iii) request that the Borrower repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.

(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 2021 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, annually 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 Lien Bonds 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 \$2,500,000, 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 quarterly financial report, which consists of (I) a schedule of actual revenues and expenses for the Borrower, and changes in fund balances in comparison to budgeted amounts, and (II) a narrative analysis of Borrower's budget to actual variances, as of the end of such period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative as fairly stating in all material respects the results of its operations 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 most recent Financial Plan submitted to 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 thirty (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 most recently submitted Financial Plan, 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**") by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau, 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 2021 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 2021 calculation, the TIFIA Lender will use the FFY 2021 base amount of \$13,873.84, 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; Electronic Signatures. 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. Each party acknowledges and agrees that they may

execute this Agreement, and any variation or amendment hereto, using Electronic Signatures, if accompanied by an email from the applicable signatory, contemporaneous or otherwise, confirming the use of such means. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

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: Division Administrator

If to Borrower:

Orange County Transportation
Authority
550 South Main Street
Orange, California 92863
Attention: Andrew Oftelie
Title: Chief Financial Officer
Phone: 714-560-5649
Fax: 714-560-5800
Email: aoftelie@octa.net and
rdavis1@octa.net

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: Dr. Morteza Farajian
Title: Executive Director of the Build
America Bureau

SCHEDULE I
PROJECT BUDGET¹³

¹³ NTD: Borrower please provide updated schedule.

SCHEDULE II
CONSTRUCTION SCHEDULE¹⁴

¹⁴ NDT: Borrower please provide updated schedule.

SCHEDULE 14(f)

LITIGATION¹⁵

A. City of Long Beach v. California Department of Transportation; Orange County Transportation Authority, Los Angeles Superior Court Case No. BS156931.

Date Filed: July 16, 2015

B. City of Seal Beach v. State of California Department of Transportation; Orange County Transportation Authority, Orange County Superior Court Case No. 30-2015-00799223.

Date Filed: July 16, 2015

A. and B. consolidated under City of Long Beach, et al. v. State of California Department of Transportation; Orange County Transportation Authority, San Diego Superior Court Case No. 37-2016-00014097.

Date Consolidated: August 24, 2016

¹⁵ NTD: Borrower please update.

SCHEDULE 14(u)
INSURANCE¹⁶

¹⁶ NTD: Borrower please provide updated schedule.

EXHIBIT A
FORM OF TIFIA BOND
ORANGE COUNTY TRANSPORTATION AUTHORITY
I-405 IMPROVEMENT PROJECT
(TIFIA – [NUMBER])
TIFIA BOND

Maximum Principal Amount: \$ 628,930,000
(excluding capitalized interest)

Effective Date: [], 2021

Due: June 1, 2058, as it may be adjusted in connection with an update to the Financial Plan, provided that such date shall be no later than the date that is 35 years following the Substantial Completion Date.

NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE BORROWER OR THE STATE OF CALIFORNIA IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF, OR THE INTEREST ON, THIS BOND.

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 most recently submitted pursuant to Section 22(a)(iii)(B) (*Financial Plan*) of the TIFIA Loan Agreement, 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.

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), 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.

IN WITNESS WHEREOF, Orange County Transportation Authority has caused this TIFIA Bond to be executed in its name and attested by its duly authorized officer, all as of the Effective Date set forth above.

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

(SEAL)

By: _____

[Name]

Chairman of the Board of Directors

ATTEST:

[Name]

[Title]

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Master Indenture and was authenticated on the date set forth below.

Date: [], 2021

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned hereby unconditionally sells, assigns and transfers unto:

(please print or type name, address and social security or other identifying 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 of Assignor)

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

NOTICE: Signature must be guaranteed by an eligible guarantor firm.

**APPENDIX ONE
I-405 IMPROVEMENT PROJECT**

Maximum Principal Sum: \$628,930,000

Maturity Date: June 1, 2058 (as may be updated pursuant to the TIFIA Loan Agreement)

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 PRINCIPAL¹⁷

Date	Amount of Disbursement	Amount of Principal Paid	Unpaid Principal Sum	Notation Made By

¹⁷ This Grid may be extended if the number of Disbursements, payments and extensions so requires.

EXHIBIT B
ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

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 CFR § 180.320 and hereby further confirms, in accordance with 2 CFR § 180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 CFR § 180.995):

(a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);

(b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR §180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(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 listed in 2 CFR §180.800(a); 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 that certain TIFIA Loan Agreement, dated as of [], 2021 (the “Effective Date”), between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: [], 2021

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.

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.

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.

Section 5. Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the TIFIA Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower (even if such disbursement has been approved by the TIFIA Lender), in each case if the TIFIA Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

Build America Bureau
United States Department of Transportation
c/o Director, Office of Credit Programs
Room W12-464
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
California Division Office
650 Capitol Mall, Suite 4-100
Sacramento, California 95814
Attention: Division Administrator

Re: I-405 IMPROVEMENT PROJECT (TIFIA # [NUMBER])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2021 (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 Lien Bonds] [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.
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)(xx) (*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 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 [] and is continuing.
13. A copy of the most recent certificate or report of the Independent Engineer delivered pursuant to Section 4.20 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: _____

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. Part 35; 29 C.F.R. Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 C.F.R. Part 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. Part 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.*), including the environmental mitigation requirements and commitments made by the Borrower that result in TIFIA Lender's approval of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 C.F.R. Part 1926 and 23 C.F.R. § 635.108, as applicable);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 C.F.R. Part 5), and, as applicable, 23 U.S.C. § 113 and

- implementing regulations (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;
- (xiii) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 C.F.R. § 635.410);
 - (xiv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 C.F.R.;
 - (xv) The Cargo Preference Act of 1954, as amended (46 U.S.C. §1241(b)), and implementing regulations (46 C.F.R. Part 381);
 - (xvi) The applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise program; and
 - (xvii) The requirements set forth at Section 889 of Pub. L. 115–232 (Aug. 13, 2018) *John S. McCain National Defense Authorization Act for Fiscal Year 2019* (prohibition on certain telecommunications and video surveillance services or equipment) and implementing regulations (2 C.F.R. § 200.216).

EXHIBIT F-1

FHWA OVERSIGHT AGREEMENT

See Attached

EXHIBIT F-2
PROJECT MANAGEMENT PLAN

See Attached

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) the Borrower is not 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.¹

¹ Other opinions to be added as appropriate for the specific project or transaction.

EXHIBIT J

Reserved

EXHIBIT K
FORM OF CERTIFICATE OF TRUSTEE
ORANGE COUNTY TRANSPORTATION AUTHORITY
TIFIA Bond,
I-405 Improvement Project
(TIFIA – [NUMBER])
[TO BE UPDATED]

The undersigned, US Bank Trust Company, National Association (the “**Trustee**”), by its duly appointed, qualified and acting Authorized Representative, certifies with respect to the above referenced bond (the “**TIFIA Bond**”) dated as of [], 2021, as follows (capitalized terms used herein 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 banking association duly organized and validly existing under and by virtue of the laws of the United States of America and is duly licensed and in good standing under the laws of the United States of America.
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 by the Trustee 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 Exhibit A attached hereto and made a 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 a 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 (the “**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 order 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 Exhibit B 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 20.06 of that certain Master Indenture, dated as of June 1, 2017, between the Orange County Transportation Authority, a public entity duly existing under the laws of the State of California (the “**Borrower**”) and the Trustee, as supplemented, including as supplemented by the Second Supplemental Indenture, dated as of _____, 2021, between the Borrower and the Trustee (collectively, the “**Indenture**”).
7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of _____, 2021 (the “**TIFIA Loan Agreement**”), by and 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**”), as the same may be amended from time to time.
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 3.05 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 7.02 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, the Senior Lien Bonds Reserve Fund) have been established as provided in the Master Indenture.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, US Bank Trust Company, National Association has caused this certificate to be executed by one of its authorized signatories this [] day of [], 2021.

**US BANK TRUST COMPANY, NATIONAL
ASSOCIATION**, as Trustee

By: _____
Name:
Its:

EXHIBIT A TO EXHIBIT K
OFFICERS OF TRUSTEE

EXHIBIT B TO EXHIBIT K
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT L
FORM OF BORROWER'S OFFICER'S CERTIFICATE

[TO BE UPDATED]

Reference is made to that certain TIFIA Loan Agreement, dated as of [], 2021 (the "TIFIA Loan Agreement"), by and between 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"), as the same may be amended from time to time. Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

The undersigned, [], as the Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his personal capacity, as of the date hereof:

- (a) in satisfaction of 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 and Cooperative Agreement, 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) in satisfaction of 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 as Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (c) in satisfaction of 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) in satisfaction of Section 13(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit D is a true, correct and complete copy of the Borrower's Independent Engineer's Report, 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;
- (e) in satisfaction of Section 13(a)(xii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit E 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 E:

1. Construction Agreement,
2. Project Oversight Agreement,
3. Caltrans DB Cooperative Agreement, and
4. Toll Facility Agreement.

- (f) 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);
- (g) in satisfaction of Section 13(a)(xiv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit F is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Project Revenues are sufficient to meet the Loan Amortization Schedule; (ii) demonstrates 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%); (iii) demonstrates 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%); (iv) demonstrates 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%); (v) does not reflect (1) the commencement of amortization of the principal amount of any Senior Lien Bonds 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 (vi) otherwise is in form and substance acceptable to the TIFIA Lender;
- (h) in satisfaction of Section 13(a)(xv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower (i) 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, (ii) 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 (iii) 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;

- (i) in satisfaction of Section 13(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit G 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. The Borrower has 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.*);
- (j) in satisfaction of Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 23-7119049 and attached hereto as Exhibit H-1 is evidence thereof, (ii) the Borrower's Data Universal Numbering System number is 153947940, 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 H-2 is evidence of each of (ii) and (iii);
- (k) in satisfaction of Section 13(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit I are true, correct and complete copies of certificates of insurance that demonstrate that (i) 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*) of the TIFIA Loan Agreement and (ii) each liability policy (other than worker's compensation insurance) reflect the TIFIA Lender as an additional insured;
- (l) in satisfaction of Section 13(a)(xxi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as (i) Exhibit J-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 or the state of its formation, 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 and (ii) Exhibit J-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 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 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;
- (m) in satisfaction of Section 13(a)(xxiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit K 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;

- (n) 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; and
- (o) (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.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of the [] day of [], 2021.

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
[Name]
[Title]

EXHIBIT A to EXHIBIT L

Indenture Documents and Cooperative Agreements

- 1) Master Indenture, dated as of June 1, 2017, by and between the Borrower and the US Bank Trust Company, National Association (the “Trustee”) and First Supplemental Indenture, dated as of June 1, 2017, by and between the Borrower and the Trustee.

(See Item Number 2 of the Closing Proceedings)
- 2) Second Supplemental Indenture, dated as of [], 2021, by and between the Borrower and the Trustee.

(See Item Number 3 of the Closing Proceedings)
- 3) Credit Facility

(See Item Number 7 and 8 of the Closing Proceedings)
- 4) Cooperative Agreement for I-405 Improvement Project, dated May 13, 2016, by and between the Borrower and the City of Costa Mesa, California.

(See Item Number 13 of the Closing Proceedings)
- 5) Cooperative Agreement for I-405 Improvement Project, dated April 19, 2016, by and between the Borrower and City of Fountain Valley, California.

(See Item Number 14 of the Closing Proceedings)
- 6) Cooperative Agreement for I-405 Improvement Project, dated May 13, 2016, by and between the Borrower and City of Huntington Beach, California.

(See Item Number 15 of the Closing Proceedings)
- 7) Cooperative Agreement for I-405 Improvement Project, dated July 29, 2016, by and between the Borrower and City of Seal Beach, California.

(See Item Number 16 of the Closing Proceedings)
- 8) Cooperative Agreement for I-405 Improvement Project, dated June 6, 2016, by and between the Borrower and City of Westminster, California.

(See Item Number 17 of the Closing Proceedings)
- 9) Cooperative Agreement for Interstate 405 Improvement Project, dated August 3, 2016, by and between the Borrower and the Orange County Flood Control District.

(See Item Number 18 of the Closing Proceedings)
- 10) Cooperative Agreement for Interstate 405 Improvement Project, dated August 30, 2016, by and between the Borrower and the Orange County Sanitation District.

(See Item Number 19 of the Closing Proceedings)

EXHIBIT B TO EXHIBIT L

INCUMBENCY CERTIFICATE

The undersigned certifies that he is the Chief Financial Officer of the Orange County Transportation Authority, a public entity duly organized and existing under the laws of the State of California (the “Borrower”), and as such he 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 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 Related Documents as the Borrower’s Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of [], 2021, by and between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, as the same may be amended from time to time):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Darrell Johnson	Chief Executive Officer	_____
Andrew Do	Chairman of the Board of Directors	_____
Andrew Oftelie	Chief Financial Officer	_____
Seam Murdock	Director of Finance and Administrator	
Robert Davis	Depart Manager, Treasury and Public Finance	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the [] day of [], 2021.

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

By: _____
[Name]

Exhibit L-7

[Title]

Exhibit L-8

EXHIBIT M
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Build America Bureau
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director

Project: I-405 Improvement Project (TIFIA – [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 [], 2021, 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**

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2021 (the “TIFIA Loan Agreement”), by and among 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, on behalf of the Borrower, hereby certifies, to the best of his or her knowledge and belief, that:

(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 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 TIFIA Loan 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.

Dated: _____

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
Name:
Title:

EXHIBIT O
REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

2 CFR Part 170

I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this TIFIA Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this TIFIA Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this **Exhibit O**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

- iii. A domestic or foreign nonprofit organization; and,
- iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this TIFIA Loan;
and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.40).

SECOND SUPPLEMENTAL INDENTURE

between

ORANGE COUNTY TRANSPORTATION AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION

as Trustee

Dated as of March 1, 2021

Relating to the

**Orange County Transportation Authority
Toll Revenue Senior Bonds,
2021 TIFIA Series**

**(Supplementing the Master Indenture
Dated as of June 1, 2017)**

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THIS SECOND SUPPLEMENTAL INDENTURE, dated as of March 1, 2021 (this “Second Supplemental Indenture”), between the ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity duly existing under the laws of the State of California (the “Authority”) and U.S. BANK 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 Second 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 entered into a First Supplemental Indenture, dated as of June 1, 2017 (the “First Supplemental Indenture”) relating to the execution and delivery of a TIFIA Loan Agreement dated as of July 19, 2017 (the “2017 TIFIA Loan”) and the issuance of a bond entitled “Orange County Transportation Authority Toll Revenue Senior Bond, 2017 TIFIA Series” (the “2017 TIFIA Bond”);

WHEREAS, the Authority intends to prepay all of the outstanding principal amount of the 2017 TIFIA Bond, including accrued but unpaid interest thereon;

WHEREAS, the Authority and the Trustee desire to enter into this Second Supplemental Indenture to set forth the terms of the Authority’s obligations to the TIFIA Lender, relating to the execution and delivery of a new TIFIA Loan Agreement dated as of March __, 2021 and attached hereto as Exhibit B (the “2021 TIFIA Loan Agreement”) authorizing and setting forth the terms and conditions of a TIFIA Loan (the “2021 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, 2021 TIFIA Series” (the “2021 TIFIA Bond”), to be issued in an aggregate principal amount not to exceed \$628,930,000;

WHEREAS, the 2021 TIFIA Loan Agreement is being entered into as indebtedness under, pursuant to and in accordance with the Act, and the proceeds of the 2021 TIFIA Loan may be disbursed by the TIFIA Lender to be used to finance the Project (as that term is defined in the 2021 TIFIA Loan Agreement); and

WHEREAS, the Authority desires to provide at this time for the issuance of the 2021 TIFIA Bond, as further provided in this Second Supplemental Indenture;

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

Section 24.01. 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 Second Supplemental Indenture and the 2021 TIFIA Loan Agreement.

(b) Additional Definitions. Unless the context otherwise requires, the following terms shall, for all purposes of this Second Supplemental Indenture, have the following meanings:

“Authorized Denominations” means, with respect to the 2021 TIFIA Bond, \$1,000,000 principal amount and any integral multiple of \$1 in excess thereof.

“First Supplemental Indenture” means the First Supplemental Indenture by and between the Authority and the Trustee dated as of June 1, 2017.

“Interest Payment Date” means, with respect to the 2021 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 2021 TIFIA Bond to the TIFIA Lender.

“Principal Payment Date” means, with respect to the 2021 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 2021 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.

“Second Supplemental Indenture” means this Second Supplemental Indenture dated as of March 1, 2021. **“Senior Lien Bonds Reserve Account (2021 TIFIA Loan)”** means the Senior Lien Bonds Reserve Account (2021 TIFIA Loan) established within the Senior Lien Bonds Reserve Fund pursuant to Section 27.02.

“Senior Lien Bonds Reserve Account (2021 TIFIA Loan) Reserve Requirement” means for each Fiscal Year, (i) an amount equal to one hundred percent (100%) of TIFIA Mandatory Debt Service due and payable in the current 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 Fiscal Year (n+1) and the TIFIA Mandatory Debt Service due and payable in the current Fiscal Year (n), (iii) fifty percent (50%) of the difference between the TIFIA Mandatory Debt Service due and payable in the second Fiscal Year (n+2) and the TIFIA Debt Service due and payable in the next Fiscal Year (n+1), and (iv) twenty-five percent (25%) of the difference between the TIFIA Mandatory Debt Service in the third Fiscal Year (n+3) and the TIFIA Mandatory Debt Service in the second Fiscal Year (n+2).

Section 24.02. 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 XXIV.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this Second Supplemental Indenture, refer to the Indenture.

In the event of a conflict or inconsistency between the terms and provisions of the Indenture and the 2021 TIFIA Loan Agreement, the terms and provisions of the 2021 TIFIA Loan Agreement shall control.

ARTICLE XXV

FINDINGS, DETERMINATIONS AND DIRECTIONS

Section 25.01. Findings and Determinations. The Authority hereby finds and determines that the 2021 TIFIA Bond shall be issued pursuant to Article XXVI hereof and upon the issuance of the 2021 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 25.02. Recital in Bonds. There shall be included in the definitive 2021 TIFIA Bond, and also in the temporary 2021 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 2021 TIFIA Bond, and in the issuing of that 2021 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 2021 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 2021 TIFIA Bond, and that such certification and recital shall be in such form as is set forth in the form of the 2021 TIFIA Bond attached hereto as Exhibit B.

Section 25.03. Effect of Findings and Recital. From and after the issuance of the 2021 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 2021 TIFIA Bond is at issue, and no bona fide purchaser of any such 2021 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 2021 TIFIA Bond.

ARTICLE XXVI

AUTHORIZATION OF THE 2021 TIFIA BOND

Section 26.01. Authorization; Principal Amount, Designation and Series. The Authority hereby approves the terms and provisions of the 2021 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 2021 TIFIA Loan Agreement, a Senior Lien Bond 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 \$628,930,000. Such Senior Lien Bond shall be designated as, and shall be distinguished from the Senior Lien Bond of all other Series by the title, “Orange County Transportation Authority Toll Revenue Senior Bond, 2021 TIFIA Series.”

Section 26.02. Priority and Lien.

(a) The principal and interest payment obligations pursuant to the 2021 TIFIA Loan Agreement and evidenced by the 2021 TIFIA Bond shall constitute Senior Lien Bonds under the Indenture. Payment obligations other than the obligation to pay principal and interest under the 2021 TIFIA Loan Agreement (and corresponding obligation to pay principal of and interest on the 2021 TIFIA Bond), including but not limited to fees and expenses payable to the TIFIA Lender under the 2021 TIFIA Loan Agreement, shall constitute either Operation and Maintenance Expenses.

Section 26.03. Purpose. The 2021 TIFIA Bond is issued for the purpose of financing the Project (as that term is defined in the 2021 TIFIA Loan Agreement).

Section 26.04. Form, Denomination, Numbers and Letters. The 2021 TIFIA Bond shall not be issued as a book-entry-only Obligation. Initially there shall be delivered hereunder one fully registered 2021 TIFIA Bond numbered R-1, without interest coupons. Any 2021 TIFIA Bonds issued in replacement thereof upon transfer or exchange shall be numbered consecutively from R-2 upward, payable to the Owner thereof. The 2021 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 2021 TIFIA Bond and as the form of the certificate of authentication. The 2021 TIFIA Bond shall be issued as one or more single 2021 TIFIA Bonds for each Owner, and each such 2021 TIFIA Bond shall be in an Authorized Denomination.

Section 26.05. Date, Maturities and Interest Rates.

(a) The 2021 TIFIA Bond shall be dated the Issue Date. The principal amount of the 2021 TIFIA Bond will increase from time to time by the amount disbursed by the TIFIA Lender to the Authority pursuant to the 2021 TIFIA Loan Agreement, as noted by the TIFIA Lender on the grid attached to the 2021 TIFIA Bond as Appendix One, with a copy to the Authority and the Trustee. Interest on such principal amount of the 2021 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 2021 TIFIA Loan Agreement. The 2021 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 2021 TIFIA Loan Agreement and the form of 2021 TIFIA Bond set forth herein, and (ii) the principal of and interest on the 2021 TIFIA Bond shall be payable, all as provided, and in the manner required or indicated, herein and in the form of 2021 TIFIA Bond set forth herein and as set forth in the 2021 TIFIA Loan Agreement, including Section 9(e) thereof.

(b) The TIFIA Loan as evidenced by the 2021 TIFIA Bond shall mature on the earlier of (i) _____ 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 2021 TIFIA Bond set forth herein and in the 2021 TIFIA Loan Agreement.

(c) For purposes of all calculations of Annual Debt Service or Maximum Annual Debt Service (i) debt service on the 2021 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 2021 TIFIA Bond shall be treated as a Senior Lien Bond.

(d) The entity in whose name the 2021 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 2021 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 2021 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 2021 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 2021 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 2021 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 2021 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 2021 TIFIA Bond without any investigation. In the event there is more than one Owner of the 2021 TIFIA Bond, payments of principal of and interest on the 2021 TIFIA Bond

shall be made ratably, based on the aggregate principal amount of 2021 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 2021 TIFIA Bond, and hereby instructs the Trustee to make the payments when due to the TIFIA Lender in accordance with this Section 26.05. The Trustee shall keep proper records of all payments made by the Authority and the Trustee with respect to the 2021 TIFIA Bond, and of all exchanges and replacements of 2021 TIFIA Bond, as provided in the Indenture.

Section 26.06. Conditions To Delivery of 2021 TIFIA Bonds. The 2021 TIFIA Bond shall be executed and delivered as authorized by this Second Supplemental Indenture and the Indenture, including Article II thereof, upon execution and delivery of the 2021 TIFIA Loan Agreement.

Section 26.07. Disposition of Proceeds of 2021 TIFIA Bonds. The proceeds from the sale of the 2021 TIFIA Bond shall be received by the Authority and applied by the Authority in accordance with the 2021 TIFIA Loan Agreement.

ARTICLE XXVII

TRANSFERS; SENIOR LIEN BONDS RESERVE ACCOUNT (2021 TIFIA LOAN)

Section 27.01. Transfers to the Debt Service Fund. Transfers to the Senior Lien Bonds Fund with respect to the 2021 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 2021 TIFIA Bond money on deposit in the Senior Lien Bonds Fund to pay principal of and interest on the 2021 TIFIA Bond due and payable on such Interest Payment Date or Principal Payment Date.

Section 27.02. Senior Lien Bonds Reserve Account (2021 TIFIA Loan). There is hereby established the Senior Lien Bonds Reserve Account (2021 TIFIA Loan) within the Senior Lien Bonds Reserve Fund, such account to be held by the Trustee. The funds set aside and placed in the Senior Lien Bonds Reserve Account (2021 TIFIA Loan) on account of the Senior Lien Bonds Reserve Account (2021 TIFIA Loan) Reserve Requirement shall be held solely for the benefit of the Owner of the 2021 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 Lien Bonds Reserve Account (2021 TIFIA Loan) pursuant to Section 5.23, the amount on deposit in the Senior Lien Bonds Reserve Account (2021 TIFIA Loan) exceeds the Senior Lien Bonds Reserve Account (2021 TIFIA Loan) Reserve Requirement as of such date, the Trustee shall transfer such excess amount to the Toll Revenue Fund.

ARTICLE XXVIII

OTHER PROVISIONS

Section 28.01. Tax Status. It is the intention of the Authority that the 2021 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 28.02. No Amendment without Consent of the TIFIA Lender. So long as the TIFIA Lender is the Owner of the 2021 TIFIA Bond, the Authority shall not enter into a Supplemental Indenture (other than the First Supplemental Indenture and this Second 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 2021 TIFIA Loan Agreement and the Indenture, the consent of the TIFIA Lender is not required.

Section 28.03. Prepayment of the 2021 TIFIA Bond. The 2021 TIFIA Bond shall be subject to mandatory and optional prepayment as provided in Section 10 of the TIFIA Loan Agreement.

Section 28.04. No Defeasance of 2021 TIFIA Bond. The 2021 TIFIA Bond shall not be subject to defeasance.

ARTICLE XXIX

MISCELLANEOUS

Section 29.01. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this Second Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Second 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 Second Supplemental Indenture shall remain valid.

Section 29.02. Parties Interested Herein. Nothing in this Second 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 2021 TIFIA Bond, any right, remedy or claim under or by reason of this Second Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Second 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 29.03. 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 29.04. Indenture to Remain in Effect. Save and except as amended and supplemented by this Second Supplemental Indenture, the Master Indenture shall remain in full force and effect.

Section 29.05. Effective Date of First Supplemental Indenture. This Second Supplemental Indenture shall take effect upon its execution and delivery.

Section 29.06. 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 TRANSPORTATION
AUTHORITY**

By: _____
Darrell Johnson
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
James M. Donich
General Counsel

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

EXHIBIT A

FORM OF TRANSFEREE'S LETTER

U.S. BANK NATIONAL ASSOCIATION

Re: Orange County Transportation Authority
Toll Revenue Senior Bond, 2021 TIFIA Series

Ladies and Gentlemen:

The undersigned representatives of _____ (the "Seller") and _____ (the "Purchaser"), do hereby certify, represent and warrant for the benefit of U.S. BANK NATIONAL ASSOCIATION, as trustee (the "Trustee"), that the Purchaser is a party to the 2021 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 2021 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 2021 TIFIA Bond and the risks associated with the purchase of the 2021 TIFIA Bond; has the ability to bear the economic risk of an investment in the 2021 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 2021 TIFIA Bond, the Indenture, the Toll Road, the Revenues and the Trust Estate, and has obtained such information regarding the 2021 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 2021 TIFIA Bond.
4. The Purchaser is purchasing the 2021 TIFIA Bond for its own account solely and not with a present view to any distribution of the 2021 TIFIA Bond or any interest therein or portion thereof or without a present intention of distributing or reselling the 2021 TIFIA Bond or any interest therein or portion thereof, provided that the Purchaser retains the right at any time to dispose of the 2021 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 2021 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 2021 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 2021 TIFIA Bond except from said Trust Estate. The 2021 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 2021 TIFIA Bond.

6. The Purchaser acknowledges that the 2021 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 2021 TIFIA Bond, and further acknowledges that any current exemption from registration of the 2021 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 2021 TIFIA Bond.

9. The Purchaser has been informed that the 2021 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 2021 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 2021 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 2021 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 Second Supplemental Indenture, dated as of March 1, 2021 (as so supplemented, the “Indenture”), each by and between Orange County Transportation Authority and U.S. Bank National Association, 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 TIFIA BOND

ORANGE COUNTY TRANSPORTATION AUTHORITY

I-405 IMPROVEMENT PROJECT

[FORM PROVIDED IN 2021 TIFIA LOAN AGREEMENT]

**APPENDIX ONE
I-405 IMPROVEMENT PROJECT**

Maximum Principal Sum: \$ _____

Maturity Date: _____

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 PRINCIPAL

1

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.

**I-405 IMPROVEMENT PROJECT TIFIA LOAN PAY-OFF
AND TERMINATION AGREEMENT**

[_____], 2021

WHEREAS, the Orange County Transportation Authority (the “Borrower”) previously entered into that certain TIFIA Loan Agreement, dated as of July 26, 2017 (the “I-405 Improvement Project Original TIFIA Loan Agreement”) by and between 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 “TIFIA Lender”). Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to such terms in the I-405 Improvement Project Original TIFIA Loan Agreement.

WHEREAS, the Borrower and the TIFIA Lender are entering into that certain TIFIA Loan Agreement, dated as of the date hereof (the “2021 TIFIA Loan Agreement”), to provide for a loan to the Borrower to finance a portion of the Eligible Project Costs related to the I-405 Improvement Project (each as defined in the 2021 TIFIA Loan Agreement).

WHEREAS, the Borrower has repaid in full to the TIFIA Lender the principal amount previously disbursed under the I-405 Improvement Project Original TIFIA Loan Agreement and all interest, whether capitalized into or accrued on, such principal amount (collectively, the “I-405 Improvement Project Original TIFIA Loan”), and the Borrower and the TIFIA Lender now wish to terminate the I-405 Improvement Project Original TIFIA Loan Agreement and cancel the TIFIA Bond (such termination and cancellation to be effective immediately prior to the effectiveness of the 2021 TIFIA Loan Agreement).

WHEREAS, the Borrower and the TIFIA Lender agree, on the terms and conditions set forth herein and in the 2021 TIFIA Loan Agreement, to terminate the I-405 Improvement Project Original TIFIA Loan Agreement (other than any provisions therein which by their terms survive the termination thereof) and to deem cancelled the bond issued to the TIFIA Lender pursuant to the I-405 Improvement Project Original TIFIA Loan Agreement.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Termination of I-405 Improvement Project Original TIFIA Loan Agreement. The TIFIA Lender and the Borrower hereby confirm and agree that as of the date hereof:

(a) the I-405 Improvement Project Original TIFIA Loan has been voluntarily prepaid in full and all other amounts due and payable as of the date hereof under the I-405 Improvement Project Original TIFIA Loan Agreement and the TIFIA Bond have been satisfied and discharged in full, except that provisions set forth in Section 18 (Indemnification), Section 21 (Accounting and Audit Procedures; Inspections; Reports and Records), and Section 29 (Fees and Expenses) of the I-405 Improvement Project Original TIFIA Loan Agreement survive the repayment of the I-405 Improvement Project Original TIFIA Loan; and

(b) the I-405 Improvement Project Original TIFIA Loan Agreement is hereby terminated (which termination shall be deemed to occur immediately prior to the effectiveness of the 2021 TIFIA Loan Agreement) and the TIFIA Bond is hereby deemed cancelled (which cancellation shall be deemed to occur immediately prior to the effectiveness of the 2021 TIFIA Loan Agreement), and are of no further force and effect, and the obligations of the Borrower thereunder have terminated and cancelled (with respect to the TIFIA Bond) and are hereby released and discharged insofar as they relate to the I-405

Improvement Project Original TIFIA Loan, in each case other than any provisions that expressly by their terms survive such termination and the payment in full of the I-405 Improvement Project Original TIFIA Loan thereunder, including, without limitation, those set forth in Section 18 (Indemnification), Section 21 (Accounting and Audit Procedures; Inspections; Reports and Records), and Section 29 (Fees and Expenses) of the I-405 Improvement Project Original TIFIA Loan Agreement.

2. TIFIA Bond. The TIFIA Lender shall promptly, once the principal office of the TIFIA Lender reopens with available staffing, following the release of the current COVID-19 pandemic restrictions, return the cancelled TIFIA Bond to the Trustee or its representative by Federal Express or other registered mail to: U.S. Bank National Association, [], with a copy provided by email to the Borrower at aoftelie@octa.net and rdavis1@octa.net.

3. Release of TIFIA Lender. The Borrower hereby releases and discharges the TIFIA Lender, in its capacity as such under the I-405 Improvement Project Original TIFIA Loan Agreement and the other TIFIA Loan Documents, and its affiliates, directors, officers, employees, agents, attorneys-in-fact and controlling persons in connection with such capacities from any and all claims, suits, demands, accounts or causes of action (collectively, "Claims") the Borrower may have against the TIFIA Lender or its affiliates, directors, officers, employees, agents, attorneys-in-fact and controlling persons, whether arising out of, in connection with or otherwise relating to, directly or indirectly, the TIFIA Loan Documents.

4. No Further Obligation. The parties hereto also hereby confirm that the TIFIA Lender has no further obligation, duty, liability or responsibility in its capacity as TIFIA Lender under the I-405 Improvement Project Original TIFIA Loan Agreement.

5. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES IF AND TO THE EXTENT SUCH FEDERAL LAWS ARE APPLICABLE AND THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, IF AND TO THE EXTENT SUCH FEDERAL LAWS ARE NOT APPLICABLE.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their respective officers thereunto duly authorized, all 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: Dr. Morteza Farajian

Title: Executive Director, Build America Bureau



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors
From: Andrea West, Interim Clerk of the Board *Andrea West*
Subject: OC Streetcar Project Supplemental Contingency

Transit Committee Meeting of March 11, 2021

Present: Directors Do, Jones, Sarmiento, Shaw, and Sidhu
Absent: Director Chaffee

Committee Vote

Following the roll call vote, this item was declared passed 5-0 by the Members present.


Committee Recommendations

- A. Authorize the use of up to an additional \$7.32 million in Measure M2 funds and up to \$8.29 million in additional Federal Congestion Mitigation and Air Quality Improvement Program funds to supplement the contingency for the OC Streetcar project. Along with other previously-approved funding adjustments of \$70,000, this will increase the Federal Transit Administration Full Funding Grant Agreement funding from \$407.76 million to \$423.44 million, with use of federal funds contingent on Federal Transit Administration approval.
- B. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program and execute or amend all necessary agreements to facilitate the above action.



March 11, 2021

To: Transit Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: OC Streetcar Project Supplemental Contingency

Overview

The Orange County Transportation Authority is currently underway with the implementation of the OC Streetcar project. Board of Directors' approval is requested to provide additional funding to supplement the contingency for the project.

Recommendations

- A. Authorize the use of up to an additional \$7.32 million in Measure M2 funds and up to \$8.29 million in additional Federal Congestion Mitigation and Air Quality Improvement Program funds to supplement the contingency for the OC Streetcar project. Along with other previously-approved funding adjustments of \$70,000, this will increase the Federal Transit Administration Full Funding Grant Agreement funding from \$407.76 million to \$423.44 million, with use of federal funds contingent on Federal Transit Administration approval.
- B. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program and execute or amend all necessary agreements to facilitate the above action.

Background

The Orange County Transportation Authority (OCTA), in cooperation with the City of Santa Ana (City) and the City of Garden Grove, is implementing a modern streetcar running between the Santa Ana Regional Transportation Center in the City and the intersection of Harbor Boulevard and Westminster Avenue in the City of Garden Grove. The OC Streetcar project (Project) will improve transit connectivity and accessibility, increase transit options, relieve congestion, and

provide benefits to the community and traveling public. The Project is being implemented as part of Measure M2 (M2) Project S – Transit Extensions to Metrolink, approved by Orange County voters in November 2006.

Construction of the 4.15-mile Project line involves complex and specialized work, including the installation of embedded track in existing streets, an overhead contact system (OCS) to supply power to the vehicles, stops with canopies, two bridges, and a maintenance and storage facility (MSF).

Discussion

On July 9, 2018, the Board of Directors (Board) approved a Project cost of \$407.75 million. The Project cost was adopted as part of the execution of the Full Funding Grant Agreement (FFGA) with the Federal Transit Administration (FTA) in November 2018 that secured \$148.95 million in federal New Starts discretionary funding for the Project. The FFGA is a contract between OCTA and FTA governing the delivery of the Project. FTA closely monitors implementation of the Project to ensure that the terms of the FFGA are being met. This includes approving any adjustments to the Project scope, cost, or schedule.

Following execution of the FFGA in November 2018, a Notice to Proceed was issued to Walsh Construction Company II, LLC, (Walsh) to commence construction activities. Since that time, work on the Project has progressed with a number of construction activities continuing to advance. A summary of recent construction milestones include: substantial completion of the bridges over Westminster Avenue and the Santa Ana River, completion of utility relocations, installation of embedded track at Bristol Street, and construction and installation of the MSF building floor slabs, the first station at Fairview Street, and the OCS poles. Additionally, vehicle manufacturing activities continue with four of the eight vehicles in testing.

The overall Project, which includes both construction and vehicle production, is approximately 48 percent complete. In terms of the construction effort, many challenges have been encountered as shared with the Board in several prior Project updates. Some of the major challenges include the following:

- The number and nature of utility conflicts encountered was higher and more complex than anticipated.
- An extensive amount of contaminated and hazardous soil was encountered during excavations on the Pacific Electric Right-of-Way (PEROW), city streets, and at the MSF site.

- Additional unforeseen conditions have been encountered, including thicker sections of pavement and unsuitable subgrade conditions within city streets, as well as an abandoned well, underground storage tank, and cultural resources discovery at the MSF.
- Contractor non-compliance with construction quality requirements and quality control plans.
- An extensive number of Requests for Change (RFC) have been submitted by Walsh to address unforeseen conditions, material substitutions, design modifications, and requests made by third parties. The RFCs have resulted in numerous change notices issued.
- An extensive number of Requests for Information (RFI) have been submitted by Walsh seeking clarifications of plans and specifications, design modifications, deviations for constructability, and designer intent. Each RFI requires technical and contractual reviews and may include specialized design disciplines, as well as oversight and approval from partner agencies and other third parties.

These challenges have resulted in OCTA issuing a higher than anticipated number of construction contract change orders (CCO) to Walsh, and requiring an increased level of professional services for technical and contractual reviews and oversight of the work by OCTA and its consultants to ensure that quality, safety, and environmental compliance requirements are met.

To date, OCTA has issued 186 days of additional contract time to Walsh due to delays related to remediation of contaminated soil at the MSF and within the PEROW, and to address delays due to a utility conflict delaying the relocation of a major storm drain. This additional contract time also requires contract extensions for professional services and staff resources for a longer duration than originally estimated.

As of January 2021, \$34.5 million of the \$37.9 million Project contingency has been committed or expended for changes, which includes \$20.6 million for CCOs, \$12.2 million for professional services, and \$1.7 million for vehicles. The original estimate of Project contingency, reviewed and concurred with by FTA, was based on the assessed known risks at the time the Project construction contract was awarded in 2018. Some of the risks have been greater than expected, and there have been additional expenses associated with items not included in the FFGA resulting in Project contingency being drawn down faster than originally forecasted for this stage of construction.

In order to address the impending depletion of contingency, staff planned to seek Board approval of a revised Project funding plan in February 2021 to address both costs incurred to date and anticipated future costs with consideration of upcoming risks. However, in January 2021, FTA advised OCTA that, given the

project challenges it will be performing its own risk assessment to better understand the impacts of Project risks on the cost and schedule. FTA requested that OCTA not finalize the Project cost and schedule until its risk assessment is completed. FTA's concurrence with the Project cost and schedule is necessary to both amend the FFGA and utilize additional federal funds. It is anticipated that FTA's process will be completed in late summer 2021. This additional time will provide more certainty in finalizing the schedule and cost to complete, as some Project risks will be retired and the Project will be further along with the remaining excavation work and MSF building work, costs related to the cultural resources discovery will be finalized, and there will be a better understanding of any potential coronavirus impacts.

To maintain Project progression while the cost and schedule is confirmed by FTA, supplemental contingency funding, in the amount of \$15.68 million, is requested to cover costs anticipated through November 2021. Expected uses of this supplemental contingency include anticipated CCOs, vehicle manufacturing change orders, professional service contract amendments to secure additional efforts and longer durations, as well as anticipated higher costs for upcoming planned contracts. Attachment A includes a breakdown of the expected uses of the supplemental contingency. The \$3.4 million contingency balance shown on the table would also be used to fund upcoming CCOs.

Funding Plan

Staff is proposing to fund the \$15.68 million contingency supplement with \$7.32 million in M2 Project S funds and \$8.29 million in federal Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds, as well as \$70,000 in state Transit and Intercity Rail Capital Program (TIRCP) funds, which were previously approved for the Project funding plan. This is consistent with the Board-adopted Capital Programming Policies and the M2 Ordinance, which require that every effort be made to maximize state and federal funding for M2 projects. The Project is an eligible use for CMAQ funds, and Board policy directs these funds to M2 fixed-guideway and/or M2 high-occupancy or high-occupancy toll operational improvements as a priority. Funding is available that was previously set aside for the high-occupancy vehicle lane component of the State Route 55 (SR-55) Improvement Project from Interstate 405 to Interstate 5. This is due to the SR-55 project recently being awarded \$140 million in SB 1 (Chapter 5, Statutes of 2017) funds, allowing the CMAQ funds reserved for the SR-55 project to be redirected instead to the Project. Use of M2 Project S funding is consistent with the intent of that program to provide funds for extensions to Metrolink.

The additional funding as proposed has a split of approximately 46.9 percent from local M2 funds and 53.1 percent from federal CMAQ funds, which is consistent with the local-to-federal funding split that was established as part of the FFGA. It should be noted that FTA will need to approve the use of the additional federal CMAQ funds once it is in agreement with the final estimated Project cost at completion. In the interim, OCTA will use M2 funds to cover the costs until the additional federal funds are confirmed through an executed grant. The original and proposed funding is provided in the table below:

OC Streetcar Project Proposed FFGA Funding Plan

Funding Programs (in 1,000's)	FFGA	Supplemental Contingency Funding	Proposed FFGA Funding Plan
FTA 5309 (New Starts)	\$148,955	-	\$148,955
FTA 5307	\$13,599	-	\$13,599
CMAQ	\$54,123	\$8,289	\$62,412
State TIRCP	\$25,586*		\$25,586
Subtotal State and Federal	\$242,263*	\$8,289	\$250,552
M2	\$165,565	\$7,321	\$172,886
Total FFGA Funding	\$407,828*	\$15,610	\$423,438

*Includes previously State-approved funding addition of \$0.07 Million in TIRCP

Not included in the table is \$8.6 million in previously-programmed funding that is being used for activities that are non-federally participating and not eligible to be included in the FFGA Project cost, including early environmental phase work and certain right-of-way acquisition costs.

When OCTA approves a programming change for a project, a Capital Funding Plan is provided to allow the Board to consider this change while looking at the overall funding for projects in the transit program. Once approved, the changes noted above will be added into the Capital Funding Program Report for the transit program, which is provided in Attachment B.

Next Steps

Staff will continue to keep the Board apprised of Project progress, including the status of FTA's risk analysis. Upon completion of FTA's review, staff will return to the Board for a recommendation on the overall Project cost to complete and schedule.

Fiscal Impact

Funds are included in OCTA's Fiscal Year 2020-2021 Budget as well as the proposed budget for fiscal year 2021-22, Capital Programs Division, under several professional service and construction accounts for the Project in Fund 0051. This will increase the Project FFGA budget by \$15.68 million, using a combination of M2, CMAQ, and TIRCP funds.

Summary

Staff is seeking Board of Directors' approval of supplemental contingency funds for the OC Streetcar Project, and approval to process all necessary amendments to the Federal Transportation Improvement Program and execute or amend all necessary agreements to facilitate the supplemental contingency funds.

Attachments

- A. OC Streetcar Project Proposed Supplemental Contingency
- B. Capital Funding Program Report

Prepared by:

Mary Shavalier
Program Manager
(714) 560-5856

Approved by:

James G. Beil, P.E.
Executive Director, Capital Programs
(714) 560-5646

OC Streetcar Project Proposed Supplemental Contingency

Description	Amount Needed	Notes
Construction	\$11,766,145	<ul style="list-style-type: none"> Construction change orders based on current issues in the field Additional ticket vending machine/software costs
Right-of-Way	\$200,000	<ul style="list-style-type: none"> Additional relocation expenses
Vehicles	\$1,030,471	<ul style="list-style-type: none"> Additional vehicle spare parts Vehicle storage costs
Professional Services	\$6,084,049	<ul style="list-style-type: none"> Expanded scope and/or extended performance period for designer, public outreach and operations and maintenance contracts Applicable to contracts and or contract amendments being executed through November 2021
Total	\$19,080,665	
Remaining Contingency	\$(3,402,361)	<ul style="list-style-type: none"> Upcoming construction change orders
Supplemental Contingency Needed	\$15,678,304	



Capital Funding Program Report

Pending OCTA Board of Directors (Board) Approval - March 22, 2021

Rail Project											
Project Title	M Code	Total Funding	Federal Funds			State Funds			Local Funds		
			STBG/CMAQ	FTA	Other Fed.	STIP	SB1	Other State	M1	M2	Other Local
Fullerton Transportation Center parking expansion	M1/R	\$33,667				\$11,250		\$11,035	\$9,718		\$1,664
OC Streetcar (New Starts) ¹	M1/S	\$423,438	\$62,412	\$162,554				\$25,586		\$172,886	
OC Streetcar (non-New Starts)	M1/S	\$8,601		\$341					\$6,904	\$1,213	\$143
Anaheim Canyon Station ²	R	\$34,200	\$30,432							\$2,000	\$1,768
Fullerton Transportation Center Stair Rehabilitation	R	\$1,330		\$1,295							\$35
Future VSS	R	\$217		\$174							\$43
Laguna Niguel to San Juan Capistrano Passing Siding	R	\$36,360	\$25,056	\$1,015		\$3,000		\$6,734			\$555
Metrolink new capital	R	\$516		\$516							
Metrolink rehabilitation/renovation - FY 2011-12 to FY 2023-24	R	\$169,802		\$169,802							
Metrolink station and track improvements, and rehabilitation	R	\$3,063		\$2,617							\$446
Orange Olive Wye Connection	R	\$16,000				\$16,000					
Placentia Commuter Rail Station	R	\$34,825	\$50			\$2,500		\$400		\$8,000	\$23,875
Preventive Maintenance (SCRRA - Metrolink) - FY 16-17 to FY 23-24	R	\$65,374		\$65,374							
San Juan Creek Bridge replacement	R	\$43,091	\$908	\$39,832	\$913			\$59		\$1,379	
Slope stabilization Laguna Niguel-Lake Forest	R	\$5,168		\$4,834						\$334	
State College grade separation (LOSSAN)	R	\$79,284						\$46,000		\$33,284	
Ticket vending machines	R	\$6,857									\$6,857
VSS at Commuter Rail Stations	R	\$4,409		\$3,594				\$56			\$759
M2 Project S Transit extensions to Metrolink (Rubber Tire)	S	\$733								\$733	
Rail Project Totals		\$966,935	\$118,858	\$451,948	\$913	\$32,750		\$89,870	\$16,622	\$219,829	\$36,145
Federal Funding Total		\$571,719									
State Funding Total		\$122,620									
Local Funding Total		\$272,596									
Total Funding (000's)		\$966,935									

Rail Project Completed											
Project Title	M Code	Total Funding	Federal Funds			State Funds			Local Funds		
			STBG/CMAQ	FTA	Other Fed.	STIP	SB1	Other State	M1	M2	Other Local
Laguna Niguel-Mission Viejo Station parking improvements and expansion (ADA ramps)	M1/R	\$5,177	\$2,800	\$732					\$1,645		
Metrolink Grade Crossing Safety Improvements (OCX)	M1/R	\$80,618						\$18,250	\$7,600	\$30,710	\$24,058
Metrolink rolling stock	M1/R	\$158,009	\$42,230	\$35,390				\$36,300	\$44,089		
Metrolink Service Track Expansion	M1/R	\$119,957						\$51,399	\$68,558		
Orange Transportation Center parking structure	M1/R	\$31,003	\$2,555	\$2,644		\$13,762			\$1,850	\$420	\$9,772
Sand Canyon Avenue grade separation	M1/R	\$62,050	\$10,536					\$28,192	\$3,116	\$5,352	\$14,854
M2 Project S Fixed-Guideway Anaheim Rapid Connection	M1/S	\$9,924		\$1,516					\$6,000	\$1,286	\$1,122
Anaheim Regional Intermodal Transportation Center (ARTIC) construction	M1/T	\$184,164	\$33,250	\$37,253	\$3,501	\$29,219			\$43,900	\$35,291	\$1,750



Capital Funding Program Report

Pending OCTA Board of Directors (Board) Approval - March 22, 2021

Rail Project Completed											
			Federal Funds			State Funds			Local Funds		
Project Title	M Code	Total Funding	STBG/CMAQ	FTA	Other Fed.	STIP	SB1	Other State	M1	M2	Other Local
Fullerton Transportation Station expansion planning, environmental PSR	M1/T	\$0	\$0						\$0		
Santa Ana grade separation planning and environmental PSR	M1/T	\$1,333	\$1,180						\$153		
Santa Ana Transportation Station planning and environmental PSR	M1/T	\$1,003	\$888						\$115		
17th Street grade separation environmental	R	\$2,476								\$2,476	
Control Point at 4th Street	R	\$2,985		\$2,985							
Control Point Stadium Crossover	R	\$6,490		\$3,245				\$3,245			
LOSSAN Corridor grade separations PSR in Anaheim, Orange, and Santa Ana	R	\$2,699								\$2,699	
Metrolink grade crossing safety improvements ROW	R	\$3,025								\$3,025	
North Beach crossings safety enhancements	R	\$348						\$166		\$182	
Positive Train Control (Metrolink)	R	\$39,916		\$4,492	\$1,234			\$34,190			
Rail Crossing signal lights and pedestrian gates	R	\$252						\$252			
Rail Station Platform safety improvements (Fullerton, Irvine, and Tustin)	R	\$553						\$553			
Safety repairs for San Clemente Pier Station	R	\$122						\$122			
San Clemente Beach Trail Crossings safety enhancements	R	\$4,999						\$2,170		\$2,251	\$578
Transit Rail Security (monitors, fencing, video surveillance)	R	\$163						\$163			
Go Local	S	\$7,730							\$7,730		
ARTIC environmental, ROW, program management support, site plan	M1	\$41,369							\$8,869		\$32,500
Fiber Optics installation (Metrolink)	M1	\$23,183		\$10,903				\$10,479	\$1,801		
Laguna Niguel-Mission Viejo Station parking expansion (south lot)	M1	\$4,135						\$695	\$3,440		
Tustin Rail Station parking expansion	M1	\$15,390				\$1,100		\$7,181	\$7,109		
Rail Project Completed Totals		\$809,073	\$93,439	\$99,160	\$4,735	\$44,081		\$193,357	\$205,975	\$83,692	\$84,634
Federal Funding Total		\$197,334									
State Funding Total		\$237,438									
Local Funding Total		\$374,301									
Total Funding (000's)		\$809,073									



Capital Funding Program Report

Pending OCTA Board of Directors (Board) Approval - March 22, 2021

Board Actions:

1. Authorize the use of up to an additional \$7.32 Million in Measure M2 and up to \$8.29 million in additional Federal Congestion Mitigation and Air Quality Improvement Program funds for the OC Streetcar to supplement the contingency for the Project which along with other previously approved funding adjustments of \$0.07 Million will increase the Federal Transit Administration Full Funding Grant Agreement funding from \$407.76 Million to \$423.44 Million with use of federal funds contingent on Federal Transit Administration approval.
2. Authorize the use of up to \$4.3 Million in additional federal Congestion Mitigation and Air Quality Improvement Program funds to provide full funding for the Anaheim Canyon Metrolink Station Improvement Project.

Acronyms:

ADA - Americans with Disabilities Act
CMAQ - Congestion Mitigation Air Quality Improvement Program
FTA - Federal Transit Administration
FY - Fiscal Year
LOSSAN - Los Angeles-San Diego-San Luis Obispo Rail Corridor
M Code - Project Codes in Measure M1 and M2
M1 - Measure M1
M2 - Measure M2
OC - Orange County
OCTA - Orange County Transportation Authority
OCX - Rail-Highway Grade Crossing/Safety Enhancement Project
PSR - Project Study Report
ROW - Right-of-Way
STBG - Surface Transportation Block Grant
STIP - State Transportation Improvement Program
VSS - Video Surveillance System

OC Streetcar Project Supplemental Contingency

Status of OC Streetcar Project (Project)

Project progress is 48 percent complete. Planned Project progress is 79 percent complete (December 2020).

- \$169.8 million expended of \$407.8 million Full Funding Grant Agreement (FFGA) project cost (as of December 2020)
- \$37.9 million in contingency
 - \$34.5 million committed/expended*
 - \$3.4 million remaining

Construction is 40 percent complete. Planned percent complete is 83 percent (December 2020).

- Falsework removed from Westminster and Santa Ana River Bridges
- Rail sticks delivered and welded into strings
- Track installation has started
- Maintenance and Storage Facility (MSF) building floor slabs have started
- Fairview and Raitt station platforms underway

Utility relocation near completion.

- Dry utilities being relocated by a third party are 99 percent complete
- All wet utility relocation is complete

Vehicles are 45 percent complete. Planned percent complete is 58 percent (December 2020).

- First four vehicles in static and dynamic testing

*Including Contract Change orders (CCO) pending execution and PGH Wong (Construction Manager) agreement amendment pending Board of Directors (Board) approval

Challenges

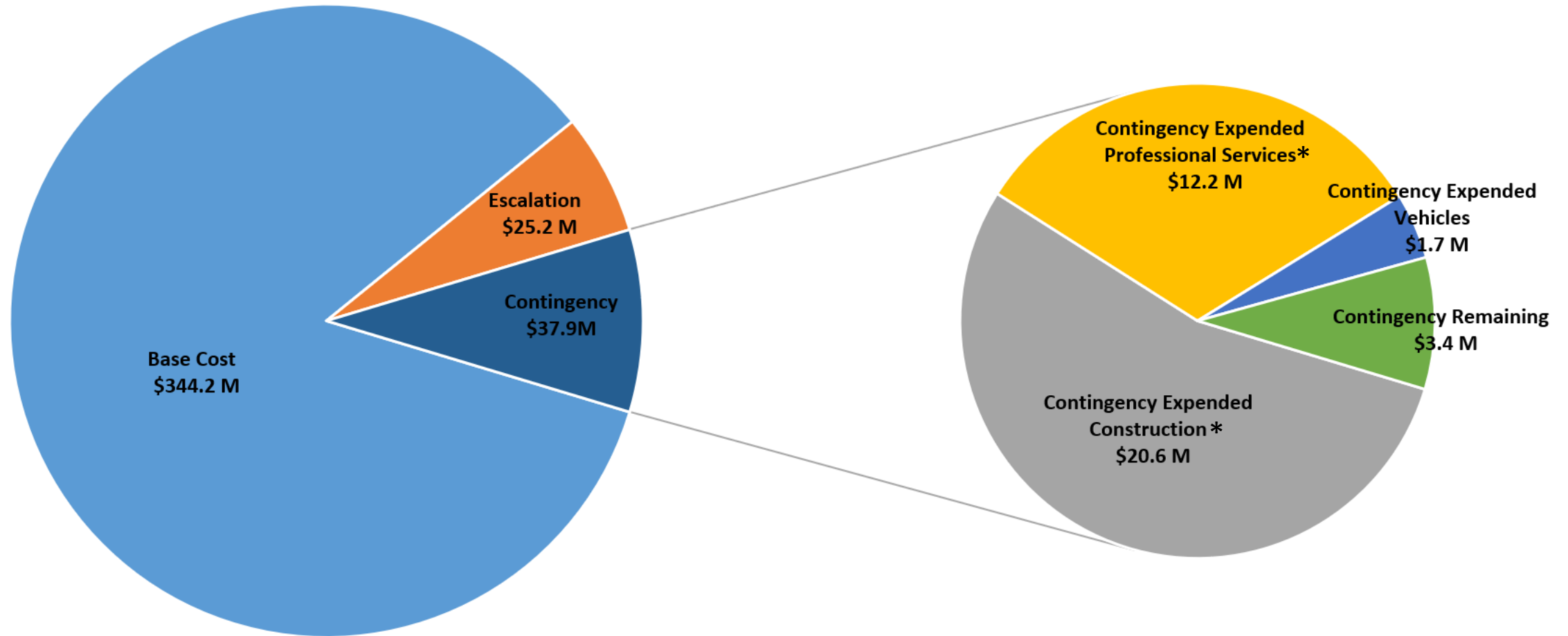
- The number and nature of utility conflicts encountered is higher and more complex than anticipated.
- Extensive amount of contamination encountered during excavations in the Pacific Electric Right-of-Way, City of Santa Ana (City) streets, and at the MSF site.
- Additional unforeseen conditions encountered including thicker pavement sections, unsuitable subgrade in city streets, abandoned well, underground storage tank, and cultural resources discovery at the MSF.
- Difficulties of Walsh Construction Company II, LLC (Walsh) complying with construction quality control plan requirements.
- Extensive number of Requests for Changes and Requests for Information.

Impacts

- Higher than anticipated number of construction contract change orders (CCO).
- Increased level of professional services for oversight to ensure quality, safety, and environmental compliance requirements are met.
- Extension of construction completion requires professional services and staff resources for a longer duration than originally estimated.
- Project contingency has been drawn down faster than originally forecast for this stage of construction.
 - Original estimate of contingency funding was based on perceived risks at the time of construction contract award. New risks have materialized, known risks have been greater than expected, and there are additional expenses associated with items not included in the FFGA.

Project Cost and Contingency Status

Project cost as defined in FFGA : \$407.8 million



*Amounts include CCO's pending execution and PGH Wong Engineering, Inc. (Construction Manager) agreement amendment pending Board approval

Federal Transit Administration (FTA) Direction on Finalizing Cost and Schedule

- In January 2021, FTA advised the Orange County Transportation Authority (OCTA) that they would be performing their own risk analysis and requested that OCTA not finalize an updated Project cost and schedule until FTA's risk effort is completed (anticipated for late summer 2021).
- Additional time will provide more certainty in finalizing an updated cost to complete, as the Project will be further along with remaining excavation work, MSF cultural resources discovery costs will be finalized, and there will be better understanding of potential coronavirus impacts.
- To maintain Project progression while the cost and schedule update is confirmed by FTA, additional funding to supplement the contingency is needed to address costs anticipated through November 2021.

Proposed Supplemental Contingency for 2021

Description	Amount Needed	Notes
Construction	\$11,766,145	<ul style="list-style-type: none"> Potential construction change orders based on current issues in the field Additional ticket vending machine/software costs
Right-of-Way	\$200,000	<ul style="list-style-type: none"> Additional estimated cost for relocation expenses
Vehicles	\$1,030,471	<ul style="list-style-type: none"> Additional vehicle spare parts Vehicle storage costs
Professional Services	\$6,084,049	<ul style="list-style-type: none"> Expanded scope and/or extended performance period required for designer, public outreach, and operations and maintenance contracts Applicable to contracts and/or contract amendments being executed through November 2021
Total Estimated Expenses	\$19,080,665	
Remaining Contingency	\$(3,402,361)	<ul style="list-style-type: none"> Amount assumes Board approval of PGH Wong (Construction Manager) Contract Amendment
Supplemental Contingency Needed	\$15,678,304	

Proposed Funding Plan for Contingency

Funding Programs	FFGA	Additional funding to support supplemental contingency:	Proposed FFGA Funding Plan
	(in 000's)	(in 000's)	(in 000's)
FTA 5309 (New Starts)	\$148,955	-	\$148,955
FTA 5307	\$13,599	-	\$13,599
CMAQ	\$54,123	\$8,289	\$62,412
State TIRCP	\$25,586*		\$25,586
Subtotal State and Federal	\$242,263*	\$8,289	\$250,552
M2	\$165,565	\$7,321	\$172,886
Total FFGA Funding	\$407,828*	\$15,610	\$423,438
*Includes previously State-approved funding addition of \$0.07 Million in TIRCP CMAQ – Congestion Mitigation and Air Quality Improvement Program TIRCP – Transit and Intercity Rail Capital Program			

Next Steps

- Staff will continue to keep the Board apprised of Project progress, including the status of the FTA risk analysis, through quarterly Project updates and other required Board actions for the Project.
- Staff will return by November 2021 with an updated Project cost and schedule to complete, as well as a funding plan based on FTA concurrence.



COMMITTEE TRANSMITTAL

March 22, 2021

To: Members of the Board of Directors

From: Andrea West, Interim Clerk of the Board *Andrea West*

Subject: Amendment to Agreement for Construction Management Services for the OC Streetcar Project

Transit Committee Meeting of March 11, 2021

Present: Directors Do, Jones, Sarmiento, Shaw, and Sidhu
Absent: Director Chaffee

Committee Vote

Following the roll call vote, this item was declared passed 5-0 by the Members present.

Committee Recommendation

Authorize the Chief Executive Officer to negotiate and execute Amendment No. 11 to Agreement No. C-6-0926 between the Orange County Transportation Authority and PGH Wong Engineering, Inc., in the amount of \$6,829,862, and extend the agreement term through November 30, 2021, for continued OC Streetcar project construction management services. This will increase the maximum cumulative obligation of the agreement to a total contract value of \$17,983,474.



March 11, 2021

To: Transit Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Amendment to Agreement for Construction Management Services for the OC Streetcar Project

Overview

On July 25, 2016, the Orange County Transportation Authority Board of Directors approved an agreement with PGH Wong Engineering, Inc., to provide construction management services for the OC Streetcar project for a term of five years. An amendment to the existing agreement is necessary for the consultant to continue providing construction management services.

Recommendation

Authorize the Chief Executive Officer to negotiate and execute Amendment No. 11 to Agreement No. C-6-0926 between the Orange County Transportation Authority and PGH Wong Engineering, Inc., in the amount of \$6,829,862, and extend the agreement term through November 30, 2021, for continued OC Streetcar project construction management services. This will increase the maximum cumulative obligation of the agreement to a total contract value of \$17,983,474.

Discussion

The Orange County Transportation Authority (OCTA), in cooperation with the cities of Garden Grove and Santa Ana is implementing a modern streetcar that will operate between the Santa Ana Regional Transportation Center in the City of Santa Ana (City) and the intersection of Harbor Boulevard and Westminster Avenue in the City of Garden Grove. On July 25, 2016, the Board of Directors (Board) approved an agreement with PGH Wong Engineering, Inc., (PGH Wong) for a five-year term to provide construction management services for the OC Streetcar project (Project). Construction activities have been underway since the issuance of the Notice to Proceed to Walsh Construction Company II, LLC, (Walsh) on March 4, 2019.

Since then, work on the Project has progressed with several construction activities continuing to advance. A summary of recent construction milestones includes the substantial completion of the Santa Ana River and Westminster bridges, completion of utility relocations, and installation of embedded track at Bristol Street. Furthermore, construction and installation was also completed for the maintenance and storage facility (MSF) building floor slabs, the first station at Fairview Street, and the overhead contact system (OCS) poles. The overall Project, which includes both construction and vehicle production, is currently 42.1 percent complete.

As the construction manager on behalf of OCTA, PGH Wong has been administering and overseeing the construction contract. These efforts include but are not limited to, communications coordination between Walsh and the Project team, Project reporting and documentation, Walsh payment application review, change management and claims support, quality inspections, safety, environmental, and labor compliance oversight, testing, commissioning, and start-up support services.

As previously discussed with the Board, a significant number of challenges have been experienced in the initial stages of construction that have resulted in an extended construction duration. These challenges include unforeseen site conditions encountered by the construction contractor during excavations at the MSF, within the Pacific Electric Right-of-Way (PEROW), and in City streets, difficulty on the part of Walsh complying with construction quality requirements and quality control plans, and a large volume of Requests for Information (RFI) and submittals resulting in numerous design modifications to be implemented by change directive. These challenges have resulted in a significantly higher level of effort required from PGH Wong than originally estimated. This higher level of effort includes additional labor hours from PGH Wong staff already assumed in the contract, as well as additional staff not originally assumed in the contract but were deemed necessary to manage specific areas that required additional efforts. The specific areas requiring additional effort include:

- Contaminated soil encountered in the PEROW, city streets, and at the MSF have required a significant amount of unanticipated field oversight, environmental compliance monitoring, soil testing, oversight of soil removal operations, and forced account payment reconciliation and processing.
- Numerous unforeseen utilities have been encountered during the relocation of utilities, requiring extensive coordination with the designer, utility companies, and Walsh to develop solutions, issue change orders, and conduct field inspections.

- The cultural resource discovery at the MSF required unforeseen support from archeologists to clear and release the site back to Walsh, including preparation of a data recovery plan, coordination with the Most Likely Descendent and Federal Transit Administration (FTA), and oversight of excavations to remove the burial and confirm the presence of any additional burials or artifacts.
- Contractor quality challenges have increased the quality manager's level of effort to full-time support and are entailing higher-than-anticipated quality inspections at supplier locations, including some instances of repeat inspections to assure compliance.
- The higher-than-anticipated number of RFIs submitted by Walsh is requiring extensive time and effort to develop responses, provide clarifications, and issue construction change notices.
- The more-than-anticipated volume and complexity of Walsh's submittals for several project elements, including special trackwork, traction power substations, overhead contact system, communication systems, and architectural finishes, requires extensive coordination between the various disciplines to review and approve submittals.
- To expedite completion of the Project, periodic weekend work has been allowed by the City, which required an increase in effort for management and special inspections.
- An increased level of effort is required on schedule reviews and coordination with Walsh, including an increased number of meetings with Walsh attempting to resolve numerous schedule and cost disputes, and to provide an accurate reflection of progress.
- Given the complexity of ongoing issues, an increased number of Project meetings are occurring with Walsh and stakeholders to ensure proper integration of project elements, as well as an increased number of construction partnering sessions.

As a result of this unanticipated higher level of effort, the original contract value is insufficient for PGH Wong to continue to manage Project construction, and a contract amendment is needed to increase funding for the services. As discussed with the Board in March 2021, FTA requested that OCTA not finalize the forecast schedule or estimated cost to complete the Project until FTA has conducted its own detailed cost and schedule risk analysis. Construction management services are needed until construction, testing, and commissioning

is complete, and the term of the agreement and the associated cost of the services cannot be finalized until OCTA reaches concurrence with FTA on the Project cost and schedule risk analysis . Upon completion of FTA's risk analysis, which is anticipated in early fall 2021, staff will return to the Board with recommendations for cost and schedule adjustments needed to complete the Project. Staff will also return to the Board at the same time to address the additional construction management services needed to provide continued oversight through the revised construction completion schedule as agreed to by FTA.

This proposed interim amendment will authorize continued construction management services for the Project through November 30, 2021, and will use Project contingency for some of the funding required.

Procurement Approach

The original procurement was handled in accordance with OCTA's Board-approved procedures for architectural and engineering services, which conform to both state and federal laws. The original agreement, authorized by the Board on July 25, 2016, was executed in the amount of \$10,752,136, for a term of five years and has been previously amended as shown in Attachment A.

Staff and PGH Wong have agreed upon the required level of effort for additional construction management support services through November 30, 2021. Staff found PGH Wong's price proposal, in the amount of \$6,829,862, to be fair and reasonable relative to the negotiated level of effort and consistent with the independent cost estimate prepared by the OCTA project management team. Proposed Amendment No. 11 includes continued construction management services for the Project, in the amount of \$6,829,862, and will increase the total contract value to \$17,983,474.

Fiscal Impact

Funding for the Project is included in OCTA's Fiscal Year (FY) 2020-21 Budget and will be proposed in the FY 2021-22 Budget, Capital Programs Division, Account No. 0051-9018-TS010-Z84, and is funded with FTA Section 5309 New Starts and local Measure M2 funds.

Summary

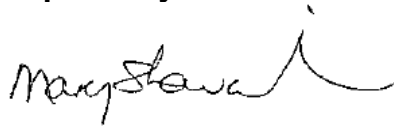
Staff requests Board of Directors' approval to authorize the Chief Executive Officer to negotiate and execute Amendment No. 11 to Agreement No. C-6-0926 with PGH Wong Engineering, Inc., in the amount of \$6,829,862, for the continuation of

OC Streetcar project construction management services and to extend the term through November 30, 2021.

Attachment

- A. PGH Wong Engineering, Inc., Agreement No. C-6-0926 Fact Sheet

Prepared by:



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Approved by:



James G. Beil, P.E.
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**PGH Wong Engineering, Inc.
Agreement No. C-6-0926 Fact Sheet**

1. July 25, 2016, Agreement No. C-6-0926, in the amount of \$10,752,136, approved by the Board of Directors (Board).
 - The agreement was executed on December 6, 2016, for construction management services to support the OC Streetcar project for a five-year term.
2. November 12, 2018, Amendment No. 1 to Agreement No. C-6-0926, \$153,972, approved by the Contracts Administration and Materials Management (CAMM) Department.
 - Increase maximum obligation to add subconsultant Gonzales-White Consulting Services, to perform labor compliance support.
 - Modify the key personnel for prime consultant PGH Wong Engineering, Inc., (PGH Wong) and subconsultant MARRS Services, Inc. (MARRS).
 - Add subconsultant Safework, Inc.
 - Modify hourly rate and other direct costs schedules for all firms.
 - Incorporate revised health, safety, and environmental specifications.
3. June 27, 2019, Amendment No. 2 to Agreement No. C-6-0926, \$0, approved by the CAMM Department.
 - Modify payment article.
 - Modify hourly rates and other direct costs schedules for prime consultant PGH Wong and subconsultants MARRS, Towill, Inc., and UltraSystems Environmental, Inc. (UltraSystems).
4. February 10, 2020, Amendment No. 3 to Agreement No. C-6-0926, \$0, approved by the CAMM Department.
 - Modify hourly rates schedule for prime consultant PGH Wong and subconsultants AP Engineering and Testing, Inc., (AP Engineering) and UltraSystems.
5. March 24, 2020, Amendment No. 4 to Agreement No. C-6-0926, \$0, approved by the CAMM Department.
 - Modify hourly rates and other direct costs schedules for UltraSystems.

6. April 2, 2020, Amendment No. 5 to Agreement No. C-6-0926, \$0, approved by the CAMM Department.
 - Modify hourly rate schedules for prime consultant PGH Wong and subconsultants Consultant Engineering, Inc., and Inspection Services, Inc. Modify other direct costs schedule for subconsultant AP Engineering
7. July 8, 2020, Amendment No. 6 to Agreement No. C-6-0926, \$0, approved by the CAMM Department.
 - Modify hourly rates and other direct costs schedules for prime consultant PGH Wong.
8. September 18, 2020, Amendment No. 7 to Agreement No. C-6-0926, \$0, approved by the CAMM Department.
 - Modify hourly rates and other direct costs schedules for prime consultant PGH Wong and subconsultants AP Engineering and UltraSystems.
9. October 21, 2020, Amendment No. 8 to Agreement No. C-6-0926, \$0, approved by the CAMM Department.
 - Add subconsultant PaleoWest, LLC, to provide cultural support services.
10. November 6, 2020, Amendment No. 9 to Agreement No. C-6-0926, \$0, approved by the CAMM Department.
 - Modify hourly rates and other direct costs schedules for subconsultants AP Engineering and UltraSystems.
11. February 1, 2021, Amendment No. 10 to Agreement No. C-6-0926, \$247,504, approved by the CAMM Department.
 - Modify hourly rates and other direct costs schedules for prime PGH Wong.
 - Increase maximum cumulative obligation for additional tribal monitoring services.
12. March 22, 2021, Amendment No. 11 to Agreement No. C-6-0926, \$6,829,862, pending Board approval.
 - Increase maximum cumulative obligation for additional construction management services to support the OC Streetcar project and extend the contract term by five months to November 30, 2021.

Total funds committed to PGH Wong Engineering, Inc. after approval of Amendment No. 11 to Agreement No. C-6-0926: \$17,983,474.