

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

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

With

ORANGE COUNTY TRANSPORTATION AUTHORITY

For the

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

Dated as of [_____, 2017]

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TIFIA LOAN AGREEMENT

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

RECITALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Caltrans” means the California Department of Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Effective Date” means the date of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Permitted Debt” means:

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

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

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

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

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

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

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

“Permitted Liens” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Secretary” means the United States Secretary of Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Trustee” means [_____].

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

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

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

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

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

“USDOT” means the United States Department of Transportation.

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

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

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

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

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

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

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

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

Section 4. Disbursement Conditions.

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

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

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

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

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

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

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

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

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

Section 8. Security and Priority; Flow of Funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. Payment of Principal and Interest.

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

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

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

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

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

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

(f) Accrual of Amounts on Interim Payment Dates.

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

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

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

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

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

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

Section 10. Prepayment.

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

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

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

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

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

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

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

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

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

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

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

Section 11. [Reserved].

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

Section 13. Conditions Precedent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) To the extent not previously delivered to the TIFIA Lender as required by this Agreement, the Borrower shall have provided certified copies of all Principal Project Contracts and all Additional Project Contracts requested by the TIFIA Lender pursuant to Section 16(b) (*Copies of Documents*) or required to be delivered to the TIFIA Lender pursuant to Section 17(e) (*Additional Projects Contracts*) (including, in each case, any amendment, modification or supplement thereto) entered into after the Effective Date which in the case of the Additional Project Contracts, shall be a condition to the next disbursement following the date when such Additional Project Contract is required to be delivered to the TIFIA Lender.

(v) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(vi) Each of the insurance policies obtained by the Borrower and by any applicable Principal Project Party in satisfaction of the conditions in Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vii) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Event of Default hereunder or event of default under any other Related Document and (B) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default hereunder or event of default under any Related Document, in each case, shall have occurred and be continuing.

(viii) To the extent necessary to make the corresponding representations and warranties true, correct and complete as of the date of any disbursement of loan proceeds hereunder, the Borrower shall have delivered an updated version of **Schedule 14(u)**, in form and substance satisfactory to the TIFIA Lender in its sole discretion.

(ix) The representations and warranties of the Borrower set forth in this Agreement (including Section 14 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(x) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(xi) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and the TIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition.

(xii) The Borrower shall have paid in full all invoices received from the TIFIA Lender as of the date of disbursement of the TIFIA Loan, for the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xiii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided to the TIFIA Lender certified, complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the date of disbursement of the TIFIA Loan, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

Section 14. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 14(b) (*Officer's Authorization*) and Section 14(l) (*Credit Ratings*), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a public entity duly organized, validly existing and in good standing under the laws of the State, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any

certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, except as set forth in **Schedule 14(f)**, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge,

there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Pledged Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Revised Financial Model, to the extent any Revised Financial Model has been approved by the TIFIA Lender). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and Borrower Act establishes, in favor of the Trustee for the benefit of the TIFIA Lender, the valid and binding Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Trust Estate except for the Permitted Liens associated with Senior Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 16(a) (*Securing Liens*) or in the Indenture Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Document or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 13(a)(v) (*Conditions Precedent to Effectiveness*).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Federal Requirements. The Borrower has complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(k) Transportation Improvement Program. The Project has been included in (i) the metropolitan transportation improvement program adopted by the Southern California Association of Governments, (ii) the State transportation plan, and (iii) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3), as applicable. The financial plan for each such program or plan reflects the amount of the TIFIA Loan and all other federal funds to be used for the Project as sources of funding for the Project.

(l) Credit Ratings. The TIFIA Loan has received a public rating from at least two (2) Nationally Recognized Rating Agencies, and written evidence of such ratings has been provided to the TIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(m) No Defaults. The Borrower is not in default under the terms of any Related Document, and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute an Event of Default.

(n) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(o) Principal Project Contracts. Each Principal Project Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Principal Project Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Principal Project Contract and each Additional Project Contract required to be delivered to, or requested by, the TIFIA Lender pursuant to Section 16(b) (*Copies of Documents*) (including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any Principal Project Contract. The Borrower is not in breach of any material term in or in default under any such Principal Project Contracts, and to the knowledge of the Borrower, no party to any Principal Project Contract is in breach of any material term therein or in default thereunder.

(p) Information. The information furnished by the Borrower to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as

of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(q) OFAC; Anti-Corruption Laws. None of the Borrower, any other Borrower Related Party, nor, to the knowledge of the Borrower, any Principal Project Party:

(i) is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act; (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or

(ii) is a Person (A) that is charged with, or has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws; (B) that has been, since the date that is five (5) years prior to the Effective Date, convicted of any violation of, has been subject to criminal or civil penalties pursuant to, had any of its property seized or forfeited under, or has entered into any agreement with the Government or a state or local government related to violations of any such laws; (C) that is named on the list of “Special Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list); (D) with whom any U.S. Person (as defined by the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law; or (E) with respect to a Principal Project Party, that is owned (other than any Person beneficially owning or holding five percent (5%) or less of the equity interests of such Principal Project Party), Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this clause (ii).

(r) Compliance with Law. Each of the Borrower and each other Borrower Related Party is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 14(s) (*Environmental Matters*)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower’s knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower, any other Borrower Related Party, or, to the Borrower’s knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(s) Environmental Matters. Each of the Borrower, each other Borrower Related Party and, to the Borrower's knowledge, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Neither the Borrower nor any other Borrower Related Party has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower or such other Borrower Related Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower or any other Borrower Related Party with any such Environmental Law or Governmental Approval. The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower or any other Borrower Related Party regarding the Borrower's or the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(t) Sufficient Rights and Utilities. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Project. As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to [own,] construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(u) Insurance. **Schedule 14(u)** lists all insurance policies of any nature maintained by the Borrower with respect to the Project, as well as a summary of the terms of each such policy. The Borrower is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound and the Borrower has received an opinion from an

accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower's self-insurance program is actuarially sound.

(v) Title. The Borrower has valid legal and beneficial title to, or a valid leasehold interest in, the personal property and other assets and revenues thereof (including the Project Revenues and the Trust Estate) on which it purports to grant Liens pursuant to the Indenture Documents, in each case free and clear of any Lien of any kind, except for Permitted Liens.

(w) No Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the Project Revenues, or the properties or assets in relation to the Project.

(x) Intellectual Property. The Borrower owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(y) Investment Company Act. The Borrower is not, and after applying the proceeds of the TIFIA Loan will not be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(z) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the TIFIA Lender pursuant to Section 22(c) (*Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(aa) Taxes. Except for 8038 forms required in connection with the issuance of tax-exempt bond, the Borrower is not required to file tax returns with any Governmental Authority. *[Please confirm that all 8038s have been filed]*

(bb) ERISA. Neither the Borrower nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Code.

(cc) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under the Indenture Documents, and this Agreement, (ii) all delay payments and insurance proceeds in respect of any casualty loss (other than any proceeds of business interruption insurance, delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) received by the Borrower or to which the Borrower is entitled in accordance with the applicable insurance policies and Principal Project Contracts, and (iii) all funds available under any other unused funding that is committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(dd) Sovereign Immunity. The Borrower and, to the Borrower's knowledge, each other Borrower Related Party, either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower or such other Borrower Related Party under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder, or, to the extent that the Borrower and, to the Borrower's knowledge, any other Borrower Related Party, has such immunity, the Borrower and, to the Borrower's knowledge, each such Borrower Related Party, has waived such immunity pursuant to Section 16(t) (*Immunity*).

(ee) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

Section 15. Representations and Warranties of TIFIA Lender. The TIFIA Lender represents and warrants that:

(a) Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

Section 16. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(b) Copies of Documents. The Borrower shall furnish to the TIFIA Lender a copy of any draft documents and final offering documents (including any Indenture Documents) and cash flow projections prepared in connection with the incurrence of any Permitted Debt or other indebtedness subject to approval by the TIFIA Lender pursuant to Section 17(a) (*Indebtedness*), in each case prior to the incurrence of any such Permitted Debt or such other indebtedness, as well as copies of any continuing disclosure documents, prepared by or on behalf of the Borrower in connection with the incurrence of such Permitted Debt or such other indebtedness, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (i) copies of any draft documents relating to the incurrence of Permitted Debt (other than equipment leases and trade accounts included in such definition) at least thirty (30) days prior to the effective date thereof and (ii) copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof. The Borrower shall provide written notice to the TIFIA Lender of the Borrower's intent to enter into an Additional Project Contract and, if such Additional Project Contract is subject to approval by the TIFIA Lender pursuant to Section 17(e) (*Additional Projects Contracts*), shall provide drafts of any such Additional Project Contracts at least thirty (30) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. If the TIFIA Lender requests a copy of any Additional Project Contract that is not subject to approval by the TIFIA Lender, the Borrower shall provide a copy of the final or near final draft of such Additional Project Contract, together with any related contracts, side letters or other understandings, prior to the execution thereof and, if requested by the TIFIA Lender, shall provide to the TIFIA Lender an executed version of such Additional Project Contract, together with any related contracts, side letters or other understandings, promptly following the full execution thereof.

(c) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of the Borrower's industry.

(ii) The Borrower shall ensure that each Construction Contractor complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Construction Contractor to the Borrower or any other Borrower Related Party and shall ensure that any letter of credit provided pursuant to any Construction Agreement meets the requirements therefor set forth in such Construction Agreement.

(iii) The Borrower shall comply with the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320.

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the Toll Road (A) in a reasonable and prudent manner and (B) substantially in accordance with the Financial Plan most recently approved by the TIFIA Lender (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Toll Road), and (ii) maintain the Toll Road in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance.

(i) The Borrower shall at all times maintain or cause to be maintained insurance for the construction of the Toll Road, with responsible insurers, as required by the Principal Project Contracts and as is customarily maintained in the United States of America with respect to works and properties of like character, against accident to, loss of or damage to such works or properties, which shall include liability coverage and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Principal Project Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

(ii) The Borrower shall at all times maintain with responsible insurers or through a program of self-insurance all such insurance on the Toll Road as is customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties.

(iii) To the extent the Borrower elects to self-insure, the Borrower shall deliver to the TIFIA Lender annually a written opinion of an accredited actuary that confirms that the Borrower's self-insurance program is actuarially sound.

(iv) The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium, from any Net Loss Proceeds available for prepayment of the TIFIA Loan in accordance with Section 10(a) (*Mandatory Prepayments*).

(v) The Borrower shall (by self-insuring or maintaining with responsible insurers or by a combination thereof) provide for workers' compensation insurance for Borrower's workers and insurance against public liability and property damage to the Toll Road to the extent reasonably necessary to protect the Borrower and the TIFIA Lender.

(vi) The Borrower shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any Construction Contractor), other than workers' compensation insurance, to reflect the TIFIA Lender as an additional insured to the extent of its insurable interest.

(vii) The Borrower shall deliver to the TIFIA Lender all (A) insurance brokers' letters, and (B) certificates of insurance, in each case promptly after Borrower's receipt thereof and in any event no later than when required to be delivered pursuant to the Master Indenture. Promptly upon request by the TIFIA Lender, the Borrower shall deliver to the TIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower in respect of the Toll Road. All such policies shall be available at all reasonable times for inspection by the TIFIA Lender, its agents and representatives.

(viii) The Borrower shall comply with the insurance requirements of the Indenture Documents and shall deliver to the TIFIA Lender within five (5) Business Days after receipt thereof any certifications or opinions provided to the Borrower pursuant to Section [] of the Master Indenture with respect to the Borrower's program of insurance or self-insurance.

(g) Notice.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit M**;

(B) Events of Default: any Event of Default or any event that, with the giving of notice or the passage of time or both, would constitute an Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in

each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of \$[____], either individually or in the aggregate, and (3) any material notices or filings in respect of any action, petition, suit or proceeding listed in Schedule 14(f);

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any material notice of violation under any Environmental Law related to the Toll Road or any material changes to the NEPA Determination;

(F) Insurance Claim: any insurance claims made by the Borrower or a Construction Contractor in respect of the Toll Road in excess of \$[____] either individually or in the aggregate, to the extent related to the Toll Road or to the extent the proceeds from such insurance claim would be deposited into a Project Account;

(G) Amendments: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any Principal Project Contract or other Related Document at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(H) Principal Project Contract Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Principal Project Contract;

(I) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(J) Project Changes: any (A) change to the Total Project Costs forecasts in excess of [____] percent ([____]%) of total forecasted Total Project Costs or (B) material change to the Construction Schedule;

(K) Ratings Changes: any change in the rating assigned to the Senior Obligations or any Subordinate Obligations by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, the Borrower, or the Project Revenues;

(L) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335; and

(M) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in Section 16(g)(i) (*Notice*).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 16(g)(i) (*Notice*) (other than in Section 16(g)(i)(A) (*Substantial Completion*), Section 16(g)(i)(G) (*Amendments*), or Section 16(g)(i)(K) (*Ratings Changes*) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) No Lien Extinguishment or Adverse Amendments. Borrower shall not, without the prior written consent of the TIFIA Lender, either (i) extinguish the lien on the Trust Estate, except as provided under the Master Indenture, (ii) amend, modify, supplement or grant or receive any waiver with respect to any Related Document in a manner that could adversely affect the TIFIA Lender in connection with the TIFIA Loan or (iii) terminate, assign, amend or modify, or waive timely performance by the Borrower or any other party of material covenants under, the Construction Agreement or any other Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender copies of any proposed amendments to any Related Document at least 30 days prior to the effective date thereof.

(j) Maintain Legal Structure. The Borrower shall maintain its existence as a public entity organized under the laws of the State.

(k) Annual Rating. The Borrower shall, [commencing in 20[___]], no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the Senior Obligations, including the TIFIA Bond, by a Nationally Recognized Rating Agency, together with the rating report or letter delivered by such Nationally Recognized Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.

(l) Project Accounts; Permitted Investments.

(i) The Borrower shall maintain the accounts within the Senior Obligations Reserve Fund in an amount equal to the applicable Senior Obligations Reserve Requirement in accordance with the provisions of this Agreement and the

applicable Indenture Documents. Amounts in the Senior Obligations Reserve Fund shall be made available to ensure the timely payment of Senior Debt Service on the Senior Obligations.

The Borrower agrees that the TIFIA Debt Service Reserve Requirement will be funded from Pledged Revenues, and if such Pledged Revenues are insufficient therefor, from a Borrower's loan. The Borrower shall maintain the TIFIA Debt Service Reserve Account in an amount equal to the TIFIA Debt Service Reserve Requirement in accordance with the provisions of this Agreement and Indenture Documents.

(ii) To the extent not provided in Section 16(l)(i) (*Project Accounts; Permitted Investments*), the Borrower shall cause the other Reserve Accounts to be funded in such amounts and under such conditions as are required by this Agreement and the Indenture Documents.

(iii) Amounts on deposit in the Project Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Debt Service Reserve Account, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the TIFIA Debt Service Account (or any other debt service account with respect to a Senior Obligation) or in any debt service account in respect of Senior Obligations corresponding to amounts needed for the payment of interest, not later than the next Semi-Annual Payment Date, (C) with respect to Permitted Investments maintained in the TIFIA Debt Service Account (or any other debt service account with respect to a Senior Obligation) or in any debt service account for Senior Obligations corresponding to amounts needed for the repayment of principal, the next Payment Date for repayment of principal in respect of such debt, and (D) with respect to any other Project Accounts, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from the applicable Project Account.

(iv) The Borrower may replace all or a portion of the required balance of any Reserve Account, in accordance with the terms of the applicable Indenture Documents, with a Credit Facility provided by a financial institution with an Acceptable Credit Rating and consented to by the TIFIA Lender, but such Credit Facility cannot be secured by the Project Revenues or Trust Estate. If at any time an issuer of an Acceptable Letter of Credit securing a Reserve Account ceases to be a Qualified Issuer, the Borrower shall cause such letter of credit to be replaced by a new Acceptable Letter of Credit within thirty (30) Business Days of the date on which the current issuer ceased to be a Qualified Issuer, or the Trustee shall be permitted to immediately draw the full amount of such letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account. Any new Acceptable Letter of Credit shall have the same terms and conditions (including expiration date and face amount) as the letter of credit being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit securing a Reserve Account is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit with a new Acceptable Letter of Credit at least ten (10) Business Days prior to the stated expiry date

of the existing letter of credit and such new Acceptable Letter of Credit shall be in an amount equal to at least the amount of expiring letter of credit. If the Borrower fails to provide such new Acceptable Letter of Credit by the date required above, the Trustee shall be permitted to immediately draw the full undrawn amount of the existing letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account.

(m) Deposits to the Distribution Lock-up Fund. Commencing on the Substantial Completion Date and thereafter [on the last Business Day of each month], the Borrower shall cause to be deposited in the Distribution Lock-up Fund, all Pledged Revenues remaining after the deposits required by Section 8(d)(i) through and including (xi) (*Security and Priority; Flow of Funds*) have been made in full. [In accordance with Section [] of the Master Indenture, upon the later of (a) the [Final Completion Date] (as defined in the Construction Agreement) and (b) the date of the final disbursement of the TIFIA Loan, the Borrower shall cause any amounts remaining in the Project Fund to be transferred to the Reserve Accounts, in the following order of priority, (i) Senior Obligations Reserve Fund up to the Senior Obligations Reserve Requirement, (ii) Subordinate Obligations Reserve Fund up to the Subordinate Obligations Reserve Requirement, (iii) Operation and Maintenance Reserve Fund up to the Operation and Maintenance Reserve Fund Requirement and (iv) Major Maintenance Reserve Fund up to the Major Maintenance Reserve Requirement.]

(n) Rate Coverage. (i) The Borrower shall, subject to the remainder of this paragraph, fix, charge and collect rates and charges for use of the Toll Road such that Net Revenues in the first Calculation Period after the Substantial Completion Date and for each Calculation Period through the Final Maturity Date are sufficient to produce, subject to Section 16(n)(iii) (*Rate Coverage*):

(A) a Senior Debt Service Coverage Ratio of at least one hundred thirty-five percent (135%) in each such Calculation Period;

(B) a Total Debt Service Coverage Ratio of at least one hundred twenty-five percent (125%) in each such Calculation Period;

(C) a Senior Loan Life Coverage Ratio of at least one hundred thirty-five percent (135%); and

(D) an amount equal to one hundred percent (100%) of the deposits required to be made in Section 8(d)(i) through and including (xiii) (*Security and Priority; Flow of Funds*).

Section 16(n)(i)(A), (B), (C) and (D) are collectively referred to herein as the “**Rate Coverage Test**”.

(ii) Commencing on the third Calculation Date after the Substantial Completion Date and on each Calculation Date thereafter, the Borrower shall calculate each of the ratios contained in the Rate Coverage Test (a) as of such Calculation Date and for each of the two (2) immediately preceding Calculation Dates and (b) for each Calculation Date or Calculation Period, as applicable, through the Final Maturity Date.

(iii) For purposes of the Rate Coverage Test calculations set forth in clause (ii) above, the Borrower shall be credited with amounts available in the Distribution Lock-up Fund, notwithstanding the fact that such amounts are not included within the definition of Net Revenues. The Borrower shall be credited with amounts available in the Distribution Lock-up Fund but not released from the Distribution Lock-up Fund solely to the extent necessary to comply with each of the ratios within the Rate Coverage Test until the fifth anniversary of the Substantial Completion Date. Each such credit against the Distribution Lock-up Fund shall be deemed a release therefrom for purposes of the Rate Coverage Test during such period, such that the amount credited will not be available for any future credit under the Rate Coverage Test. In no event shall the Borrower be credited with amounts available in the Distribution Lock-up Fund for any calculation related to the Restricted Payment Conditions.

(iv) If in any (A) Coverage Certificate delivered pursuant to Section 16(o) (*Coverage Certificate*) or (B) Financial Plan delivered to the TIFIA Lender pursuant to Section 22(a)(iv) (*Financial Plan*), the Borrower determines, as of any such Calculation Date that (1) the Senior Debt Service Coverage Ratio or the Total Debt Service Coverage Ratio portions of the Rate Coverage Test was not satisfied for each of the two (2) previous Calculation Periods, or (2) projected Net Revenues may be inadequate to satisfy the Rate Coverage Test for any Calculation Period until the Final Maturity Date, the Borrower shall:

- (I) within thirty (30) days after the end of the Calculation Period during which the Rate Coverage Test was not satisfied, in the case of clause (ii)(a) above, or within thirty (30) days after the calculation (or, if applicable, the submission of the Financial Plan) demonstrating a prospective shortfall in satisfying the Rate Coverage Test, engage the Traffic Consultant to review and analyze the operations of the Toll Road and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Revenues so as to satisfy the Rate Coverage Test for future Calculation Periods,
- (II) cause the Traffic Consultant to issue its report, including any such recommended actions, no later than one hundred eighty (180) days from the date the Rate Coverage Test was not satisfied, and
- (III) either implement the Traffic Consultant's recommendations or undertake an alternative course of action after demonstrating to the TIFIA Lender's satisfaction the manifest errors contained in the Traffic Consultant's recommended actions, or to the extent agreed upon by the TIFIA Lender, undertake an alternative course of action that will ensure the Borrower's ability to meet its payment obligations under this Agreement.

(v) Subject to the following clause (vi), failure to comply with the Rate Coverage Test shall not constitute an Event of Default if either (A) the Borrower

complies with the covenant described in clause (vii) of this Section 16(n) (*Rate Coverage*) or (B) the Traffic Consultant provides a written opinion stating that the actions required in order to produce the required Net Revenues are impracticable at that time. For purposes of this subsection, “impracticable” means (x) such actions would not result in an increase in Net Revenues that is sufficient to comply with the Rate Coverage Test, (y) the economic cost of taking such actions exceeds the economic benefit resulting from such actions or (z) the Borrower does not have sufficient available funds to pay the cost of taking such actions.

(vi) Notwithstanding clause (v) above, a failure to comply with the Rate Coverage Test (excluding Section 16(n)(i)(D) (*Rate Coverage*)), for a period of eighteen (18) consecutive months shall require prepayment of the TIFIA Loan in accordance with Section 10(a)(v) (*Mandatory Prepayments*).

(vii) If any study conducted pursuant to clause (iv) of this Section 16(n) (*Rate Coverage*) concludes that actions with respect to the operation of the Toll Road and tolls, fees and charges for using the Toll Road will not provide sufficient Net Revenues in each subsequent Fiscal Year to comply with the Rate Coverage Test, the Borrower shall use its best efforts to collect revenues from other legally available sources or to reduce debt service expenses such that the Borrower will be able to comply with the Rate Coverage Test.

(viii) Beginning on the Substantial Completion Date, the Borrower shall fix, charge and collect tolls, fees, rentals and other charges for the use of, and for services furnished by, the Toll Road (including revising such tolls, fees, rentals and other charges as may be necessary or appropriate), in accordance with the Toll Policy to (i) generate sufficient revenues to sustain the financial viability of the Toll Road and (ii) ensure all covenants in the financing documents are satisfied. Notwithstanding the preceding sentence, the Borrower shall not amend or otherwise change the Toll Policy in a manner that could potentially reduce Project Revenues unless the Borrower delivers to the Trustee and the TIFIA Lender a report from the Traffic Consultant stating that Project Revenues in each Calculation Date through the Final Maturity Date are projected to produce (x) Senior Debt Service Coverage Ratios that are not less than one hundred fifty percent (150%), (y) Total Debt Service Coverage Ratios that are not less than one hundred thirty-five percent (135%) and (z) Senior Loan Life Coverage Ratios that are not less than one hundred fifty percent (150%).

(o) Coverage Certificate. No later than ten (10) Business Days after each Calculation Date, the Borrower shall furnish to the TIFIA Lender a certificate signed by the Borrower’s Authorized Representative certifying as to (i) the Senior Debt Service Coverage Ratio, the Total Debt Service Coverage Ratio and the Senior Loan Life Coverage Ratio as of such Calculation Date and for each of the two (2) immediately preceding Calculation Dates and (ii) the projected Senior Debt Service Coverage Ratio, the projected Total Debt Service Coverage Ratio and the projected Senior Loan Life Coverage Ratio for each of the Calculation Dates immediately succeeding such Calculation Date through the Final Maturity Date (a “**Coverage Certificate**”). Each Coverage Certificate shall be in form and substance

satisfactory to the TIFIA Lender and shall include the Borrower's calculation of each such coverage ratio in reasonable detail.

(p) Application of Certain Reserves to Pay Debt Service; Replenishment of Reserves. If there are deficiencies with the deposits described in Section 8(d)(iii) through (ix) (*Security and Priority; Flow of Funds*), pursuant to Section [] of the Master Indenture, the Trustee shall transfer funds (i) first, with respect to the Senior Obligations, in the following order of priority, from the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund to the Senior Obligations Fund and Senior Obligations Reserve Fund; provided, however, that if there are insufficient funds in the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund to fully replenish all such deficiencies, the amounts on deposit in the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund shall be applied *pro rata* based on the Outstanding principal amount of Senior Obligations, and (ii) second, with respect to the Subordinate Obligations, in the following order of priority, from the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund to the Subordinate Obligations Fund and Subordinate Obligations Reserve Fund; provided that if there are insufficient funds in the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund to fully replenish all such deficiencies, the amounts on deposit in the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund shall be applied *pro rata* based on the Outstanding principal amount of Subordinate Obligations.

(q) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Pledged Revenues or the Borrower's other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the Pledged Revenues or the Trust Estate; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(r) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(s) Events of Loss; Loss Proceeds.

(i) If an Event of Loss shall occur with respect to the Toll Road or any part thereof, the Borrower shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all Loss Proceeds stemming from such event in accordance with Section 16(s)(ii) (*Event of Loss; Loss Proceeds*) and, to the extent applicable, Section 10(a)(ii) (*Mandatory Prepayments*).

(ii) The Borrower shall apply all Loss Proceeds as provided in Section [] of the Master Indenture. The Borrower shall cause the relevant insurers, reinsurers and Governmental Authorities, as applicable, to pay all Loss Proceeds directly to the Trustee as loss payee and, if paid to the Borrower, shall be received in trust and for the benefit of the Trustee segregated from other funds of the Borrower, and shall be paid over to the Trustee in the same form as received (with any necessary endorsement).

(t) Immunity. To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

(u) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the TIFIA Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(v) Major Maintenance Reserve Fund Requirements. The Borrower shall comply with applicable requirements of the Master Indenture relating to the funding of, and application of amounts on deposit in the Major Maintenance Reserve Fund.

(w) Operating Agreement. The Borrower shall seek to extend the term of the Operating Agreement if necessary in order to ensure that the Operating Agreement remains valid throughout the term of the Secured Obligations.

(x) Cargo Preference Act. Pursuant to 46 C.F.R. Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Toll Road:

At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial

ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(y) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 C.F.R. Part 20.

Section 17. Negative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Except for Additional Senior Obligations described in paragraph (a) and (b) of the definition “Additional Senior Obligations”, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness of any kind payable from or secured by the Trust Estate or Project Revenues; provided, that the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur any Variable Interest Rate Obligations.

(ii) Prior to the incurrence of Permitted Debt described in clauses (b) or (e) of the definition thereof, the Borrower shall provide to the TIFIA Lender a certificate signed by the Borrower’s Authorized Representative, demonstrating to the TIFIA Lender’s satisfaction that such proposed indebtedness is authorized pursuant to this Section 17(a) (*Indebtedness*) and satisfies the applicable requirements under the definitions of “Permitted Debt” and “Additional Senior Obligations,” as applicable.

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, either (i) extinguish or impair the Liens on the Trust Estate granted pursuant to the Master Indenture, (ii) amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender’s determination) in connection with the TIFIA Loan, (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender’s determination) in connection with the TIFIA Loan, or (iv) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender’s determination). Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification or supplement to any Related Document within five (5) Business Days after execution thereof.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Toll Road, the Trust Estate, the Project Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Principal Project Contract, unless pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) Distributions from the Distribution Lock-up Fund.

(i) Except as expressly set forth in this Section 17(d) (*Distributions from the Distribution Lock-up Fund*), the Borrower shall not at any time release, transfer or make payments, or permit the Trustee to release, transfer or make payments from amounts on deposit in the Distribution Lock-up Fund or any account therein.

(ii) Prior to the first Calculation Date immediately succeeding the fifth anniversary of the Substantial Completion Date, amounts on deposit in the Distribution Lock-up Fund shall only be used to replenish a deficiency first in the Senior Obligations Reserve Fund and second in the Subordinate Obligations Reserve Fund.

(iii) Commencing on the first Calculation Date immediately succeeding the fifth anniversary of the Substantial Completion Date and on each Calculation Date thereafter, amounts on deposit in the Distribution Lock-up Fund may be applied at the direction of the Borrower:

(A) (I) to replenish a deficiency first in the Senior Obligations Reserve Fund and second in the Subordinate Obligations Reserve Fund to the extent that amounts on deposit in the Pledged Account are insufficient therefor in accordance with Section 16(p) (*Application of Certain Reserves to Pay Debt Service; Replenishment of Reserves*), (II) to any other Project Accounts (other than the Pledged Account or the Unpledged Account) to satisfy any deficiency in any such Project Account, or (III) for the redemption or prepayment of Senior Obligations and the TIFIA Bond, provided that such prepayment or redemption shall be made pro rata among the Senior Obligations and the TIFIA Bond on the basis of the respective Outstanding principal amounts thereof which may be currently prepaid or redeemed and

(B) after any deposits required pursuant to subclause (A) and upon satisfaction by the Borrower of the Restricted Payment Conditions set forth below, to the Pledged Account and the Unpledged Account (collectively, the transfers referred to in this Section 17(d)(iii)(B) (*Distributions from the Lock up Account*) are referred to herein as the "**Restricted Payments**"; provided, however that transfers to the Unpledged Account are further subject to the provisions of clause (vii) of this Section 17(d) (*Distributions from the Distribution Lock-up Fund*) below.

(iv) The Borrower shall not make, nor permit to be made, any Restricted Payments prior to the fifth anniversary of the Substantial Completion Date. On and after the fifth anniversary of the Substantial Completion Date, Restricted Payments can only be made if the Borrower shall have delivered to the TIFIA Lender a certificate of the Borrower's Authorized Representative (including calculations in reasonable detail of the applicable coverage ratios) certifying as of the two recent Calculation Dates that the following conditions have been satisfied (the "**Restricted Payment Conditions**"):

(A) no Event of Default, or any event that with the giving of notice or the passage of time, or both, would constitute an event of default, has occurred and is continuing under the TIFIA Loan Documents, any other Related Document or documentation for other Secured Obligations (if any), or, in each case, would occur as a direct result of the applicable transfer;

(B) the Reserve Accounts are each fully funded at their respective requirements;

(C) no default under the Principal Project Contracts;

(D) the Borrower is not insolvent and would not be rendered insolvent by the making of such proposed Restricted Payment;

(E) (I) the Senior Debt Service Coverage Ratio as of such Calculation Dates is equal to at least one hundred thirty-five percent (135%), (II) the Total Debt Service Coverage Ratio as of such Calculation Date is equal to at least one hundred twenty-five percent (125%), and (III) the Senior Loan Life Coverage Ratio as of such Calculation Date is equal to at least one hundred thirty-five percent (135%);

(F) (I) the Senior Debt Service Coverage Ratio projected for each of such Calculation Date through the Final Maturity Date is equal to at least one hundred forty percent (140%), (II) the Total Debt Service Coverage Ratio projected for each of such Calculation Date through Final Maturity is equal to at least one hundred thirty percent (130%), and (III) the Senior Loan Life Coverage Ratio projected for each of such Calculation Date through the Final Maturity Date is equal to at least one hundred forty percent (140%);

(G) the TIFIA Debt Service is being paid on a current basis and no due and payable amounts of TIFIA Debt Service from any prior periods remain unpaid; and

(H) Second anniversary of TIFIA Debt Service Payment Commencement Date has occurred.

Any calculation of the Senior Debt Service Coverage Ratio, Total Debt Service Coverage Ratio or Senior Loan Life Coverage Ratio for purposes of Section 17(d)(iv) (*Distributions from the Distribution Lock-up Fund*) shall be based solely on Net Revenues and shall disregard

amounts available under any amounts available under any liquidity support arrangement or in any Reserve Account.

(v) Any time there is a deficiency in the Senior Obligations Reserve Fund or the Subordinate Obligations Fund, such deficiency shall be replenished first from the Pledged Account and second from the Distribution Lock-up Fund in accordance with Section 16(p) (*Application of Certain Reserves to Pay Debt Service; Replenishment of Reserves*).

(vi) In addition, at the direction of the Borrower, amounts on deposit in the Pledged Account may be upon satisfaction of the requirements in the following sentence, transferred at any time to a new account within the Project Accounts to pay costs of improvements to the Project or any Additional Project (which Additional Project satisfies the requirements of Section 17(f) (*Additional Projects*)). Prior to transferring any amounts from the Pledged Account to the Project Accounts, the Borrower shall deliver to the TIFIA Lender, no earlier than ten (10) Business Days and no later than three (3) Business Days prior to the proposed transfer, a certificate signed by the Borrower's Authorized Representative certifying as to the matters contemplated in clauses (i) through (iv) above, including a Coverage Certificate providing calculations in reasonable detail of the applicable coverage ratios. The Borrower shall only apply amounts on deposit in the Pledged Account for costs of an Additional Project in accordance with the provisions hereof and of the Master Indenture.

(vii) Fifty percent (50%) of the amounts to be deposited in the Unpledged Account shall be transferred to the TIFIA Loan Prepayment Account so that in accordance with Section 10(a)(i) (*Mandatory Prepayments*), the Borrower shall prepay a portion of the TIFIA Bond. Amounts in the Unpledged Account can be used for any lawful purpose of the Borrower.

(e) Additional Project Contracts. The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) that commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower of, amounts that either: (i) exceed \$2,500,000 in any Borrower Fiscal Year, or (ii), alone or when aggregated with the other Total Project Costs or Operation and Maintenance Expenses, as applicable, in the same line item of the applicable budget set forth in the Financial Plan most recently approved by the TIFIA Lender, would cause aggregate Total Project Costs or Operation and Maintenance Expenses, as applicable, for such line item in any Borrower Fiscal Year to exceed the amounts for such line item for any Borrower Fiscal Year reflected in the budget in the Financial Plan most recently approved by the TIFIA Lender.

(f) Additional Projects. The prior written approval of the TIFIA Lender shall be required for any Additional Project.

(g) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the Toll Road, a substantial portion of the assets included in the Toll Road, or its rights and obligations under any Related Document, in each case unless

such sale, lease or assignment (i) could not reasonably be expected to result in a Material Adverse Effect, and (ii) is made by the Borrower in the ordinary course of business.

(h) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Master Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

(i) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, the Borrower shall not (i) sell or transfer any property or assets constituting part of the Toll Road to, or purchase or acquire any property or assets of, any other Governmental Authority for inclusion as part of the Toll Road except in accordance with Section 17(f) (*Additional Projects*), or (ii) otherwise engage in any other transactions in connection with the Toll Road with, any other Governmental Authority (including any other Governmental Authority of or in the State) the terms and provisions of which are materially adverse to the Borrower or the Toll Road or that could reasonably be expected to result in a Material Adverse Effect.

(j) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or the Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Government.

(k) Change in Legal Structure; Mergers and Acquisitions. The Borrower shall not, and shall not agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person, other than purchases or other acquisitions of inventory or materials or spare parts or Major Maintenance Expenditures, each in the ordinary course of business in compliance with the annual budget set forth in the Financial Plan most recently approved by the TIFIA Lender; or

(ii) reorganize, consolidate with, or merge into another Person unless (A) such merger or consolidation is with or into another entity established and Controlled by Caltrans, and, in each case, including reorganization, does not adversely affect or impair to any extent or in any manner (1) the Pledged Revenues or other elements of the Trust Estate, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such

reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender.

(l) No Defeasance of TIFIA Bond. The Borrower shall not defease the TIFIA Bond pursuant to the Master Indenture without the prior written consent of the TIFIA Lender.

(m) OFAC Compliance. The Borrower shall not (and shall cause each other Borrower Related Party not to):

(i) violate (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act, (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State, or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or

(ii) be a Person (A) that is charged with, or that has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws, (B) that is convicted of any violation of, is subject to civil or criminal penalties pursuant to, has any of its property seized or forfeited under, or enters into any agreement with the Government or a state or local government related to violations of, any such laws, (C) that is named on the list of “Special Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list), (D) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law, (E) that is owned, Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this Section 17(m)(ii) (*OFAC Compliance*), or (F) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States of America and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

The Borrower shall not knowingly make a payment, directly or indirectly, to any Principal Project Party that has violated any of the laws referenced in Section 17(m)(i) (*OFAC Compliance*) or that is a Person described in Section 17(m)(ii) (*OFAC Compliance*).

(n) Hedging and Variable Interest Rate Obligations. The Borrower shall not enter into any Hedging Transaction or Variable Interest Rate Obligation without the prior written approval of the TIFIA Lender.

(o) Operations and Maintenance Expenses. The Borrower shall not increase in any year the aggregate amount of Operation and Maintenance Expenses by more than 10% over the amount shown for such expenditures in the prior year as shown in the Base Case Financial Model, without the TIFIA Lender's prior written consent. No consent shall be required for the following purposes, provided that the Borrower submits a written explanation for the increase over 10% together with a Written Engineer's Certificate stating that such expenditures were necessary and permitted hereunder: (i) reasonably unforeseen expenditures to the extent necessary to pay for compliance with emergency expenses; (ii) reasonably unforeseen expenditures to the extent necessary to be made to cause the Project to be in compliance with any applicable mandatory requirement imposed by a Governmental Authority; (iii) expenses and reasonably incurred as a result of increased vehicular traffic greater than that shown in the Traffic and Revenue Study, (iv) expenses related to collection of unpaid Toll Revenues; or (v) expenditures necessary to be in compliance with Section [5.05] of the Master Indenture.

(p) No Prohibited Business. The Borrower shall not at any time engage in any business or activity other than as authorized the laws of the State.

(q) Distributions from the Operation and Maintenance Reserve Fund and the Major Maintenance Reserve Fund. The Borrower shall not at any time release, transfer or make payments, or permit the Trustee to release, transfer or make payments from amounts on deposit in Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund if Pledged Revenues are insufficient to pay Senior Debt Service or Subordinate Debt Service. If the Borrower fails to make any of the deposits described in clauses (iii) through (ix) of Section 8(d) (*Security and Priority; Flow of Funds*), the Borrower, or the Trustee upon instruction by the Borrower, shall transfer any funds available, (i) first, with respect to the Senior Obligations, in the following order of priority: the Pledged Account, Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund, and (ii) second, with respect to the Subordinate Obligations, in the following order of priority: the Pledged Account, the Distribution Lock-up Fund, the Major Maintenance Reserve Fund and the Operation and Maintenance Reserve Fund, in each case in the order of priority provided in Section 8(d)(iii) through (ix) (*Security and Priority; Flow of Funds*).

Section 18. Indemnification. To the extent permitted by law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Toll Road; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines,

penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnatee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 18 (*Indemnification*) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 18 (*Indemnification*). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnatee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 18 (*Indemnification*) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 18 (*Indemnification*) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 18 (*Indemnification*)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 19. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. After such date, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 19 (*Sale of TIFIA Loan*). Such sale or reoffering shall be on such terms as the TIFIA Lender shall deem advisable. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 30 (*Amendments and Waivers*). The TIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 19 (*Sale of TIFIA Loan*) shall not (x) obligate the TIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

Section 20. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any of the principal amount of or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*), and any mandatory prepayment required pursuant to the provisions of Section 10(a) (*Mandatory Prepayments*)), when and as the payment thereof shall be required under this Agreement or the TIFIA Bond or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, or (B) the Borrower’s knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(ii) (*Covenant Default*), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided further, that if such failure is due to there being an insufficient amount in any of the Reserve Accounts, then no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(ii) (*Covenant Default*) for a period of twelve (12) months.

(iii) Development Default. A Development Default shall occur and such Development Default shall not be cured within thirty (30) days thereafter; provided that no Event of Default shall be deemed to have occurred and be continuing by reason of a Development Default pursuant to clause (a) of the definition thereof, if and so long as within such thirty (30) day period, the Borrower demonstrates to the TIFIA Lender’s reasonable satisfaction (which demonstration shall include certification by the Independent Engineer) that (A) the Borrower is proceeding with the construction of the Project with due diligence and will achieve Substantial Completion by the projected Substantial Completion Date and (B) the Borrower has sufficient funds to pay all construction costs under the Development Agreement. If a Development Default shall occur and is not cured, to the extent provided in the preceding sentence, the TIFIA Lender may (1) suspend the disbursement of TIFIA Loan proceeds under this Agreement and (2) pursue such other remedies as provided in this Section 20 (*Events of Default and Remedies*). If so requested by the TIFIA Lender in connection with a Development Default, the Borrower shall immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 20(a)(iv) (*Misrepresentation Default*) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 14(h) (*No Debarment*), Section 14(j) (*Compliance with Federal Requirements*), Section 14(k) (*Transportation Improvement Program*), Section 14(q) (*OFAC; Anti-Corruption Laws*), or Section 14(dd) (*Patriot Act*);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Senior Obligations. Any acceleration shall occur of the maturity of any Senior Obligation, or any such Senior Obligation shall not be paid in full upon the final maturity thereof.

(vi) Cross Default. (A) Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the Indenture Documents, or made in or delivered pursuant to the documents (the “**Other Loan Documents**”) under which any Senior Obligation is created or incurred, shall prove to be false or misleading in any material respect (each an “**Other Indebtedness Misrepresentation Default**”), or any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Indenture Documents or the Other Loan Documents, and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Indenture Documents or the Other Loan Documents (as the case may be) with respect to such default (each an “**Other Indebtedness Covenant Default**”), if the effect of such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default shall be to permit the immediate acceleration of the maturity of any or all of the Senior Obligations, and, in the

case of any such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default, the Borrower shall have failed to cure such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of such Senior Obligations.

(B) The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Related Document or any Related Document shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Related Document, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(vi)(B) (*Cross Default*) if, in the case of any termination of a Principal Project Contract, the Borrower replaces such Principal Project Contract with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness and experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the TIFIA Lender) and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender) and (3) effective as of the date of termination of the Principal Project Contract being replaced.

(vii) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$[1,000,000] (inflated annually by CPI) that are payable from Project Revenues and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(viii) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a public entity unless at or prior to the time the Borrower ceases to exist in such form a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of the Borrower and has assumed all of the obligations of the Borrower under the TIFIA Loan Documents and the Indenture Documents, including the payment of all Secured Obligations.

(ix) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to any Borrower Related Party (other than the Borrower)

or any Principal Project Party, excluding (1) a Construction Contractor or a Guarantor to the extent the Bankruptcy Related Event does not constitute a default under Section 16.1.1(n) and (o) of the Construction Agreement, and (2) in the case of a Bankruptcy Related Event occurring with respect to such Construction Contractor or such Guarantor that constitutes a default under Sections 16.1.1(n) or (o) of the Construction Agreement, the Borrower provides the TIFIA Lender with a plan acceptable to the TIFIA Lender in its sole discretion within thirty (30) days immediately following the occurrence of such Bankruptcy Related Event to (I) replace the relevant Construction Contractor or Guarantor, (II) in the case of a Bankruptcy Related Event with respect to a Construction Contractor, to complete the Project with the non-defaulting Construction Contractors, or (III) in the case of a Bankruptcy Related Event with respect to any Guarantor, cause a letter of credit to be provided by a Qualified Issuer for the benefit of the Borrower, which letter of credit shall not be secured by, or payable from, Pledged Revenues and which secures the obligations guaranteed by such Guarantor, and in each case the Borrower executes such plan in accordance with its terms.

(x) Project Abandonment. The Borrower shall abandon the Toll Road.

(xi) Invalidity of TIFIA Loan Documents. (A) Any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable; or any Borrower Related Party contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby.

(xii) Cessation of Operations. Operation of all or a portion of the Toll Road shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated) and the Borrower shall either be self-insured in an amount sufficient to cover, or shall have in force an insurance policy or policies under which the Borrower is entitled to recover amounts sufficient to pay (and may use such amounts to pay) all Senior Debt Service, TIFIA Debt Service and costs and expenses of the Borrower during such cessation of operations.

(b) Upon the occurrence of an Event of Default described in Section 20(a)(iii) (*Development Default*), all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall immediately be deemed terminated.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement

of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (A) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (B) declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the TIFIA Bond or the other TIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 20 (*Events of Default and Remedies*) shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all of which shall survive any such action.

Section 21. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Toll Road-related transactions (including collection of Pledged Revenues, and any other revenues attributable to the Toll Road, and TIFIA Loan requisitions received and disbursements made with regard to the Toll Road), so that audits may be performed to ensure compliance with and

enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 21(b) (*Accounting and Audit Procedures; Inspections; Reports and Records*) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 21(b) (*Accounting and Audit Procedures; Inspections; Reports and Records*) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. Unless otherwise required pursuant to 49 C.F.R. § 18.42, the Borrower shall maintain and retain all files relating to the Toll Road, the Project Revenues and the TIFIA Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Toll Road, the Project Revenues, the TIFIA Loan or this Agreement is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and the Borrower. The Borrower shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Toll Road or the Project Revenues that the TIFIA Lender may reasonably request from time to time.

(d) Copies of Secured Obligation Related Notices. The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Nationally Recognized Rating Agency that has provided, or is being requested to provide, a rating with respect to the Toll Road or any indebtedness of the Borrower that is or will be secured by or paid from the Project Revenues, (ii) all notices and other written communications, other than those that are non-substantive or ministerial in nature, received by it from the Trustee or any Bondholder, and (iii) all reports, notices and other written materials, other than those that are non-substantive or ministerial in nature, required to be sent to the Trustee or any Bondholder under the Indenture Documents, including all such notices, other than those that are non-substantive or ministerial in nature, relating to any of the Principal Project Contracts; unless, in each case, the TIFIA Lender notifies the Borrower that any such reports, notices and/or other written materials no longer need to be provided.

(e) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in 2017 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 C.F.R. § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Toll Road or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 22. Financial Plan, Statements, and Reports.

(a) Financial Plan. The Borrower shall provide to the TIFIA Lender and the FHWA Division Office, within sixty (60) days after the Effective Date and annually thereafter not later than ninety (90) days after the beginning of each Borrower Fiscal Year, a Financial Plan. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model. The Financial Plan shall not reflect amortization of Senior Obligations until such time as all currently accruing interest on the TIFIA Loan is being paid in full. The initial and each subsequent Financial Plan delivered hereunder shall be subject to approval by the TIFIA Lender.

(i) The Financial Plan shall be prepared in accordance with recognized financial reporting standards, such as those in the “Guide for Prospective Financial Information” of the American Institute of Certified Public Accountants, as amended from time to time, and shall be in form and substance satisfactory to the TIFIA Lender.

(ii) The Financial Plan shall include: (A) a certificate signed by the Borrower’s Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower’s knowledge and belief; (B) a certificate signed by the Borrower’s Authorized Representative demonstrating that annual projected Net Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Rate Coverage Test established pursuant to Section 16(n) (*Rate Coverage*); and (C) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, in substantially the form of the Base Case Financial Model, based upon assumptions and projections with respect to the Pledged Revenues, expenses and other financial aspects of the Toll Road that shall reflect the prior experience and current status of the Toll Road, and the expectations of the Borrower with respect to the Toll Road, as of the most recent practicable date prior to the delivery of such Revised Financial Model.

(iii) For the period through the Substantial Completion Date, the Financial Plan shall:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since

the previous Financial Plan, discuss reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the preceding Financial Plan;

(B) provide updates to the Construction Schedule, including (1) an update, if any, to the Projected Substantial Completion Date and an explanation of any such adjustment and (2) an update, if any, to the Final Maturity Date (but in no event shall the Final Maturity Date be later than the date that is thirty-five (35) years following the Substantial Completion Date;

(C) identify major milestones for each phase of the Project and compare current milestone dates with the milestone dates in the Construction Schedule and in the preceding Financial Plan, and discuss reasons for changes in Project milestones;

(D) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss reasons for and implications of the funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(E) provide an updated cash flow schedule showing annual cash needs versus available revenue and funding to meet those needs and identify any potential revenue and funding shortfalls, and addressing contingency measures that will or may be taken to address any shortfalls;

(F) based on the updated cash flow schedule, provide projected Senior Debt Service Coverage Ratios and Total Debt Service Coverage Ratios through the Final Maturity Date;

(G) provide cost containment strategies and risk mitigation plans that have been or may be implemented to address factors that are affecting or could affect the scheduled completion or financial viability of the Project;

(H) provide the total value of approved changes in Project design or scope, and provide a listing of each individual change valued at \$[5,000,000] or more, setting forth the rationale or need for the proposed change and describing the impact of such change on the Project;

(I) to the extent that any Hedging Transactions are then in effect, report on the notional amounts covered by such Hedging Transactions; and

(J) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative executive summary of the topics described in clauses (A) through (I) above since the Effective Date and since the preceding Financial Plan, describing in reasonable detail all material matters that may affect the future

performance of the Borrower's obligations under this Agreement, including any adjustment to the Projected Substantial Completion Date, and the causes thereof.

(iv) For the period following the Substantial Completion Date until repayment of the TIFIA Loan in full, the Financial Plan shall:

(A) provide an updated cash flow schedule showing annual cash inflows (Project Revenues, interest and other income) and outflows (Operation and Maintenance Expenses, Major Maintenance Expenditures, Senior Debt Service, TIFIA Debt Service, replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls;

(B) report on variances during the prior Borrower Fiscal Year between the actual Operation and Maintenance Expenses and Major Maintenance Expenditures incurred and the budgeted Operation and Maintenance Expenses and Major Maintenance Expenditures as shown in the Financial Plan for such prior Borrower Fiscal Year, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more;

(C) provide current and estimated amounts of Pledged Revenues received and the amounts deposited into each of the accounts and subaccounts established under the Indenture Documents and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts;

(D) provide an updated budget for Operation and Maintenance Expenses and Major Maintenance Expenditures for the current Borrower Fiscal Year;

(E) provide an updated schedule of actual and projected Net Revenues, showing actual and projected Senior Debt Service Coverage Ratios and Total Debt Service Coverage Ratios, and report on variances during the prior Borrower Fiscal Year between the Pledged Revenues actually received and the budgeted Pledged Revenues as shown in the Financial Plan for such prior Borrower Fiscal Year, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more;

(F) provide a schedule of then current toll rates, receipts, and charges and all returns, fees or moneys constituting Project Revenues and planned increases thereto;

(G) to the extent that any Hedging Transactions are then in effect, report on the notional amounts and mark to market values under such Hedging Transactions; and

(H) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative executive summary of the topics described in clauses (A) through (G) above since the Effective Date and since the preceding Financial

Plan, including in reasonable detail (i) an explanation of any variances in costs or revenues in comparison to the Base Case Financial Model and the preceding Financial Plan, and (ii) a description of any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof, including traffic and revenue reports, operational contracts, and third-party transactions.

(b) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the TIFIA Lender with written notification at least [thirty (30)] days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than [\$10,000,000], which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the TIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(c) Financial Statements. The Borrower shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(B) as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the TIFIA Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP (or in the case of non-U.S. Persons, substantially equivalent principles) applied

consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(d) Officer's Certificate. The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 22(c) (*Financial Statements*), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event that, with the giving of notice or the passage of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

Section 23. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with the FHWA Oversight Agreement. The Borrower's oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the FHWA Oversight Agreement, which may be amended from time to time upon mutual agreement of the Borrower and the FHWA Division Office, or when so required by federal statute or otherwise required by the Congress. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation or other information as shall be requested by the TIFIA Lender, or its agents, including any independent engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender the documentation described below.

(i) Monthly Construction Progress Report. On or before the last Business Day of any calendar month during the Construction Period, a report executed by a Borrower's Authorized Representative that:

(A) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar month and the amount of Total Project Costs estimated to be required to complete the Project;

(B) provides a demonstration that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project;

(C) provides an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule;

(D) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently approved by the TIFIA Lender;

(E) provides a detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems;

(F) specifies the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule;

(G) specifies any proposed or pending change orders;

(H) specifies any material changes or deviations from the Borrower's land procurement plans or schedule;

(I) includes a copy of each report delivered by a Construction Contractor to the Borrower that has not previously been delivered to the TIFIA Lender in a prior report delivered pursuant to this Section 23(b)(i) (*Monthly Construction Progress Report*); and

(J) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause the Construction Contractor to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any Construction Contractor's performance of its obligations under the Construction Agreement to which such Construction Contractor is a party.

(ii) Annual Operating Budget. The Borrower shall submit (A) no later than 30 days prior to the commencement of each Borrower Fiscal Year, an operating plan and a preliminary budget and (B) not later than the first day of each Borrower Fiscal Year, a final budget, in each case, on a cash flow basis of projected traffic, Pledged Revenues, Operation and Maintenance Expenses, Major Maintenance Expenditures, interest, and other costs for the next Borrower Fiscal Year (collectively, an "**Annual Operating Budget**"), each prepared by the Borrower in good faith and accompanied by a certificate of the Borrower's Authorized Representative to the effect that such officer has no reason to believe that it is incorrect or misleading in any material respect, based upon information then known by such Authorized Representative.

(iii) Quarterly Traffic and Operating Report. For the period commencing after the Substantial Completion Date, deliver to the TIFIA Lender, not later than ninety (90) days after the end of each financial quarter, a traffic and operating report showing (A) the operating data for the Toll Road for the previous financial quarter, including total Pledged Revenues received and total Operation and Maintenance Expenses and Major Maintenance Expenditures incurred, (B) the variances for such period between the Pledged Revenues actually received and the budgeted Pledged Revenues as shown in the Financial Plan most recently approved by the TIFIA Lender, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more, and (C) the variances for such period between the actual Operation and Maintenance Expenses incurred and the budgeted Operation and Maintenance Expenses as shown in the Financial Plan, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more.

(iv) Requested Information. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver to the TIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Toll Road or the Project Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements related to the acquisition or control of any Toll Road right-of-way.

(c) Toll Road Operations. For the period following the Substantial Completion Date, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Toll Road's operations and, as the TIFIA Lender may request from time to time, to receive reporting on the operation and management of the Toll Road, and copies of any contracts relating to the operation, maintenance, and safety services for the Toll Road. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation, or other information requested by the TIFIA Lender. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender, to carry out the provisions of this Section 23(c) (*Toll Road Operations*), and the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring, including the costs of any financial oversight advisor, shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

(d) Independent Engineer. The Borrower shall retain an Independent Engineer throughout the term of this Agreement. The Independent Engineer shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower of its obligations under this Agreement and the Related Documents. The Borrower may replace the Independent Engineer, subject to the TIFIA Lender's right to object to any replacement Independent Engineer in accordance with this Section 23(d) (*Independent Engineer*). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days advance written notice of any proposed replacement of the Independent Engineer, together with supporting information concerning the qualifications of the proposed replacement Independent Engineer. The proposed replacement Independent Engineer shall become the Independent Engineer thirty (30) Business Days following the date

of the notice provided by the Borrower under this Section 23(d) (*Independent Engineer*), unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Borrower's notice. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed replacement Independent Engineer. The Borrower shall pay for all services performed by the Independent Engineer.

Section 24. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 25. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the TIFIA Lender, the Servicer (if any), the Executive Director, and the Government harmless, to the extent permitted by law and in accordance with Section 18 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

Section 26. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 27. TIFIA Lender's Authorized Representative.

(a) The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, and the further delegation of authority, dated August 31, 2016 (the "**Delegation**"), the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 28. Servicer. The TIFIA Lender may from time to time designate another entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 29. Fees and Expenses.

(a) Commencing in Federal Fiscal Year 2017 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the fifteenth (15th) of November. The TIFIA Lender shall establish the amount of this annual fee, and the TIFIA Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the fee, the TIFIA Lender will adjust the previous year's base amount in proportion to the percentage change in CPI. For the FFY 2017 calculation, the TIFIA Lender will use the FFY 2017 base amount of \$13,000, which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time-to-time, within thirty (30) days after receipt of any invoice from the TIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys' and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under, this Agreement, any other Related Document, or the Trust Estate, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder; and

(iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 29 (*Fees and Expenses*) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 30. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 31. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 32. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 33. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender.

Section 34. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 35. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 36. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 37 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 37. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to TIFIA Lender:

Build America Bureau
United States Department of
Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of
Credit Programs
Email: BureauOversight@dot.gov

with copies to:

Federal Highway Administration
California Division Office
650 Capitol Mall, Suite 4-100
Sacramento, California 95814
Attention: []

Servicer (at address provided
below)

If to Borrower:

Orange County Transportation
Authority
550 South Main Street
P.O. Box 14184
Orange, California 92863
Attention: []
Email: []

If to Servicer:

[Name]

[Address]

Attention: [_____]

Email: [_____]

With copies to:

[Insert relevant parties]

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(g) (*Manner of Payment*) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time-to-time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 37 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 37 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 38. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 39. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 18 (*Indemnification*), the reporting and record keeping requirements of Section 21(b) (*Inspections*) and Section 21(c) (*Reports and Records*), and the payment requirements of Section 29 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 40. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

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

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
Name: _____
Title: _____

UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and
through the Executive Director of the Build
America Bureau

By: _____
Name: _____
Title: _____

SCHEDULE I

PROJECT BUDGET

[To be provided by Borrower]

SCHEDULE II
CONSTRUCTION SCHEDULE

[To be provided by Borrower]

SCHEDULE 14(f)
LITIGATION

SCHEDULE 14(u)

INSURANCE

[To be provided by Borrower]

EXHIBIT A
FORM OF TIFIA BOND
ORANGE COUNTY TRANSPORTATION AUTHORITY
I-405 IMPROVEMENT PROJECT

(TIFIA – 2017[])
TIFIA BOND

Maximum Principal Amount: \$ [627,000,000]
(excluding capitalized interest)

Effective Date: _____

Due: _____

ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity duly organized under the laws of the State of California (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(g) (*Manner of Payment*) and Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. [If the Final Maturity Date is amended in connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 22(a)(iii)(B) (*Financial Plan*) of the TIFIA Loan Agreement,

Exhibit A-1

the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.]³

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “**TIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Loan Agreement.

Payment of the obligations of the Borrower under this TIFIA Bond is secured pursuant to the Master Indenture referred to in the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

³ To be included when the TIFIA Lender has agreed to a Final Maturity Date that is a defined anniversary of the Substantial Completion Date. Pursuant to the Act, the Final Maturity Date cannot be later than the 35th anniversary of the Substantial Completion Date. The actual number of years will be determined as part of the TIFIA Lender’s underwriting process.

IN WITNESS WHEREOF, [BORROWER] has caused this TIFIA Bond to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

(SEAL)

By: _____

Name: _____

Title: _____

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Master Indenture.

[NAME OF TRUSTEE]

By: _____
(Authorized Signer)

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns
and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B
ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

<u>Borrower Fiscal Year</u>	<u>Amount</u>
	\$

EXHIBIT C

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS— PRIMARY COVERED TRANSACTIONS

The undersigned, on behalf of ORANGE COUNTY TRANSPORTATION AUTHORITY, hereby certifies that the ORANGE COUNTY TRANSPORTATION AUTHORITY has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement, dated as of [Dated Date], between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____

Name:

Title:

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as Appendix One to this **Exhibit D**. Supporting documentation should be submitted with the requisition.

The TIFIA Lender agrees to promptly send to the Borrower in accordance with Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as Appendix Two to this **Exhibit D** setting forth the date of receipt by the TIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the TIFIA Lender. All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the TIFIA Lender, the TIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid

and the most recent certificate of or report prepared by the Independent Engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

The TIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or with good engineering practices, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or

(iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 13(b) (*Conditions Precedent to All Disbursements*) of the TIFIA Loan Agreement; or

(v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request

in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

United States Department of Transportation
c/o Director, TIFIA Joint Program Office (HITJ)
Federal Highway Administration
Room E64-426
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
California Division Office
[Address]
Attention: Division Administrator

[Loan Servicer]
[Address]
[Attention]

Re: [] PROJECT (TIFIA # [])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [Dated Date] (the “**TIFIA Loan Agreement**”), by and between ORANGE COUNTY TRANSPORTATION AUTHORITY (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [].
2. The requested date of disbursement is [] 15, 20[] (the “**Disbursement Date**”), which is the first Business Day following [] 15, 20[].
3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, \$[]. The amounts previously disbursed and to be disbursed under the Senior Loan Agreements as of the date of the requested disbursement equal, in the aggregate, \$[]. The amounts previously disbursed and to be disbursed under the [applicable funding document] as of the date of the requested disbursement equal, in the aggregate, \$[]. [Prior to or simultaneously herewith the undersigned has requisitioned a pro rata amount of proceeds from [Senior Obligations] [other funding sources] (in the amount of \$[]) under [the Master Indenture].]

4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan, and the amount of this Requisition together with the sum of all disbursements of TIFIA Loan proceeds made and to be made for the current year will not exceed the cumulative disbursements through the end of the current year as set forth in the Anticipated TIFIA Loan Disbursement Schedule.
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
7. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
8. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 13(a)(xix) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the TIFIA Lender [and [the FHWA Division Office][*insert other USDOT modal agency office, if applicable*]] and with good engineering practices.
10. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [_____, 20__] and is continuing.⁴

⁴ Insert the date on which the Borrower submitted the Application to the TIFIA Lender.

13. A copy of the most recent certificate or report of the Independent Engineer delivered pursuant to Section [____] of the Master Indenture has been delivered to each of the above named addressees.
14. A copy of the monthly construction progress report pursuant to Section 23(b)(i) (*Monthly Construction Progress Report*) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Government deems appropriate.
16. A copy of this requisition has been delivered to each of the above named addressees.
17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Trustee.]

Date: _____

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____

Name: _____

Title: _____

APPENDIX TWO TO EXHIBIT D

FORM OF ACKNOWLEDGMENT OF RECEIPT OF

REQUISITION FOR DISBURSEMENT OF TIFIA LOAN PROCEEDS

[Borrower name and address]

Re: Receipt of Requisition for Disbursement of TIFIA Loan Proceeds

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [Dated Date], by and between Orange County Transportation Authority (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), the undersigned authorized representative of the TIFIA Lender hereby acknowledges receipt of the attached Requisition for Disbursement of TIFIA Loan proceeds (the “**Requisition**”) from the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection therewith, we hereby represent and certify the following:

1. The date of receipt of the Requisition is [_____].
2. Unless this Requisition is denied, disbursement shall be made on or before [_____].

Date: [__]

On behalf of the TIFIA Lender's Authorized Representative

Name:

Title:

APPENDIX THREE TO EXHIBIT D
[APPROVAL/DISAPPROVAL] OF THE TIFIA LENDER
(To be delivered to the Borrower)

Requisition Number [●] is [approved in the amount of \$[●]] [approved in part in the amount of \$[●]] [not approved]⁵ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [Dated Date], by and between Orange County Transportation Authority (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and
through the Executive Director of the Build
America Bureau

By: _____
TIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

⁵ Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX THREE TO EXHIBIT D

[Insert reasons for any partial or full denial of approval.]

EXHIBIT E

COMPLIANCE WITH LAWS

The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 C.F.R. § 35; 29 C.F.R. § 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*) and 49 C.F.R. § 21;
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*);
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*, as amended by Pub. L. 92-500);
- (ix) The environmental mitigation requirements and commitments made by the Borrower that result in TIFIA Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. § 4332(2)(C)) and issuance of the Record of Decision for the Project;
- (x) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (xi) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xii) The health and safety requirements set forth in 23 C.F.R. § 635.108;
- (xiii) The prevailing wage requirements set forth in 40 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. § 5, 23 C.F.R. §§ 635.117(f) and 635.118, and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- (xiv) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 C.F.R. § 635.410);

- (xv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 C.F.R.;
- (xvi) The Cargo Preference Act of 1954, as amended (46 U.S.C. §1241(b)), and implementing regulations (46 C.F.R. Part 381); and
- (xvii) The applicable requirements of 49 C.F.R. § 26 relating to the Disadvantaged Business Enterprise program.

EXHIBIT F-1
FHWA OVERSIGHT AGREEMENT

EXHIBIT F-2

PROJECT MANAGEMENT PLAN

EXHIBIT G
TIFIA DEBT SERVICE

EXHIBIT H
TIFIA DEBT STRUCTURE

EXHIBIT I

OPINIONS REQUIRED OF COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that: (a) the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization; (b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action, in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) the TIFIA Bond is secured by the Trust Estate and is a Bond entitled to the benefits of a Bond under the Master Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person, (f) the Master Indenture creates the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act, (g) all actions by the Borrower that are required for the use of Pledged Revenues as required under the Indenture and under the TIFIA Loan Agreement have been duly and lawfully made; (h) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Pledged Revenues as required by the terms of the Indenture and the TIFIA Loan Agreement, (i) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower; (j) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; (k) none of the Borrower is an investment company required to register under the Investment Company Act of 1940, as amended; (l) the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; (m) [the Borrower is not entitled to claim governmental immunity in any breach of contract action under the TIFIA Loan Agreement or the TIFIA Bond or by the Trustee under the Indenture Documents] and (n) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against

the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.⁶

⁶ Other opinions to be added as appropriate for the specific project or transaction.

EXHIBIT J
FORECAST OF NET REVENUE

EXHIBIT K

FORM OF CERTIFICATE OF TRUSTEE

ORANGE COUNTY TRANSPORTATION AUTHORITY

**TIFIA Bond,
I-405 Improvement Project
(TIFIA Project Number)**

The undersigned, [_____] (the “*Trustee*”), by its duly appointed, qualified and acting [_____] , certifies with respect to the above referenced bond (the “*TIFIA Bond*”) dated as of [_____] , 20[___], as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Master Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of [_____].
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained and are in full force and effect.
3. That the documents pertaining to the issuance of the TIFIA Bond to which the Trustee is a party were executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Master Indenture (“*Trusts*”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section [____] of that certain Master Indenture (the “**Indenture**”), dated as of [May 1], 2017, between Orange County Transportation Authority (the “**Borrower**”) and the Trustee.
7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [____], 2017 (the “**TIFIA Loan Agreement**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Bondholder**”).
8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee [and of Bond Registrar and Paying Agent] for and in respect of the TIFIA Bond as set forth in the Master Indenture and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Section [____] of the Master Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Section [____] of the Master Indenture.
9. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Master Indenture (including, but not limited to, [*insert name of account designated for TIFIA Debt Service*]) have been established as provided in the Master Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [_____], 20[__]

[TRUSTEE]

By: _____

Its:

ANNEX ONE TO EXHIBIT K
OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT K
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT L
FORM OF BORROWER'S OFFICER'S CERTIFICATE

[TO BE UPDATED CLOSER TO CLOSING OF THE LOAN]

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 20[___] (the "TIFIA Loan Agreement"), by and among the Orange County Transportation Authority (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

The undersigned, [____], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 13(a)(iii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit A are complete and fully executed copies of each Indenture Document[, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date,] and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the TIFIA Lender in its sole discretion;
- (b) pursuant to Section 13(a)(viii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (c) [pursuant to Section 13(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit C is a true, correct and complete copy of the Borrower's Traffic and Revenue Study, accompanied by a letter from the preparer of such study, certifying that the assumptions and projections contained in the Traffic and Revenue Study are reasonable and may be relied upon by the TIFIA Lender;]
- (d) pursuant to Section 13(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit D are true, correct and complete copies of each Principal Project Contract that has been executed on or prior to the Effective Date (as listed below), and each such Principal Project Contract is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Exhibit D:

- 1. [Construction Agreement]; and
- 2. [Others];

- (e) the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (f) pursuant to Section 13(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit E is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [____], (iii) demonstrates a Senior Loan Life Coverage Ratio for each Calculation Date through the Final Maturity Date that is not less than [____], [(iv) *other coverage ratios as applicable*], [(i)v] does not reflect (1) the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (2) the payment of any interest on any Subordinate Obligations before the Debt Service Payment Commencement Date, or (3) the commencement of amortization of the principal amount of any Subordinate Obligations before the commencement of amortization of the principal amount of the TIFIA Loan;
- (g) pursuant to Section 13(a)(xvi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit F is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;
- (h) pursuant to Section 13(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is [_____] and attached hereto as Exhibit G-1 is evidence thereof, (ii) the Borrower's Data Universal Numbering System number is [____], and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as Exhibit G-2 is evidence of each of (ii) and (iii);
- (i) [pursuant to Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit H are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of Section 13(a)(xviii) of the TIFIA Loan Agreement;]⁷
- (j) pursuant to Section 13(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as (i) Exhibit I-1 is a copy of each Borrower Related Party Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the [certificate], (ii) Exhibit I-2 is a copy of all resolutions authorizing each Borrower Related Party to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such

⁷ Subject to modification to the extent that the Borrower utilizes a self-insurance program.

resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower Related Parties relating to the matters described therein, and (iii) as Exhibit I-3 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents;

- (k) pursuant to Section 13(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit J are complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instruments is in compliance with the requirements for such performance security instrument pursuant to the applicable Principal Project Contract and is in full force and effect;
- (l) the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;
- (m) (i) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs; and
- (n) [*other attachments and provisions, as may apply to the specific TIFIA Loan Agreement*].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____

Name:

Title: Authorized Person

EXHIBIT B TO EXHIBIT L

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of [____], a [____], (the “Borrower”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the [TIFIA Loan Documents] and/or the [Indenture Documents] as the Borrower’s Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this ____ day of [____], 20[____].

[_____]

By: _____
Name:
Title:

EXHIBIT M
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

TIFIA Joint Program Office (HITJ)
Federal Highway Administration
Room E64-426
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director

Project: *[Project Name]* *[TIFIA Project Reference Number]*

Dear Director:

This Notice is provided pursuant to Section 16(g)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “TIFIA Loan Agreement”), dated as of *[Dated Date]*, by and between Orange County Transportation Authority (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the TIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the TIFIA Lender that:

- (a) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[Insert reference to the concession agreement, design-build or similar agreement for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

[Borrower’s Authorized Representative]

By: _____
Name:
Title:

EXHIBIT N
CERTIFICATION REGARDING LOBBYING

**CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF
APPROPRIATED FUNDS FOR LOBBYING**

The undersigned, on behalf of the ORANGE COUNTY TRANSPORTATION AUTHORITY, hereby certifies, to the best of his or her knowledge and belief, that ORANGE COUNTY TRANSPORTATION AUTHORITY:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the TIFIA Loan.

(b) If any funds other than proceeds of the TIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the TIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including the Additional Principal Project Contracts, subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Terms not otherwise defined herein shall have the meaning ascribed thereto in the TIFIA Loan Agreement, dated _____, 2017, between the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau and the Orange County Transportation Authority.

Dated: _____

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____
Name:
Title: