

Support Material Agenda Item No. 39

Board of Directors Meeting

**March 3, 2021
10:00 AM**

MEETING ACCESSIBLE VIA ZOOM AT: <https://gosbcta.zoom.us/j/95402329863>

Teleconference

Dial: 1-669-900-6833
Meeting ID: 954 023 9863

DISCUSSION ITEMS

Discussion – Project Delivery

39. Transportation Infrastructure Finance and Innovation Act Refinance Financial Close

That the Board, acting as the San Bernardino County Transportation Authority:

Adopt Resolution No. 21-035 to authorize: execution and delivery of a Second Supplemental Indenture, a Toll Revenue Bond, and a Loan Agreement (No. 21-1002566) relating to the Interstate 10 (I-10) Corridor Contract 1 Transportation Infrastructure Finance and Innovation Act Toll Revenue Bond financing and of related documents; execution and delivery of a Fourth Supplemental Measure I Sales Tax Indenture; and taking of all other actions necessary in connection therewith.

The Second Supplemental Indenture, Fourth Supplemental Indenture and Loan Agreement are being provided as a separate attachment.

SECOND SUPPLEMENTAL INDENTURE

between

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

and

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

Dated as of [_____] 1, 2021

Relating to the

**San Bernardino County Transportation Authority
Toll Revenue Second Lien Obligation, 2021 TIFIA Series**

**(Supplementing the Master Indenture (I-10 Corridor Contract 1 Project)
Dated as of April 1, 2019)**

TABLE OF CONTENTS

| | Page |
|--|-------------|
| ARTICLE XVIII DEFINITIONS..... | 2 |
| Section 18.01. Definitions..... | 2 |
| Section 18.02. Rules of Construction..... | 3 |
| ARTICLE XIX FINDINGS, DETERMINATIONS AND DIRECTIONS | 3 |
| Section 19.01. Findings and Determinations..... | 3 |
| Section 19.02. Recital in Bonds | 3 |
| Section 19.03. Effect of Findings and Recital..... | 4 |
| ARTICLE XX AUTHORIZATION OF THE TIFIA BOND | 4 |
| Section 20.01. Authorization; Principal Amount, Designation and Series | 4 |
| Section 20.02. Priority and Lien..... | 4 |
| Section 20.03. Purpose | 4 |
| Section 20.04. Form, Denomination, Numbers and Letters | 4 |
| Section 20.05. Date, Maturities and Interest Rates | 5 |
| Section 20.06. Conditions To Delivery of TIFIA Bonds | 6 |
| Section 20.07. Disposition of Proceeds of TIFIA Bonds | 6 |
| ARTICLE XXI TRANSFERS; TIFIA LOAN RESERVE ACCOUNT | 6 |
| Section 21.01. Transfers to the Debt Service Fund..... | 6 |
| Section 21.02. TIFIA Loan Reserve Account | 6 |
| ARTICLE XXII OTHER PROVISIONS..... | 7 |
| Section 22.01. Tax Status | 7 |
| Section 22.02. No Amendment without Consent of the TIFIA Lender | 7 |
| ARTICLE XXIII MISCELLANEOUS | 7 |
| Section 23.01. Severability..... | 7 |
| Section 23.02. Parties Interested Herein..... | 7 |
| Section 23.03. Headings Not Binding | 8 |
| Section 23.04. Indenture to Remain in Effect | 8 |
| Section 23.05. Effective Date of Second Supplemental Indenture | 8 |
| Section 23.06. Execution in Counterparts | 8 |
| EXHIBIT A FORM OF TRANSFEREE’S LETTER | A-1 |
| EXHIBIT B FORM OF TIFIA BOND..... | B-1 |

THIS SECOND SUPPLEMENTAL INDENTURE, dated as of [_____] 1, 2021 (this “Second Supplemental Indenture”), between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a public entity duly existing under the laws of the State of California (the “Authority”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (together with any successor thereto, the “Trustee”).

WITNESSETH:

WHEREAS, this Second Supplemental Indenture is supplemental to the Master Indenture (I-10 Corridor Contract 1 Project), dated as of April 1, 2019 (the “Master Indenture” and, as supplemented and amended from time to time pursuant to its terms, the “Indenture”), between the Authority and the Trustee;

WHEREAS, the Indenture provides that the Authority may issue Second Lien Obligations from time to time as authorized by a Supplemental Indenture, which Second Lien Obligations are to be secured by the Trust Estate in accordance with the Indenture;

WHEREAS, the Authority and the TIFIA Lender previously entered into that certain TIFIA Loan Agreement, dated as of April 26, 2019, by and between the Authority and the TIFIA Lender (the “2019 TIFIA Loan Agreement”);

WHEREAS, the Authority in connection with the 2019 TIFIA Loan Agreement and to evidence the loan to be extended pursuant thereto, executed and delivered a bond entitled “San Bernardino County Transportation Authority Toll Revenue Second Lien Obligation, 2019 TIFIA Series” (the “2019 TIFIA Bond”), issued in an aggregate principal amount not to exceed \$225,000,000;

WHEREAS, the Authority has not drawn any funds under the 2019 TIFIA Loan Agreement and no amount has been issued under the 2019 TIFIA Bond;

WHEREAS, pursuant to that certain agreement, dated as of [____], 2021, by and between the Authority and the TIFIA Lender (the “Termination and Release Agreement”), the Authority and the TIFIA Lender have agreed to (i) terminate the 2019 TIFIA Loan Agreement (other than any provisions which by their terms survive the termination thereof) and (ii) terminate, cancel and discharge the 2019 TIFIA Bond;

WHEREAS, the Authority and the Trustee desire to enter into this Second Supplemental Indenture to set forth the terms of the Authority’s obligations to the TIFIA Lender, relating to the execution and delivery of that certain TIFIA Loan Agreement, dated as of [____], 2021 (the “2021 TIFIA Loan Agreement”), by and between the Authority and the TIFIA Lender, authorizing and setting forth the terms and conditions of the TIFIA Loan (as defined in the 2021 TIFIA Loan Agreement, the “TIFIA Loan”) from the TIFIA Lender to the Authority, which TIFIA Loan is to be evidenced by a bond entitled “San Bernardino County Transportation Authority Toll Revenue Second Lien Obligation, 2021 TIFIA Series” (the “TIFIA Bond” or “2021 TIFIA Bond”), to be issued in an aggregate principal amount not to exceed \$225,000,000;

WHEREAS, the 2019 TIFIA Bond has been discharged and all references to “TIFIA Bond” shall hereinafter refer to the 2021 TIFIA Bond;

WHEREAS, the TIFIA Loan Agreement is being entered into as indebtedness under, pursuant to and in accordance with the Toll Act, and the proceeds of the TIFIA Loan may be disbursed by the TIFIA Lender to be used to finance the I-10 Corridor Contract 1 Project; and

WHEREAS, the Authority desires to provide at this time for the issuance of the TIFIA Bond, as further provided in this Second Supplemental Indenture.

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

ARTICLE XVIII

DEFINITIONS

Section 18.01. Definitions.

(a) Definitions. Unless the context otherwise requires, or as otherwise provided in subsection (b) of this Section, all terms defined in the Indenture shall have the same meanings, respectively, in this Second Supplemental Indenture.

(b) Additional Definitions. Unless the context otherwise requires, the following terms shall, for all purposes of this Second Supplemental Indenture, have the following meanings:

“**Authorized Denominations**” means, with respect to the TIFIA Bond, \$1,000,000 principal amount and any integral multiple of \$1 in excess thereof.

“**Interest Payment Date**” means, with respect to the TIFIA Bond, each June 30 and December 31 (and, if applicable, each Interim Payment Date) of each applicable year on and after the TIFIA Debt Service Payment Commencement Date, or if such day is not a Business Day, then the next succeeding Business Day.

“**Interim Payment Date**” means any date (a) on which interest on or principal of any Obligations is payable and (b) that is not a June 30 or December 31 occurring on or after the TIFIA Debt Service Payment Commencement Date.

“**Issue Date**” means the date of delivery of the TIFIA Bond to the TIFIA Lender.

“**Principal Payment Date**” means, with respect to the TIFIA Bond, each principal payment date as set forth in the Loan Amortization Schedule (as defined in the TIFIA Loan Agreement), which shall occur on June 30 and December 31 of each applicable year on and after the TIFIA Debt Service Payment Commencement Date, or if such day is not a Business Day, then the next succeeding Business Day.

“**Record Date**” means, with respect to the TIFIA Bonds, the fifteenth (15th) day (whether or not a Business Day) of the month in which such Interest Payment Date occurs.

“**Second Supplemental Indenture**” means this Second Supplemental Indenture, dated as of [_____] 1, 2021.

“**TIFIA Bond**” means the bond issued to the TIFIA Lender pursuant to the 2021 TIFIA Loan Agreement.

“**TIFIA Loan Agreement**” means that certain TIFIA Loan Agreement, dated as of [_____] 1, 2021, between the Authority and the TIFIA Lender, as supplemented and amended pursuant to the terms thereof.

“**TIFIA Loan Reserve Account**” means the TIFIA Loan Reserve Account established within the Second Lien Obligations Reserve Fund pursuant to Sections 5.02(a) and 21.02.

“**TIFIA Loan Reserve Requirement**” means the amount set forth in Section 5.08(f).

Section 18.02. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. Defined terms shall include any variant of the terms set forth in this Article XVIII.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this Second Supplemental Indenture, refer to the Indenture.

ARTICLE XIX

FINDINGS, DETERMINATIONS AND DIRECTIONS

Section 19.01. Findings and Determinations. The Authority hereby finds and determines that the TIFIA Bond shall be issued pursuant to Article XX hereof and upon the issuance of the TIFIA Bond, any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the issuance thereof, will exist, will have happened and will have been performed, in due time, form and manner, as required by the Constitution and statutes of the State.

Section 19.02. Recital in Bonds. There shall be included in the definitive TIFIA Bond, and also in the temporary TIFIA Bond, if any is issued, a certification and recital that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by that TIFIA Bond, and in the issuing of that TIFIA Bond, exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State and the Act, and that said TIFIA Bond, together with all other indebtedness of the Authority payable out of Revenue, is within every debt and other limit prescribed by the Constitution and statutes of the State and the Act, and that neither the full faith and credit nor the taxing power of the State is pledged to the

payment of principal of or interest on the TIFIA Bond, and that such certification and recital shall be in such form as is set forth in the form of the TIFIA Bond attached hereto as Exhibit B.

Section 19.03. Effect of Findings and Recital. From and after the issuance of the TIFIA Bond, the findings and determinations herein shall be conclusive evidence of the existence of the facts so found and determined in any action or proceeding in any court in which the validity of the TIFIA Bond is at issue, and no bona fide purchaser of any such TIFIA Bond containing the certification and recital shall be required to see to the existence of any fact, or to the performance of any condition, or to the taking of any proceeding, required prior to such issuance, or to the application of the proceeds of such TIFIA Bond.

ARTICLE XX

AUTHORIZATION OF THE TIFIA BOND

Section 20.01. Authorization; Principal Amount, Designation and Series. The Authority hereby approves the terms and provisions of the TIFIA Loan Agreement. Pursuant to the provisions of the Indenture and the provisions of the Act, and to evidence the principal and interest payment obligations of the Authority under the TIFIA Loan Agreement, a Second Lien Obligation entitled to the benefit, protection and security of such provisions, including without limitation the grant of the Trust Estate in the Indenture subject to the provisions of the Indenture, is hereby authorized in the aggregate principal amount not to exceed \$225,000,000 (excluding compounded interest). Such Second Lien Obligation shall be designated as, and shall be distinguished from the Second Lien Obligations of all other Series by the title, "San Bernardino County Transportation Authority Toll Revenue Second Lien Obligation, 2021 TIFIA Series."

Section 20.02. Priority and Lien. The principal and interest payment obligations pursuant to the TIFIA Loan Agreement and evidenced by the TIFIA Bond shall constitute Second Lien Obligations under the Indenture; provided, that immediately upon the occurrence of a Bankruptcy Related Event affecting the Authority, the principal and interest payment obligations pursuant to the TIFIA Loan Agreement and evidenced by the TIFIA Bond shall constitute Senior Lien Obligations under the Indenture without any further action on the part of any Person. Payment obligations other than the obligation to pay principal and interest under the TIFIA Loan Agreement (evidenced by the corresponding obligation to pay principal of and interest on the TIFIA Bond), including but not limited to fees and expenses payable to the TIFIA Lender under the TIFIA Loan Agreement, shall constitute Operation and Maintenance Expenses under the Indenture or, to the extent such obligations are judgement amounts, arbitration awards or settlement amounts that are excluded from the Operations and Maintenance expenses, amounts payable in accordance with clause Fifteenth of Section 5.03(b) of the Indenture.

Section 20.03. Purpose. The TIFIA Bond is issued for the purpose of financing the I-10 Corridor Contract I Project.

Section 20.04. Form, Denomination, Numbers and Letters. The TIFIA Bond shall not be issued as a book-entry-only Obligation. Initially there shall be delivered

hereunder one fully registered TIFIA Bond numbered R-1, without interest coupons. Any TIFIA Bonds issued in replacement thereof upon transfer or exchange shall be numbered consecutively from R-2 upward, payable to the Owner thereof. The TIFIA Bond and the certificate of authentication shall be substantially in the form attached hereto as Exhibit B, which form is hereby approved and adopted as the form of the TIFIA Bond and as the form of the certificate of authentication. The TIFIA Bond shall be issued as one or more single TIFIA Bonds for each Owner, and each such TIFIA Bond shall be in an Authorized Denomination.

Section 20.05. Date, Maturities and Interest Rates.

(a) The TIFIA Bond shall be dated the Issue Date. The principal amount of the TIFIA Bond will increase from time to time by the amount disbursed by the TIFIA Lender to the Authority pursuant to the TIFIA Loan Agreement, as noted by the TIFIA Lender on the grid attached to the TIFIA Bond as Appendix One, with a copy to the Authority and the Trustee. The Authority shall copy the Trustee on each request to the TIFIA Lender for a disbursement under the TIFIA Loan Agreement. Interest on such principal amount of the TIFIA Bond will accrue on the basis of a 365-day or 366-day year, as appropriate for the actual number of days elapsed, and will be compounded on June 30 and December 31 of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Loan Agreement. The TIFIA Bond (i) may and shall be prepaid prior to the respective payment dates, in whole or in part, and at such time, in such amounts and with such notice as may be provided in the TIFIA Loan Agreement and the form of TIFIA Bond set forth herein, and (ii) the principal of and interest on the TIFIA Bond shall be payable, all as provided, and in the manner required or indicated, herein and in the form of TIFIA Bond set forth herein and as set forth in the TIFIA Loan Agreement, including Section 9 thereof.

(b) The TIFIA Loan as evidenced by the TIFIA Bond shall mature on the earlier of (i) December 31, 2057 and (ii) the June 30 or December 31 (whichever is more recent) occurring immediately prior to the date that is 35 years after the Substantial Completion Date (as defined in the TIFIA Loan Agreement), and shall bear interest at the rate of []% per annum (or the TIFIA Default Rate (as defined in the TIFIA Loan Agreement), if applicable), compounded and payable on the dates and in accordance with the form of TIFIA Bond set forth herein and in the TIFIA Loan Agreement.

(c) For purposes of calculations of Annual Debt Service, debt service on the TIFIA Bond shall include TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service.

(d) The entity in whose name the TIFIA Bond shall be registered in the registration books of the Trustee at any time shall be deemed and treated as the absolute Owner thereof for all purposes of the Indenture, whether or not the TIFIA Bond shall be overdue, and the Authority and the Trustee shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. Payment of, or on account of, the principal of, premium, if any, and interest on the TIFIA Bond shall be made only to such Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon the TIFIA Bond to the extent of the sum or sums so paid. Pursuant to Section 19 of the TIFIA Loan Agreement, the TIFIA Lender may sell the TIFIA Bond but may not change the terms and conditions of the TIFIA Loan without the consent of the Authority. The Trustee shall not register any transfer or

exchange of the TIFIA Bond unless the Owner's prospective transferee delivers to the Trustee (i) a letter substantially in the form as set forth in Exhibit A attached hereto and (ii) confirmation from the Authority that it has consented to any amendments to the TIFIA Loan Agreement necessitated by such sale and transfer. The Trustee may rely on such confirmation and the letter in making a transfer or exchange of the TIFIA Bond without any investigation. In the event there is more than one Owner of the TIFIA Bond, payments of principal of and interest on the TIFIA Bond shall be made ratably, based on the aggregate principal amount of TIFIA Bond held by each such Owner.

(e) The Authority appoints the Trustee to act as the paying agent for paying the principal of and interest on the TIFIA Bond and any other amounts under the TIFIA Loan Agreement, and hereby instructs the Trustee to make the payments when due to the TIFIA Lender in accordance with this Section 20.05. The Trustee shall keep proper records of all payments made by the Authority and the Trustee with respect to the TIFIA Bond, and of all exchanges and replacements of TIFIA Bond, as provided in the Indenture.

Section 20.06. Conditions To Delivery of TIFIA Bonds. The TIFIA Bond shall be executed and delivered as authorized by this Second Supplemental Indenture and the Indenture, including Article II thereof, upon execution and delivery of the TIFIA Loan Agreement.

Section 20.07. Disposition of Proceeds of TIFIA Bonds. The proceeds from the sale of the TIFIA Bond shall be received by the Authority and applied by the Authority in accordance with the TIFIA Loan Agreement.

ARTICLE XXI

TRANSFERS; TIFIA LOAN RESERVE ACCOUNT

Section 21.01. Transfers to the Debt Service Fund. Transfers to the Second Lien Obligations Fund with respect to the TIFIA Bond shall commence on the sixth Monthly Funding Date prior to the TIFIA Debt Service Payment Commencement Date. On each Interest Payment Date and each Principal Payment Date thereafter, the Trustee shall transfer to the Owner of the TIFIA Bond money on deposit in the Second Lien Obligations Fund to pay principal of and interest on the TIFIA Bond due and payable on such Interest Payment Date or Principal Payment Date. On each June 30 and December 31 (or if such day is not a Business Day, then the Business Day succeeding such date) on and after the TIFIA Loan Prepayment Commencement Date and on any date of prepayment specified by the Authority pursuant to Section 5.12(d), the Trustee shall transfer the amount then on deposit in the TIFIA Loan Prepayment Account to the Owner of the TIFIA Bond to prepay principal of the TIFIA Bond.

Section 21.02. TIFIA Loan Reserve Account. There is hereby established the TIFIA Loan Reserve Account within the Second Lien Obligations Reserve Fund, such account to be held by the Trustee. On or before the Calculation Date that is six (6) months prior to the TIFIA Debt Service Payment Commencement Date, the Trustee shall deposit to the TIFIA Loan Reserve Account funds in accordance with Section 5.03(b) and, to the extent applicable, Section 5.05(c)(1) and Section 5.08(a) an amount equal to the TIFIA Loan Reserve Requirement as of

such Calculation Date. Thereafter, on or before each Calculation Date, the Trustee shall deposit to the TIFIA Loan Reserve Account funds in the amount required such that an aggregate amount equal to the TIFIA Loan Reserve Requirement as of such date is on deposit therein, as provided in Section 5.08(f). The funds set aside and placed in the TIFIA Loan Reserve Account on account of the TIFIA Loan Reserve Requirement shall be held solely for the benefit of the Owner of the TIFIA Bond, and shall be used, withdrawn, and replenished as provided herein and in Sections 5.03 and 5.08. If, on any date of valuation of Permitted Investments credited to the TIFIA Loan Reserve Account pursuant to Section 5.22, the amount on deposit in the TIFIA Loan Reserve Account exceeds the TIFIA Loan Reserve Requirement ending as of the later of the Calculation Date following the Debt Service Payment Commencement Date or such date of valuation, the Trustee shall transfer such excess amount to the Toll Revenue Fund.

ARTICLE XXII

OTHER PROVISIONS

Section 22.01. Tax Status. It is the intention of the Authority that the TIFIA Bond not be an obligation described in section 103 of the Code interest on which is excludable from the gross income of the holders and in that regard the Authority agrees not to file a form 8038-G, or any comparable information return relating to tax-exempt obligations, with the Internal Revenue Service.

Section 22.02. No Amendment without Consent of the TIFIA Lender. The Authority shall not enter into a Supplemental Indenture (other than this Second Supplemental Indenture) pursuant to the Indenture without the prior written consent of the TIFIA Lender (or its successors or assigns) as set forth in the Indenture except to authorize the issuance of additional Obligations for which, under the provisions of the TIFIA Loan Agreement and the Indenture, the consent of the TIFIA Lender is not required.

ARTICLE XXIII

MISCELLANEOUS

Section 23.01. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this Second Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Second Supplemental Indenture, and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Second Supplemental Indenture shall remain valid.

Section 23.02. Parties Interested Herein. Nothing in this Second Supplemental Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Authority, the Trustee, and the Owners of the TIFIA Bond, any right, remedy or claim under or by reason of this Second Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Second Supplemental Indenture contained by and on behalf of

the Authority shall be for the sole and exclusive benefit of the Authority, the Trustee and the Owners.

Section 23.03. Headings Not Binding. The headings in this Second Supplemental Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Second Supplemental Indenture.

Section 23.04. Indenture to Remain in Effect. Save and except as amended and supplemented by this Second Supplemental Indenture, the Indenture shall remain in full force and effect.

Section 23.05. Effective Date of Second Supplemental Indenture. This Second Supplemental Indenture shall take effect upon its execution and delivery.

Section 23.06. Execution in Counterparts. This Second Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

DRAFT

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

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Raymond W. Wolfe, Executive Director

Countersigned:

By: _____
Hilda Flores, Chief Financial Officer

APPROVED AS TO FORM:

By: _____
Julianna K. Tillquist, General Counsel

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: _____
Authorized Officer

EXHIBIT A

FORM OF TRANSFEREE’S LETTER

U.S. Bank National Association

Re: San Bernardino County Transportation Authority
Toll Revenue Second Lien Obligation, 2021 TIFIA Series

Ladies and Gentlemen:

The undersigned representatives of _____ (the “Purchaser”), do hereby certify, represent and warrant for the benefit of U.S. Bank National Association as trustee (the “Trustee”), that the Purchaser is not a party to the TIFIA Loan Agreement and does not have the rights or obligations of the “TIFIA Lender” thereunder. The Purchaser understands that in connection with any future transfer or exchange of the TIFIA Bond by the Purchaser, there must be delivered to the Trustee a letter of the transferee in substantially the form of Exhibit A to the Second Supplemental Indenture.

The undersigned Purchaser hereby further represents as follows:

1. The Purchaser has full power and authority to carry on its business as now conducted, deliver this letter and make the representations contained herein.
2. The Purchaser has knowledge and experience in financial and business matters that make it capable of evaluating the TIFIA Bond and the risks associated with the purchase of the TIFIA Bond; has the ability to bear the economic risk of an investment in the TIFIA Bond; and is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.
3. The Purchaser has conducted its own investigation of the financial condition of the Authority, the TIFIA Bond, the Indenture, the Toll Road, the Revenues and the Trust Estate, and has obtained such information regarding the TIFIA Bond, such facilities and the Authority and its operations, financial condition and financial prospects as the Purchaser deems necessary to make an informed investment decision with respect to the purchase of the TIFIA Bond.
4. The Purchaser is purchasing the TIFIA Bond for its own account solely and not with a present view to any distribution of the TIFIA Bond or any interest therein or portion thereof or without a present intention of distributing or reselling the TIFIA Bond or any interest therein or portion thereof, provided that the Purchaser retains the right at any time to dispose of the TIFIA Bond or any interest therein or portion thereof as it may determine to be in its best interests, subject to the requirements and provisions of the Indenture. In the event that the Purchaser disposes of the TIFIA Bond or any part thereof in the future, the Purchaser understands that it has the responsibility for complying with

any applicable federal and state securities laws and all rules and regulations promulgated pursuant thereto.

5. The Purchaser understands that the TIFIA Bond is a limited obligation of the Authority secured solely by the Trust Estate as defined and provided in the Indenture and the Authority is not obligated to pay the TIFIA Bond except from said Trust Estate. The TIFIA Bond does not constitute a debt or liability of the State of California or any political subdivision of the State other than the Authority. Neither the full faith and credit nor the taxing power of the State of California or any political subdivision of the State of California is pledged to the payment of principal of or interest on the TIFIA Bond.

6. The Purchaser acknowledges that the TIFIA Bond has not been registered under the Securities Act of 1933, as amended, and that such registration is not legally required. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any subsequent disposition of the TIFIA Bond, and further acknowledges that any current exemption from registration of the TIFIA Bond does not affect or diminish this requirement.

7. In entering into this transaction, the Purchaser has not relied upon any representations or opinions of the Authority (except as with respect to representations, warranties and covenants made by the Authority in the Indenture), its counsel or its bond counsel, Orrick, Herrington & Sutcliffe LLP or other counsel to the Authority relating to the legal consequences or other aspects of its investment in the TIFIA Bond.

9. The Purchaser has been informed that the TIFIA Bond (i) has not been and will not be registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

10. None of the Authority, its governing body, or any of its employees, counsel or agents will have any responsibility to the Purchaser for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Authority or its financial condition or regarding the TIFIA Bond, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the Authority to the Purchaser with respect to the TIFIA Bond. The Purchaser acknowledges that, as between the Purchaser and all of such parties, the Purchaser has assumed responsibility for obtaining such information and making such review as the Purchaser deemed necessary or desirable in connection with its decision to purchase the TIFIA Bond.

Terms not defined herein shall have the meanings given to them under the Master Indenture (I-10 Corridor Contract 1 Project), dated as of April 1, 2019, as supplemented and amended, including as supplemented and amended by the Second Supplemental Indenture, dated as of [_____] 1, 2021 (as so supplemented, the “Indenture”), each by and between San Bernardino County Transportation Authority and U.S. Bank National Association, as Trustee.

IN WITNESS WHEREOF, the undersigned representative has hereunto executed this letter as of the _____ day of _____, 20__.

[PURCHASER]

By: _____
Name: _____
Title: _____

[MUST BE SIGNED BY ACTUAL PURCHASER
MAY NOT BE SIGNED BY NOMINEE OR AGENT]

DRAFT

EXHIBIT B

FORM OF TIFIA BOND

Number R-1

**Not to Exceed \$225,000,000
(plus compounded interest added to principal)**

UNITED STATES OF AMERICA

STATE OF CALIFORNIA

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
TOLL REVENUE SECOND LIEN OBLIGATION, 2021 TIFIA SERIES
(TIFIA – 2021 – [____])**

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

**Maturity Date: December 31, 2057 or such earlier date determined pursuant to the
TIFIA Loan Agreement**

Maximum

**Principal Amount: TWO HUNDRED TWENTY-FIVE MILLION DOLLARS (PLUS
COMPOUNDED INTEREST ADDED TO PRINCIPAL)**

Interest Rate: _____%

Issue Date: _____, 2021

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a public entity duly organized and existing under the laws of the State of California (the “Authority”) for value received, hereby promises to pay (but solely from the Trust Estate hereinafter referred to) to the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender” or “Registered Owner”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the TIFIA Lender (such lesser amount, together with any interest at the rate set forth above that is compounded on June 30 and December 31 of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Loan Agreement, dated _____, 2021, by and between the Authority and the TIFIA Lender (the “TIFIA Loan Agreement”), being hereinafter referred to as the “Outstanding TIFIA Loan Balance”), together with accrued and unpaid interest (including, if applicable, interest at the TIFIA Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding TIFIA Loan Balance from the last compounding date, compounded on the basis of a 365-day or 366-day year, as appropriate, all as more fully described in the above-referenced TIFIA Loan Agreement. Each Disbursement made by the TIFIA Lender to the Authority pursuant to the

TIFIA Loan Agreement and each prepayment made on account of the Outstanding TIFIA Loan Balance shall be recorded by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as Appendix One, which will correspond to Exhibit G in the TIFIA Loan Agreement; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Authority's obligations hereunder or under any other TIFIA Loan Document. The Authority shall provide notice to the Trustee of the same. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement and shall be paid 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. Such Exhibit G to the TIFIA Loan Agreement shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement, provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Authority's obligations hereunder or under any other TIFIA Loan Document. Payments of interest hereon are to be made in accordance with Sections 9 and 10 of the TIFIA Loan Agreement as the same become due. Principal of and interest on this Bond shall be paid in funds available on the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This 2021 TIFIA Series Bond is a fully registered Bond and the principal of and interest on the 2021 TIFIA Series Bond shall be payable by wire transfer to the Registered Owner hereof in accordance with the TIFIA Loan Agreement.

This Bond is one of a duly authorized issue of bonds of the Authority, designated as "San Bernardino County Transportation Authority I-10 Toll Revenue Second Lien Obligation" (the "Bonds"), of the series designated above, all of which are being issued pursuant to the San Bernardino County Transportation Authority Consolidation Act of 2017, being Chapter 7 of Division 12 of the Public Utilities Code of the State of California (Section 130800 *et seq.*) (the "Authority Act") and Streets and Highways Code Sections 149.7 and 149.11, including Chapter 421 of the California Statutes of 2008 (the "Toll Act"), and a Master Indenture (I-10 Corridor Contract 1 Project), dated as of April 1, 2019 (the "Master Indenture"), as amended and supplemented, including as amended and supplemented by a Second Supplemental Indenture, dated as of [_____] 1, 2021 (the "Second Supplemental Indenture"), each between the Authority and U.S. Bank National Association, as trustee (the "Trustee"). The Master Indenture, as supplemented and amended from time to time pursuant to its terms, including as supplemented by the Second Supplemental Indenture, is hereinafter referred to as the "Indenture." Capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Indenture, and if not defined in the Indenture, as defined in the TIFIA Loan Agreement.

THIS BOND IS A LIMITED OBLIGATION OF THE AUTHORITY SECURED SOLELY BY THE TRUST ESTATE AS DEFINED AND PROVIDED IN THE INDENTURE AND THE AUTHORITY IS NOT OBLIGATED TO PAY THIS BOND EXCEPT FROM SAID TRUST ESTATE. THIS BOND DOES NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION OF THE STATE OTHER THAN THE AUTHORITY. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION

OF THE STATE OF CALIFORNIA IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR THE INTEREST ON THIS BOND.

Reference is hereby made to the Indenture, the Authority Act, the Toll Act and the TIFIA Loan Agreement for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Trust Estate and the rights of the registered owners of the Bonds and all the terms of the Indenture and the TIFIA Loan Agreement are hereby incorporated herein and constitute a contract between the Authority and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued and other indebtedness may be incurred on a senior or parity basis with the Series of Bonds of which this Bond is a part, but only subject to the conditions and limitations contained in the Indenture and the TIFIA Loan Agreement.

This Bond is secured by and payable both as to principal and interest, and as to any premium upon the redemption hereof, solely from the Trust Estate as defined in the Indenture, subject only to the provisions of the Indenture permitting application thereof for the purposes and on the terms and conditions set forth therein, and the Authority is not obligated to pay this Bond except from such Trust Estate.

THIS BOND SHALL AND MAY BE PREPAID in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid to be determined in accordance with the TIFIA Loan Agreement and the Indenture; provided, however, that any prepayment shall be in a principal amount of at least \$1,000,000), at any time or from time to time, without penalty or premium, by paying to the Registered Owner all or part of the principal amount of this Bond in accordance with the TIFIA Loan Agreement.

THIS BOND SHALL BE SUBJECT TO MANDATORY PREPAYMENT in accordance with the TIFIA Loan Agreement and the Indenture.

The rights and obligations of the Authority and of the holders and registered owners of the Bonds of the Series of Bonds of which this Bond is a part may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the TIFIA Loan Agreement.

This Bond is transferable or exchangeable as provided in Section 19 of the TIFIA Loan Agreement and Section 2.08 of the Indenture, upon surrender by the registered owner hereof in person, or by such owner's duly authorized attorney, of this Bond at the Principal Office of the Trustee, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or such owner's duly authorized attorney, and thereupon a new Bond or Bonds of the same series, maturity, interest rate and in the aggregate maximum principal amount, shall be issued to the registered owner or owners in exchange therefor as provided in the Indenture, upon payment of any charges therein prescribed.

The person in whose name this Bond is registered shall be deemed and regarded as the absolute owner hereof for all purposes, including receiving payment of, or on account of, the principal of and premium and interest due hereon.

The Trustee shall not register any transfer or exchange of this Bond unless the Registered Owner's prospective transferee delivers to the Trustee a letter substantially in the form as set forth in Exhibit A attached to the Second Supplemental Indenture.

Any delay on the part of the TIFIA Lender in exercising any right hereunder or under the TIFIA Loan Agreement shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default. The Authority hereby waives presentment, demand, protest and notice of any kind.

It is hereby certified and recited by the Authority that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, the Authority Act and the Toll Act and that this Bond, together with all other indebtedness of the Authority secured by the Trust Estate, is within every debt and other limit prescribed by the Constitution and statutes of the State of California.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF the San Bernardino County Transportation Authority has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its duly authorized representatives all as of the Issue Date set forth above.

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
President of the Board of Directors

Countersigned:

By: _____
Chief Financial Officer

[FORM OF CERTIFICATE OF AUTHENTICATION]

It is hereby certified that this Bond has been issued under the provisions of the Indenture described in this Bond.

Dated of Authentication: _____

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: _____
Authorized Officer

DRAFT

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

(Please Print or Type Name and Address of Assignee)

PLEASE INSERT SOCIAL SECURITY OR OTHER
TAX IDENTIFICATION NUMBER OF ASSIGNEE

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

to transfer the within Bond on the books kept for registration thereof with full power of
substitution in the premises.

Dated:

Signature:

(Signature of Assignor)

Notice: The signature on this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

**APPENDIX ONE
 SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
 TOLL REVENUE SECOND LIEN OBLIGATION, 2021 TIFIA SERIES
 (TIFIA – 2021 – [____])**

I-10 CORRIDOR CONTRACT 1 PROJECT

Maximum Principal Sum: \$225,000,000 Maturity Date: December 31, 2057 (or such
 (plus compounded interest earlier date determined pursuant
 added to principal) to the TIFIA Loan Agreement)

Borrower: San Bernardino County Transportation Authority

TIFIA Lender: The United States Department of Transportation, acting by and through
 the Executive Director of the Build America Bureau

DISBURSEMENTS AND PAYMENTS OF PRINCIPAL¹

| Date | Amount of Disbursement | Compounded Interest | Amount of Principal Paid | Unpaid Principal Balance | Notation Made By |
|-------------|-------------------------------|----------------------------|---------------------------------|---------------------------------|-------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

¹ This Grid may be extended if the number of Disbursements, payments and extensions so requires.

FOURTH SUPPLEMENTAL INDENTURE

between

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of April 1, 2021

Relating to

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
SALES TAX REVENUE BONDS
(LIMITED TAX BONDS)

(Supplementing the Indenture
Dated as of March 1, 2012)

TABLE OF CONTENTS

ARTICLE XXVII DEFINITIONS 2

Section 27.01. Definitions 2

Section 27.02. Rules of Construction 2

ARTICLE XXVIII AMENDMENT OF INDENTURE 2

Section 28.01. Application of Provisions to TIFIA Loan Agreement 2

ARTICLE XXIX MISCELLANEOUS 3

Section 29.01. Severability 3

Section 29.02. Parties Interested Herein 3

Section 29.03. Headings Not Binding 3

Section 29.04. Indenture to Remain in Effect 3

Section 29.05. Effective Date of Fourth Supplemental Indenture 3

Section 29.06. Execution in Counterparts 3

DRAFT

FOURTH SUPPLEMENTAL INDENTURE

THIS FOURTH SUPPLEMENTAL INDENTURE, dated as of [April] 1, 2021 (this “Fourth Supplemental Indenture”), between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a public entity duly established and existing under the laws of the State of California (the “Authority”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as successor trustee (the “Trustee”):

WITNESSETH:

WHEREAS, this Fourth Supplemental Indenture is supplemental to the Indenture, dated as of March 1, 2012 (collectively, and as supplemented and amended from time to time pursuant to its terms, the “Indenture”), between the Authority and the Trustee; and

WHEREAS, the Authority and the TIFIA Lender previously entered into that certain TIFIA Loan Agreement, dated as of April 26, 2019, by and between the Authority and the TIFIA Lender (the “2019 TIFIA Loan Agreement”); and

WHEREAS, the Authority has not drawn any funds under the 2019 TIFIA Loan Agreement; and

WHEREAS, pursuant to that certain agreement, dated as of [____], 2021, by and between the Authority and the TIFIA Lender (the “Termination and Release Agreement”), the Authority and the TIFIA Lender have agreed to (i) terminate the 2019 TIFIA Loan Agreement (other than any provisions which by their terms survive the termination thereof), (ii) terminate, cancel and discharge the bond issued to the TIFIA Lender pursuant to the 2019 TIFIA Loan Agreement (the “2019 TIFIA Bond”); and

WHEREAS, in connection with the issuance of the toll revenue bonds pursuant to the Toll Indenture, and the execution and delivery of that certain TIFIA Loan Agreement, dated as of [____], 2021, between the Authority and the TIFIA Lender (the “TIFIA Loan Agreement”), the Authority is supplementing and amending this Indenture in accordance with Section 9.01(B)(1) in order to amend the definition of “TIFIA Loan Agreement” and have the existing covenants and agreements of the Authority under the Indenture apply to the TIFIA Loan Agreement, including the provisions for the transfer of sales tax revenues as an investment in the I-10 Corridor Contract 1 Project;

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

ARTICLE XXVII
DEFINITIONS

Section 27.01. Definitions.

(a) Definitions. Unless the context otherwise requires, or as otherwise provided in subsection (b) of this Section to this Fourth Supplemental Indenture, all terms which are defined in Sections 1.02 and 24.01 of the Indenture shall have the same meanings in this Fourth Supplemental Indenture.

(b) Additional Definitions. Unless the context otherwise requires, the following terms shall, for all purposes of the Indenture, have the following meanings:

“Fourth Supplemental Indenture” means this Fourth Supplemental Indenture, dated as of April 1, 2021, between the Authority and the Trustee.

“TIFIA Loan” means the loan made to the Authority by the TIFIA Lender to finance certain costs of the I-10 Corridor Contract 1 Project pursuant to the TIFIA Loan Agreement.

“TIFIA Loan Agreement” means that certain TIFIA Loan Agreement, dated as of [____], 2021, between the Authority and the TIFIA Lender, as supplemented and amended pursuant to the terms thereof.

Section 27.02. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. Defined terms shall include any variant of the terms set forth in this Article XXVII.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this Fourth Supplemental Indenture, refer to the Indenture.

ARTICLE XXVIII

AMENDMENT OF INDENTURE

Section 28.01. Application of Provisions to TIFIA Loan Agreement. The provisions of the Third Supplemental Indenture, including the amendments to Section 3.05 and Section 5.02 contained therein, shall continue in full force and effect and the references to “TIFIA Loan Agreement” therein shall refer to the TIFIA Loan Agreement as defined in this Fourth Supplemental Indenture and the references to “TIFIA Loan” shall refer to the TIFIA Loan executed and delivered pursuant to such TIFIA Loan Agreement.

ARTICLE XXIX

MISCELLANEOUS

Section 29.01. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this Fourth Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Fourth Supplemental Indenture, and the application of any such covenant, agreement or provision, or portion thereof, to other Persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Fourth Supplemental Indenture and the Bonds issued pursuant hereto shall remain valid, and the Holders of the Bonds shall retain all valid rights and benefits accorded to them under this Indenture, the Act and the Constitution and statutes of the State.

Section 29.02. Parties Interested Herein. Nothing in this Fourth Supplemental Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Authority, the Trustee, each Credit Provider, if any, and the Holders of the Bonds, any right, remedy or claim under or by reason of this Fourth Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Fourth Supplemental Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Authority, the Trustee, each Credit Provider, if any, the Holders of the Bonds, and the Toll Trustee with respect to Section 25.02. For so long as the TIFIA Loan Agreement remains in effect, the TIFIA Lender is and shall be a third party beneficiary of this Fourth Supplemental Indenture and any amendments, modifications or waivers to this Fourth Supplemental Indenture shall require the prior written consent of the TIFIA Lender.

Section 29.03. Headings Not Binding. The headings in this Fourth Supplemental Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Fourth Supplemental Indenture.

Section 29.04. Indenture to Remain in Effect. Save and except as amended and supplemented by this Fourth Supplemental Indenture, the Indenture shall remain in full force and effect.

Section 29.05. Effective Date of Fourth Supplemental Indenture. This Fourth Supplemental Indenture shall take effect upon its execution and delivery.

Section 29.06. Execution in Counterparts. This Fourth Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

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

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Raymond W. Wolfe, Executive Director

ATTEST:

Marleana Roman, Clerk of the Board
San Bernardino County Transportation Authority

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: _____
Authorized Officer

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

For Up to \$225,000,000

With

**SAN BERNARDINO COUNTY TRANSPORTATION
AUTHORITY**

For the

**I-10 CORRIDOR CONTRACT 1 PROJECT
(TIFIA – [____])**

Dated as of [____], 2021

TABLE OF CONTENTS

| | <u>Page</u> |
|--------------------|---|
| Section 1. | Definitions.....2 |
| Section 2. | Interpretation.....32 |
| Section 3. | TIFIA Loan Amount.....33 |
| Section 4. | Disbursement Conditions.....33 |
| Section 5. | Term.....34 |
| Section 6. | Interest Rate34 |
| Section 7. | Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule.....34 |
| Section 8. | Security and Priority; Flow of Funds.....35 |
| Section 9. | Payment of Principal and Interest.....36 |
| Section 10. | Prepayment39 |
| Section 11. | [Reserved].....41 |
| Section 12. | Compliance with Laws41 |
| Section 13. | Conditions Precedent41 |
| Section 14. | Representations and Warranties of Borrower.....47 |
| Section 15. | Representations and Warranties of TIFIA Lender.....54 |
| Section 16. | Affirmative Covenants.....54 |
| Section 17. | Negative Covenants72 |
| Section 18. | Indemnification.....79 |
| Section 19. | Sale of TIFIA Loan.....80 |
| Section 20. | Events of Default and Remedies.....80 |
| Section 21. | Accounting and Audit Procedures; Inspections; Reports and Records87 |
| Section 22. | Financial Plan, Statements, and Reports.....88 |
| Section 23. | Project Oversight and Monitoring92 |
| Section 24. | No Personal Recourse.....95 |
| Section 25. | No Third Party Rights.....95 |
| Section 26. | Borrower’s Authorized Representative.....95 |
| Section 27. | TIFIA Lender’s Authorized Representative95 |
| Section 28. | Servicer96 |
| Section 29. | Fees and Expenses96 |
| Section 30. | Amendments and Waivers97 |
| Section 31. | Governing Law97 |
| Section 32. | Severability97 |
| Section 33. | Successors and Assigns.....98 |
| Section 34. | Remedies Not Exclusive.....98 |
| Section 35. | Delay or Omission Not Waiver.....98 |
| Section 36. | Counterparts.....98 |
| Section 37. | Notices; Payment Instructions98 |
| Section 38. | Effectiveness99 |
| Section 39. | Termination.....100 |
| Section 40. | Integration.....100 |

SCHEDULE I – Project Budget
SCHEDULE II – Construction Schedule
SCHEDULE III – Section 5.03(b) of Indenture
SCHEDULE IV – Measure I Investment
SCHEDULE 14(f) – Litigation
SCHEDULE 14(u) – Insurance
SCHEDULE 16(w) – Measure I Backstop Mechanics

EXHIBIT A – Form of TIFIA Bond
EXHIBIT B – Anticipated TIFIA Loan Disbursement Schedule
EXHIBIT C – Non-Debarment Certification
EXHIBIT D – Requisition Procedures
EXHIBIT E – Compliance with Laws
EXHIBIT F – FHWA Oversight Agreement
EXHIBIT G – TIFIA Debt Service
EXHIBIT H-1 – Opinions Required from Counsel to Borrower
EXHIBIT H-2 – Opinions Required from Bond Counsel
EXHIBIT I – [Reserved]
EXHIBIT J – Form of Certificate of Trustee
EXHIBIT K – Form of Borrower’s Officer’s Certificate
EXHIBIT L – Form of Certificate of Substantial Completion
EXHIBIT M – Certification Regarding Lobbying
EXHIBIT N – Reporting Subawards and Executive Compensation

TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of [____], 2021, is by and between **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**, a public entity duly existing under the laws of the State of California, with an address of 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715 (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, Section 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 and the TIFIA Lender previously entered into that certain TIFIA Loan Agreement, dated as of April 26, 2019, by and between the Borrower and the TIFIA Lender (the “**2019 TIFIA Loan Agreement**”); and

WHEREAS, the Borrower has not drawn any funds under the 2019 TIFIA Loan Agreement; and

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$225,000,000 (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 received [____] (the “**Application**”); and

WHEREAS, on the terms and conditions set forth herein and in the Termination and Release Agreement (as defined herein), the Borrower and the TIFIA Lender agree to (i) terminate the 2019 TIFIA Loan Agreement (other than any provisions which by their terms survive the termination thereof), (ii) terminate, cancel and discharge the bond issued to the TIFIA Lender pursuant to the 2019 TIFIA Loan Agreement (the “**2019 TIFIA Bond**”), and (iii) enter into this Agreement; 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), the Consulting Engineer's Report (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. 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.

"2019 Sales Tax Revenue Bond Supplemental Indenture" means that certain Third Supplemental Indenture, dated as of April 1, 2019, by and between the Borrower and the Sales Tax Trustee.

"2019 TIFIA Bond" has the meaning provided in the recitals hereto.

"2019 TIFIA Loan Agreement" has the meaning provided in the recitals hereto.

"2019 TIFIA Supplemental Indenture" means that certain First Supplemental Indenture, dated as of April 1, 2019, between the Borrower and the Trustee, relating to the San Bernardino County Transportation Authority Toll Revenue Second Lien Bonds, 2019 TIFIA Series.

"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 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; 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.

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

“**Accreted Value**” means, with respect to any Capital Appreciation Obligations or Convertible Capital Appreciation Obligations, the principal amount thereof plus the interest accrued thereon at and prior to the maturity or earlier redemption thereof, in the case of a Capital Appreciation Obligation, or at and prior to the date of conversion of such Obligation to a Current Interest Obligation, in the case of a Convertible Capital Appreciation Obligation (other than the TIFIA Loan), compounded on the basis of a 360-day year of twelve 30-day months at the approximate interest rate thereon on each compounding date specified therein. The Accreted Value of an Obligation at any date of computation shall be an amount equal to the principal amount of such Obligation plus interest accrued thereon from the date of issuance, such interest to accrue at the rate per annum established as provided in a Supplemental Indenture and be compounded periodically, plus, if such date of computation shall not be a compounding date, the ratable portion of the difference between the Accreted Value computed as of the immediately preceding compounding date (or the date of issuance thereof if the date of computation is prior to the first compounding date succeeding the date of issuance) and the Accreted Value computed as of the immediately succeeding compounding date, calculated based on the assumption that the Accreted Value increases during any period in equal daily amounts (with straight-line interpolation between compounding dates).

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

“**Additional Obligations**” means any Obligations issued pursuant to the Indenture that are permitted under Section 17(a) (*Indebtedness*) and under the Indenture, which Additional Obligations are issued or incurred after the Effective Date and also satisfy the following requirements, as applicable:

(a) if the proceeds thereof will be used to refinance outstanding Additional Obligations, (i) no such issuance shall occur until after the second (2nd) anniversary of the Debt Service Payment Commencement Date, (ii) after issuance of such Additional Obligations (after deducting any amounts required to be deposited to satisfy the applicable debt service reserve requirement specified in the applicable Supplemental Indenture (e.g. Senior Lien Obligations Reserve Requirement) and any amounts used to pay reasonable and necessary costs of issuance not to exceed two percent (2%) of the principal amount of such Additional Obligations), the Trustee shall have on deposit in a separate account irrevocably in trust and used only as provided in this clause (a), either (A) moneys in an amount sufficient to pay (but not more than is needed to pay) the applicable redemption price to refund the Additional Obligations being refinanced (together with unpaid interest accrued or to accrue to the redemption date) or (B) Permitted Investments in such principal amounts, having such maturities, bearing such interest, and otherwise having such terms and qualifications as shall be necessary to pay, as and when the Additional Obligations to be refinanced are redeemed, the applicable redemption price (including accrued but unpaid interest to the redemption date) to redeem such Additional Obligations (but not more than such amounts), as evidenced by a defeasance opinion from Bond Counsel and by a certificate of defeasance from the Trustee, in each case that has been delivered to the TIFIA Lender, (iii) the net proceeds of such Additional Obligations (after deducting any amounts required to be deposited to satisfy the applicable debt service reserve requirement specified

in the applicable Supplemental Indenture (e.g. Senior Lien Obligations Reserve Requirement) and any amounts used to pay reasonable and necessary costs of issuance not to exceed two percent (2%) of the principal amount of such Additional Obligations) shall be used solely to refinance other Additional Obligations at the same lien level as, or that are at a higher lien level than, such Additional Obligations being issued and shall not exceed the par amount of such other Additional Obligations outstanding and being refinanced by such Additional Obligations except to the extent the required cost of acquisition of Permitted Investments as contemplated in clause (B) above in connection with any advance refunding would cause the principal amount of such Additional Obligations to exceed the par amount or Accreted Value, as the case may be, of the Additional Obligations to be refinanced, (iv) Annual Debt Service in respect of such Additional Obligations, in each year of the remaining term of the TIFIA Loan, must be projected to be equal to or less than the Annual Debt Service in respect of the Obligations to be refinanced for each such year in 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), and (v) the maturity date of the Additional Obligations must not be later than the maturity date of the Obligations being refinanced; and

(b) if the proceeds thereof will be used for any reason not described in clause (a), then no such issuance shall occur without the prior written consent of the TIFIA Lender, in its sole discretion;

provided that for each of clauses (a) and (b) above, (x) no Default or Event of Default under this Agreement has occurred and is continuing and no Event of Default (as defined in any Indenture Document or the Sales Tax Revenue Bond Indenture) or event that, with the giving of notice or the passage of time or both, would constitute such an Event of Default has occurred and is continuing, (y) such Additional Obligations must receive an Investment Grade Rating, and (z) the Nationally Recognized Rating Agency that provided the most recent public credit ratings of the TIFIA Loan and any outstanding Obligations in accordance with Section 16(j) (*Annual Rating*) shall have provided a confirmation or affirmation (or the equivalent) that the incurrence of such Additional Obligations shall not result in a downgrade in the public credit ratings of the TIFIA Loan or any outstanding Obligations below (with respect to each Nationally Recognized Rating Agency) the lower of (A) the then-existing credit ratings of the TIFIA Loan and such outstanding Obligations, respectively, and (B) the credit ratings, respectively, of the TIFIA Loan as of the Effective Date or of any outstanding Obligations as of the closing date of such outstanding Additional Obligations.

“Additional Project” means the I-10 Corridor Contract 2 Project, the I-15 Corridor Project, the I-15 Corridor Future Project, and any addition, acquisition, improvement, betterment, extension or equipping of, or relating to, the Toll Road or any additional capital project extending, improving or otherwise related to the Borrower's tolling program that the Borrower determines or proposes to finance pursuant to the Indenture.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument (other than a Principal Project Contract) entered into by the Borrower after the Effective Date, providing for the design, construction, testing, and start-up, of the Project, or the safety, financial services, operation or maintenance of the Project, or otherwise relating to

the Project, including any master contract providing goods or services for multiple projects or assets including the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (a) is entered into (i) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (ii) for necessary Project-related expenditures, (b) commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower in one contract or a series of related contracts of, no more than \$2,500,000 (inflated annually by CPI) in the aggregate for any such contract or series of related contracts allocable to the Project or payable from Revenues and (c) is for a term not exceeding two (2) years (including any contract term renewals).

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

“**Annual Debt Service**” means, except as expressly provided below, the amount of payments actually due on the applicable Obligations for any Calculation Period.

In calculating Annual Debt Service for any future period (except as otherwise specifically provided herein):

(a) in determining the principal amount of an Obligation due in any period, 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;

(b) to the extent the requirements of Section 17(a)(ii) (*Indebtedness*) have been waived, any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at such rate or rates approved in writing by the TIFIA Lender at the time such debt is issued;

(c) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Obligations and Deferred Income Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period;

(d) principal and interest payments on Obligations may be excluded to the extent such payments are to be paid from amounts other than Revenues that are irrevocably held by the Trustee or another fiduciary in escrow specifically for the payment of such principal and interest and interest payments on any Obligations may be excluded to the extent that such interest payments are to be paid from capitalized interest held by the Trustee or another fiduciary in a capitalized interest account (and not a Reserve Account) funded from sources other than Revenues specifically to pay such interest, including amounts held on deposit to pay capitalized interest on one or more Series of Obligations;

(e) if any of the Obligations are, or upon issuance will be, obligations for which the Borrower is entitled to receive Subsidy Payments, as evidenced by an opinion of Bond Counsel delivered with respect to such Obligations, such Obligations may be treated as bearing an interest rate equal to the rate of interest borne or assumed to be borne, as applicable, by the Obligations for the period of determination minus a rate equal to the Subsidy Payments to which the Borrower is entitled for such period, divided by the Outstanding principal amount of such Obligations during such period; and

(f) Annual Debt Service in respect of the TIFIA Loan shall include TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service with respect to the applicable time period.

“Annual Operating Budget” means the budget of revenues and expenses prepared by the Borrower and approved by the Borrower’s board of directors for each Borrower Fiscal Year.

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

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

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

“Appreciated Value” means, with respect to any Deferred Income Bond 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 Deferred Income Bond.

“Backstop Account” means the account by that name created pursuant to Section 5.02 of the Indenture.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified as amended in various sections of 12 U.S.C. and 31 U.S.C.), as amended, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) 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 (ii) 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 (i) and (ii), 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;

(b) such Person shall (i) 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, (ii) 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, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Mandatory Debt Service in accordance with the

provisions of Section 9 (Payment of Principal and Interest), (iv) make a general assignment for the benefit of creditors, (v) 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) of this definition, (vi) 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, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) 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 any Obligations (including the TIFIA Loan) 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 other than the TIFIA Lender, funds on deposit in any of the Project Accounts upon the occurrence and during the continuation of an Event of Default under the Indenture for application to the prepayment or repayment of any principal amount of any Obligations (other than the TIFIA Loan) other than in accordance with Article V and, if applicable, Section 7.02 of the 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 the Indenture and the terms of the applicable Supplemental Indenture.

“Bond Counsel” means a firm of nationally-recognized attorneys-at-law experienced in legal work relating to the issuance of municipal bonds selected by the Borrower.

“Bondholder” or **“Holder”** or **“Owner”** means the record holder of a Bond, including the TIFIA Lender and its successors and assigns.

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

“Borrower Fiscal Year” means (a) means the period of twelve (12) months ending on June 30 of each 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(g) (*Organizational Documents; Fiscal Year*).

“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 (as such term is defined in the Indenture) of the Trustee or, with respect to any Obligations secured by a Credit Facility, the office where draws are to be made on a Credit Provider (as such term is defined in the Indenture) is located.

“Calculation Date” means each June 30 and December 31 occurring after the Substantial Completion Date.

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

“Caltrans” means the California Department of Transportation.

“Caltrans DB Cooperative Agreement” means that certain Agreement 08-1645 (SBCTA 17-1001736) for Design-Build of the I-10 Corridor Contract 1 Express Lanes Project, dated July 28, 2017, as amended.

“Capital Appreciation Obligations” means the Obligations designated as Capital Appreciation Obligations in the Supplemental Indenture providing for the issuance of such Obligations and on which interest is compounded and paid at maturity or on prior redemption.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

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

“Cash Supplement Account” means the account by that name created pursuant to Section 5.02 of the Indenture.

“CEQA” means the California Environmental Quality Act (Public Resources Code section 21000 et seq.) and the State CEQA Guidelines (14 Cal. Code Regs., § 15000 et seq.) as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

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

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

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

“**Consulting Engineer**” means Parsons Transportation Group, Inc. or any successor thereto or such other replacement engineering firm selected by the Borrower and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving notice of such selection.

“**Consulting Engineer’s Report**” means the I-10 Corridor Contract 1 Project Engineer’s Technical Report dated as of September 26, 2018.

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

“**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 January 2021 as the base period for purposes of Section 29 (*Fees and Expenses*) and January 2019 as the base period for all other purposes herein.

“**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), including any Credit Support Instrument or Reserve Facility (as each such term is defined in the Indenture), that 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 Obligations designated as Current Interest Obligations in the Supplemental Indenture providing for the issuance of such 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 (a) the earlier of (i) the Semi-Annual Payment Date occurring immediately prior to the fifth (5th) anniversary of the Substantial Completion Date and (ii) December 31, 2027 or (b) if the Borrower elects an earlier Semi-Annual

Payment Date pursuant to Section 9(c) (*Early Debt Service Payment Commencement Date*), such earlier Semi-Annual Payment Date.

“**Default**” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

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

“**Deferred Income Bond**” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Income Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately succeeding the Interest Commencement Date and thereafter on the dates specified in or determined pursuant to the Supplemental Indenture authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Income Bond is redeemed prior to maturity, the principal amount of a Deferred Income Bond shall be deemed to be its Appreciated Value.

“**Design-Build Contract**” means, the Design-Build Contract for the I-10 Corridor Contract 1 Project, dated August 16, 2018, between the Borrower and the Design-Build Contractor.

“**Design-Build Contractor**” means Lane Security Paving Joint Venture and any successor thereto.

“**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.

“**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 approved by the TIFIA Lender and the FHWA Division Office, all of which shall arise from the following:

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

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

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

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

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

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

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

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

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

“**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.

“**FHWA Oversight Agreement**” means that certain Project Oversight Agreement, dated as of March 21, 2017, by and between the Borrower, Caltrans and the FHWA Division Office attached hereto as Exhibit F.

“**Final Maturity Date**” means the earlier of (a) the Semi-Annual Payment Date occurring immediately prior to the thirty-fifth (35th) anniversary of the Substantial Completion Date and (b) December 31, 2057.

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

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

“**Fixed Level Payment**” has the meaning provided in Section 9(e) (*Fixed Level Payments*).

“Freeway Maintenance Agreement” means that certain agreement related to maintenance of the Project to be entered into by the Borrower and either Caltrans or another entity selected by the Borrower, as provided in the Toll Facility Agreement.

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

“GAAP” means generally accepted accounting principles as defined by the Governmental Accounting Standards Board, 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.

“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” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose.

“I-10 Corridor Contract 1 Project” means the development, design, construction, right-of-way acquisition, utilities adjustment, operation and maintenance, repair, rehabilitation, reconstruction, financing, administration, or any combination of these including the establishment of reserves for such purposes, with respect to the I-10 express lanes in San Bernardino County, consisting of the construction of tolled express lanes extending approximately 10 miles from the border of the County of Los Angeles to the I-10/I-15 interchange and the installation of an electronic toll enforcement and collection system.

“I-10 Corridor Contract 2 Project” means the development, design, construction, right-of-way acquisition, utilities adjustment, operation and maintenance, repair, rehabilitation, reconstruction, financing, administration, or any combination of these, including the establishment of reserves for such purposes, with respect to the I-10 express lanes in San Bernardino County, including the construction of tolled express lanes extending approximately 23 miles from the I-10/I-15 interchange to Ford Street in the City of Redlands and the installation of an electronic toll enforcement and collection system.

“I-15 Corridor Future Project” means the development, design, construction, right-of-way acquisition, utilities adjustment, operation and maintenance, repair, rehabilitation, reconstruction, financing, administration, or any combination of these, including the establishment of reserves for such purposes, with respect to the I-15 express lanes in San Bernardino County, including the construction of tolled express lanes extending approximately 20 miles from Duncan Canyon Road in the City of Fontana to US-395 in the City of Hesperia and the installation of an electronic toll enforcement and collection system.

“I-15 Corridor Project” means the development, design, construction, right-of-way acquisition, utilities adjustment, operation and maintenance, repair, rehabilitation, reconstruction, financing, administration, or any combination of these, including the establishment of reserves for such purposes, with respect to the I-15 express lanes in San Bernardino County, including the construction of tolled express lanes extending approximately 14 miles from Cantu-Galleano Ranch Road in Riverside County to Duncan Canyon Road in the City of Fontana and the installation of an electronic toll enforcement and collection system.

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

“Indenture” means that certain Master Indenture (I-10 Corridor Contract 1 Project), dated as of April 1, 2019, between the Borrower and the Trustee.

“Indenture Documents” means the Indenture, each Supplemental Indenture, each Hedging Agreement related to the Obligations, and each Credit Facility related to the Obligations.

“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.

“Interest Commencement Date” means, with respect to any particular Deferred Income Bond, the date determined by the Supplemental Indenture for such Deferred Income Bond after which interest accruing on such Deferred Income Bond shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Indenture.

“Interim Payment Date” means any day occurring during a Payment Period that (a) is a date on which interest on or principal of Additional 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 Additional 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.

“ISDA Master Agreement” means a master agreement, entered into by the Borrower and a Hedging Bank, in the form published by the International Swaps and Derivatives Association, Inc.

“Level Payment Commencement Date” means the 41st Semi-Annual Payment Date after the Debt Service Payment Commencement Date.

“Level Payment Period” means the period commencing on the Level 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).

“**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.

“**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.

“**LTAIA**” has the meaning provided in Section 17(a)(vi) (*Indebtedness*).

“**Major Maintenance and Repair Fund Permitted Expenditures**” means Capital Expenditures reasonably necessary to repair or rehabilitate the Toll Road so that it remains in a condition that meets the performance and maintenance standards established by Caltrans for existing State-operated transportation facilities of substantially equivalent size, location and character, and other similar expenses related to the Toll Road excluded from the Operation and Maintenance Expenses.

“**Major Maintenance and Repair Fund**” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“**Major Maintenance and Repair Fund Required Amount**” means (1) for any Calculation Date, an amount equal to the aggregate of (a) one hundred percent (100%) of expected Major Maintenance and Repair Fund Permitted Expenditures for the following twelve (12) month period, (b) eighty percent (80%) of expected Major Maintenance and Repair Fund Permitted Expenditures for the next succeeding twelve (12) month period (i.e., year 2), (c) sixty percent (60%) of expected Major Maintenance and Repair Fund Permitted Expenditures for the next succeeding twelve (12) month period (i.e., year 3), (d) forty percent (40%) of expected Major Maintenance and Repair Fund Permitted Expenditures for the next succeeding twelve (12) month period (i.e., year 4) and (e) twenty percent (20%) of expected Major Maintenance and Repair Fund Permitted Expenditures for the next succeeding twelve (12) month period (i.e., year 5), in each case, initially based on the forecast of estimated life cycle maintenance costs with respect to the Toll Road set forth in the Base Case Financial Model and thereafter based on the information regarding Major Maintenance and Repair Fund Permitted Expenditures included in the then-current Annual Operating Budget prepared by the Borrower and certified by the Consulting Engineer or, if different, in the Revised Financial Model approved by the TIFIA Lender as part of the then-current Financial Plan and (2) for any Monthly Funding Date after a Calculation Date until the Monthly Funding Date preceding the next Calculation Date, an amount equal to (i) the amount for such most recent Calculation Date, less (ii) the Major Maintenance and Repair Fund Permitted Expenditures made after such most recent Calculation Date, plus (iii) the pro-rata amount (one-sixth for each month) of the additional amount projected to be needed for deposit to the Major Maintenance and Repair Fund by such succeeding Calculation Date in order for the

Major Maintenance and Repair Fund Required Amount for such succeeding Calculation Date to be on deposit therein by such Calculation Date.

“Material Adverse Effect” means a material adverse effect on (a) the Project, the Revenues or the Measure I Investment, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, in each case, with respect to the Project or the Toll Road, (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 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. By way of clarification, the issuance of Sales Tax Revenue Bonds, Sales Tax Revenue subordinate obligations and related credit, liquidity and similar obligations, in each case in accordance with the requirements of the Sales Tax Revenue Bond Indenture, including the Sales Tax Revenue Bond Fourth Supplemental Indenture, as of the Effective Date, shall not by itself constitute a Material Adverse Effect.

“Maximum Annual Debt Service” means the maximum amount of Annual Debt Service becoming due and payable on all Bonds Outstanding and all Parity Obligations and Subordinate Obligations then outstanding, and on any Bonds, Parity Obligations and/or Subordinate Obligations proposed to be issued as of the date of such calculation, during the period from the date of such calculation through the final maturity date of the Bonds, Parity Obligations and Subordinate Obligations, calculated utilizing the assumptions set forth under the definition of Annual Debt Service (as each capitalized term in this definition is defined in the Sales Tax Revenue Bond Indenture).

“Measure I Backstop” means Measure I sales tax revenues invested by the Borrower in the Project and transferred by the Sales Tax Trustee on behalf of the Borrower to the Measure I Reserve Fund in order to fund projected Toll Revenue shortfalls in clauses *First* through clause *Fifteenth* in Section 5.03(b) of the Indenture, in accordance with Section 5.05 of the Indenture; provided, that (x) the amount of such deposit shall not exceed in any Borrower Fiscal Year the budgeted total aggregate Operation and Maintenance Expenses and deposits to the Major Maintenance and Repair Fund for such Borrower Fiscal Year plus, for the Borrower Fiscal Year during which the TIFIA Loan Reserve Account is required to be initially funded, the TIFIA Loan Reserve Requirement and (y) the maximum aggregate outstanding principal amount of such invested amounts when combined with the Measure I Cash Supplement made and not repaid and scheduled to be made shall not exceed an aggregate outstanding principal amount of ninety-three million dollars (\$93,000,000) (excluding accrued and unpaid interest).

“Measure I Backstop Semi-Annual MIRF Amount” means, with respect to any semi-annual period ending on a Calculation Date (commencing on July 1, 2025 and continuing until December 31, 2039), the amount reflected in the then-current Annual Operating Budget as being scheduled for deposit into the Measure I Reserve Fund during the semi-annual period ending on the next Calculation Date, which amount shall correspond to the Measure I Backstop Semi-Annual TRF Amount that is projected to be deposited to the Toll Revenue Fund during the semi-annual period ending twelve (12) months following the next Calculation Date.

“Measure I Backstop Semi-Annual TRF Amount” means, with respect to any semi-annual period ending on a Calculation Date (commencing on July 1, 2026 and continuing for so long as the Borrower has a Measure I Investment obligation hereunder, but not beyond December 31, 2040), any projected shortfall in Toll Revenues during such semi-annual period, measured against the Borrower’s funding obligations during such semi-annual period pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture.

“Measure I Cash Supplement” means sales tax revenues collected pursuant to the Measure I Ordinance and transferred on behalf of the Borrower to the Measure I Reserve Fund for deposit in the Toll Revenue Fund in accordance with Section 5.05 of the Indenture and Schedule IV.

“Measure I Investment” means the Measure I Backstop and the Measure I Cash Supplement, in an aggregate outstanding principal amount not to exceed ninety-three million (\$93,000,000) (excluding accrued and unpaid interest).

“Measure I Ordinance” means Ordinance No. 04-01, named “An Ordinance Providing for the Continuation of a One-Half of One Percent Retail Transactions and Use Tax by the San Bernardino County Transportation Authority for Local Transportation Purposes and the Transportation Expenditure Plan” adopted by the Borrower on June 2, 2004, providing for the continued imposition of a retail transactions and use tax applicable in the incorporated and unincorporated territory of San Bernardino County in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code, at the rate of one-half of one percent (1/2%) for a period not to exceed thirty (30) years beginning April 1, 2010.

“Measure I Reserve Fund” means the account by that name created pursuant to the Indenture.

“Monthly Funding Date” means the second to 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 that certain Record of Decision, Interstate 10 Corridor Project, dated July 6, 2017, issued by Caltrans.

“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 5.04(f) of the Indenture.

“Net Revenue” means, for any applicable time period, without duplication, (a) Revenue received by the Borrower during such period plus (b) Measure I Cash Supplement amounts

transferred to the Toll Revenue Fund from the Measure I Reserve Fund during such period, plus (c) solely for the current Calculation Period and the historical ratio calculations and solely to the extent necessary to achieve 1.00x coverage of payments required pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture, Measure I Backstop amounts transferred to the Toll Revenue Fund from the Measure I Reserve Fund during such period, less (d) Operation and Maintenance Expenses for such period (excluding, in such calculations, (i) any extraordinary or one-time Revenues for such period, and (ii) any extraordinary or one-time Operation and Maintenance Expenses for such period, 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 above), less (e) any deposits to the Rebate Fund made from Revenues during such period and less (f) with respect to ratio calculations for any Obligation, deposits of Revenues into any debt service reserve account or fund that has priority over the payment of debt service with respect to such Obligation, pursuant to Section 5.03(b) of the Indenture. When calculating projected Net Revenues for purposes of Sections 16(l) (*Rate Coverage*), 17(a) (*Indebtedness*), and 17(d) (*Residual Release Conditions*), Revenue shall only include amounts received under clauses (a), (b) and (f) of the definition of Toll Revenues and Cash Supplements. For purposes of Sections 16(l) (*Rate Coverage*), 17(a) (*Indebtedness*), 17(d) (*Residual Release Conditions*), and the conditions described in the definition of Additional Obligations, Revenue shall only include the amounts received under clauses (a), (b) and (f) of the definition of Toll Revenues and Cash Supplements and shall not include Measure I Backstop, except for the current Calculation Period and the historical ratio calculation described in clause (c) above.

“Obligations” means all indebtedness for borrowed money incurred by the Borrower pursuant to the TIFIA Loan Documents, the Indenture, or any Supplemental Indenture (including any indebtedness incurred pursuant to any Credit Facility or any Hedging Transaction) that is payable from Revenue or other collateral in the Trust Estate, including any bonds, notes, certificates or other obligations, as the case may be, authenticated and delivered under and pursuant to the Indenture as Obligations, but excluding Measure I Investments.

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

“Operation and Maintenance Expenses” means all current expenses incurred and paid or payable (or, if applicable, forecasted to be incurred and paid) by the Borrower for the operation and maintenance of the Toll Road in any particular time period to which said term is applicable, including payments with respect to financing leases and installment purchase agreements, all amounts paid or payable under the Toll Services Contract, the TCA Cooperative Agreement, the Police Services Agreement, the Freeway Maintenance 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, fees and expenses of the TIFIA Lender, any other secured creditor of the Borrower (excluding any commitment fees, termination fees, fines or other penalties or any payments to be made to Hedging Banks, such as Hedging Obligations and Hedging Termination Obligations), any rating agency and any insurance consultant, amounts required for the acquisition of any Qualified Hedge, legal

and accounting expenses, and any other reasonable and necessary expenses paid or payable for the operation and maintenance of the Toll Road, but excluding Capital Expenditures, expenditures for rehabilitation and operational improvement projects on the Toll Road, expenses in the form of judgment amounts, arbitral awards or dispute settlement amounts that in any case exceed the Borrower's applicable insurance deductible, other dispute resolution related expenses that are not covered by insurance, any costs, fees or reimbursements in respect of any Credit Facility, depreciation or obsolescence charges or reserves therefore, debt service for Obligations and Measure I Investments, 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 account by that name established pursuant to Section 5.02 of the Indenture.

“Operation and Maintenance Fund Required Amount” means, for any Monthly Funding Date, an amount equal to the Operation and Maintenance Expenses then due and payable or coming due and payable prior to the next Monthly Funding Date, plus an additional amount equal to forty-one and seven tenths percent (41.7%) of expected Operation and Maintenance Expenses for the applicable Borrower Fiscal Year, in each case initially based on the forecast of Operation and Maintenance Expenses with respect to the Project set forth in the Base Case Financial Model and thereafter based on the then-current forecasts regarding Operation and Maintenance Expenses prepared by the Borrower and included in the then-current Annual Operating Budget or, if different, in the Revised Financial Model approved by the TIFIA Lender as part of the then-current Financial Plan.

“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 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.

“**Permitted Debt**” means debt payable from Revenues that is limited to the following:

- (a) the TIFIA Loan;
- (b) Additional Obligations that satisfy each of the applicable requirements in the definition thereof;
- (c) repayment obligations in respect of Measure I Investments, to the extent provided herein and in the Indenture;
- (d) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that qualify as Operation and Maintenance Expenses, which obligations and leases do not require payments by the Borrower in any Borrower Fiscal Year in excess of \$500,000 in the aggregate (inflated annually by CPI); and
- (e) trade accounts payable (other than for borrowed money) related to the Project so long as such trade accounts payable are payable not later than ninety (90) days after the respective goods are delivered or the respective services are rendered.

“**Permitted Investments**” means:

- (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;

(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;

(f) the California Asset Management Program (CAMP), for so long as such fund maintains a rating category at least equivalent to the then applicable rating category on debt obligations issued by the United States Treasury Department from each Nationally Recognized Rating Agency that provides a rating for such fund; and

(g) the pooled investment fund of the County of San Bernardino, California, which is administered in accordance with the investment policy of said County as established by the Treasurer/Tax Collector thereof, as permitted by Section 53601 of the Government Code of the State, for so long as such fund maintains a rating category at least equivalent to the then applicable rating category on debt obligations issued by the United States Treasury Department from each Nationally Recognized Rating Agency that provides a rating for such fund.

“Permitted Liens” means:

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

(b) Liens imposed pursuant to any subordinate lien indenture approved by the TIFIA Lender pursuant to Section 17(a) (*Indebtedness*);

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

(d) 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(n) (*Material Obligations; Liens*);

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

(f) 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;

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

(h) 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;

(i) 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;

(j) 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

(k) 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.

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

“Principal Project Contracts” means:

- (a) the Design-Build Contract;
- (b) the Toll Services Contract;
- (c) the Caltrans DB Cooperative Agreement;
- (d) the Toll Facility Agreement;
- (e) the TCA Cooperative Agreement; and
- (f) the Freeway Maintenance Agreement.

“Principal Project Party” means any Person (other than the Borrower) party to a Principal Project Contract for so long as such Principal Project Contract (or any provision thereof) remains in effect or such entity remains the contracting party thereunder.

“Project” means the I-10 Corridor Contract 1 Project.

“Project Accounts” means the Toll Revenue Fund, the Project Fund, the Rebate Fund, the Senior Lien Obligations Fund, the Senior Lien Obligations Reserve Fund, the Major Maintenance and Repair Fund, the Second Lien Obligations Fund, the Second Lien Obligations Reserve Fund, the Subordinate Obligations Fund, the Subordinate Obligations Reserve Fund, the Sweep Fund, the Measure I Repayment Fund, the Measure I Reserve Fund, the Residual Fund, the Operation and Maintenance Fund, and any Accounts and sub-accounts established under any of the foregoing, and each other Fund or Account established pursuant to the Indenture or any Supplemental Indenture from time to time.

“Project Budget” means the budget for the Project in the aggregate amount of \$929,097,027 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.

“Projected Substantial Completion Date” means July 3, 2023.

“Qualified Hedge” means a Hedging Transaction approved in writing by the TIFIA Lender and entered into with a Qualified Hedge Provider and meeting the requirements of Section 16(o) (*Hedging*).

“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 set forth in Section 16(l) (*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 established pursuant to Section 5.02 of the Indenture.

“**Related Documents**” means the Indenture Documents, the Sales Tax 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 each of the TIFIA Loan Reserve Account, the Measure I Reserve Fund, the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund, and the Subordinate Obligations Reserve Fund.

“**Residual Fund**” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“**Residual Release Conditions**” means the requirements set forth in Section 17(d) (*Residual Release Conditions*).

“**Revenues**” means (a) Toll Revenues, (b) all interest or other income received from investment of money in the Funds and Accounts (excluding the Rebate Fund, the Measure I Reserve Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument), and (c) revenues received under any Hedging Transactions permitted hereunder; provided that for any ratio calculations required hereunder, “Revenue” shall not include Subsidy Payments (as defined in the Indenture) or any amounts transferred to the Toll Revenue Fund from the Sweep Fund or from the Residual Fund.

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

“**Sales Tax Indenture Documents**” means the Sales Tax Revenue Bond Indenture, the Sales Tax Revenue Bond Fourth Supplemental Indenture and the 2019 Sales Tax Revenue Bond Supplemental Indenture; provided, that for purposes of Section 13(b)(ii) and Section 17(b), this definition shall disregard any amendment that would not require the consent of the Holders of such Bonds (each as defined in the Sales Tax Revenue Bond Indenture) under Section 9.01(A)(1) of the Sales Tax Revenue Bond Indenture.

“**Sales Tax Revenue Bond Fourth Supplemental Indenture**” means that certain Fourth Supplemental Indenture, dated as of [____] 1, 2021, by and between the Borrower and the Sales Tax Trustee.

“**Sales Tax Revenue Bond Indenture**” means that certain Indenture, dated as of March 1, 2012, between the Borrower and the Bank of New York Mellon Trust Company, N.A., as supplemented and amended in accordance therewith.

“Sales Tax Revenue Bonds” means San Bernardino County Transportation Authority Sales Tax Revenue Bonds (Limited Tax Bonds) and San Bernardino County Transportation Authority Sales Tax Revenue Notes (Limited Tax Bonds) and other debt obligations payable from Sales Tax Revenues and issued in accordance with the Sales Tax Revenue Bond Indenture.

“Sales Tax Revenues” means the amounts distributed to the Borrower on account of the retail transactions and use tax imposed in the County of San Bernardino, CA pursuant to the Act, the Ordinance, and Ordinance No. 89-1 (as each such term is defined in the Indenture).

“Sales Tax Trustee” means the Trustee under the Sales Tax Revenue Bond Indenture.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

“Scheduled Major Maintenance and Repair Fund Required Deposit” means for each Monthly Funding Date, any current shortfall in the Major Maintenance and Repair Fund Required Amount.

“Second Lien Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Net Revenue for such Calculation Period to Annual Debt Service in respect of all Senior Lien Obligations and Second Lien Obligations for such Calculation Period.

“Second Lien Obligations” means any obligations issued or incurred under the Indenture that are subordinated in right of payment and lien priority to the Senior Lien Obligations and senior in right of payment and lien priority to the Subordinate Obligations, including the TIFIA Loan.

“Second Lien Obligations Account” means the Account by that name established within the Second Lien Obligations Fund pursuant to Section 5.02 of the Indenture.

“Second Lien Obligations Fund” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“Second Lien Obligations Interest Account” means the Account by that name created within the Second Lien Obligations Fund pursuant to Section 5.02 of the Indenture.

“Second Lien Obligations Principal Account” means the Account by that name established within the Second Lien Obligations Fund pursuant to Section 5.02 of the Indenture.

“Second Lien Obligations Reserve Fund” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“Second Lien Obligations Reserve Requirement” means, (a) for any Second Lien Obligations, the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Second Lien Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the outstanding Second Lien Obligations secured by such Fund or Account and (b) for the TIFIA Loan, the TIFIA Loan Reserve Requirement.

“Secretary” means the United States Secretary of Transportation.

“Secured Parties” means the Trustee, the TIFIA Lender, any Bondholders, any other trustee, holder or creditor of any Obligations, any Hedging Banks and any provider of Credit Facilities.

“Semi-Annual Payment Date” means each June 30 and December 31.

“Senior Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Net Revenue for such Calculation Period to Annual Debt Service in respect of all Senior Lien Obligations for such Calculation Period.

“Senior Lien Bonds” means Obligations identified as San Bernardino County Transportation Authority Toll Revenue Bonds Senior Lien Bonds authorized by, issued in accordance with, and at any time outstanding pursuant to, the Indenture.

“Senior Lien Obligations” means collectively, the Senior Lien Bonds and any Additional Obligations that are Senior Lien Bonds.

“Senior Lien Obligations Fund” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“Senior Lien Obligations Reserve Fund” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

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

“Series” means all Obligations identified in the Indenture or any Supplemental Indenture as a separate Series.

“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.

“State” means the State of California.

“Subordinate Obligations” means any Obligations that are subordinated in right of payment and lien priority to the Senior Lien Obligations and the Second Lien Obligations.

“Subordinate Obligations Fund” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“Subordinate Obligations Reserve Fund” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“Subordinate Obligations Reserve Requirement” means, for any Subordinate Obligations, the amount, if any, 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 Obligations issued under Section 54AA of the Code, the amounts relating to such Series of 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 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 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 I-10 Corridor Contract 1 Project to vehicular traffic.

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

“Supplemental Indenture” means any indenture executed and delivered by the Borrower and the Trustee in accordance with the Indenture that is stated to be a supplemental indenture thereto.

“Sweep Fund” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“TCA Cooperative Agreement” means that certain Cooperative Agreement, dated as of June 13, 2018, by and between the Borrower and the Toll Operator to implement and operate a toll collection system through a toll services contract for the Project, and all related or ancillary agreements, or any other operating agreement relating to the Toll Road entered into by the Borrower and one or more entities, subject to compliance with the requirements of this Agreement (including Section 17(e) (*Additional Project Contracts*)).

“Termination and Release Agreement” means that certain agreement, dated as of the date hereof, executed by the Borrower and the TIFIA Lender, relating to the termination of the 2019 TIFIA Loan Agreement and the 2019 TIFIA Loan and the termination, cancellation and discharge of the 2019 TIFIA Bond.

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

“**TIFIA Bond**” means the Bond issued by the Borrower pursuant to the Indenture in substantially the form of Exhibit A.

“**TIFIA Debt Service**” means with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the sum of (a) TIFIA Mandatory Debt Service and (b) the TIFIA Scheduled Debt Service, in each case (x) as set forth on Exhibit G, and (y) that is due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(d) (Payment of TIFIA Mandatory Debt Service), Section 9(d) (Payment of TIFIA Scheduled Debt Service), and Section 9(e) (Fixed Level Payments) as applicable.

“**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 \$225,000,000 (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 Indenture, the TIFIA Supplemental Indenture, the Sales Tax Revenue Bond Fourth Supplemental Indenture and the 2019 Sales Tax Revenue Bond Supplemental Indenture.

“**TIFIA Loan Prepayment Account**” means the Account by that name established within the Second Lien Obligations Fund pursuant to Section 5.02 of the Indenture.

“**TIFIA Loan Reserve Account**” means the Account by such name established within the Second Lien Obligations Reserve Fund pursuant to Section 5.02(a) of the Indenture.

“**TIFIA Loan Reserve Requirement**” means (a) as of the Calculation Date preceding the Debt Service Payment Commencement Date, \$10,000,000 and (b) thereafter, an amount equal to the greater of (i) the aggregate amount of TIFIA Mandatory Debt Service for the following twelve (12) month period and (ii) the highest amount that would result from applying each of the formulas used to calculate the Senior Lien Obligations Reserve Requirement to the TIFIA Loan.

“**TIFIA Mandatory Debt Service**” means, with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the portion of the principal of the Outstanding TIFIA Loan Balance and the interest payable on such Outstanding TIFIA Loan Balance, or portion thereof, (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), in each case, (a) designated as “**TIFIA Mandatory Debt Service**” on Exhibit G (or that becomes payable as TIFIA Mandatory Debt

Service as a result of an election by the Borrower pursuant to Section 9(c) (*Early Debt Service Payment Commencement Date*)) and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(c) (*Payment of TIFIA Mandatory Debt Service*), and which shall be unconditionally required to be paid on such Semi-Annual Payment Date.

“**TIFIA Scheduled Debt Service**” means, with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the portion of the principal of the Outstanding TIFIA Loan Balance and the interest payable on such Outstanding TIFIA Loan Balance, or portion thereof, (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), in each case, (a) designated as “**TIFIA Scheduled Debt Service**” on Exhibit G (or that becomes payable as TIFIA Scheduled Debt Service as a result of a missed payment by the Borrower pursuant to Section 9(d) (*Payment of TIFIA Scheduled Debt Service*)) and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(d) (*Payment of TIFIA Scheduled Debt Service*).

“**TIFIA Supplemental Indenture**” means that certain Second Supplemental Indenture, dated as of [] 1, 2021, between the Borrower and the Trustee, relating to the San Bernardino County Transportation Authority Toll Revenue Second Lien Obligations, 2021 TIFIA Series.

“**Toll Facility Agreement**” means that certain Toll Facility Agreement, dated as of February 14, 2019, by and between the Borrower and Caltrans.

“**Toll Operator**” means Transportation Corridor Agencies, 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 TCA Cooperative Agreement.

“**Toll Revenue Fund**” means the Fund by that name established pursuant to Section 5.01 of the Indenture.

“**Toll Revenues**” means (a) toll revenues, user fees, fines, rents or other similar charges payable for use of the Project, including receipts from the sale or rental of transponders, 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 Borrower with respect to the Project (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, but excluding proceeds of fire and other casualty insurance, (c) proceeds of any condemnation awards with respect to the Project, 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 Project, (d) liquidated damages for delayed completion of a Project paid to the Borrower under any construction contract relating to the Project or a portion thereof, including the Design-Build Contract, (e) liquidated damages paid to the Borrower by the Toll Services Provider pursuant to the Toll Services Contract, and (f) any other incidental or related fees or charges; but excluding therefrom cash advances representing deposits against future toll payments from users or potential users of the Project.

“Toll Road” means lanes of a street, road or highway upon which the Borrower has all right, power and authority pursuant to its toll program to impose tolls, and upon which tolls are imposed by the Borrower, and the related tolling facilities, as such tolled lanes and related facilities may from time to time be expanded, improved, upgraded, enlarged, or enhanced, but only to the extent that: (a) the Borrower irrevocably designates in writing that such toll lanes and related facilities, and any expansion, improvement, upgrade, enlargement or enhancement constitute a Toll Road generating Toll Revenues under the Indenture and (b) that (i) the additional Operation and Maintenance Expenses associated with any such expansion, improvement, upgrade, enlargement or enhancement and (ii) any additional Obligations issued to finance the costs of any such expansion, improvement, upgrade, enlargement or enhancements satisfy all of the requirements in this Agreement applicable to Additional Projects. The Toll Road initially means the Project.

“Toll Services Contract” means that certain I-10 Corridor Contract 1 Project Toll Services Contract, dated as of June 6, 2018, by and between the Borrower and the Toll Services Provider to design, implement and operate a toll collection system through a toll services contract for the I-10 Corridor Contract 1 Project, and all related or ancillary agreements, or any other operating agreement entered into by the Borrower and one or more entities, subject to compliance with the requirements of this Agreement (including Section 17(e)).

“Toll Services Provider” means TransCore, LP, a Delaware limited partnership, or any successor pursuant to the Toll Services Contract.

“Total Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of (a) Net Revenue for such Calculation Period to (b) aggregate Annual Debt Service with respect to all Obligations (including Additional Obligations) for such Calculation Period.

“Total 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 the Calculation Period ending on 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 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 actual results and updated revenue and traffic projections provided by the Traffic Consultant and approved by the TIFIA Lender; to (b) the aggregate outstanding principal amount of all Obligations on such Calculation Date taking into account any Additional Obligations that the Borrower has proposed to issue.

“Total Project Costs” means (a) the costs paid or incurred or to be paid or incurred by the Borrower 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 (excluding the Measure I Investment) to be paid into any fund or account upon the incurrance of the TIFIA Loan or any Additional 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 March 14, 2018, as revised as of March 15, 2019, prepared by the Traffic Consultant, and any amendments, supplements or updates thereto.

“Traffic Consultant” means CDM Smith, 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 Annual Debt Service for the applicable Obligations to the original purchase price of such Obligations (taking into account discounts, premiums and transaction costs) on the basis of semi-annual compounding of interest.

“Trust Estate” has the meaning provided in the Indenture, and includes all rights, title, interest and privileges of the Borrower in, to and under (a) the Toll Revenues, (b) all interest or other income from investment of money in the Funds and Accounts (excluding the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Facility), (c) all revenues from any Hedging Transactions, (d) remaining proceeds of insurance resulting from an event of loss affecting the Project, 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 5.04(f) of the Indenture, (e) delay liquidated damages, proceeds from business interruption and delay in start-up insurance policies, in each case related to the Project, (f) the amounts of the Measure I Investment transferred to the Trustee, (g) all amounts (including the proceeds of Obligations) held in each Fund and Account (except for amounts on deposit in the Rebate Fund and amounts on deposit in any Fund or Account established to hold the proceeds of a drawing on any Credit Facility) and (h) any additions to the Trust Estate (as defined in the Indenture) made after the Effective Date.

“Trustee” means U.S. Bank National Association.

“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.

“**USDOT**” means the United States Department of Transportation.

“**Valuation Date**” means (a) with respect to any Capital Appreciation Obligations, the date or dates set forth in the Supplemental Indenture authorizing such Capital Appreciation Obligations on which specific Accreted Values are assigned to the Capital Appreciation Obligations and (b) with respect to any Deferred Income Bonds, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Indenture authorizing such Deferred Income Bonds on which specific Appreciated Values are assigned to the Deferred Income Bonds.

“**Variable Interest Rate**” means a variable interest rate to be borne by any Obligations. The method of computing such variable interest rate shall be specified in the Supplemental Indenture pursuant to which such Obligations are 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 any Obligations that accrue interest at a Variable Interest Rate.

“**Weighted Average Interest Cost**” means, for each Semi-Annual Payment Date, a rate calculated as follows: the sum of (a) the applicable True Interest Cost(s) for any Additional Obligations that are Senior Lien Obligations multiplied by the ratio of (i) the current principal amount of Additional Obligations that are Senior Lien Obligations then outstanding to (ii) the aggregate of the Outstanding TIFIA Loan Balance and the principal of any Additional Obligations outstanding as of such Semi-Annual Payment Date; (b) the interest rate on the TIFIA Loan multiplied by the ratio of (i) the current Outstanding TIFIA Loan Balance to (ii) the aggregate of the Outstanding TIFIA Loan Balance and the principal of any Additional Obligations outstanding as of such Semi-Annual Payment Date; (c) the applicable True Interest Cost(s) for any Second Lien Obligations (other than the TIFIA Loan) multiplied by the ratio of (i) the current principal amount of Additional Obligations that are Second Lien Obligations then outstanding to (ii) the aggregate of the Outstanding TIFIA Loan Balance and the principal of any Additional Obligations outstanding as of such Semi-Annual Payment Date; and (d) the applicable True Interest Cost(s) for any Subordinate Obligations multiplied by the ratio of (i) the current principal amount of Additional Obligations that are Subordinate Obligations then outstanding to (ii) the aggregate of the Outstanding TIFIA Loan Balance and the principal of any Additional Obligations outstanding as of such Semi-Annual Payment Date.

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 otherwise expressly required herein, 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 (except when the notice itself is set forth in the form of an email).

Section 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$225,000,000 (excluding capitalized interest). 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 any construction contract relating to the Project, the Borrower shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** to Exhibit D, along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the TIFIA Lender, all in accordance with the procedures of Exhibit D and subject to the requirements of this Section 4 (Disbursement Conditions) and the conditions set forth in Section 13(b) (Conditions Precedent to All Disbursements); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender, the Servicer (if any) and the FHWA Division Office on or before the first (1st) Business Day of each month for which a disbursement is requested. Subject to clause (d) of this Section 4, if the

TIFIA Lender does 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 denial of a Requisition by the TIFIA Lender shall be provided substantially in the form attached as **Appendix Two** to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 13 (*Conditions Precedent*) or Exhibit D (*Requisition Procedures*)), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

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

Section 6. Interest Rate. The interest rate with respect to the Outstanding TIFIA Loan Balance (the "**TIFIA Interest Rate**") shall be [_____] (____%) per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due and not capitalized interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any past due interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date and not capitalized as part of the Outstanding TIFIA Loan Balance (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any past due interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date and not capitalized as part of the Outstanding TIFIA Loan Balance (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date the Outstanding TIFIA Loan Balance and any past due and not capitalized interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

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

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; (iii) increased on each occasion on which the interest portion of any TIFIA Scheduled Debt Service is not paid by the Borrower on the applicable Semi-Annual Payment Date, by the amount of such unpaid interest, which shall be capitalized; and (iv) 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 or the Trustee, advise the Borrower or the Trustee, as applicable, 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 (including any election by the Borrower pursuant to Section 9(c) (*Early Debt Service Payment Commencement Date*)), 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 *pro rata* over the Level Payment Period to reduce future payments due on the TIFIA Bond. 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 (evidenced by the TIFIA Bond), the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the owners of the Obligations issued under the Indenture including the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture and the TIFIA Supplemental Indenture. The TIFIA Loan (evidenced by the TIFIA Bond) shall be secured by the Liens on the Trust Estate and subordinate, during any period when a Bankruptcy Related Event with respect to the Borrower has not occurred, only (except as otherwise required by law) to the Senior Lien Obligations issued in accordance with this Agreement and the Indenture. Upon the occurrence of a Bankruptcy Related Event with respect to the Borrower, the TIFIA Loan

(evidenced by the TIFIA Bond) shall be secured by a first priority security interest in the Trust Estate on a parity with the Senior Lien Obligations.

(b) Except for Permitted Liens and to the extent provided in Section 8(a), 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 and the TIFIA Supplemental Indenture in favor of the Trustee (on behalf of the TIFIA Lender and owners of the other Obligations), 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 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 and shall not apply any portion of the Revenues in contravention of this Agreement or the Indenture.

(d) The Indenture provides that all Revenues shall, subject to Section 5.03(b) thereof, be deposited in the Toll Revenue Fund and applied in the order of priority described in Section 5.03(b) of the Indenture, a copy of which Section 5.03(b), as of the Effective Date, is attached as Schedule III (all capitalized terms used in Schedule III and not otherwise defined in this Agreement shall have the meanings ascribed in the Indenture).

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan, evidenced by the TIFIA Bond, by making payments in accordance with the provisions of this Agreement, the Indenture and the TIFIA Supplemental Indenture 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 (to the extent provided in Section 20(d) (Events of Default and Remedies) 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 June 30 and December 31 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) Early Debt Service Payment Commencement Date. The Borrower shall have the right to elect to establish the Debt Service Payment Commencement Date on any Semi-Annual Payment Date occurring after the Substantial Completion Date and prior to the earlier of the fifth (5th) anniversary of the Substantial Completion Date and December 31, 2027, by providing not less than six (6) months' irrevocable, advance written notice to the TIFIA Lender; provided, that such modification to the Debt Service Commencement Date shall not go into effect until the Borrower has funded the TIFIA Loan Reserve Account with the TIFIA Loan Reserve Requirement. In such event, (i) subject to the foregoing, the Debt Service Payment Commencement Date shall be the date specified by the Borrower in such written notice (which date shall be a Semi-Annual Payment Date), (ii) all interest on the TIFIA Loan accruing from and after the date of such election shall be payable on a current basis as TIFIA Mandatory Debt Service and shall not be capitalized (but there shall be no change to the dates for payment of the principal of the TIFIA Loan), and (iii) the Borrower's payment obligations in respect of TIFIA Scheduled Debt Service in accordance with Section 9(e) shall commence as of such specified Debt Service Payment Commencement Date and shall be TIFIA Mandatory Debt Service for all purposes hereunder. The Borrower shall have no right to revoke or adjust any election made pursuant to this Section. Notwithstanding any of the foregoing or any early achievement of Substantial Completion, in no event shall the Borrower have the right to elect to establish the Debt Service Payment Commencement Date prior to the Projected Substantial Completion Date.

(d) Payment of TIFIA Mandatory Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the Borrower shall pay TIFIA Mandatory Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date as TIFIA Mandatory Debt Service 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(h) (Manner of Payment) and the Indenture.

(e) Payment of TIFIA Scheduled Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the Borrower shall pay TIFIA Scheduled Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date as TIFIA Scheduled Debt Service 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(h) (Manner of Payment) and the Indenture. In the event any payment of TIFIA Scheduled Debt Service is not made in accordance with this Section 10(e), the amount of such missed payment shall be added to the amount of TIFIA Scheduled Debt Service to be paid by the Borrower on the next applicable Semi-Annual Payment Date.

(f) Fixed Level Payments. On each Semi-Annual Payment Date occurring on or after the Level Payment Commencement Date, the Borrower shall pay TIFIA Debt Service in the amount of one hundred percent (100%) of the Fixed Level Payment, which payments shall constitute TIFIA Mandatory Debt Service and shall be made in accordance with this Section 9(e) and Section 9(h) (Manner of Payment). On each Semi-Annual Payment Date occurring during the Level Payment Period, the Borrower shall make level payments of principal and interest (each a "**Fixed Level Payment**"), each of which payments shall be approximately equal in amount. The amount of the Fixed Level Payment shall be calculated in such manner that the Outstanding TIFIA

Loan Balance as of the Level Payment Commencement Date shall 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, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal of or interest on the TIFIA Loan are made during such period). Within thirty (30) days prior to the beginning of the Level Payment Period, the TIFIA Lender may (or, at the written request of the Borrower, shall) give written notice to the Borrower of the amount of the related Fixed Level Payment, which amount shall be deemed conclusive absent manifest error, but no failure to provide or delay in providing the Borrower with such notice shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents. To the extent that any prepayments of the TIFIA Loan shall be made during the Level Payment Period in addition to the Fixed Level Payments, such prepayments shall be applied to the remaining Outstanding TIFIA Loan Balance and the resulting Fixed Level Payments shall be recalculated as provided in Section 10(c) (*General Prepayment Instructions*) and reflected in a revised Exhibit G.

(g) Accrual of Amounts on Interim Payment Dates.

(i) If any Additional 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 Second Lien Obligations Principal Account and Second Lien Obligations Interest Account, as applicable, 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) (in the case of interest) and twelve (12) (in the case of principal).

(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 Second Lien Obligations Principal Account and Second Lien Obligations Interest Account, as applicable, pursuant to this Section 9(g) (*Accrual of Amounts on Interim Payment Dates*) shall be determined at such time by the parties hereto.

(h) Manner of Payment. Payments under this Agreement and the TIFIA Bond shall be made by wire transfer on each Semi-Annual Payment Date or the next Business Day if the Semi-Annual Payment Date is not a Business Day 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.

(i) 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 Section 20(d) (*Events of Default and Remedies*)).

(j) TIFIA Bond. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall execute and cause the Trustee to 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 \$225,000,000 (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

Section 10. Prepayment.

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

(i) on each Semi-Annual Payment Date occurring on or after the earlier of (A) completion of both the I-10 Contract 2 and I-15 Corridor Projects and (B) the fifteenth (15th) anniversary of the Substantial Completion Date, in an amount equal to fifty percent (50%) of the amounts on deposit in the Residual Fund on such date, after repayment of all Measure I Investment amounts (plus any interest accrued thereon in accordance with this Agreement) due on such date; provided that such prepayments shall only occur if the Residual Release Conditions have been met as of such date;

(ii) following the determination thereof in accordance with Section 5.04(f) of the Indenture, in the amount of any Net Loss Proceeds or, to the extent Net Loss Proceeds will also be used to prepay Senior Lien Bonds or other Second Lien Obligations, in the pro rata amount (based on relative outstanding principal amounts of the TIFIA Loan and any Additional Obligations that are Senior Lien Bonds or Second Lien Bonds) of such Net Loss Proceeds allocable to the TIFIA Loan;

(iii) upon any voluntary prepayment of Obligations other than the TIFIA Loan, on a *pro rata* basis (based on relative outstanding principal) with such voluntary prepayment, provided that the Borrower shall have no obligation to prepay the TIFIA Loan in connection with the prepayment of Obligations resulting from the issuance of refunding Obligations pursuant to clause (a) in the definition of Additional Obligations; and

(iv) from and after any Semi-Annual Payment Date following the first anniversary of Substantial Completion as of which the Borrower shall have failed to be in compliance with the Rate Coverage Test on six (6) consecutive Calculation Dates, on such Semi-Annual Payment Date (or on the next Monthly Funding Date thereafter) in an amount equal to a *pro rata* portion (based on the relative outstanding principal amounts of the TIFIA Loan and any Additional Obligations that are Senior Lien Bonds or Second Lien Bonds) of the lesser of (A) the total amount then on deposit in the Residual Fund and the Sweep Fund (after any other transfers from the Residual Fund and the Sweep Fund otherwise contemplated on such Semi-Annual Payment Date) and (B) the amount necessary to cause the Borrower to regain compliance with the Rate Coverage Test;

provided, that to the extent the Borrower is not required to make a prepayment of the Senior Lien Bonds or Second Lien Bonds (not including the TIFIA Bond) in the circumstances described above, the full amount described above (and not a *pro rata* portion) shall be paid to the TIFIA Lender as a mandatory prepayment under this clause (iv). If the mandatory prepayment described above is insufficient to cause the Borrower to regain compliance with the Rate Coverage Test, the Borrower shall thereafter make mandatory prepayments in the manner described above on each Semi-Annual Payment Date thereafter until the Borrower 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 5.03(c), 5.04(f), 5.12(d) or 6.03(e) of the 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 a minimum principal amount of \$1,000,000), at any time or from time-to-time, without penalty or premium. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower intends to pay concurrently with such prepayment, if any. In the case of any optional prepayment, such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender. Anything in this Section 10(b) (*Optional Prepayments*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement. 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. The Borrower shall promptly deposit into the TIFIA Loan Prepayment Account pursuant to the Indenture any amounts required or elected to be applied to a prepayment of the TIFIA Loan. All partial prepayments of principal pursuant to Section 10(a)(iv) and Section 10(b) shall reduce future principal amounts of TIFIA Mandatory Debt Service payments and Fixed Level Payments ratably by an equal amount. All other prepayments shall be applied to reduce each Fixed Level Payment by an equal amount. If said monies 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 Project 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, Caltrans 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 duly executed and delivered to the TIFIA Lender this Agreement and the TIFIA Bond, each in form and substance satisfactory to the TIFIA Lender.

(ii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Indenture Document and each Sales Tax Indenture Document, together with any amendments, waivers or modifications thereto (which, in the case of the Sales Tax Indenture Documents, would in any way be considered material to the Borrower's undertakings hereunder or thereunder with respect to the Measure I Investment), 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 (other than the Sales Tax Revenue Bond Indenture) 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)(ii) (*Conditions Precedent to Effectiveness*), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(iii) 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 H-1) and Bond 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 H-2).

(iv) 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).

(v) 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 Southern California Association of Governments, (B) the State transportation plan, and (C) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and sources of funding for, the Project.

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

(vii) The Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as Exhibit K (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.

(viii) 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 in accordance with the Construction Schedule and in any event on or prior to the Projected Substantial Completion Date.

(ix) 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, accompanied by a letter from the preparer of such study, dated as of April 18, 2019, 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.

(x) The Borrower shall have delivered to the TIFIA Lender an original fully executed counterpart (or a certified copy) of the Consulting Engineer's Report, accompanied by a letter from the Consulting Engineer, dated as of April 18, 2019, and certifying that Consulting Engineer's Report 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 Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.35:1.00, (C) demonstrate a Second Lien Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.25:1.00, (D) demonstrate Net Revenues sufficient to fully fund all amounts required pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture as of each current Calculation Date through the Final Maturity Date, (E) demonstrate a Total Loan Life Coverage Ratio for each Calculation Date through the Final Maturity Date that is not less than 1.30x, 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 pursuant to Cal. Gov. Code §5450-5451, the Borrower is authorized 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 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 Document, 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 (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xvi) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender of compliance with NEPA, (B) provided evidence satisfactory to the TIFIA Lender of compliance with CEQA, and (C) 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 certificates of insurance in respect of all insurance policies listed in Schedule 14(u), and, at the TIFIA Lender's request, copies of such insurance policies. The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that (A) each such policy meets the requirements of Section 16(f) (*Insurance*) and (B) each liability policy (other than workers' compensation insurance) reflects the TIFIA Lender as an additional insured.

(xx) The Borrower shall have provided to the TIFIA Lender evidence that the Borrower 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: (A) a copy of its Organizational Documents, as in effect on the Effective Date, 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 the Borrower 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 authorizing the execution and delivery of, and the performance under, the TIFIA Loan Documents, 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 J.

(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 M 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).

(xxviii) The Borrower shall have executed and delivered to the TIFIA Lender the Termination and Release Agreement, in form and substance satisfactory to the TIFIA Lender.

(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*).

(ii) 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 any Related Documents, and any amendments thereto, entered into after the Effective Date.

(iii) To the extent not previously delivered to the TIFIA Lender, 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 Section 17(e) (*Additional Project Contracts*) (including, in each case, any amendment, modification or supplement thereto) entered into after the Effective Date.

(iv) 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.

(v) 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.

(vi) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Default or Event of Default shall have occurred and be continuing, and (B) no material event of default of any Principal Project Party under any Principal Project Contract shall have occurred and be continuing and (C) no event of default of the Borrower under any Related Document, shall have occurred and be continuing.

(vii) To the extent necessary to make the corresponding representations and warranties true and correct 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.

(viii) 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 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).

(ix) 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.

(x) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the TIFIA Lender.

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

(xii) 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.

(xiii) The Borrower shall have demonstrated, and the Consulting Engineer shall have confirmed in writing, to the TIFIA Lender's satisfaction that the funds described in the Financial Plan most recently submitted to the TIFIA Lender as being available and committed to pay for Project costs will be sufficient to complete the Project in accordance with the Construction Schedule (and in any event on or prior to the Projected Substantial Completion Date) and no facts or circumstances have arisen that would reasonably be likely to cause such amounts reflected in such Financial Plan not to be available as and when needed to pay such costs, including such committed and allocated contingency funds as needed to enable the Borrower to pay for any reasonably anticipated cost overruns associated with completion of the Project.

Section 14. Representations and Warranties of Borrower. The Borrower hereby makes the following representations and warranties 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 county transportation authority 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 the Toll Road or the Trust Estate (or any portion thereof), 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 (other than Project right of way condemnation proceedings) 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 (other than Project right of way condemnation proceedings), 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 Revenues or provide the Measure I Investment in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or, if applicable, the Revised Financial Model most recently 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 and the TIFIA Supplemental Indenture, in accordance with Streets and Highways Code Sections 149.7 and 149.11 and Governmental Code Sections 5450 and 5451 and other applicable provisions of law, establish, in favor of the Trustee for the benefit of owners of Obligations issued pursuant to the Indenture including 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 as of the Effective Date. As of the Effective Date, the priority of the TIFIA Loan (as evidenced by the TIFIA Bond) with respect to the Trust Estate is not *pari passu* with or subordinate to any Obligations and, as of any date thereafter, (i) is not subordinate to any Obligations other than any Additional Obligations constituting Senior Lien Obligations that have been issued in accordance with the requirements of this Agreement and the Indenture Documents and (ii) not *pari passu* with any Obligations other than any Additional Obligations constituting Second Lien Obligations that have been issued in accordance with requirements of this Agreement and the Indenture Documents. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture, the TIFIA Supplemental Indenture and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture and the TIFIA Supplemental Indenture. 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 and the TIFIA Supplemental Indenture, and (ii) 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, have been paid. Under the laws of the State, neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture and the TIFIA Supplemental Indenture 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 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)(iv) (Conditions Precedent to Effectiveness). Further, the Borrower has fully complied with 2 C.F.R. Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 C.F.R. § 1200.332. The Borrower is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 C.F.R. Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents in effect are true and correct, 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).

(j) Compliance with Federal and CEQA Requirements. The Borrower has complied, with respect to the Project, with all applicable requirements of NEPA, CEQA, 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 costs of, and sources of funding for, the Project.

(l) Credit Ratings. The TIFIA Loan has received a public Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, 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. No Default or Event of Default has occurred and is continuing.

(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 or default under any Principal Project Contract, and to the knowledge of the Borrower, no Principal Project Party is in breach or default of any material term under any Principal Project Contract.

(p) Information. The information furnished by the Borrower to the TIFIA Lender with respect to the Borrower, the Project and funding or financing thereof, 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 made, in light of the circumstances under which they were made, 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; and provided, further, that financial information is made as of the date indicated in the financial report as provided, and is not to be taken as a representation or omission as to financial information as of a different date.

(q) OFAC; Anti-Corruption Laws.

(i) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party is a Sanctioned Person.

(ii) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or any Principal Project Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the TIFIA Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(r) Compliance with Law. The Borrower 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 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 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. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower 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 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 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 (or as applicable, lease), 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 or to be maintained by the Borrower, the Design-Build Contractor and the Toll Services Provider, in each case 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 (including Section 16(f) (*Insurance*)) as of the date on which this representation and warranty is made.

(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 Revenues and the Trust Estate) on which it purports to grant Liens pursuant to the Indenture Documents, 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 Revenues, or the properties or assets of the Toll Road.

(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 financial statement, including any government-wide, governmental and enterprise fund or Project specific statements of net position, statements of activities and statements of 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. The Borrower is not required to file tax returns with any Governmental Authority.

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

(cc) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under the TIFIA Loan Documents, (ii) the other funding sources identified in the Base Case Financial Model that are committed and allocated to the Borrower, (iii) 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 (iv) 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 in accordance with the Construction Schedule (and in any event on or prior to the Projected Substantial Completion Date).

(dd) Sovereign Immunity. Under Sections 814 *et seq.* of the Government Code of the State, the Borrower is not immune from actions brought in contract within the jurisdiction of any court of competent jurisdiction or which could be asserted in any action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party by reason of the fact that it is a governmental entity, including the obligations of the Borrower hereunder and thereunder.

(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 hereby makes the following representations and warranties as of the Effective Date:

(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 and the TIFIA Lender has delivered its initial TIFIA Lender's Authorization Representative Certificate to the Borrower.

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 owners of the Obligations, including the Holder of the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture, or intended so to be granted pursuant to the Indenture and any Supplemental Indenture, 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 and the Supplemental Indentures, 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 and the Supplemental Indentures and all the rights of the Trustee for the benefit of the owners of the Obligations, including the Holder of the TIFIA Bond, 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 to be submitted to the board of directors of the Borrower and offering documents related to Additional Obligations and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing 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. With respect to the issuance of Sales Tax Revenue Bonds, the Borrower shall furnish to the TIFIA Lender, (i) prior to issuing the preliminary official statement to investors, the certificate and documentation required pursuant to Section 17(a)(vi) and (ii) prior to or simultaneously with the release thereof to investors, copies of the preliminary official statement and final official statement, and shall deliver to the TIFIA Lender copies of fully executed or final versions of all other definitive documentation related to the issuance of such Sales Tax Revenue Bonds within ten (10) days following execution or completion thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) 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 (y) copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof. The Borrower shall provide written notice to the TIFIA Lender of the Borrower's intent to enter into an Additional Project Contract and, if such Additional Project Contract is subject to approval by the TIFIA Lender pursuant to Section 17(e) (Additional Project Contracts), shall provide drafts of any such Additional Project Contracts at least thirty (30) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. If the TIFIA Lender

requests a copy of any Additional Project Contract that is not subject to approval by the TIFIA Lender, the Borrower shall provide a copy of the final or near final draft of such Additional Project Contract, together with any related contracts, side letters or other understandings, prior to the execution thereof (provided such request is made prior to the execution of such contract) 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. Copies of the foregoing may be provided by email notice and a link to the proposed board of directors' agenda items.

(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 applicable 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 good engineering practices.

(ii) The Borrower shall ensure that the Design-Build Contractor and its subcontractors comply with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by the Design-Build Contractor to the Borrower and shall ensure that any letter of credit provided pursuant to the Design-Build Contract meets the requirements therefor set forth therein.

(iii) The Borrower shall comply with 2 C.F.R. Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 C.F.R. § 1200.332.

(e) Operation and Maintenance. The Borrower shall (i) operate and maintain the Project (A) in a reasonable and prudent manner and (B) substantially in accordance with the Financial Plan most recently submitted to 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 Project), and (ii) maintain the Project 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 maintain or cause to be maintained insurance for the construction and operation of the Project, with responsible insurers and, in any event, 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. The Borrower shall obtain and maintain each of the policies set forth in Schedule 14(u) that apply to the operating period of the Project prior to the Substantial Completion Date.

(ii) The Borrower shall prepay (proportionately with any Senior Lien Obligations and Second Lien Obligations (based on relative outstanding principal amount) to the extent required in the Indenture) the TIFIA Loan in whole or in part, without penalty or premium, from any Net Loss Proceeds available for prepayment of the TIFIA Loan, which amount shall be paid pursuant to Section 10(a)(ii) (*Mandatory Prepayments*).

(iii) The Borrower shall (by maintaining with responsible insurers) provide for workers' compensation insurance for Borrower's workers and insurance against public liability and property damage to the Project to the extent reasonably necessary to protect the Borrower and the TIFIA Lender.

(iv) The Borrower shall cause all liability insurance policies maintained by the Borrower, the Design-Build Contractor and the Toll Services Provider (other than workers' compensation insurance) to reflect the TIFIA Lender as an additional insured to the extent of its insurable interest.

(v) The Borrower shall deliver to the TIFIA Lender all (A) insurance brokers' letters, and (B) certificates of insurance, with respect to each policy set forth in Schedule 14(u), in each case promptly after Borrower's receipt thereof and in any event no later than when required to be delivered pursuant to the 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 Project. All such policies shall be available at all reasonable times for inspection by the TIFIA Lender, its agents and representatives.

(vi) The Borrower shall comply at all times with the insurance requirements of the Indenture Documents.

(vii) The Borrower shall, within thirty (30) days after the Substantial Completion Date, provide certificates of insurance with respect to any policies reflected in Schedule 14(u) related to the operating period of the Project. Each certificate of insurance delivered pursuant to this clause (vii) shall reflect the requirements set forth in Section 13(a)(xix) (*Conditions Precedent to Effectiveness*).

(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 and including any relevant and significant documentation:

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

(B) Change to Projected Substantial Completion Date: the occurrence of any delay in the Projected Substantial Completion Date, including a revised Construction Schedule;

(C) Defaults; Events of Default: any Default or Event of Default;

(D) 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 individual award amounts in excess of \$2,000,000 (but excluding condemnation awards associated with the procurement of right of way for the Project);

(E) 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;

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

(G) Insurance Claim: any insurance claims made by the Borrower or the Design-Build Contractor in respect of the Project in excess of \$1,000,000 either individually or in the aggregate, to the extent related to the Project or to the extent the proceeds from such insurance claim would be deposited into a Project Account;

(H) 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 (other than the Sales Tax Indenture Documents which are addressed in the proviso below) at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof; provided, that with respect to the Sales Tax Indenture Documents, the requirements of this clause (H) shall apply solely to amendments or supplements that are related to the priority of transfers of sales tax revenues from amounts held in the Sales Tax Revenue Bond Indenture, or that otherwise amend or affect the Sales Tax Revenue Bond Fourth Supplemental Indenture;

(I) 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 or any Additional Project Contract related to the operation and maintenance of the Project;

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

(K) Project Changes: any (1) change to the Total Project Costs in excess of five percent (5%) of total forecasted Total Project Costs, together (in the case of increased costs) with a written description of the committed funding sources available to the Borrower to pay for such increased Total Project Costs; or (2) material change to the Construction Schedule, together with a proposed revised Construction Schedule;

(L) Ratings Changes: any change in the rating assigned to the TIFIA Loan, any Additional Obligations or any Sales Tax Revenue Bonds by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, or the Borrower, (and, with respect to any outstanding Credit Facility related to any Obligations or any Fund under the Indenture, any change in the rating of the issuer of such Credit Facility);

(M) 2 C.F.R. Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 13(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 C.F.R. § 180.335; (2) any other notification required pursuant to 2 C.F.R. § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 C.F.R. § 200.113, and the Borrower shall require its subcontractors to provide it notice of any such violation; and

(N) 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)(H) (*Amendments*), or Section 16(g)(i)(M) (*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) Maintain Legal Structure. The Borrower shall maintain its existence as a county transportation authority, under the laws of the State of California.

(j) Annual Rating. The Borrower shall, commencing in [2021], 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 TIFIA Bond and on any Additional Obligations 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.

(k) Project Accounts; Permitted Investments.

(i) TIFIA Loan Reserve Requirement. The Borrower shall cause to be deposited amounts (including any proceeds of the Measure I Backstop) into the TIFIA Loan Reserve Account so that such Account is funded in an amount at least equal to \$10,000,000 by no later than the Calculation Date preceding the Debt Service Payment Commencement Date. The Borrower's failure to deposit the TIFIA Loan Reserve Requirement into the TIFIA Loan Reserve Account by the Calculation Date preceding the Debt Service Payment Commencement Date (or such earlier date that may be elected as the Debt Service Payment Commencement Date pursuant to Section 9(c) (*Early Debt Service Payment Commencement Date*)) shall be an Event of Default pursuant to Section 20(a)(xiii) (*Funding of Required Amounts*). Amounts in the TIFIA Loan Reserve Account shall be made available to ensure the timely payment of TIFIA Mandatory Debt Service. To the extent the Trustee withdraws amounts from the TIFIA Loan Reserve Account, the Borrower shall cause such Account to be replenished on a monthly basis to one hundred percent (100%) of the TIFIA Loan Reserve Requirement by no later than the next Semi-Annual Payment Date, subject to the availability of Revenue and Measure I Investment for such purpose; provided, that the Borrower's failure to do so due to the unavailability of (A) Revenues or (B) Measure I Investment due to the annual or aggregate limits on Measure I Investment described in Section 16(w), shall not by themselves constitute an Event of Default.

(ii) Senior Lien Obligations Reserve Fund. The Borrower shall deposit amounts into the Senior Lien Obligations Reserve Fund so that such Fund or Account is funded in an amount equal to the Senior Lien Obligations Reserve Requirement applicable to such Senior Lien Obligations. The Borrower's failure to deposit the Senior Lien Obligations Reserve Requirement into the Senior Lien Obligations Reserve Fund (or the applicable Account thereunder) on or prior to the date required therefor pursuant to the applicable Indenture Documents shall be an Event of Default pursuant to Section 20(a)(xiii) (*Funding of Required Amounts*). Amounts in the Senior Lien Obligations Reserve Fund (or the applicable Account thereunder) shall be made available to ensure the timely payment of the principal of, and interest accrued on, such Senior Lien Obligations. To the extent the Borrower withdraws amounts from the Senior Lien Obligations Reserve Fund (or an Account therein), the Borrower shall cause such Fund or Account to be replenished on a monthly basis to one hundred percent (100%) of the Senior Lien Obligations Reserve Requirement by no later than the next Semi-Annual Payment Date, subject to the availability of Revenues and Measure I Investment for such purpose;

provided, that the Borrower's failure to do so due to the unavailability of (A) Revenues or (B) Measure I Investment due to the annual or aggregate limits on Measure I Investment described in Section 16(w) shall not by themselves constitute an Event of Default.

(iii) Second Lien Obligations Reserve Fund. The Borrower shall deposit amounts into the Second Lien Obligations Reserve Fund (or the applicable Account thereunder established for any Second Lien Obligations other than the TIFIA Loan Reserve Account) so that such Fund or Account is funded in an amount equal to the Second Lien Obligations Reserve Requirement applicable to such Second Lien Obligations. The Borrower's failure to deposit the Second Lien Obligations Reserve Requirement into the Second Lien Obligations Reserve Fund (or the applicable Account thereunder) on or prior to the date required therefor pursuant to the applicable Indenture Documents shall be an Event of Default pursuant to Section 20(a)(xiv) (*Funding of Required Amounts*). Amounts in the Second Lien Obligations Reserve Fund (or the applicable Account thereunder) shall be made available to ensure the timely payment of the principal of, and interest accrued on, such Second Lien Obligations. To the extent the Borrower withdraws amounts from the Second Lien Obligations Reserve Fund (or an Account therein), the Borrower shall cause such Fund or Account to be replenished on a monthly basis to one hundred percent (100%) of the Second Lien Obligations Reserve Requirement by no later than the next Semi-Annual Payment Date, subject to the availability of Revenues and Measure I Investment for such purpose; provided, that the Borrower's failure to do so due to the unavailability of (A) Revenues or (B) Measure I Investment due to the annual or aggregate limits on Measure I Investment described in Section 16(w) shall not by themselves constitute an Event of Default.

(iv) Operation and Maintenance Fund. At all times from and after the Substantial Completion Date, the Borrower shall fund the Operation and Maintenance Fund in an amount equal to the Operation and Maintenance Fund Required Amount. The Borrower's failure to deposit the Operation and Maintenance Fund Required Amount into the Operation and Maintenance Fund as of the Substantial Completion Date shall be an Event of Default pursuant to Section 20(a)(xiv) (*Funding of Required Amounts*). Amounts in the Operation and Maintenance Fund shall be made available to ensure the timely payment of Operation and Maintenance Expenses. To the extent the Borrower withdraws amounts from the Operation and Maintenance Fund, the Borrower shall cause such Fund to be replenished on a monthly basis to one hundred percent (100%) of the Operation and Maintenance Fund Required Amount by no later than the next Semi-Annual Payment Date, subject to the availability of Revenues and Measure I Investment for such purpose; provided, that the Borrower's failure to do so due to the unavailability of (A) Revenues or (B) Measure I Investment due to the annual or aggregate limits on Measure I Investment described in Section 16(w) shall not by themselves constitute an Event of Default.

(v) Major Maintenance and Repair Fund. At all times from and after the Substantial Completion Date, the Borrower shall fund the Major Maintenance and Repair Fund in an amount equal to the Major Maintenance and Repair Fund Required Amount. The Borrower's failure to have on deposit the Major Maintenance and Repair Fund Required Amount in the Major Maintenance and Repair Fund on the Substantial Completion Date shall be an Event of Default pursuant to Section 20(a)(xiv) (*Funding of*

Required Amounts). Amounts in the Major Maintenance and Repair Fund shall be made available to ensure the timely payment of Major Maintenance and Repair Fund Permitted Expenditures. To the extent the Borrower withdraws amounts from the Major Maintenance and Repair Fund, the Borrower shall cause such Fund to be replenished on a monthly basis to one hundred percent (100%) of the Major Maintenance and Repair Fund Required Amount by no later than the next Semi-Annual Payment Date, subject to the availability of Revenues and Measure I Investment for such purpose; provided, that the Borrower's failure to do so due to the unavailability of (A) Revenues or (B) Measure I Investment due to the annual or aggregate limits on Measure I Investment described in Section 16(w) shall not by themselves constitute an Event of Default.

(vi) Measure I Reserve Fund. The Borrower shall fund the Measure I Reserve Fund as provided in Section 16(w) (*Measure I Investments*). The Borrower's failure to deposit Measure I Cash Supplement amounts into the Measure I Reserve Fund in accordance with Schedule IV shall be an Event of Default pursuant to Section 20(a)(xiv) (*Funding of Required Amounts*). Amounts in the Measure I Reserve Fund in respect of the Measure I Backstop shall be made available on a monthly basis to ensure the timely deposit of required amounts described in clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture to the extent that Revenues are insufficient to ensure timely deposit of such amounts, after taking into account transfers from the Residual Fund of amounts then available in such Fund, and subject to the annual and aggregate limits on the Measure I Investment. In addition, amounts in the Measure I Reserve Fund in respect of the Measure I Backstop shall be made available to ensure that the TIFIA Loan Reserve Account is funded to the TIFIA Loan Reserve Requirement as of the Calculation Date preceding the Debt Service Payment Commencement Date to the extent that the TIFIA Loan Reserve Account is not funded to the TIFIA Loan Reserve Requirement as of such date. Amounts on deposit in the Measure I Reserve Fund shall accrue interest at the yield generated by Permitted Investments into which such amounts are invested. Such earned interest shall be paid to the Borrower on each Calculation Date.

(vii) Sweep Fund. At all times from and after the Substantial Completion Date, subject to the availability of Revenues, the Borrower shall fund the Sweep Fund in an amount equal to ten million dollars (\$10,000,000), to be funded in accordance with Section 5.03(b) of the Indenture. The Borrower's failure to have on deposit the ten million dollars (\$10,000,000) in the Sweep Fund on or after the Substantial Completion Date shall not be an Event of Default. Amounts in the Sweep Fund shall be used solely to ensure timely payment and, as provided in Section 10(a) (*Mandatory Prepayments*), prepayment of Senior Lien Obligations and Second Lien Obligations, including TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service. To the extent the Borrower withdraws amounts from the Sweep Fund, the Borrower shall cause such Fund to be replenished by the next Calculation Date, subject to the availability of Revenues.

(viii) Permitted Investments. The Borrower shall hold (or cause the Trustee to hold) amounts on deposit in the TIFIA Loan Reserve Account and the TIFIA Loan Prepayment Account 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 Loan Reserve Account, not later

than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the TIFIA Loan Prepayment Account 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 Loan Prepayment Account corresponding to amounts needed for the repayment of principal, the next Payment Date for repayment of principal in respect of the TIFIA Loan, and (D) with respect to any other Project Accounts, on or prior to the date on which the funds invested in such Permitted Investments (as defined in the Indenture as of the Effective Date) are reasonably expected to be needed for any payments from the applicable Project Account. The Borrower shall hold (or cause the Trustee to hold) amounts on deposit in all Funds and Accounts other than the TIFIA Loan Prepayment Account and the TIFIA Loan Reserve Account uninvested or invested in Permitted Investments (as such term is defined in the Indenture) and shall comply with the requirements of the Indenture with respect to any such Permitted Investments.

(ix) Letters of Credit. 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. 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) calendar 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.

(x) Post-Construction Transfers from the Project Fund. Upon Final Acceptance (as defined in the Design-Build Contract), the Borrower shall transfer, or shall cause the Trustee to transfer any amounts remaining in the Project Fund to the Toll Revenue Fund.

(l) Rate Coverage. The Borrower shall, subject to the remainder of this paragraph, fix, charge and collect rates and charges such that (i) Net Revenue in each Calculation Period through the Final Maturity Date shall be projected to produce (A) a Senior Debt Service Coverage Ratio at least equal to 1.35:1.00 in each such Calculation Period and (B) a Second Lien Debt Service Coverage Ratio at least equal to 1.25:1.00 in each such Calculation Period, and (ii) Net Revenues in each Calculation Period shall be projected to be sufficient to satisfy the

Borrower's funding obligations pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture during each such Calculation Period (clauses (i) and (ii) together, the "**Rate Coverage Test**"). Within fifteen (15) days after each Calculation Date occurring on or after the first anniversary of the Substantial Completion Date, the Borrower shall deliver to the TIFIA Lender a report setting forth the Net Revenues for such Calculation Period, including a written explanation of whether such revenues were sufficient to meet the Rate Coverage Test, and calculations of each of the ratios listed in clause (i) above. If any forecast of Net Revenues furnished by the Borrower pursuant to this Section 16(l) demonstrates that projected Net Revenue may be inadequate to satisfy the Rate Coverage Test for any Calculation Period until the Final Maturity Date, or if the Borrower fails to satisfy the Rate Coverage Test in respect of any Calculation Period then ended, the Borrower shall (x) within thirty (30) days after request by the TIFIA Lender, engage the Traffic Consultant to review and analyze the operations of the Project 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, (y) cause the Traffic Consultant to issue its report, including any such recommended actions, and (z) by no later than one hundred twenty (120) days following such engagement, either (A) implement the Traffic Consultant's recommendation or (B) 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. The Borrower's failure to comply with the Rate Coverage Test on any six (6) consecutive Calculation Dates after the Substantial Completion Date shall result in the mandatory prepayment described in Section 10(a)(iv) (*Mandatory Prepayments*), but shall not constitute an Event of Default.

(m) Borrower Report and Certificate. Beginning with the Borrower Fiscal Year following the fifth (5th) anniversary of the Substantial Completion Date and continuing each Borrower Fiscal Year thereafter until the Final Maturity Date, by no later than sixty (60) days following the end of such Borrower Fiscal Year, the Borrower shall deliver to the TIFIA Lender (i) a report that (A) describes the major maintenance work on the Project and any Additional Project conducted during the previous Borrower Fiscal Year, (B) describes any variances between actual Major Maintenance and Repair Fund Permitted Expenditures incurred and budgeted Major Maintenance and Repair Fund Permitted Expenditures for such Borrower Fiscal Year, (C) provides a narrative description of any major maintenance work related to the Project or any Additional Project that was scheduled to be performed during such Borrower Fiscal Year but was deferred, along with an explanation of the reasons for such deferral, (D) compares all major maintenance work performed to date and Major Maintenance and Repair Fund Permitted Expenditures incurred to date from Substantial Completion, in each case with respect to the Project and any Additional Projects, against the major maintenance work and Major Maintenance and Repair Fund Permitted Expenditures for such time period contemplated in the Base Case Financial Model, and (ii) a certificate executed by the Consulting Engineer, which certificate (A) verifies that the major maintenance work conducted during the previous Borrower Fiscal Year was consistent with the Consulting Engineer's recommendations and with prudent engineering practices, (B) assesses the prudence of any deferred major maintenance described in clause (i)(C) above, including a recommendation for when such work should be performed, and (C) confirms the prudence of the Borrower's projected Major Maintenance and Repair Fund Permitted Expenditures for the then-

current Borrower Fiscal Year (as reflected in the Borrower's Financial Plan for such Borrower Fiscal Year pursuant to Section 22(a)(iv)(G)).

(n) 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 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 the Project, the Toll Road, the 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.

(o) Hedging.

(i) As a condition to the issuance of any Obligations that bear interest at a Variable Interest Rate (subject to Section 17(a)(ii) (*Indebtedness*), the Borrower shall enter into a Qualified Hedge with respect to such Obligations and shall maintain such Qualified Hedge in place until the earlier to occur of (i) the maturity date of any such Obligations and (ii) the Final Maturity Date. Each Qualified Hedge must have an aggregate stated notional amount of not less than (A) during the Construction Period, at least ninety percent (90%) and not more than one hundred ten percent (110%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding during such time period and (B) at all other times, at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding until the maturity of such Variable Interest Rate Obligations. Any such Qualified Hedge shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of the applicable Variable Interest Rate Obligations subject to such Qualified Hedge and will be subject to TIFIA Lender's prior written consent, such consent not to be unreasonably withheld. Such Qualified Hedge shall have a stated maturity or termination date not earlier than the earlier to occur of (x) the Final Maturity Date and (y) the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge.

(ii) Each Qualified Hedge shall provide for a fixed interest rate acceptable to the TIFIA Lender that results in fixed payment amounts payable by the Borrower to the Qualified Hedge Provider. The Borrower's obligations to pay Hedging Obligations and Hedging Termination Obligations shall be from the sources and in the priority specified in the Indenture Documents. The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge that for any reason terminates before the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge, (A) a Qualified Hedge is in full force and effect or (B) the Variable Interest Rate Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Indenture Documents.

(iii) The Borrower shall not commence seeking any bids from any Qualified Hedge Provider for a Qualified Hedge unless, at least thirty (30) days prior thereto, the Borrower has delivered to the TIFIA Lender evidence satisfactory to the TIFIA Lender and certified by the Borrower's Authorized Representative that the process to be utilized by the Borrower for selecting such Qualified Hedge is a competitive process designed to obtain a fair market price and to avoid conflicts of interest. At the time the Qualified Hedge is priced, the Borrower shall provide to the TIFIA Lender a certificate from a qualified third party acceptable to the TIFIA Lender to the effect that either the underlying fixed rate or the price of acquiring such Qualified Hedge is a fair price based on the interest rate market at the time such Qualified Hedge is priced.

(iv) The Trustee shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower's obligations under the TIFIA Loan Documents. The Hedging Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Trustee for deposit and disbursement in accordance with the Indenture Documents.

(v) The Borrower shall neither terminate, transfer, nor consent to any transfer (other than to a Qualified Hedge Provider) of any existing Qualified Hedge without the TIFIA Lender's prior written consent as long as the Borrower is required to maintain a Qualified Hedge pursuant to this Agreement.

(vi) If at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall, within thirty (30) days (or such lesser number of days required by the applicable Hedging Agreement, including any credit support annex thereto) of the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, either (A) cash collateralize the mark-to-market value of the Hedging Termination Obligations (in accordance with the credit support annex or similar requirements of the applicable Hedging Agreement) or provide a guarantee for such amount from an entity with an Acceptable Credit Rating, or (B) cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank's Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank's Hedging Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of this Section 16(o) (Hedging); provided that if the disqualified Hedging Bank's highest credit rating from any Nationally Recognized Rating Agency is less than 'A-', 'A3' or the equivalent, clause (A) shall not apply and the Borrower shall be required to cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider pursuant to clause (B).

(p) 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.

(q) Events of Loss; Loss Proceeds.

(i) If an Event of Loss shall occur with respect to the Project 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(q)(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 5.04(f) of the 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).

(r) Immunity. To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and to the fullest extent permitted by applicable law 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.

(s) 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.

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

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

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in clause (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.

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

(v) Design-Build Contract and Toll Services Contract Bonds. In the event of any increase in the contract price of either the Design-Build Contract or the Toll Services Contract due to a Change Order (as defined in the Design-Build Contract or the Toll Services Contract, as applicable) or otherwise, the Borrower shall exercise its right under Section 10.1.4(c) of the Design-Build Contract, or Section 15.1.12 of the Toll Services Contract, as applicable, to require a corresponding proportionate increase in the value of each bond provided under the applicable Principal Project Contract, or to require that a new Performance Security Instrument in the amount of such increased contract price be issued by the Design-Build Contractor or the Toll Services Provider, as applicable.

(w) Measure I Investments; Annual Operating Budget.

(i) General. The Borrower shall make available Sales Tax Revenues in an aggregate outstanding amount not to exceed ninety-three million dollars (\$93,000,000) (excluding accrued and unpaid interest), on a revolving basis, pursuant to this Agreement and the Indenture Documents (including the 2019 Sales Tax Revenue Bond Supplemental Indenture and the Sales Tax Revenue Bond Fourth Supplemental Indenture, and in accordance with this Section 16(w)). The Borrower shall cause the Trustee to give the TIFIA Lender a monthly report of each transfer of Measure I Backstop amounts from the Measure I Reserve Fund to any other Fund or Account and any repayment to the Borrower of a Measure I Investment. Measure I Investment amounts (excluding interest thereon) that are repaid pursuant to clause (iii)(4) or clause (iv) below shall be available to be used as Measure I Backstop thereafter. Amounts on deposit in the Measure I Reserve Fund shall accrue interest at the yield generated by Permitted Investments (as defined in the Indenture as of the Effective Date) into which such amounts are invested. Such earned interest shall be paid to the Borrower on each Calculation Date. Measure I Investment amounts deposited to the Toll Revenue Fund shall accrue interest at the TIFIA Interest Rate plus 1.25%, compounded semi-annually, on a 360 day/30 day month basis, on each Calculation Date until repaid to the Borrower.

(ii) Measure I Cash Supplement. Commencing on the Monthly Funding Date following the third Calculation Date preceding the TIFIA Debt Service Commencement Date and on each Monthly Funding Date thereafter, the Borrower shall cause the Sales Tax Trustee to transfer to the Cash Supplement Account within the Measure I Reserve Fund one sixth (1/6th) of the amount of Measure I Cash Supplement required to be on deposit in the Cash Supplement Account within the Measure I Reserve Fund on the following Calculation Date, as set forth in Schedule IV. Commencing on the Monthly Funding Date following the Calculation Date preceding the Debt Service Payment Commencement Date and continuing on each Monthly Funding Date thereafter, the Borrower shall cause the Trustee to transfer from the Cash Supplement Account to the Toll Revenue Fund an amount equal to one sixth (1/6th) of the amount of Measure I Cash Supplement required to be transferred to the Toll Revenue Fund during the semi-annual period ending on the next Calculation Date, as set forth in Schedule IV. Measure I Cash Supplement amounts may be used to satisfy any of the Borrower's funding obligations described in Section 5.03(b) of the Indenture.

(iii) Measure I Backstop.

(1) Transfers to Measure I Reserve Fund. The Borrower shall cause the Sales Tax Trustee to make monthly transfers of Measure I Backstop amounts, if any such amounts are projected to be needed, to the Trustee, beginning in July 2025 and continuing each month thereafter until the date as of which all amounts of Measure I Backstop required to be on deposit in the Backstop Account with respect to transactions through December 31, 2039 have been so deposited. The amount of each monthly transfer shall equal to one-sixth (1/6th) of the then-applicable Measure I Backstop Semi-Annual MIRF Amount. The Borrower shall instruct the Trustee to deposit all Measure I Backstop amounts it receives into the Backstop Account within the Measure I Reserve Fund.

(2) Transfers to Toll Revenue Fund. Commencing on the Monthly Funding Date in July 2026 and continuing on each Monthly Funding Date until December 31, 2040 (after which date any amounts remaining on deposit in the Measure I Reserve Fund will be repaid to the Borrower), the Borrower shall cause the Trustee to transfer from the Backstop Account within the Measure I Reserve Fund to the Toll Revenue Fund an amount equal to the amount (if any) needed as of such Monthly Funding Date to cause the deposits in each of the Funds and Accounts described in clauses *First* through *Fifteenth* in Section 5.03(b) of the Indenture to be equal to the amounts required to be deposited to such Funds and Accounts as of such Monthly Funding Date, after taking into account transfers on such Monthly Funding Date from the Residual Fund of amounts then available in such Fund to higher priority Funds and Accounts.

(3) True-Up Procedure. Ninety (90) days before each Calculation Date (beginning October 2026 and continuing until October 31, 2040 and on December 31, 2040 (which is the last day for payment of the Measure I Backstop)), the Borrower shall determine whether the then-current Measure I Backstop Semi-Annual TRF Amount is projected to be sufficient to enable the Borrower to satisfy all of its funding obligations pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture on or prior to the next Calculation Date (but not later than December 31, 2040), and shall notify the TIFIA Lender of its conclusion. If the Borrower determines that the actual shortfall in Toll Revenues is likely to exceed the Measure I Backstop Semi-Annual TRF Amount, the Borrower shall promptly take all reasonable steps to seek and obtain approval from its board of directors to allocate additional Sales Tax Revenues to the Project to supplement the Measure I Backstop Semi-Annual TRF Amount so that it is equal to the actual expected Toll Revenue shortfall for the semi-annual period through such Calculation Date noted above. The Borrower shall promptly notify the TIFIA Lender in writing of the board of directors' decision regarding the request for such additional Measure I Investment. The Borrower shall promptly transfer (or cause the Sales Tax Trustee to transfer) to the Backstop Account any additional funds approved by the board of directors, and shall instruct the Trustee to deposit such funds into the Toll Revenue Fund as needed to meet the Borrower's funding obligations payable pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture on or prior to such Calculation Date.

(4) Excess Measure I Backstop.

(A) If, as of a Calculation Date, the Measure I Backstop Semi-Annual TRF Amount exceeded the actual Toll Revenue shortfall for the semi-annual period

that ended on such Calculation Date, as determined by the Trustee with notice to the Borrower and the TIFIA Lender, the Borrower shall cause the Trustee to transfer such excess amount to the Borrower from the Backstop Account within the Measure I Reserve Fund and such repayment shall reduce the outstanding principal amount of the Measure I Investment.

(B) If, as of the last Monthly Funding Date preceding a Calculation Date, the Measure I Backstop Semi-Annual TRF Amount actually deposited as of such date to the Toll Revenue Fund exceeded the actual Toll Revenue shortfall for the semi-annual period that ended on such Calculation Date (after taking into account any transfers from the Residual Fund to make up for such shortfall), as determined by the Trustee with notice to the Borrower and the TIFIA Lender, the Trustee shall repay such excess Measure I Backstop amounts to the Borrower, plus the interest accrued thereon, to the Authority from the Toll Revenue Fund.

(C) Other than with respect to interest earnings accrued previously but posted to the Backstop Account after a Calculation Date, the Borrower shall obtain the TIFIA Lender's written concurrence before delivering any direction to the Trustee contemplated by Section 5.05(c)(4)(C) of the Indenture.

(5) Limitations on Measure I Investment. Notwithstanding the foregoing provisions of this Section 16(w), the aggregate amount of Measure I Backstop transferred to the Trustee for deposit into the Measure I Reserve Fund during any Borrower Fiscal Year shall not exceed the budgeted aggregate Operation and Maintenance Expenses and Scheduled Major Maintenance and Repair Fund Required Deposits for such Borrower Fiscal Year plus, for the Borrower Fiscal Year during which the TIFIA Loan Reserve Account will initially be funded, the amount reflected in clause (a) of the definition for TIFIA Loan Reserve Requirement; provided, that the aggregate outstanding Measure I Backstop, when combined with the Measure I Cash Supplement invested and not repaid and scheduled to be made shall not exceed ninety-three million dollars (\$93,000,000) (excluding accrued and unpaid interest); and provided, further, that the aggregate outstanding Measure I Investment that has been deposited with the Trustee and not yet repaid to the Borrower shall at no time exceed an amount equal to ninety-three million dollars (\$93,000,000) (excluding accrued and unpaid interest).

(6) Measure I Backstop Mechanics. Schedule 16(w) sets forth an illustration of the budgeting and funding procedures related to the Measure I Backstop and is attached to this Agreement for reference purposes.

(iv) Repayment of Measure I Investments. The Borrower shall repay amounts in respect of any Measure I Investment previously deposited to the Toll Revenue Fund and actually used to meet a funding requirement pursuant to Section 5.03(b) of the Indenture (i.e., circumstances to which the excess Measure I Backstop provisions in Section 16(w)(iii)(4) do not apply), solely from amounts available in the Residual Fund on the next Calculation Date (or as soon as practical thereafter) as of which each of the Residual Release Conditions was satisfied. Repayment of all outstanding Measure I

Investment amounts shall occur before funds in the Residual Fund are used for any other purpose.

(v) Termination of Sales Tax Indenture. If the Sales Tax Indenture terminates for any reason prior to December 31, 2040, the Borrower shall continue to budget and allocate the Sales Tax Revenues that the Borrower receives for the Measure I Investment, and shall promptly transfer such Sales Tax Revenues on a monthly basis to the Trustee for deposit in the Measure I Reserve Fund, on or prior to each Monthly Funding Date as the Sales Tax Trustee would have been instructed to do had the Sales Tax Revenue Bond Indenture not been terminated. The Borrower shall continue to prioritize the use of Sales Tax Revenues for the Measure I Investment over other discretionary uses of Sales Tax Revenues after payment of debt service and related fees and expenses owed to third parties, such as trustees, credit providers, remarketing agents and similar parties, related to the Sales Tax Revenue Bonds.

(vi) Annual Operating Budget. The Borrower covenants and agrees to prepare a draft Annual Operating Budget each year in accordance with its Organizational Documents, the Indenture Documents, the Sales Tax Indenture Documents and all applicable laws. The Borrower covenants and agrees that for so long as the Borrower has any obligation with respect to Measure I Investments pursuant to this Agreement, it shall include in each Annual Operating Budget (i) the Measure I Cash Supplement required to be transferred to the Trustee (for deposit into the Cash Supplement Account within the Measure I Reserve Fund) during the applicable Borrower Fiscal Year, as reflected in Schedule IV, and (ii) the Measure I Backstop required to be transferred to the Trustee (for deposit into the Backstop Account within the Measure I Reserve Fund) during the applicable Borrower Fiscal Year, which amount shall be the Borrower's estimate of the Measure I Backstop amounts that will need to be transferred from the Measure I Reserve Fund to the Toll Revenue Fund during the next following Borrower Fiscal Year. The Borrower shall budget the Measure I Backstop in semi-annual amounts. The Borrower shall submit a draft of the Annual Operating Budget to the TIFIA Lender by no later than April 1 of each calendar year, and the Borrower shall respond promptly to any questions or requests for information regarding such draft Annual Operating Budget submitted by the TIFIA Lender and shall use all reasonable efforts to update the draft Annual Operating Budget to reflect comments provided by the TIFIA Lender. The Borrower shall submit the Annual Operating Budget for each Borrower Fiscal Year to its board of directors so that the Annual Operating Budget for each Borrower Fiscal Year can reasonably be expected to be approved by such board of directors and adopted by the Borrower prior to the beginning of such Borrower Fiscal Year. The Borrower shall use all reasonable efforts to cause its board of directors to timely approve such Annual Operating Budget, giving preference to the Measure I Investments to be allocated to the Project over any other uses of Sales Tax Revenues being considered by the Borrower's board of directors. The Borrower shall promptly notify the TIFIA Lender in writing in the event any Annual Operating Budget is not timely approved by the Borrower's board of directors or if any amount in respect of the Measure I Investments is not approved or required to be altered. The Borrower shall not modify, amend or supplement any Annual Operating Budget in a manner that that would reduce the Measure I Investment reflected in such Annual Operating Budget without first obtaining the TIFIA Lender's prior written consent.

(x) Credit Facilities.

(i) The Borrower may replace all or a portion of the required balance of any Reserve Account (other than the Measure I Reserve Fund), in accordance with the terms of the applicable Indenture Documents, with a Credit Facility provided by a financial institution with an Acceptable Credit Rating, provided that the terms and conditions of any such Credit Facility shall not permit or require the Borrower to use Revenues to satisfy any payment obligations to the Credit Provider or any other Person in connection with such Credit Facility other than amounts on deposit in the Residual Fund, following satisfaction of the Residual Release Conditions; provided, further, that the Borrower shall not use the proceeds of any Measure I Investment contribution to pay any fees, premiums, reimbursements or other amounts in respect of a Credit Facility.

(ii) The Borrower shall not enter into any Credit Facility that permits the provider of such Credit Facility to accelerate the Borrower's reimbursement obligations.

(iii) 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 ten (10) 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.

(iv) 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.

(y) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in Exhibit N hereto.

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

(a) Indebtedness.

(i) Except for Permitted Debt, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness of any kind that is payable from, or secured by, the Revenues or other property or rights in the Trust Estate; provided that following the occurrence, and during the continuation, of an Event of Default, the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Trust Estate, including Permitted Debt, without the prior written consent of the TIFIA Lender; provided, further, that in the event Additional Obligations to be issued will be used to prepay or repay the TIFIA Loan in whole (and not in part), the prior written consent of the TIFIA Lender shall not be unreasonably withheld.

(ii) The Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur Variable Interest Rate Obligations or enter into any Hedging Transaction under which the Borrower is required to make payments based on a Variable Interest Rate, in either case secured by the Revenues.

(iii) The Borrower shall not issue Additional Obligations prior to the second (2nd) anniversary of the Debt Service Payment Commencement Date.

(iv) Prior to the incurrence of Permitted Debt described in clauses (a), (d), 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 Obligations," as applicable.

(v) The Borrower shall not issue Obligations that are, or upon issuance will be, payable in a currency other than lawful currency of the United States of America.

(vi) The Borrower shall not, by supplemental indenture or otherwise, issue any subordinate obligations pursuant to the Sales Tax Revenue Bond Indenture unless the Borrower shall have first provided to the TIFIA Lender a certificate signed by the Borrower's Authorized Representative certifying that (A) such proposed indebtedness is authorized pursuant to, and satisfies the applicable requirements under, the Sales Tax Revenue Bond Indenture, (B) Sales Tax Revenues (as defined below) collected during any twelve (12) consecutive calendar months specified by the Borrower within the most recent eighteen (18) calendar months immediately preceding the date on which such proposed additional obligations will become outstanding or are authorized to be issued up to a specific principal amount shall have been at least equal to 1.50 times Maximum Annual Debt Service, and (C) projected Sales Tax Revenues, as set forth in a report prepared by an independent third-party consultant, for each Calculation Period through the Final Maturity Date are sufficient to produce a total debt service coverage ratio (on all bonds, parity obligations and subordinate obligations issued under the Sales Tax Revenue Bond Indenture and utilizing the calculation assumptions set forth in the definition of Annual Debt Service in the Sales Tax Revenue Bond Indenture, except as noted in the second proviso below) at least equal to 1.50:1.00 for each Calculation Period, which certificate shall also set forth the computations upon which such certificate is based; provided, that with respect to any indebtedness under the Sales Tax Revenue Bond Indenture the

requirements of this paragraph (vi) shall apply to the initial issuance or authorization of such subordinate obligations and not to (1) subsequent refundings or refinancings the net proceeds of which are used solely to refinance such subordinate obligations and for which the principal amount of such refundings or refinancings does not exceed the outstanding principal amount of the refunded or refinanced obligations or (2) in the case of a commercial paper program, subsequent issuances and rollovers of such commercial paper up to the authorized principal amount; provided, further, that for any commercial paper program or revolving credit facility, the coverage ratio tests contemplated in clauses (B) and (C) above shall be calculated assuming that the maximum principal amount permitted at any time with respect to such subordinate obligations is outstanding. For purposes of this covenant, “**Sales Tax Revenues**” means the amounts collected on account of the retail transactions and use tax imposed in San Bernardino County, CA pursuant to the Local Transportation Authority and Improvement Act (Division 19 of the Public Utilities Code of the State of California (Section 180000 et seq.)) (the “**LTAIA**”) and the Measure I Ordinance on and after April 1, 2010, after deducting amounts payable by the Borrower to the California Department of Tax and Fee Administration for costs and expenses for its services in connection with the retail transactions and use taxes collected pursuant to the LTAIA with respect to the Measure I Ordinance.

(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 Indenture, (ii) amend, modify, replace, or supplement any Related Document (other than the Sales Tax Revenue Bond Indenture) in a manner that could adversely affect the TIFIA Lender in connection with the TIFIA Loan, (iii) permit any material increase or decrease to the scope of work for the Project, without the prior written consent of the TIFIA Lender, which consent shall not be unreasonably withheld; provided that the TIFIA Lender may reasonably withhold such consent if any such change in scope could reasonably be expected to result in a delay in Substantial Completion beyond the Projected Substantial Completion Date or diminish expected Toll Revenues in any material respect, (iv) waive or permit a waiver of any provision of any Related Document (other than the Sales Tax Revenue Bond Indenture) in a manner that could adversely affect the TIFIA Lender in connection with the TIFIA Loan, or (v) 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. The Borrower shall not, without the prior written consent of the TIFIA Lender, amend the Sales Tax Indenture Documents, or waive or permit a waiver thereof, in a manner that could adversely affect the Borrower’s ability to satisfy any of its obligations thereunder with respect to the Measure I Investment in any material respect; provided, however, that no such consent will be required for the issuance of Sales Tax Revenue Bonds that in each case satisfy all of the requirements for the issuance thereof set forth in the Sales Tax Revenue Bond Indenture and the 2019 Sales Tax Revenue Bond Supplemental Indenture as of the Effective Date. 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, waivers or supplements to any Related Document subject to this Section 17(b) at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification, waiver or supplement to any Related Document within ten (10) 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 Project, the Trust Estate, the 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 or a Supplemental Indenture in favor of the Trustee on behalf of all of the Secured Parties.

(d) Residual Release Conditions. Except as expressly permitted in this Section 17(d), 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 Residual Fund or any Account therein to the Borrower or to a Fund or Account with a lower priority in the cash flow waterfall described in Section 5.03(b) of the Indenture, including any repayment of any Measure I Investments or any release of such amounts to the Borrower, unless each of the following conditions (the "**Residual Release Conditions**") have been satisfied as of a Semi-Annual Payment Date:

(i) the second (2nd) anniversary of the Debt Service Payment Commencement Date has occurred;

(ii) no Payment Default or default in respect of the payment of principal or interest in respect of any Obligation shall have occurred and be continuing;

(iii) all TIFIA Mandatory Debt Service, all TIFIA Scheduled Debt Service, and all principal and interest in respect of all other Obligations for all Payment Dates through such Semi-Annual Payment Date shall have been paid in full (including any amounts remaining unpaid from any prior period);

(iv) the Senior Debt Service Coverage Ratio (1) for the Calculation Periods ending on the then current Calculation Date and as of each of the two (2) Calculation Dates preceding such then current Calculation Date is or was, as applicable, equal to at least 1.35:1.00 and (2) for the Calculation Periods ending as of each of the four (4) consecutive succeeding Calculation Dates is, in each case, projected to equal at least 1.35:1.00;

(v) the Second Lien Debt Service Coverage Ratio (1) for the Calculation Periods ending on the then current Calculation Date and as of each of the two (2) Calculation Dates preceding such then current Calculation Date is or was, as applicable, equal to at least 1.25:1.00 and (2) for the Calculation Periods ending as of each of the four (4) consecutive succeeding Calculation Dates is, in each case, projected to equal at least 1.25:1.00;

(vi) the aggregate of Toll Revenues and Measure I Cash Supplement amounts deposited to the Toll Revenue Fund are and were sufficient to fund in full all amounts required pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture as of the current Calculation Date and as of each of the three (3) consecutive preceding Calculation Dates and the aggregate of Toll Revenues and Measure I Cash

Supplement amounts projected to be deposited to the Toll Revenue Fund are projected to be sufficient to fund in full amounts required pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture for each of the four (4) consecutive succeeding Calculation Dates;

(vii) the Total Loan Life Coverage Ratio for each Calculation Period during the term of the TIFIA Loan is equal to or greater than 1.30:1.00;

(viii) each Reserve Account is fully funded, the amount on deposit in the Major Maintenance and Repair Fund is at least equal to the then applicable Major Maintenance and Repair Fund Required Amount, the amount on deposit in the Operation and Maintenance Fund is at least equal to the then applicable Operation and Maintenance Fund Required Amount, and all deposits to the Measure I Reserve Fund required to be made as of such date shall have been made in full and the Sweep Fund has \$10,000,000 on deposit therein;

(ix) no Default or Event of Default has occurred and is continuing; and

(x) no default or event of default has occurred and is continuing under any Principal Project Contract;

provided, that with respect to clauses (iv) and (v) above, the Senior Debt Service Coverage Ratio and Second Lien Debt Service Coverage Ratio will be based solely on Toll Revenues described in clause (a) of the definition thereof, plus Measure I Cash Supplement payments deposited in the Toll Revenue Fund during such period. Any Revenues to be paid to the Borrower (including the repayment of any amount in respect of the Measure I Investment) or transferred to a Fund or Account after satisfaction of the Residual Release Conditions shall be made on the Calculation Date (or as soon as practical thereafter) on which the Residual Release Conditions with respect to such Revenues were satisfied.

(e) Principal Project Contracts; Additional Project Contracts. The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into any Principal Project Contract that is not in effect as of the Effective Date. The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) allocable to the Project or payable from Revenue 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, inflated annually by CPI, 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 submitted to 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 submitted to the TIFIA Lender.

(f) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the Project, a substantial portion of the assets included in the Project, 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.

(g) Borrower Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

(h) No Fundamental Change to Project. The Borrower shall not sell or otherwise dispose of the assets comprising the Project or the Toll Road if any such sale, disposal or group of sales or disposals would result in a reduction of Revenues in any material respect or an increase in Operation and Maintenance Expenses or Major Maintenance and Repair Fund Permitted Expenditures in any material respect.

(i) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or the Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Government; provided, however, that the Borrower may prepay the TIFIA Loan in whole or in part with the proceeds of a validly issued Federal credit instrument pursuant to, and in accordance with, Section 10 (Prepayment).

(j) No Fundamental Change to Borrower. The Borrower shall not, and shall not agree to reorganize, consolidate with, or merge into another Person unless (i) such reorganization, consolidation or merger does not adversely affect or impair to any extent or in any manner (A) the Revenues or other elements of the Trust Estate, or (B) the availability of the Revenues or the Measure I Investment for the payment and security of the obligations of the Borrower under this Agreement and the other TIFIA Loan Documents; and (ii) 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. The documents authorizing any reorganization, consolidation or merger shall require 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.

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

(l) OFAC Compliance. The Borrower:

(i) shall not violate (A) any applicable Anti-Money Laundering Laws, (B) any applicable Sanctions, (C) Anti-Corruption Laws or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(ii) shall not use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement and the other applicable Related Documents;

(iii) shall provide that each of its directors, officers, employees, and agents (acting on behalf of the Borrower), shall not, directly or indirectly, use the proceeds of the TIFIA Loan or lend to, make any payment to, contribute or otherwise make available any funds to any Affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the TIFIA Lender or any Principal Project Party); and

(iv) shall not make a payment, directly or indirectly, to any Principal Project Party that, to Borrower's knowledge, has violated any of the laws referenced in Section 17(1)(i) (*OFAC Compliance*) or that is a Sanctioned Person.

(m) Hedging. The Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction relating to Obligations other than a Qualified Hedge. Any such Hedging Transaction shall comply with the requirements for Hedging Transactions hereunder.

(n) Changes to I-10 Toll Policies. The Borrower shall not make any change to its toll policies for the Project in a manner that would be reasonably likely to result in a material reduction to projected Toll Revenues in comparison to the Base Case Projections, unless Borrower first demonstrates to the TIFIA Lender's satisfaction that, following the implementation of such change to the toll policies for the Project, Revenues and Measure I Cash Supplement are expected to produce (i) a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date of not less than 1.35:1.00, (ii) a Second Lien Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date of not less than 1.25:1.00, and (iii) Toll Revenues (combined with Measure I Cash Supplement amounts, as permitted by this Agreement) sufficient to fund in full amounts required pursuant to clauses *First* through *Fifteenth* of Section 5.03(b) of the Indenture.

(o) Additional Projects. The Borrower shall not undertake any work of a physical nature (excluding internal planning and budgeting and environmental review and approvals) with respect to any Additional Project without first demonstrating to the TIFIA Lender's reasonable satisfaction that such Additional Project shall not adversely affect the Project, which demonstration shall include delivery of a Revised Financial Model and a report from the Traffic Consultant (level 3) demonstrating and certifying that such Additional Project could not reasonably be expected to have a Material Adverse Effect on Toll Revenue. The Borrower shall not issue any Obligations payable from or secured by Revenues in order to finance an Additional Project without obtaining the TIFIA Lender's prior written consent pursuant to Section 17(a) (*Indebtedness*). From and after the substantial completion of any Additional Project, such

Additional Project shall be considered as part of the Project, any revenues derived from such Additional Project shall be treated as Revenues for all purposes of this Agreement and the Indenture, and such revenues shall be included in the Trust Estate for all purposes hereunder and under the Indenture.

(p) Discretionary Capital Expenditures. Subject to Section 17(o) (*Additional Projects*), the Borrower shall not incur or expend Capital Expenditures paid for with Revenues that are not Major Maintenance and Repair Fund Permitted Expenditures without the TIFIA Lender's prior written consent, unless such discretionary Capital Expenditures are paid solely from amounts in the Residual Fund (for the avoidance of doubt, after satisfaction of the Residual Release Conditions) or other sources of funding available to the Borrower that do not constitute Revenues.

Section 18. Indemnification. To the extent permitted by the laws of the State, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent, advisor or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 18 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 18. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder.

All amounts due to any Indemnitee under this Section 18 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 18 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) 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 only in accordance with the provisions of this Section 19 and in compliance with the transfer requirements in the Indenture and subject to applicable securities laws. Such sale shall be on such terms as the TIFIA Lender shall deem advisable. However, in making such sale 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 of the TIFIA Loan, written notice to the Borrower of the TIFIA Lender's intention to consummate such a sale; 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 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**”); provided, however, that failure to pay TIFIA Scheduled Debt Service shall not be a Payment Default hereunder if the amount on deposit in the Second Lien Obligations Interest Account or the Second Lien Obligations Principal Account within the Second Lien Obligations Fund, as applicable, was insufficient therefor notwithstanding compliance by the Borrower and the Trustee with Section 8(d) (Security and Priority; Flow of Funds).

(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, Development Default, or failure to fully fund any Project Account), 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 clause (A) or (B) above, as applicable.

(iii) Development Default. A Development Default shall occur, in which case the TIFIA Lender may (A) suspend the disbursement of TIFIA Loan proceeds under this Agreement and (B) pursue such other remedies as provided in this Section 20 (*Events of Default and Remedies*); provided, however, that in seeking any waiver of this Event of Default, which waiver shall be determined by the TIFIA Lender in its sole discretion, the Borrower shall (W) propose a new Projected Substantial Completion Date that is reasonably acceptable to the TIFIA Lender, (X) demonstrate to the satisfaction of the TIFIA Lender that the Borrower and the Principal Project Parties are able to complete the Project by such new Projected Substantial Completion Date, (Y) demonstrate to the satisfaction of the TIFIA Lender that the Borrower has sufficient funds to complete the Project by the new Projected Substantial Completion Date, and (Z) demonstrate to the satisfaction of the TIFIA Lender that such funds are fully committed and available to the Borrower to pay for Total Project Costs through completion.

(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*), Section 14(ee) (*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 or Non-Payment of Other Obligations.

(A) Any acceleration shall occur of the maturity of any Additional Obligations due to a default with respect thereto.

(B) Any Additional Obligations shall not be paid in full upon the final maturity thereof.

(C) The Borrower shall fail to pay any amount of principal or interest due with respect to any Additional Obligations (including any reimbursement obligations under any Credit Facility) or any amount of Debt Service (as defined in the Sales Tax Revenue Bond Indenture) due with respect to any Sales Tax Revenue Bonds, and such failure shall not be remedied within any grace period applicable to such Additional Obligations or Sales Tax Revenue Bonds; provided, that with respect to any payment default described above regarding any Sales Tax Revenue Bond, the Borrower shall be entitled to a cure period of six (6) months from the date of the original failure to make payment, or such longer period acceptable to the TIFIA Lender, in each case to the extent that the Borrower continues to be in compliance with all of its obligations hereunder with respect to the Measure I Investment.

(vi) Cross Default.

(A) *Financing Documents.* 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 Additional 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, in any case, 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 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 Obligations and the applicable Indenture Documents.

(B) *Principal Project Contracts.* (1) The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract (unless such default could not reasonably be expected to have a Material Adverse Effect) or any Principal Project Contract shall be terminated prior to its scheduled expiration, and the Borrower shall have failed to cure such default or to obtain an effective written waiver thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be); or (2) any Principal Project Contract ceases to be in full force and effect for any reason (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower or any Principal Project Party shall contest in any manner the validity or enforceability of any Principal Project Contract or any material provision thereof or denies it has any further liability under any Principal Project Contract, or purports to revoke, terminate or rescind any Principal Project Contract or any material provision thereof; provided that no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(vi)(B) (*Cross Default-Principal Project Contracts*) if, in the case any Principal Project Contract is terminated or otherwise ceases to be in full force and effect, (I) the Borrower replaces such Principal Project Contract with a replacement agreement (a) entered into with another counterparty that (i) is of similar or greater creditworthiness (including credit support), technical capability and relevant 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), (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, (iii) is not, at the time of such replacement, in violation of any applicable laws referenced in Section 14(q) (*OFAC; Anti-Money Laundering; Anti-Corruption Laws*), and is in compliance with all applicable laws referenced in Section 14(r) (*Compliance with Law*) and Section 14(s) (*Environmental Matters*), and (iv) is capable (in the TIFIA Lender's reasonable determination, in consultation with the Consulting Engineer) of completing the scope of work of the replaced Principal Project Party in such a manner so that the Project is reasonably expected to be completed in accordance with the Construction Schedule and Project Budget set forth in the then-current Financial Plan, (b) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender), (c) effective as of the date of termination of the Principal Project Contract being replaced (or with respect to the occurrence of any event described in clause (2) above, effective as soon as practicable following such event (but in no case longer than ninety (90) days thereafter)); and (II) each performance security instrument required under the replacement agreement is in full force and effect at the time of such replacement and is on substantially the same terms and conditions as the comparable performance security instrument required

under the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender).

(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 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 sixty (60) 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 county transportation authority duly existing under the laws of the State, 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, the Indenture Documents and the Sales Tax Indenture Documents, including the payment of all 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 Principal Project Party; provided, that no Event of Default shall be deemed to have occurred or be continuing under this clause (B) if:

(1) with respect to a Bankruptcy Related Event of any letter of credit issuer, such letter of credit issuer is replaced by a new issuer that is a Qualified Issuer within ten (10) Business Days after the occurrence of such Bankruptcy Related Event; or

(2) with respect to a Bankruptcy Related Event of a Principal Project Party, such Principal Project Party is replaced within ninety (90) days, or such additional time period as is approved in writing by the TIFIA Lender in its sole discretion, after the occurrence of such Bankruptcy Related Event by a new Principal Project Party that (I) possesses similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced, considered as of the time the applicable Principal Project Contract was originally executed, as certified by the Consulting Engineer, or otherwise reasonably acceptable to the TIFIA Lender, (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, (III) is not, at the time of such replacement, in violation of any applicable laws referenced in Section 14(q) (*OFAC; Anti-Money Laundering; Anti-Corruption Laws*), and is in compliance with all applicable laws referenced in Section 14(r) (*Compliance with Law*) and Section 14(s) (*Environmental Matters*), (IV) is bound under a contract containing substantially the same terms and

conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender), and (V) is capable (in the TIFIA Lender's reasonable determination, in consultation with the Consulting Engineer) of completing the scope of work of the replaced Principal Project Party in such a manner so that the Project is reasonably expected to be completed in accordance with the Construction Schedule and Project Budget set forth in the then-current Financial Plan.

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

(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 party thereto (other than the TIFIA Lender) 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 such document prior to the termination thereof in accordance with its terms, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) the Indenture, as modified and supplemented by the TIFIA Supplemental Indenture, 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) Invalidity of the Sales Tax Revenue Bond Indenture. The Sales Tax Revenue Bond Indenture 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 party thereto contests in any manner the validity or enforceability of the Sales Tax Revenue Bond Indenture, or denies it has any further liability under any such document prior to the termination thereof in accordance with its terms, or purports to revoke, terminate or rescind the Sales Tax Revenue Bond Indenture.

(xiii) Cessation of Operations. Operation of the Project 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 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 TIFIA Debt Service, all Annual Debt Service in respect of all Obligations, and costs and expenses of the Borrower during such cessation of operations.

(xiv) Funding of Required Amounts. The Borrower shall fail to have on deposit in any of the Funds or Accounts described in clauses (i), (ii), (iii), (iv), (v) and (vi) of Section 16(k), one hundred percent (100%) of the initial required minimum balance on the date as of which such required minimum balance must be initially funded in accordance with Section 16(k) (Project Accounts; Permitted Investments) and the applicable Indenture Documents. The Borrower shall fail to make any deposit from time to time required hereunder or under any of the Indenture Documents to be made into any Fund or Account (other than the Measure I Backstop Repayment Account or Measure I Cash Supplement

Repayment Account, each as defined in the Indenture) for any reason other than the insufficiency of Revenues available for such deposits in accordance with Section 5.03(b) of the Indenture.

(xv) Measure I Investments. Subject to limits on the annual and aggregate amounts of Measure I Investments pursuant to Section 16(w) (*Measure I Investment*), the Borrower shall fail to cause Sales Tax Revenues (or other funds available to the Borrower, which may include Revenues paid to the Borrower as a repayment of the Measure I Investment or Revenues released to the Borrower upon satisfaction of the Residual Release Conditions), to be deposited into the Measure I Reserve Fund in the amounts required to be deposited into the Measure I Reserve Fund to be so deposited therein as of any Calculation Date pursuant to Section 16(w) (*Measure I Investment*) or Schedule IV.

(b) Upon the occurrence of an Event of Default described in Section 20(a)(iii) (*Development Default*), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and/or (iii) request that the Borrower repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.

(c) Upon the occurrence of any Bankruptcy Related Event, with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan. Upon the occurrence of the Event of Default described in clause (A) of Section 20(a)(v), the unpaid principal amount of the TIFIA Loan shall be 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. The TIFIA Lender shall have the right to deliver notice to the Trustee with direction to the Trustee that the Trustee shall deem an Event of Default hereunder to be an “Event of Default” under the Indenture.

(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, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law and the Indenture out of the Trust Estate the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including (to the extent applicable) all rights and remedies of a secured creditor and a 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, the Indenture (subject to the rights of the Trustee and Owners of Additional Obligations under the Indenture), or the TIFIA Supplemental Indenture 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; provided, that except as expressly provided in Sections 20(d), the TIFIA Lender shall have no right of acceleration with respect to the TIFIA Loan; provided, further, that for the avoidance of doubt the TIFIA Lender may file proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the TIFIA Lender (including any claim for the reasonable compensation, expenses, disbursements and advances of the TIFIA Lender, its agents and counsel) allowed in any judicial proceedings relative to the Borrower (or any other obligor upon the TIFIA Loan), its creditors or its property and is entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims.

(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 Project-related transactions (including collection of Revenues, and any other revenues attributable to the Project, and TIFIA Loan requisitions received and disbursements made with regard to the Project), 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) 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) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower shall maintain and retain all files relating to the Project, the 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 Project, the 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 Project or the Revenues that the TIFIA Lender may reasonably request from time to time.

(d) Copies of Senior Debt 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 Project or any indebtedness of the Borrower that is or will be secured by or paid from the 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, including all such notices, other than those that are non-substantive or ministerial in nature, relating to any of the Principal Project Contracts; unless, in each case, the TIFIA Lender notifies the Borrower that any such reports, notices and/or other written materials no longer need to be provided.

(e) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in [2021] and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 C.F.R. § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project 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 a Financial Plan 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. 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 Additional 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 GAAP, shall meet FHWA's Major Project Financial Plan requirements, 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 Revenues and Measure I Cash Supplement payments shall be sufficient to meet the Loan Amortization Schedule and to meet the Rate Coverage Test established pursuant to Section 16(l) (*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 Revenues, Net Revenues, expenses and other financial aspects of the Project that shall reflect the prior experience and current status of the Project, and the expectations of the Borrower with respect to the Project, 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) 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;

(C) 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;

(D) 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;

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

(F) 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;

(G) 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;

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

(I) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative executive summary of the topics described in clauses (A) through (H) 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 proposed 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 (Revenues, Measure I Investment, interest and other income), outflows (Operation and Maintenance Expenses, Major Maintenance and Repair Fund Permitted Expenditures, Capital Expenditures, TIFIA Debt Service, Annual Debt Service in respect of all other Obligations, Measure I Investment repayments, replenishment of reserves and other uses) and Net Revenues 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) for so long as the Borrower is authorized to collect and receive Sales Tax Revenues, provide a summary, in each case with respect to the preceding Borrower Fiscal Year, of Sales Tax Revenues received by the Borrower and amounts deposited into the Measure I Reserve Fund, and provide a statement of the principal amount of the Sales Tax Revenue Bonds outstanding as of the end of the most recently ended Borrower Fiscal Year and an amortization profile of the forecasted debt service payments with respect to such Sales Tax Revenue Bonds;

(C) report on variances during the prior Borrower Fiscal Year between the actual Operation and Maintenance Expenses and Major Maintenance and Repair Fund Permitted Expenditures incurred and the budgeted Operation and

Maintenance Expenses and Major Maintenance and Repair Fund Permitted 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;

(D) provide current and estimated amounts of Revenues received and the amounts deposited into each of the accounts and subaccounts established under the Indenture and the Supplemental Indentures, and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts;

(E) provide an updated budget for Operation and Maintenance Expenses and Major Maintenance and Repair Fund Permitted Expenditures for the current Borrower Fiscal Year;

(F) provide an updated schedule of actual and projected Revenues and Measure I Investments, showing actual and projected Senior Debt Service Coverage Ratios, Second Lien Debt Service Coverage Ratios and Total Debt Service Coverage Ratios, and report on variances during the prior Borrower Fiscal Year between the Revenues actually received and the budgeted 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;

(G) beginning five (5) years after Substantial Completion, provide an updated projection of Major Maintenance and Repair Fund Permitted Expenditures;

(H) provide a description of any changes to the Borrower's toll policies adopted for the Project;

(I) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative executive summary of the topics described in clauses (A) through (H) above since the Effective Date and since the preceding Financial Plan, including in reasonable detail (1) an explanation of any variances in costs or revenues in comparison to the Base Case Financial Model and the preceding Financial Plan, and (2) a description of any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof, including traffic and revenue reports, operational contracts, and third-party transactions.

(b) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the TIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than \$2,500,000, which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this

Agreement, is necessary or beneficial to the Project, does not materially impair the TIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (other than the Sales Tax Indenture Documents) (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

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

(i) (A) as soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited quarterly financial report of the Borrower, which consists of (I) a schedule of actual revenues, expenditures and expenses, and changes in fund balances in comparison to budgeted amounts, and (II) narrative analysis of Borrower's budget to actual variances, as of the end of such period certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative as fairly stating in all material respects the results of its operations for such period (subject to normal year-end audit adjustments); and

(B) as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, a copy of all audited financial statements (statement of net position, statement of activities and statement of cash flows) relating to the operations of the Borrower generally and, if applicable, to the Project, 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 pursuant to the Borrower's procurement processes..

(ii) All such annual audited financial statements and financial reports shall be complete and correct in all material respects and shall be prepared in reasonable detail and such annual audited financial statements shall be prepared in accordance with GAAP 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 quarterly reports 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 Default or Event of Default, and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default 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. Caltrans shall be responsible for administering construction oversight of the Project in accordance with the FHWA Oversight Agreement. Caltrans' 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 Caltrans 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 and the FHWA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FHWA Division Office, or its agents, including any Consulting Engineer reports, documentation or information.

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

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

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

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

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

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

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

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

(G) specifies any proposed or pending change orders;

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

(I) includes a copy of each report delivered by the Design-Build 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 Design-Build Contractor to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and the Design-Build Contractor's performance of its obligations under the Design-Build Contract.

(ii) 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 Project for the previous financial quarter, including total Revenues received and total Operation and Maintenance Expenses and Capital Expenditures incurred, (B) the variances for such period between the Revenues actually received and the budgeted Revenues as shown in the Financial Plan most recently submitted to 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.

(iii) 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 Project or the Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements related to the acquisition or control of any Project right-of-way.

(iv) 10-Year Delivery Plan. The Borrower shall deliver to the TIFIA Lender each biennial updated 10-Year Delivery Plan Measure I 2010-2040 promptly following the adoption of such plan by the board of directors of the Borrower.

(c) Project 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 Project's operations and, as the TIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation, maintenance, and safety services for the Project. 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), 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) Consulting Engineer. The Borrower shall retain a Consulting Engineer throughout the term of this Agreement. The Consulting 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 applicable Related Documents (other than the Sales Tax Indenture Documents). The Borrower may replace the Consulting Engineer, subject to the TIFIA Lender's right to object to any replacement Consulting Engineer in accordance with this Section 23(d) (*Consulting Engineer*). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days advance written notice of any proposed replacement of the Consulting Engineer, together with supporting information concerning the qualifications of the proposed replacement Consulting Engineer. The proposed replacement Consulting Engineer shall become the Consulting Engineer thirty (30) Business Days following the date of the notice provided by the Borrower under this Section 23(d) *Consulting 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 Consulting Engineer. The Borrower shall pay for all services performed by the Consulting 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 ("FFY") 2022 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 2022 calculation, the TIFIA Lender will use the FFY 2021 base amount of \$13,873.84, which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers

between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

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

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

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

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

The obligations of the Borrower under this Section 29 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 nor obligations hereunder nor any interest therein may be assigned, delegated, or transferred 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. [Each of the parties hereto agrees that the transaction consisting of this Agreement may be conducted by electronic means. Each party agrees, and acknowledges that it is such party's intent, that if such party signs this Agreement using an electronic signature, it is signing, adopting, and accepting this Agreement and that signing this Agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Agreement on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this Agreement in a usable format.][Each party acknowledges and agrees that they may execute this Agreement, and any variation or amendment hereto, using Electronic Signatures, if accompanied by an email from the applicable signatory, contemporaneous or otherwise, confirming the use of such means. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.]¹

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:

¹ **Note to Borrower:** Please advise which language is proper under California law.

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
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814
Attention: Division Administrator
Telephone: 916-498-5001
Facsimile: 916-498-5008
E-mail: HDACA@dot.gov

If to Borrower: San Bernardino County Transportation Authority

San Bernardino County Transportation Authority
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715

Attention: Chief Financial Officer
Telephone: (909) 884-8276
Fax: (909) 885-4407
E-mail: hflores@gosbcta.com

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 (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 (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 along with the TIFIA Bond 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.

DRAFT

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.

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Name: Raymond W. Wolfe
Title: Executive Director

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

By: _____
Name: _____
Title: _____

DRAFT

SCHEDULE I
PROJECT BUDGET²

SCHEDULE I
San Bernardino County Transportation Authority I-10 Express Lanes Contract 1
Project Budget

| Cost | Total Inflated Costs | Eligible Cost? | Eligible Amount | Ineligible Amount |
|---|----------------------|----------------|--------------------|-------------------|
| <u>Construction Costs</u> | | | | |
| Preliminary engineering and environmental | 8,828,472 | Yes | 8,794,567 | 33,905 |
| Program management | 34,025,530 | Yes | 21,000,000 | 13,025,530 |
| Project construction management | 65,300,000 | Yes | 65,300,000 | - |
| Project development and procurement | 8,107,500 | Yes | 500,000 | 7,607,500 |
| ROW acquisition, utilities and support | 56,500,000 | Yes | 56,500,000 | - |
| Landscape maintenance | 4,200,000 | No | - | 4,200,000 |
| Final design | - | No | - | - |
| Construction | 724,765,930 | Yes | 722,369,000 | 2,396,930 |
| Toll collection system and ITS | 20,405,595 | Yes | 20,405,595 | - |
| Total Construction Costs | 922,133,027 | | 894,869,162 | 27,263,865 |
| <u>Other Costs</u> | | | | |
| Financial closing costs | 2,105,092 | Yes | 2,105,092 | - |
| TIFIA issuance costs | 719,594 | No | - | 719,594 |
| Initial deposit to O&M reserve | 4,139,314 | No | - | 4,139,314 |
| Total Other Costs | 6,964,000 | | 2,105,092 | 4,858,908 |
| Total Cost | 929,097,027 | | 896,974,254 | 32,122,773 |

² Note to Draft: Updated budget to be confirmed.

SCHEDULE II
CONSTRUCTION SCHEDULE

[See attached]

DRAFT

SCHEDULE III

SECTION 5.03(b) OF THE INDENTURE

From and after the Substantial Completion Date for the I-10 Corridor Contract 1 Project, subject to Section 5.24 hereof, including the delivery of a Funds Transfer Certificate by the Authority (to the extent required by such Section 5.24), the Trustee shall make the following transfers and payments from the Toll Revenue Fund in the amounts, at the times and only for the purposes specified below and in the following order of priority (it being agreed that no amount shall be transferred on any date pursuant to any clause below until amounts sufficient as of the Monthly Funding Date falling on or most recently prior to such date (to the extent applicable) for all the purposes specified under the prior clauses shall have been transferred or set aside):

First, on each Monthly Funding Date, 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 or coming due and payable prior to the next Monthly Funding Date, plus an additional amount equal to 41.7% of the amount of Operation and Maintenance Expenses projected by the Authority at such time to be due and payable in the Fiscal Year continuing or commencing on the day after such Monthly Funding Date, as reflected in the Annual Operating Budget for such Fiscal Year, including any revisions thereto; provided, that if the requirements described in this paragraph cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund and the Backstop Account of the Measure I Reserve Fund shall be transferred to the Operation and Maintenance Fund in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Second, on each Monthly Funding Date, any payments then due and payable by the Authority to the Rebate Fund or any similar rebate fund established with respect to any future tax-exempt borrowing transaction under this Indenture;

Third, (x) on each Monthly Funding Date, to the Senior Lien Obligations Interest Account the sum of (A)(1) in the case of Outstanding Senior Lien Obligations with semiannual Interest Payment Dates, one-sixth (1/6) of the amount of the interest payable on such Senior Lien Obligations on the next Interest Payment Date; (2) in the case of Outstanding Senior Lien Obligations with quarterly Interest Payment Dates, one-third (1/3) of the amount of the interest payable on such Senior Lien Obligations on the next Interest Payment Date; and (3) in the case of Outstanding Senior Lien Obligations with monthly Interest Payment Dates, the amount of interest payable on such Senior Lien 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 Lien 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 Lien Obligations, any other amount required to make the amount credited to the Senior Lien Obligations Interest Account equal to the amount payable on such Senior Lien Obligations on such Interest Payment Date and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments (as described in clause (a) of the definition of Hedging Obligations) then due, if any, under any Swaps entered into in connection with such

Senior Lien Obligations, net of any scheduled amounts then payable to the Authority under such Swaps; provided, that if the requirements described in this paragraph cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund, the Backstop Account in the Measure I Reserve Fund, the Sweep Fund, and in the applicable Account in the Senior Lien Obligations Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Interest Account in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Fourth, on each Monthly Funding Date, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Senior Lien Obligations Principal Account, the sum of (A)(1) in the case of Outstanding Senior Lien 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 Lien Obligations; and (2) in the case of Outstanding Senior Lien 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 Lien Obligations; plus (B) the sum of any shortfall in transfers required to have been made to the Senior Lien Obligations Principal Account on any previous Monthly Funding Date; plus (C) if the Monthly Funding Date is also a principal payment date (or mandatory sinking fund redemption date) or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Senior Lien Obligations, any other amount required to make the amount credited to the Senior Lien Obligations Principal Account equal to the amount of principal due on such Senior Lien Obligations on such principal payment date or mandatory sinking fund redemption date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund, the Backstop Account in the Measure I Reserve Fund, the Sweep Fund, and in the applicable Account in the Senior Lien Obligations Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Principal Account in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Fifth, (x) on each Monthly Funding Date, to the Second Lien Obligations Interest Account the sum of (A)(1) in the case of Outstanding Second Lien Obligations with semiannual Interest Payment Dates, one-sixth (1/6) of the amount of the interest payable on such Second Lien Obligations on the next Interest Payment Date; (2) in the case of Outstanding Second Lien Obligations with quarterly Interest Payment Dates, one-third (1/3) of the amount of the interest payable on such Second Lien Obligations on the next Interest Payment Date; and (3) in the case of Outstanding Second Lien Obligations with monthly Interest Payment Dates, the amount of interest payable on such Second Lien Obligations on the next Interest Payment Date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Second Lien 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 Second Lien Obligations, any other amount required to make the amount credited to the Second Lien Obligations Interest Account equal to the amount payable on such Second Lien Obligations on such Interest Payment Date and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments (as described in clause (a) of the definition of Hedging Obligations) then due, if any, under any Swaps entered into in connection with such

Second Lien Obligations, net of any scheduled amounts then payable to the Authority under such Swaps; provided, that with respect to Second Lien Obligations in the form of or securing payment of the TIFIA Loan, only the interest component of TIFIA Mandatory Debt Service shall be set aside pursuant to this clause Fifth; provided, further, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund, the Backstop Account in the Measure I Reserve Fund, the Sweep Fund, and in the applicable Account in the Second Lien Obligations Reserve Fund (in that order) shall be transferred to the Second Lien Obligations Interest Account in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Sixth, on each Monthly Funding Date, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Second Lien Obligations Principal Account, the sum of (A)(1) in the case of Outstanding Second Lien 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 Second Lien Obligations; and (2) in the case of Outstanding Second Lien 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 Second Lien Obligations; plus (B) the sum of any shortfall in transfers required to have been made to the Second Lien Obligations Principal Account on any previous Monthly Funding Date; plus (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 Second Lien Obligations, any other amount required to make the amount credited to the Second Lien Obligations Principal Account equal to the amount of principal due on such Second Lien Obligations on such principal payment date or mandatory sinking fund redemption date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund, the Backstop Account in the Measure I Reserve Fund, the Sweep Fund, and in the applicable Account in the Second Lien Obligations Reserve Fund (in that order) shall be transferred to the Second Lien Obligations Principal Account in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall; provided, further, that with respect to Second Lien Obligations in the form of or securing payment of the TIFIA Loan, only the principal component of TIFIA Mandatory Debt Service shall be set aside pursuant to this clause Sixth;

Seventh, on each Monthly Funding Date, to the Senior Lien 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 Senior Lien Obligations Reserve Requirement; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund and the Backstop Account in the Measure I Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Reserve Fund in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall; provided, further, that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Senior Lien Obligations Reserve Fund ratably in accordance with its respective shortfall;

Eighth, on each Monthly Funding Date, to the TIFIA Loan Reserve Account, the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein) to the TIFIA Loan Reserve Requirement; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, commencing on the Calculation Date six (6) months prior to the TIFIA Debt Service Payment Commencement Date, funds available in the Residual Fund and the Backstop Account in the Measure I Reserve Fund (in that order) shall be transferred to the TIFIA Loan Reserve Account up to an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Ninth, for so long as Second Lien Obligations in the form of or securing the TIFIA Loan are outstanding, on each Monthly Funding Date commencing on the Monthly Funding Date that is six (6) months prior to the date on which TIFIA Scheduled Debt Service is first due and payable, to the Second Lien Obligations Principal Account, an amount which equals the sum of (A) one-sixth (1/6) of the TIFIA Scheduled Debt Service due and payable on the immediately succeeding TIFIA Payment Date for the TIFIA Loan, plus (B) the sum of any continuing shortfall in transfers required to have been made to the Second Lien Obligations Principal Account in respect of TIFIA Scheduled Debt Service 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 the Second Lien Obligations in the form of or securing payment of the TIFIA Loan, any other amount required to make the amount credited to the Second Lien Obligations Principal Account equal to the amount payable on such Second Lien Obligations in respect of TIFIA Scheduled Debt Service on such Interest Payment Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund, the Backstop Account in the Measure I Reserve Fund, and the Sweep Fund (in that order) shall be transferred to the Second Lien Obligations Principal Account in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Tenth, on each Monthly Funding Date, to the Second Lien Obligations Reserve Fund (or the applicable Account therein excluding the TIFIA Loan Reserve Account), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein excluding the TIFIA Loan Reserve Account) to the Second Lien Obligations Reserve Requirement; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund and the Backstop Account in the Measure I Reserve Fund (in that order) shall be transferred to the Second Lien Obligations Reserve Fund in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall; provided, further that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Second Lien Obligations Reserve Fund (except for the TIFIA Loan Reserve Account) ratably in accordance with its respective shortfall;

Eleventh, (x) on each Monthly Funding Date, 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; and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments (as described in clause (a) of the definition of Hedging Obligations) then due, if any, under any Swaps entered into in connection with such Subordinate Obligations, net of any scheduled amounts then payable to the Authority under such Swaps; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund, the Backstop Account in the Measure I Reserve Fund and in the applicable Account in the Subordinate Obligations Reserve Fund (in that order) shall be transferred to the Subordinate Obligations Interest Account in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Twelfth, on each Monthly Funding Date, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first 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 date, 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 Obligation 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 Obligation on such principal payment date or mandatory sinking fund redemption date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund, the Backstop Account in the Measure I Reserve Fund and in the applicable Account in the Subordinate Obligations Reserve Fund (in that order) shall be transferred to the Subordinate Obligations Principal Account in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Thirteenth, on each Monthly Funding Date, 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; provided, that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Subordinate Obligations Reserve Fund ratably in accordance with its respective shortfall; provided, further, that in the event such

requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund and the Backstop Account in the Measure I Reserve Fund (in that order) shall be transferred to the Subordinate Obligations Reserve Fund in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall; provided, further that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Subordinate Obligations Reserve Fund ratably in accordance with its respective shortfall;

Fourteenth, on each Monthly Funding Date, to the Major Maintenance and Repair Fund, an amount equal to the Scheduled Major Maintenance and Repair Fund Required Deposit for such Monthly Funding Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Residual Fund and the Backstop Account in the Measure I Reserve Fund (in that order) shall be transferred to the Major Maintenance and Repair Fund in an amount equal to such shortfall, to the extent sufficient funds are available in such Funds and Accounts to cover such shortfall;

Fifteenth, on each Monthly Funding Date, to the applicable Swap Parties, an amount equal to Hedging Termination Obligations then due or due prior to the next Monthly Funding Date with respect to a termination of any Swaps entered into with such Swap Parties and, to any Credit Provider, the fees and expenses due to such Credit Provider on or prior to the next Monthly Funding Date, in each case net of any other sources of funds available to the Authority to make such payments and, to the Authority, amounts necessary to pay litigation awards, judgment amounts, arbitration awards, dispute settlement amounts and expenses not covered by insurance;

Sixteenth, on the last Monthly Funding Date preceding a Calculation Date, to the Sweep Fund to cause the amount on deposit in the Sweep Fund to equal \$10,000,000; provided, that on such Monthly Funding Date, if the Measure I Backstop transferred to the Toll Revenue Fund during the current Semi-Annual Calculation Period was greater than the actual Toll Revenue shortfall for such Semi-Annual Calculation Period, then Revenue shall be used to repay first any withdrawals from the Sweep Fund during such semi-annual period and then to repay such excess amount of Measure I Backstop, plus interest accrued thereon, on such Monthly Funding Date, prior to any deposit of additional Revenues into the Sweep Fund, as provided in Section 5.05(c)(4); and

Seventeenth, on the last Monthly Funding Date prior to a Calculation Date, any amount remaining after the deposits and transfers described in clauses First through Sixteenth above, including the full funding of any of the reserves described above and the repayment of the excess amount of Measure I Backstop, shall be deposited to the Residual Fund.

SCHEDULE IV

MEASURE I INVESTMENT

| Interest Rate: | | []% ³ | | | | | | | | | | |
|----------------|--|---|--|---|--|---|--|--|----------------------------|-------------------------|--------------------------|--|
| Period Ending | Measure I Reserve Fund - Opening Balance | Transfers to Measure I Reserve Fund - Cash Supplement | Transfers to Measure I Reserve Fund - Backstop | Total Transfers to Measure I Reserve Fund | Transfers of Measure I to Project Fund - Cash Supplement | Transfers of Measure I to Project Fund - Backstop | Total Transfers of Measure I to Project Fund | Measure I Reserve Fund - Closing Balance | Measure I Accrued Interest | Measure I Interest Paid | Measure I Principal Paid | |
| 6/30/2025 | - | - | - | - | - | - | - | - | - | - | - | |
| 12/31/2025 | - | - | - | - | - | - | - | - | - | - | - | |
| 6/30/2026 | - | - | - | - | - | - | - | - | - | - | - | |
| 12/31/2026 | - | 2,010,354 | - | 2,010,354 | - | - | - | 2,010,354 | - | - | - | |
| 6/30/2027 | 2,010,354 | 1,987,788 | - | 1,987,788 | - | - | - | 3,998,142 | - | - | - | |
| 12/31/2027 | 3,998,142 | 2,102,887 | - | 2,102,887 | 2,010,354 | - | 2,010,354 | 4,090,675 | - | - | - | |
| 6/30/2028 | 4,090,675 | 2,055,312 | - | 2,055,312 | 1,987,788 | - | 1,987,788 | 4,158,199 | 42,016 | - | - | |
| 12/31/2028 | 4,158,199 | 2,115,559 | - | 2,115,559 | 2,102,887 | - | 2,102,887 | 4,170,871 | 84,439 | - | - | |
| 6/30/2029 | 4,170,871 | 1,881,816 | - | 1,881,816 | 2,055,312 | - | 2,055,312 | 3,997,375 | 130,154 | - | - | |
| 12/31/2029 | 3,997,375 | 1,905,608 | - | 1,905,608 | 2,115,559 | - | 2,115,559 | 3,787,424 | 175,831 | - | - | |
| 6/30/2030 | 3,787,424 | 1,851,798 | - | 1,851,798 | 1,881,816 | - | 1,881,816 | 3,757,406 | 223,721 | (223,721) | (12,586,157) | |
| 12/31/2030 | 3,757,406 | 1,857,696 | - | 1,857,696 | 1,905,608 | - | 1,905,608 | 3,709,494 | - | - | - | |
| 6/30/2031 | 3,709,494 | 1,799,693 | - | 1,799,693 | 1,851,798 | - | 1,851,798 | 3,657,389 | 39,827 | (39,827) | (3,757,406) | |
| 12/31/2031 | 3,657,389 | 1,811,314 | - | 1,811,314 | 1,857,696 | - | 1,857,696 | 3,611,007 | - | - | - | |
| 6/30/2032 | 3,611,007 | 1,745,168 | - | 1,745,168 | 1,799,693 | - | 1,799,693 | 3,556,482 | 38,826 | (38,826) | (3,657,389) | |
| 12/31/2032 | 3,556,482 | 1,758,495 | - | 1,758,495 | 1,811,314 | - | 1,811,314 | 3,503,663 | - | - | - | |
| 6/30/2033 | 3,503,663 | 1,689,959 | - | 1,689,959 | 1,745,168 | - | 1,745,168 | 3,448,454 | 37,856 | (37,856) | (2,065,977) | |
| 12/31/2033 | 3,448,454 | 1,701,918 | - | 1,701,918 | 1,758,495 | - | 1,758,495 | 3,391,877 | 31,152 | (31,152) | (2,223,205) | |
| 6/30/2034 | 3,391,877 | 1,690,505 | - | 1,690,505 | 1,689,959 | - | 1,689,959 | 3,392,423 | 21,439 | (21,439) | (2,297,738) | |
| 12/31/2034 | 3,392,423 | 1,692,872 | - | 1,692,872 | 1,701,918 | - | 1,701,918 | 3,383,377 | 8,737 | (8,737) | (2,119,934) | |
| 6/30/2035 | 3,383,377 | 1,593,603 | - | 1,593,603 | 1,690,505 | - | 1,690,505 | 3,286,475 | - | - | - | |
| 12/31/2035 | 3,286,475 | 1,594,446 | - | 1,594,446 | 1,692,872 | - | 1,692,872 | 3,188,049 | 35,332 | (35,332) | (2,685,209) | |
| 6/30/2036 | 3,188,049 | 1,438,211 | - | 1,438,211 | 1,593,603 | - | 1,593,603 | 3,032,657 | 14,592 | (14,592) | (2,291,771) | |
| 12/31/2036 | 3,032,657 | 1,436,942 | - | 1,436,942 | 1,594,446 | - | 1,594,446 | 2,875,153 | - | - | - | |
| 6/30/2037 | 2,875,153 | 1,257,721 | - | 1,257,721 | 1,438,211 | - | 1,438,211 | 2,694,663 | 33,324 | (33,324) | (3,030,699) | |
| 12/31/2037 | 2,694,663 | 1,303,110 | - | 1,303,110 | 1,436,942 | - | 1,436,942 | 2,560,831 | 41 | (41) | (1,438,900) | |
| 6/30/2038 | 2,560,831 | 1,170,186 | - | 1,170,186 | 1,257,721 | - | 1,257,721 | 2,473,296 | - | - | - | |
| 12/31/2038 | 2,473,296 | 827,244 | - | 827,244 | 1,303,110 | - | 1,303,110 | 1,997,430 | 26,286 | (26,286) | (2,560,831) | |
| 6/30/2039 | 1,997,430 | 661,566 | - | 661,566 | 1,170,186 | - | 1,170,186 | 1,488,810 | - | - | - | |
| 12/31/2039 | 1,488,810 | 219,346 | - | 219,346 | 827,244 | - | 827,244 | 880,912 | 24,457 | (24,457) | (1,997,430) | |
| 6/30/2040 | 880,912 | - | - | - | 661,566 | - | 661,566 | 219,346 | - | - | - | |

³ **Note to Draft:** Interest rate to be updated to the new TIFIA Interest Rate plus 1.25%.

| | | | | | | | | | | | |
|--------------|---------|-------------------|---|-------------------|-------------------|---|-------------------|---|----------------|------------------|---------------------|
| 12/31/2040 | 219,346 | - | - | - | 219,346 | - | 219,346 | - | 13,827 | (13,827) | (880,912) |
| 6/30/2041 | - | - | - | - | - | - | - | - | - | - | - |
| 12/31/2041 | - | - | - | - | - | - | - | - | - | - | - |
| Total | | 43,161,117 | - | 43,161,117 | 43,161,117 | - | 43,161,117 | - | 981,856 | (549,416) | (43,593,558) |

DRAFT

SCHEDULE 14(f)

LITIGATION

1. *Daniel Hayler and Leticia Hayler v. San Bernardino County Transportation Authority*, Central District of California Case No. 5:19-cv-02469-CJC-SP. This is an inverse condemnation related to a pending I-10 Express Lanes eminent domain proceeding. The Haylers allege that the state court's granting of an order for prejudgment possession of a temporary construction easement, which was affirmed by the appellate court, effected a taking under the Fifth Amendment. SBCTA filed a motion to dismiss, asserting lack of jurisdiction, or, alternatively, federal abstention. The court granted the motion on the abstention grounds, but rather than dismiss the case, it stayed it pending the outcome of the state court case.

DRAFT

SCHEDULE 14(u)⁴

INSURANCE

A. BORROWER INSURANCE (SBCTA)

| | |
|--------------------|--|
| Type | Workers' compensation and employers liability |
| Period | 07/01/2018 – 07/01/2019 |
| Insured | Borrower - SBCTA |
| Additional Insured | N/A |
| Sum insured | Payroll - \$5,900,771 |
| Conditions | Yes – Refer to Policy |
| Exclusions | Yes – Refer to Policy |
| Maximum deductible | N/A |
| Type | Commercial general liability [not project specific] |
| Interest | N/A |
| Period | 07/01/2018 – 07/01/2019 |
| Insured | Borrower - SBCTA |
| Additional Insured | Build America Bureau – US Department of Transportation |
| Sum Insured | Limits of Coverage: \$10,000,000 |
| Conditions | Yes – Refer to Policy |
| Exclusions | Yes – Refer to Policy |
| Maximum Deductible | \$50,000 - retention |
| Type | Automobile Liability |
| Interest | N/A |
| Period | 07/01/2018 – 07/01/2019 |
| Insured | Borrower - SBCTA |
| Additional Insured | Build America Bureau – US Department of Transportation |
| Sum insured | Limits of Coverage: \$10,000,000 |
| Maximum Deductible | Retention: \$50,000 |
| Type | Excess / umbrella liability [not project specific] |
| Interest | N/A |
| Period | N/A |
| Insured | N/A |
| Additional Insured | N/A |
| Sum insured | N/A |
| Conditions | N/A |

⁴ **Note to Borrower:** Please update coverage periods and any other changes to coverage details since the date of the 2019 TIFIA Loan agreement.

| | |
|--------------------|---|
| Type | Workers' compensation and employers liability |
| Maximum Deductible | N/A |
| Type | Property damage and business interruption [<i>not project specific</i>] (Broad form) |
| Interest | N/A |
| Period | 07/01/2018 – 07/01/2019 |
| Insured | Borrower - SBCTA |
| Additional Insured | Build America Bureau – US Department of Transportation |
| Sum insured | TIV + Personal Property - \$30,423,570 |
| Conditions | Yes – Refer to Policy |
| Maximum Deductible | \$5,000 |
| Type | Pollution liability [<i>not project specific</i>] |
| Interest | N/A |
| Period | N/A |
| Insured | N/A |
| Sum insured | N/A |
| Conditions | N/A |
| Maximum Deductible | N/A |
| Type | Commercial crime [<i>not project specific</i>] |
| Interest | N/A |
| Period | 07/01/2018 – 07/01/2019 |
| Insured | Borrower - SBCTA |
| Sum Insured | Limits of Coverage - \$10,000,000 |
| Maximum Deductible | \$20,000 |

B. TSP INSURANCE (Transcore)

| | |
|--------------------|---|
| Type | Workers' compensation and employers liability |
| Period | 04/01/2019 – 04/01/2020 |
| Insured | Roper Technologies, Inc.; A Parent Company TransCore, LP |
| Additional Insured | N/A |
| Sum insured | Unknown Payroll |
| Conditions | Yes – Refer to Policy |
| Exclusions | Yes – Refer to Policy |
| Maximum Deductible | N/A |
| Type | Commercial general liability [(Project specific)] |
| Interest | N/A |
| Period | 04/01/2019 – 04/01/2020 |

| | |
|--------------------|--|
| Type | Workers' compensation and employers liability |
| Insured | Roper Technologies, Inc.; A Parent Company TransCore, LP |
| Additional Insured | San Bernardino County Transportation Authority (SBCTA) Build America Bureau – US Department of Transportation |
| Sum Insured | Limits of Coverage: \$2M per occurrence / \$5M aggregate |
| Conditions | Yes – Refer to Policy |
| Exclusions | Yes – Refer to Policy |
| Maximum Deductible | Unknown |
| Type | Automobile |
| Interest | N/A |
| Period | 04/01/2019 – 04/01/2020 |
| Insured | Roper Technologies, Inc.; A Parent Company TransCore, LP |
| Additional Insured | San Bernardino County Transportation Authority (SBCTA) Build America Bureau – US Department of Transportation |
| Sum Insured | Limits of Coverage: \$2,000,000 |
| Maximum Deductible | Unknown |
| Type | Excess / umbrella liability [(Project specific)] |
| Interest | N/A |
| Period | 04/01/2019 – 04/01/2020 |
| Insured | Roper Technologies, Inc.; A Parent Company TransCore, LP |
| Additional Insured | San Bernardino County Transportation Authority (SBCTA) Build America Bureau – US Department of Transportation |
| Sum insured | Limits of Coverage: \$10,000,000 |
| Conditions | Yes – Refer to Policy |
| Maximum Deductible | Guided by Underlying policy |
| Type | Property damage and business interruption (Project specific) (Broad form) |
| Interest | Location: BOS Location, currently planned to be the Caltrans District 8 TMC |
| Period | 04/01/2019 – 04/01/2020 |
| Insured | Roper Technologies, Inc.; A Parent Company TransCore, LP |
| Additional Insured | San Bernardino County Transportation Authority (SBCTA) Build America Bureau – US Department of Transportation |
| Sum insured | Limits of Insurance: Valuable Papers and Records = \$10,000,000 Blanket Building and Business Personal Property = \$300,000,000 |
| Conditions | N/A |
| Maximum Deductible | \$100,000 |
| Type | Pollution liability (Project specific) |
| Interest | N/A |

| | |
|--------------------|---|
| Type | Workers' compensation and employers liability |
| Period | N/A |
| Insured | N/A |
| Sum Insured | N/A |
| Conditions | N/A |
| Maximum Deductible | N/A |
| Type | Commercial crime |
| Interest | N/A |
| Period | 04/01/2019 – 04/01/2020 |
| Insured | Roper Technologies, Inc.; A Parent Company TransCore, LP |
| Sum Insured | Limits of Coverage: \$10,000,000 |
| Maximum Deductible | Unknown |

C. Design Builder INSURANCE (LSPJV)

| | |
|--------------------|--|
| Type | Workers' compensation and employers liability |
| Period | 07/15/2018 – 07/15/2023 |
| Insured | The Lane-Security Paving Joint Venture |
| Additional Insured | N/A |
| Sum Insured | Payroll: \$89,833,568 |
| Conditions | Yes – Refer to Policy |
| Exclusions | Yes – Refer to Policy |
| Maximum Deductible | N/A |
| Type | Commercial general liability [(Project specific)] |
| Interest | N/A |
| Period | 07/15/2018 – 07/15/2023 |
| Insured | The Lane-Security Paving Joint Venture |
| Additional Insured | San Bernardino County Transportation Authority (SBCTA) Build America Bureau – US Department of Transportation |
| Sum Insured | Limits of Coverage: \$2M per occurrence / \$4M aggregate |
| Conditions | Yes – Refer to Policy |
| Exclusions | Yes – Refer to Policy |
| Maximum Deductible | \$250,000 |
| Type | Automobile |
| Interest | N/A |
| Period | 07/15/2018 – 07/15/2023 |
| Insured | The Lane-Security Paving Joint Venture |
| Additional Insured | San Bernardino County Transportation Authority (SBCTA) Build America Bureau – US Department of Transportation |
| Sum Insured | Limits of Liability: \$2,000,000 |
| Maximum Deductible | \$1,000 |
| Type | Excess / umbrella liability [(Project specific)] |

| | |
|--------------------|--|
| Type | Workers' compensation and employers liability |
| Interest | N/A |
| Period | 07/15/2018 – 07/15/2023 |
| Insured | The Lane-Security Paving Joint Venture |
| Additional Insured | San Bernardino County Transportation Authority (SBCTA) Build America Bureau – US Department of Transportation |
| Sum Insured | Limits of Liability: \$250,000,000 |
| Conditions | Yes – Refer to Policy |
| Maximum Deductible | Guided by underlying policy |
| Type | Builder's Risk |
| Interest | N/A |
| Period | 08/15/2018 – 08/15/2023 |
| Insured | The Lane-Security Paving Joint Venture |
| Additional Insured | N/A |
| Sum Insured | \$707,575,000 |
| Conditions | Yes – Refer to Policy |
| Maximum Deductible | N/A |
| Type | Pollution liability (Project specific) |
| Interest | N/A |
| Period | 07/15/2018 – 07/15/2023 |
| Insured | The Lane-Security Paving Joint Venture |
| Sum Insured | Limits of Coverage: \$10,000,000 |
| Conditions | Yes – Refer to Policy |
| Maximum Deductible | Self-Insured Retention: \$250,000 |
| Type | Commercial crime |
| Interest | N/A |
| Period | N/A |
| Insured | N/A |
| Sum Insured | N/A |
| Maximum Deductible | N/A |

SCHEDULE 16(w)

MEASURE I BACKSTOP MECHANICS



2025

| Month | SBCTA | Sales Tax Trustee | Toll Trustee |
|-----------|---|---|--|
| January | | | |
| February | | | |
| March | | | |
| April | <ul style="list-style-type: none"> Calculate Backstop required for Semi Annual Periods ending December 31, 2026 (\$2m) and June 30, 2027 (\$1m) Send notice to Bureau | | |
| May | | | |
| June | <ul style="list-style-type: none"> Send notice to Bureau that Board has approved the Backstop amount (\$3m) | | |
| July | <ul style="list-style-type: none"> Instruct Sales Tax Trustee to transfer: <ul style="list-style-type: none"> 1/6th of \$2m to Measure I Reserve Fund each month from July to Dec 2025 1/6th of \$1m to Measure I Reserve Fund each month from Jan to June 2026 | <ul style="list-style-type: none"> Transfer 1/6th of \$2m to Measure I Reserve Fund | |
| August | | <ul style="list-style-type: none"> Transfer 1/6th of \$2m to Measure I Reserve Fund | |
| September | | <ul style="list-style-type: none"> Transfer 1/6th of \$2m to Measure I Reserve Fund | |
| October | | <ul style="list-style-type: none"> Transfer 1/6th of \$2m to Measure I Reserve Fund | |
| November | | <ul style="list-style-type: none"> Transfer 1/6th of \$2m to Measure I Reserve Fund | |
| December | | <ul style="list-style-type: none"> Transfer 1/6th of \$2m to Measure I Reserve Fund | <ul style="list-style-type: none"> Pay SBCTA interest earned on Measure I Reserve Fund proceeds invested in Permitted Investments |

2026 (Measure I Backstop required is higher than budgeted)

| Month | SBCTA | Sales Tax Trustee | Toll Trustee |
|-----------|--|---|--|
| January | | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | |
| February | | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | |
| March | | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | |
| April | <ul style="list-style-type: none"> Calculate Backstop required for Semi Annual Periods ending December 31, 2027 (\$4m) and June 30, 2028 (\$1m) Send notice to Bureau | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | |
| May | | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | |
| June | <ul style="list-style-type: none"> Send notice to Bureau that Board has approved the Backstop amount (\$5m) | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | <ul style="list-style-type: none"> Pay SBCTA interest earned on Measure I Reserve Fund proceeds invested in Permitted Investments |
| July | <ul style="list-style-type: none"> Instruct Toll Trustee to transfer funds as needed each month from of \$2m reserved in the Measure I Reserve Fund to the Waterfall from July to December 2026 Instruct Sales Tax Trustee to transfer: <ul style="list-style-type: none"> 1/6th of \$4m to Measure I Reserve Fund each month from July to Dec 2026 1/6th of \$1m to Measure I Reserve Fund each month from Jan to June 2027 | <ul style="list-style-type: none"> Transfer 1/6th of \$4m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$2m) from Measure I Reserve Fund to Waterfall |
| August | | <ul style="list-style-type: none"> Transfer 1/6th of \$4m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$2m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| September | | <ul style="list-style-type: none"> Transfer 1/6th of \$4m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$2m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| October | <ul style="list-style-type: none"> Confirm if the Backstop amount budgeted for Semi Annual Period ending December 31, 2026 (\$2m) is sufficient. <ul style="list-style-type: none"> If amount required is higher, request Budget Amendment for shortfall (e.g. \$0.5m) Send notice to Bureau <p><i>Note: This step will be required for all semiannual periods where debt service is due irrespective of whether a Backstop amount was reserved for that period or not</i></p> | <ul style="list-style-type: none"> Transfer 1/6th of \$4m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$2m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |

| Month | SBCTA | Sales Tax Trustee | Toll Trustee |
|-----------------|--|--|---|
| November | | <ul style="list-style-type: none"> Transfer 1/6th of \$4m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$2m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| December | <ul style="list-style-type: none"> Send notice to Bureau that Board has approved the amendment to pay the shortfall (\$0.5m) Instruct Sales Tax Trustee to transfer the final shortfall amount to Measure I Reserve Fund. The shortfall should be equal to or below \$0.5 million approved by the Board. | <ul style="list-style-type: none"> Transfer 1/6th of \$4m to Measure I Reserve Fund Transfer \$0.5m (or lower amount, as applicable) to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$2m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall If necessary, as a result of the analysis undertaken in October, transfer \$0.5m (or lower amount, as applicable) from Measure I Reserve Fund to Waterfall Trustee transfers to SBCTA any amount of the \$2.5m not needed, plus interest on such amounts if they were deposited to the Toll Revenue Fund but repaid from later months Revenue in semi-annual period. Pay SBCTA interest earned on Measure I Reserve Fund proceeds invested in Permitted Investments |

DRAFT

2027 (Measure I Backstop required is lower than budgeted)

| Month | SBCTA | Sales Tax Trustee | Toll Trustee |
|----------|--|--|---|
| January | <ul style="list-style-type: none"> Instruct Toll Trustee to transfer funds as needed each month from of \$1m reserved in the Measure I Reserve Fund to the Waterfall from January to June 2027 | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$1m) from Measure I Reserve Fund to Waterfall |
| February | | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$1m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| March | | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$1m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| April | <ul style="list-style-type: none"> Calculate Backstop required for Semi Annual Periods ending December 31, 2028 (\$3m) and June 30, 2029 (\$0m) Confirm if the Backstop budgeted for Semi Annual Period ending June 30, 2027 (\$1m) is sufficient. <ul style="list-style-type: none"> If amount required is estimated to be less than \$1m (e.g. by \$0.25m), no action required in this month (see June) If no true up amount is required to be budgeted, no adjustment needed to Budget approval Send notice to Bureau | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$1m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| May | | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$1m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| June | <ul style="list-style-type: none"> Send notice to Bureau that Board has approved the Backstop amount (\$2.75m) Instruct Toll Trustee to pay excess Backstop amount (\$0.25m or such amount as finally determined as on the Calculation Date) from the Measure I Reserve Fund to SBCTA | <ul style="list-style-type: none"> Transfer 1/6th of \$1m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$1m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall Pay SBCTA interest earned on Measure I Reserve Fund proceeds invested in Permitted Investments If any part of the excess Backstop amount (\$0.25m or such amount as finally determined as on the Calculation Date) remains in the Measure I Reserve Fund (i.e., was not transferred to the Toll Revenue Fund), the trustee will pay such excess amount back to SBCTA from the Measure I Reserve Fund If any part of the excess Backstop amount was transferred to the Toll Revenue Fund, pay SBCTA such |

| Month | SBCTA | Sales Tax Trustee | Toll Trustee |
|------------------|--|---|---|
| | | | excess amount from the Toll Revenue Fund, together with interest calculated at TIFIA Interest Rate plus 1.25% p.a., calculated from the month in which the relevant transfer was made to the Calculation Date) |
| July | <ul style="list-style-type: none"> Instruct Toll Trustee to transfer funds as needed each month from of \$4m reserved in the Measure I Reserve Fund to the Waterfall from July to December 2027 Instruct Sales Tax Trustee to transfer: <ul style="list-style-type: none"> 1/6th of \$3m to Measure I Reserve Fund each month from July to Dec 2027 | <ul style="list-style-type: none"> Transfer 1/6th of \$3m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$4m) from Measure I Reserve Fund to the Waterfall |
| August | | <ul style="list-style-type: none"> Transfer 1/6th of \$3m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$4m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| September | | <ul style="list-style-type: none"> Transfer 1/6th of \$3m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$4m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| October | <ul style="list-style-type: none"> Confirm if the Backstop budgeted for Semi Annual Period ending December 31, 2027 (\$4m) is sufficient. <ul style="list-style-type: none"> If amount Backstop amount required is lower than \$4m (e.g. by \$0.35m), no action required in this month (see December) Send notice to Bureau | <ul style="list-style-type: none"> Transfer 1/6th of \$3m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$4m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| November | | <ul style="list-style-type: none"> Transfer 1/6th of \$3m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$4m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall |
| December | <ul style="list-style-type: none"> Instruct Toll Trustee to transfer excess Backstop amount (\$0.35m or such amount as finally determined as on the Calculation Date) from the Measure I Reserve Fund to SBCTA* | <ul style="list-style-type: none"> Transfer 1/6th of \$3m to Measure I Reserve Fund | <ul style="list-style-type: none"> Transfer amount as needed (up to \$4m less amount transferred in the previous month(s) during this semiannual period) from Measure I Reserve Fund to Waterfall Pay SBCTA interest earned on Measure I Reserve Fund proceeds invested in Permitted Investments If any part of the excess Backstop amount (\$0.35m or such amount as finally determined as on the Calculation Date) remains in the Measure I Reserve Fund (i.e., was not transferred to the Toll Revenue Fund), the trustee will pay such |

Schedule 16(w)-5

| Month | SBCTA | Sales Tax Trustee | Toll Trustee |
|-------|-------|-------------------|--|
| | | | <p>excess amount back to SBCTA from the Measure I Reserve Fund</p> <ul style="list-style-type: none"> • If any part of the excess Backstop amount was transferred to the Toll Revenue Fund, pay SBCTA such excess amount from the Toll Revenue Fund, together with interest calculated at TIFIA Interest Rate plus 1.25% p.a., calculated from the month in which the relevant transfer was made to the Calculation Date) |

DRAFT

EXHIBIT A

FORM OF TIFIA BOND

Number R-1

**Not to Exceed \$225,000,000
(plus compounded interest added to principal)**

UNITED STATES OF AMERICA

STATE OF CALIFORNIA

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
TOLL REVENUE SECOND LIEN OBLIGATION, 2021 TIFIA SERIES
(TIFIA – [_____])**

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

Maturity Date: **December 31, 2057 or such earlier date determined pursuant to the
TIFIA Loan Agreement**

**Maximum
Principal Amount:** **[TWO HUNDRED TWENTY-FIVE MILLION] DOLLARS (PLUS
COMPOUNDED INTEREST ADDED TO PRINCIPAL)**

Interest Rate: **[•]%**

Issue Date: **[_____]**

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a public entity duly organized and existing under the laws of the State of California (the “**Authority**”) for value received, hereby promises to pay (but solely from the Trust Estate hereinafter referred to) to the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**” or “**Registered Owner**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest at the rate set forth above that is compounded on June 30 and December 31 of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Loan Agreement, dated [_____] , 2021, by and between the Authority and the TIFIA Lender (the “**TIFIA Loan Agreement**”), being hereinafter referred to as the “**Outstanding TIFIA Loan Balance**”), together with accrued and unpaid interest (including, if applicable, interest at the TIFIA Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding TIFIA Loan Balance from the last compounding date, compounded on the basis of a 365-day or 366-day year, as appropriate, all as more fully described in the above-referenced TIFIA Loan Agreement. Each Disbursement made by the TIFIA Lender to the Authority pursuant to the TIFIA Loan Agreement and each prepayment made on account of the Outstanding TIFIA Loan Balance shall be recorded

by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as Appendix One, which will correspond to Exhibit G in the TIFIA Loan Agreement; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Authority's obligations hereunder or under any other TIFIA Loan Document. The Authority shall provide notice to the Trustee of the same. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement and shall be paid 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. Such **Exhibit G** to the TIFIA Loan Agreement shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement, provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Authority's obligations hereunder or under any other TIFIA Loan Document. Payments of interest hereon are to be made in accordance with Sections 9 and 10 of the TIFIA Loan Agreement as the same become due. Principal of and interest on this Bond shall be paid in funds available on the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This 2021 TIFIA Series Bond is a fully registered Bond and the principal of and interest on the 2021 TIFIA Series Bond shall be payable by wire transfer to the Registered Owner hereof in accordance with the TIFIA Loan Agreement.

This Bond is one of a duly authorized issue of bonds of the Authority, designated as "**San Bernardino County Transportation Authority I-10 Toll Revenue Second Lien Obligation**" (the "**Bonds**"), of the series designated above, all of which are being issued pursuant to the San Bernardino County Transportation Authority Consolidation Act of 2017, being Chapter 7 of Division 12 of the Public Utilities Code of the State of California (Section 130800 et seq.) (the "**Authority Act**"), and Streets and Highways Code Sections 149.7 and 149.11, including Chapter 421 of the California Statutes of 2008 (the "**Toll Act**"), and a Master Indenture (I-10 Corridor Contract 1 Project), dated as of April 1, 2019 (the "**Master Indenture**"), as amended and supplemented, including as amended and supplemented by a Second Supplemental Indenture, dated as of [____], 2021 (the "**Second Supplemental Indenture**"), each between the Authority and U.S. Bank National Association, as trustee (the "**Trustee**"). The Master Indenture, as supplemented and amended from time to time pursuant to its terms, including as supplemented by the Second Supplemental Indenture, is hereinafter referred to as the "**Indenture**." Capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Indenture, and if not defined in the Indenture, as defined in the TIFIA Loan Agreement.

THIS BOND IS A LIMITED OBLIGATION OF THE AUTHORITY SECURED SOLELY BY THE TRUST ESTATE AS DEFINED AND PROVIDED IN THE INDENTURE AND THE AUTHORITY IS NOT OBLIGATED TO PAY THIS BOND EXCEPT FROM SAID TRUST ESTATE. THIS BOND DOES NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION OF THE STATE OTHER THAN THE AUTHORITY. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR THE INTEREST ON THIS BOND.

Reference is hereby made to the Indenture, the Authority Act, the Toll Act and the TIFIA Loan Agreement for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Trust Estate and the rights of the registered owners of the Bonds and all the terms of the Indenture and the TIFIA Loan Agreement are hereby incorporated herein and constitute a contract between the Authority and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued and other indebtedness may be incurred on a senior or parity basis with the Series of Bonds of which this Bond is a part, but only subject to the conditions and limitations contained in the Indenture and the TIFIA Loan Agreement.

This Bond is secured by and payable both as to principal and interest, and as to any premium upon the redemption hereof, solely from the Trust Estate as defined in the Indenture, subject only to the provisions of the Indenture permitting application thereof for the purposes and on the terms and conditions set forth therein, and the Authority is not obligated to pay this Bond except from such Trust Estate.

THIS BOND SHALL AND MAY BE PREPAID in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid to be determined in accordance with the TIFIA Loan Agreement and the Indenture; provided, however, that any prepayment shall be in a principal amount of at least \$1,000,000), at any time or from time to time, without penalty or premium, by paying to the Registered Owner all or part of the principal amount of this Bond in accordance with the TIFIA Loan Agreement.

THIS BOND SHALL BE SUBJECT TO MANDATORY PREPAYMENT in accordance with the TIFIA Loan Agreement and the Indenture.

The rights and obligations of the Authority and of the holders and registered owners of the Bonds of the Series of Bonds of which this Bond is a part may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the TIFIA Loan Agreement.

This Bond is transferable or exchangeable as provided in Section 19 of the TIFIA Loan Agreement and Section 2.08 of the Indenture, upon surrender by the registered owner hereof in person, or by such owner's duly authorized attorney, of this Bond at the Principal Office of the Trustee, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or such owner's duly authorized attorney, and thereupon a new Bond or Bonds of the same series, maturity, interest rate and in the aggregate maximum principal amount, shall be issued to the registered owner or owners in exchange therefor as provided in the Indenture, upon payment of any charges therein prescribed.

The person in whose name this Bond is registered shall be deemed and regarded as the absolute owner hereof for all purposes, including receiving payment of, or on account of, the principal of and premium and interest due hereon.

The Trustee shall not register any transfer or exchange of this Bond unless the Registered Owner's prospective transferee delivers to the Trustee a letter substantially in the form as set forth in Exhibit A attached to the Second Supplemental Indenture.

Any delay on the part of the TIFIA Lender in exercising any right hereunder or under the TIFIA Loan Agreement shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default. The Authority hereby waives presentment, demand, protest and notice of any kind.

It is hereby certified and recited by the Authority that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, the Authority Act and the Toll Act and that this Bond, together with all other indebtedness of the Authority secured by the Trust Estate, is within every debt and other limit prescribed by the Constitution and statutes of the State of California.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF the San Bernardino County Transportation Authority has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its duly authorized representatives all as of the Issue Date set forth above.

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
President of the Board of Directors

(Seal)

Countersigned:

By: _____
Chief Financial Officer

[FORM OF CERTIFICATE OF AUTHENTICATION]

It is hereby certified that this Bond has been issued under the provisions of the Indenture described in this Bond.

Dated of Authentication: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

DRAFT

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

(Please Print or Type Name and Address of Assignee)

PLEASE INSERT SOCIAL SECURITY OR OTHER
TAX IDENTIFICATION NUMBER OF ASSIGNEE

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

to transfer the within Bond on the books kept for registration thereof with full power of
substitution in the premises.

Dated:

Signature:

(Signature of Assignor)

Notice: The signature on this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

DRAFT

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

| <u>Calendar Year</u> | <u>Amount (000s)</u> |
|-----------------------------|-----------------------------|
| 2016 | \$0 |
| 2017 | \$0 |
| 2018 | \$0 |
| 2019 | \$0 |
| 2020 | \$0 |
| 2021 | \$16,703 |
| 2022 | \$158,902 |
| 2023 | \$49,395 |
| Total Disbursements | \$225,000 |

DRAFT

EXHIBIT C

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

The undersigned, on behalf of SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, hereby certifies that SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, in accordance with 2 C.F.R. § 180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995):

(a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);

(b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR §180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR §180.800(a); and

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

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

Dated: _____

SAN BERNARDINO 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. Section 2 through Section 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

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

All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the fifteenth (15th) Business Day of a calendar month in order to obtain disbursement by the first (1st) day of the next succeeding calendar month or, if either such day is not a Business Day, the next succeeding Business Day.

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

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by the Consulting Engineer relating to the construction of the Project, including the certificate delivered by the Borrower pursuant to Section 5.24(d) of the Indenture (to the extent not previously delivered to the TIFIA Lender).

The TIFIA Lender shall promptly send to the Borrower, in accordance with Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, a notice of any Requisition so

rejected, and the reasons therefor, substantially in the form attached as **Appendix Two** to this **Exhibit D**. 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) a Default or Event of Default 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 in accordance with the highest standards of the Borrower's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or
 - (iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or
 - (iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 13(b) (*Conditions Precedent to All Disbursements*) of the TIFIA Loan Agreement; or
 - (v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Government Shutdown. Notwithstanding anything to the contrary set forth in this Exhibit D, the TIFIA Lender (a) shall be entitled to withhold approval of any pending or

subsequent requests for the disbursement of TIFIA Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower (even if such disbursement has been approved by the TIFIA Lender), in each case if the TIFIA Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

DRAFT

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

Build America Bureau
United States Department of Transportation
c/o Director, Office of Credit Programs
Room W12-464
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

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

[Loan Servicer]
[Address]
[Attention]

Re: I-10 CORRIDOR CONTRACT 1 PROJECT (TIFIA # [_____])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [_____] , 2021 (the “**TIFIA Loan Agreement**”), by and between SAN BERNARDINO 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 [_____] 1, 20[___] (the “**Disbursement Date**”)[, which is the first Business Day following [_____] 1, 20[_____]].
3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, \$[_____].
4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.

5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan.
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
7. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
8. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) and Section 16(f) (*Insurance*) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the TIFIA Lender and the FHWA Division Office and in accordance 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 Default or 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 February 25, 2019 and is continuing.
13. A copy of the most recent certificate delivered by the Borrower pursuant to Section 5.24(d) of the Indenture and signed by the Consulting Engineer 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(1)(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.

DRAFT

[Add wire instructions for SBCTA.]

Date: _____

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____

Name:

Title: _____

DRAFT

APPENDIX TWO TO EXHIBIT D

**DISAPPROVAL OF THE TIFIA LENDER
(To be delivered to the Borrower)**

Requisition Number [●] is [approved in part in the amount of \$[●]] [not approved]⁶ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 20[___], by and between [____] (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA 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:

⁶ Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

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

DRAFT

EXHIBIT E

COMPLIANCE WITH LAWS

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

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 C.F.R. Part 35; 29 C.F.R. Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 C.F.R. Part 21);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. Part 35; 41 C.F.R. Part 60; and 49 C.F.R. Part 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by the Borrower that result in FHWA's approval of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 C.F.R. Part 1926 and 23 C.F.R. § 635.108, as applicable);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 C.F.R. Part 5), and, as applicable, 23 U.S.C. § 113 and implementing regulations (23 C.F.R. §§ 635.117(f) and 635.118), and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- (xiii) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 C.F.R. § 635.410);
- (xiv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 C.F.R.;

(xv) The Cargo Preference Act of 1954, as amended (46 U.S.C. §1241(b)), and implementing regulations (46 C.F.R. Part 381); and

(xvi) The applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise program.

DRAFT

EXHIBIT F
FHWA OVERSIGHT AGREEMENT

DRAFT

EXHIBIT G
TIFIA DEBT SERVICE SCHEDULE

DRAFT

EXHIBIT H-1

OPINIONS REQUIRED FROM 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; (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) 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; (f) 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; (g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) 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.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that: (a) each of the TIFIA Bond, the Indenture, the TIFIA Supplemental Indenture, and Sales Tax Revenue Bond Fourth Supplemental Indenture has been duly authorized, executed, and delivered by the Borrower in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (b) each of the TIFIA Bond, the Indenture, the TIFIA Supplemental Indenture, the 2019 Sales Tax Revenue Bond Supplemental Indenture and the Sales Tax Revenue Bond Fourth Supplemental Indenture is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions; (c) the TIFIA Bond is secured by the Trust Estate and is a Bond entitled to the benefits of a Bond under the Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person; (d) the 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; (e) all actions by the Borrower that are required for the use of Revenues as required under the Indenture and under the TIFIA Loan Agreement have been duly and lawfully made; (f) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Revenues as required by the terms of the Indenture and the TIFIA Loan Agreement; (g) the Borrower is legally eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code pursuant to [*insert State law citation*]; and (h) 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 or the Sales Tax Indenture Documents.

EXHIBIT I

[Reserved]

DRAFT

EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY TOLL REVENUE SECOND LIEN OBLIGATION, 2021 TIFIA SERIES (TIFIA – [____])

The undersigned, U.S. BANK NATIONAL ASSOCIATION (the “**Trustee**”), by its duly appointed, qualified and acting authorized officer, certifies with respect to the above referenced bond (the “**TIFIA Bond**”) dated as of [____], 2021, as follows:

1. This Certificate is being provided in connection with that certain Master Indenture (I-10 Corridor Contract 1 Project), dated as of April 1, 2019 (the “**Master Indenture**”), as supplemented and amended by the Second Supplemental Indenture, dated as of [____], 2021 (the “**Second Supplemental Indenture**” and, together with the Master Indenture, the “**Indenture**”), by and between San Bernardino County Transportation Authority (the “**Borrower**”) and the Trustee. Capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Indenture.
2. That the Trustee is a national banking 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 the United States of America.
3. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained by the Trustee and are in full force and effect.
4. That the documents pertaining to the issuance of the TIFIA Bond to which the Trustee is a party were executed by the Trustee 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.
5. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the 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 order or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
6. That attached to this Certificate as Annex One 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.

7. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section 14.06 of the Indenture.
8. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [____], 2021 (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**").
9. 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 Indenture and the TIFIA Loan Agreement, including from time to time redeeming or prepaying all or a portion of the TIFIA Bond as provided in Section 4.01 of the Indenture and Section 10 of the TIFIA Loan Agreement. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Sections 8.01 and 8.02 of the Indenture.
10. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Indenture (including, but not limited to, the TIFIA Loan Prepayment Account) have been established by the Trustee as provided in the Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [_____]

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

DRAFT

ANNEX ONE TO EXHIBIT J
OFFICERS OF TRUSTEE
AND
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

DRAFT

EXHIBIT K
FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain TIFIA Loan Agreement, dated as of [_____], 2021 (the “**TIFIA Loan Agreement**”), by and among San Bernardino 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, Hilda Flores, Chief Financial Officer of the San Bernardino County Transportation Authority, as Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in her personal capacity, as of the date hereof:

- (a) pursuant to Section 13(a)(ii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit A are complete and fully executed copies of each Indenture Document and each Sales Tax 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)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit B is a certificate from Borrower’s Authorized Representative (A) as to the satisfaction of certain conditions precedent set forth in 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;
- (c) pursuant to Section 13(a)(ix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit C is an original fully executed counterpart (or a certified copy) of the Traffic and Revenue Study, accompanied by a letter from the preparer of such study, dated as of April 18, 2019 and certifying as to the matters set forth therein;
- (d) pursuant to Section 13(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit D is a certified, fully executed copy of the Consulting Engineer's Report, accompanied by a letter from the Consulting Engineer, dated as of April 18, 2019 and certifying as to the matters set forth therein;
- (e) pursuant to Section 13(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit E are certified, complete, and fully executed copies of the Principal Project Contracts listed below, 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:
 - (i) the Design-Build Contract;

- (ii) the Toll Services Contract;
 - (iii) the Caltrans DB Cooperative Agreement;
 - (iv) the Toll Facility Agreement; and
 - (v) the TCA Cooperative Agreement.⁷
- (f) pursuant to Section 13(a)(xii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and 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);
- (g) pursuant to Section 13(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit F is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.35x, (iii) demonstrates a Second Lien Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.25x, (iv) demonstrates a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.00x, (v) demonstrates a Total Loan Life Coverage Ratio for each Calculation Date through the Final Maturity Date that is not less than 1.30x, and (vi) does not reflect (1) the payment of any interest on any Additional Obligations before the Debt Service Payment Commencement Date or (2) the commencement of amortization of the principal amount of any Additional Obligations before the commencement of the amortization of the principal amount of the TIFIA Loan;
- (h) pursuant to Section 13(a)(xvi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit G is a true, correct and complete copy of the final NEPA Determination, which document also demonstrates the Borrower's compliance with CEQA. The NEPA Determination has not been revoked or amended on or prior to the date hereof and the Borrower has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) with respect to the Project;
- (i) pursuant to Section 13(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 33-0072823 and attached hereto as Exhibit H is evidence thereof, (ii) the Borrower's Data Universal Numbering System number is 782991368, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as Exhibit H is evidence of each of (ii) and (iii);

⁷ **Note to Borrower:** Has the Freeway Maintenance Agreement been signed?

- (j) pursuant to Section 13(a)(xiv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower is authorized pursuant to Cal. Gov. Code §5450-5451 to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture, without the need for notice to any Person, physical delivery, recordation, filing or further act, (ii) no recordation or filing of documents or instruments, nor any other action, is necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (iii) no taxes or filing fees are due and payable in connection with the execution, delivery or performance of any Indenture Document or any instrument or certificate in connection therewith;
- (k) pursuant to Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit I are true, correct and complete copies of certificates of insurance in respect of all insurance policies that the Borrower and each applicable Principal Project Party has obtained as of the Effective Date with respect to the Project and the Borrower, as applicable, that demonstrate that (1) each such policy meets the requirements of Section 16(f) (*Insurance*) of the TIFIA Loan Agreement and (2) each liability policy (other than workers' compensation insurance) reflects the TIFIA Lender as an additional insured;
- (l) pursuant to Section 13(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as (i) Exhibit J-1 is a copy of the Borrower's Organizational Documents, as in effect on the Effective Date, which Organizational Documents consist of the Authority Act (California Public Utilities Code Sections 130800-130828.1) and the Toll Act (California Streets and Highways Code Sections 149.7 and 149.11), and which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto reflected in Exhibit J-1, and (ii) Exhibit J-2 is a copy of all resolutions authorizing the Borrower 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 relating to the matters described therein;
- (m) pursuant to Section 13(a)(xxiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit K are complete and fully executed copies of each performance security instrument delivered to or by the Borrower pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instrument is (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract and (B) is in full force and effect;
- (n) pursuant to Section 13(a)(xxiv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

- (o) pursuant to Section 13(a)(xxv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (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.

DRAFT

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

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

By: _____
Name: Hilda Flores
Title: Chief Financial Officer

DRAFT

EXHIBIT B TO EXHIBIT K
INCUMBENCY CERTIFICATE
OF THE
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

Dated as of [_____] , 2021

The undersigned officers hereby certify as follows:

1. The President of the Board of Directors of the San Bernardino County Transportation Authority (the “**Authority**”) officially signed and executed by her facsimile signature and the undersigned Chief Financial Officer of the Authority, official countersigned and executed by her facsimile signature the following bond:

Title of Bond: San Bernardino County Transportation Authority
Toll Revenue Second Lien Obligation, 2021 TIFIA Series
(TIFIA – [_____])

Principal Amount: \$225,000,000 (excluding compounded interest added to principal)

Date of Bond: [_____]

2. Pursuant to due authorization in accordance with the provisions of the Resolution No. 19-06, the undersigned Executive Director or Chief Financial Officer of the Authority officially executed and delivered: (i) the Master Indenture (I-10 Corridor Contract 1 Project), dated as of April 1, 2019 and the Second Supplemental Indenture, dated as of [_____] , 2021 (collectively, the “**Indenture**”), each between the Authority and U.S. Bank National Association, as trustee (the “**Trustee**”); (ii) the TIFIA Loan Agreement, dated as of [_____] , 2021, between the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, and the Authority (the “**Loan Agreement**”); (iii) the Fourth Supplemental Indenture, dated as of [_____] 1, 2021, between the Authority and U.S. Bank National Association, as sales tax trustee (the “**Fourth Supplemental Indenture**”); and (iv) certain closing certificates relating to the authorization and the issuance of the Bond (collectively, the “**Financing Documents**”). Capitalized terms used herein and not otherwise defined herein have the meanings ascribed to such terms in the Loan Agreement.

3. Said officers, at the time of signing of the Bond, the Financing Documents and said closing certificates held said offices, respectively, and they now hold the same.

4. The undersigned, Vicki Watson, certifies that she is the clerk of the Board of Directors of the Authority, and as such 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 Authority in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. 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 Authority’s Authorized Representative:

| <u>Name</u> | <u>Title</u> | <u>Signature</u> |
|------------------|--|------------------|
| Frank J. Navarro | President of the Board of Directors of the Authority | _____ |
| Marleana Roman | Clerk of the Board of Directors of the Authority | _____ |
| Raymond W. Wolfe | Executive Director of the Authority | _____ |
| Hilda Flores | Chief Financial Officer of the Authority | _____ |
| Timothy Byrne | Director of the Toll Program | _____ |

The undersigned, Clerk of the Board of Directors, hereby further certifies by her signature hereto that the facsimile signature of the President of the Board of Directors affixed hereto is the genuine facsimile signature of Frank J. Navarro and that use of his facsimile signature on the Bond has been duly authorized.

Executed as of the date first above written.

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Marleana Roman
Clerk of the Board of Directors

EXHIBIT L
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

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

Project: I-10 Corridor Contract 1 Project (TIFIA – [_____])

Dear Director:

This Notice is provided pursuant to Section 16(g)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “**TIFIA Loan Agreement**”), dated as of [_____], 2021 by and between San Bernardino 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]

Name:

Title:

EXHIBIT M

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

The undersigned, on behalf of the San Bernardino County Transportation Authority, hereby certifies, to the best of his or her knowledge and belief, that the San Bernardino 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 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.

Dated: _____

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY⁸**

By: _____

Name:

Title:

⁸ To be executed by Borrower's Authorized Representative.

EXHIBIT N
REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION
2 CFR Part 170

I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this TIFIA Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this TIFIA Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. In the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and
2. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this **Exhibit N**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization; and,
- iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

- i. Receives a subaward from you (the recipient) under this TIFIA Loan; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402)