

Agenda # **6-3**  
October 12, 2020 Meeting  
Web Attachment 2 (B)

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**UNITED STATES  
DEPARTMENT OF TRANSPORTATION**

**TIFIA LOAN AGREEMENT**

**For Up to \$8,449,000**

**With**

**MONTEREY-SALINAS TRANSIT DISTRICT**

**For the**

**SOUTH COUNTY OPERATIONS AND MAINTENANCE  
FACILITY PROJECT  
(TIFIA – 2020-[\_\_\_\_])**

**Dated as of [\_\_\_\_], 2020**

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## TIFIA LOAN AGREEMENT

**THIS TIFIA LOAN AGREEMENT** (this “**Agreement**”), dated as of the Effective Date, is by and between the **MONTEREY-SALINAS TRANSIT DISTRICT**, a special purpose district created under the laws of the State of California (the “**State**”), with an address of 19 Upper Ragsdale Dr., Suite 200, Monterey, CA 93940 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

### RECITALS:

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

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

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$8,449,000 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 on September 9, 2020 (the “**Application**”); and

WHEREAS, on [\_\_\_\_], 2020, 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 Note (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 projections in the Base Case Financial Model (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.

**“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 Liquidity Facility or a policy of bond insurance, surety bond, guarantee or similar instrument, ‘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.

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

**“Additional Obligations”** means Pari Passu Obligations that are permitted under Section 16(a) (*Indebtedness*) and that are issued or incurred after the Effective Date and shall also satisfy the following requirements, as applicable:

(a) if the proceeds thereof will be used to refinance other Pari Passu Obligations, (i) such Additional Obligations shall only refinance Obligations of the same payment and lien priority as the Obligations being refinanced, (ii) the net proceeds thereof (after deducting any amounts required to be deposited to satisfy the applicable Pari Passu Debt Service Reserve Required Balance), must not exceed the principal amount of the Obligations being refinanced, (iii) Debt Service in respect of all Pari Passu Obligations, after the incurrence of such Additional Obligations, in each year of the term of such Additional Obligations, must be projected to be equal to or less than the Debt Service in respect of all Pari Passu Obligations projected for each such year in the Base Case Financial Model or, if applicable, the Revised Financial Model and (iv) final maturity of the Additional Obligations must not be later than the final maturity date of the Obligations being refinanced; and

(b) if the proceeds thereof will be used for any reason not described in clause (a) above, such Additional Obligations must receive an Investment Grade Rating and the Borrower’s Authorized Representative shall have certified to the TIFIA Lender, and if a Consulting Engineer has been retained, the Consulting Engineer shall have confirmed, that (i) the activity or project to which such Additional Obligations will be applied could not reasonably be expected to result in a Material Adverse Effect, and (ii) the LTF Funds allocated to the Borrower and deposited into the Revenue Account during any twelve (12) consecutive months during the eighteen (18) months prior to the date of the issuance

of such Additional Obligations were at least equal to 2.0x MADS (with MADS including the projected debt service for such Additional Obligations);

provided that (x) for each of clauses (a) and (b) above, no Event of Default under any Other Financing Document or any TIFIA Loan Document has occurred and is continuing, and (y) for clause (b) above, the Nationally Recognized Rating Agency that provided the most recent public ratings of the Pari Passu Obligations and the TIFIA Loan in accordance with Section 15(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 of the lower of (A) the then-existing credit ratings of the Pari Passu Obligations and the TIFIA Loan, respectively, and (B) the credit ratings of the Pari Passu Obligations and the TIFIA Loan, respectively, as of the Effective Date.

**“Adjusted Debt Service Amount”** means the amounts described in clauses (a) and (b) below, subject to the adjustment described in the proviso below:

(a) for the TIFIA Debt Service Sub-Account, an amount equal to (i) the interest due on the TIFIA Loan on the next Semi-Annual Payment Date *plus* (ii) (A) for any Payment Period beginning on July 1, fifty percent (50%) of the principal due on the TIFIA Loan on the next Annual Payment Date or (B) for any Payment Period beginning on January 1, one hundred percent (100%) of the principal due on the TIFIA Loan on the next Annual Payment Date, *plus* (iii) any fees, costs, expenses and other amounts then due and payable under this Agreement; and

(b) for any Pari Passu Debt Service Sub-Account, an amount equal to (i) the interest due on the applicable Pari Passu Obligation with respect to such sub-account on the next Semi-Annual Payment Date for the applicable Pari Passu Obligation *plus* (ii) (A) for any Payment Period beginning on an Annual Payment Date for the applicable Pari Passu Obligation, fifty percent (50%) of the principal due on the applicable Pari Passu Obligation with respect to such sub-account on the next Annual Payment Date for the applicable Pari Passu Debt or (B) for any Payment Period that does not begin on an Annual Payment Date for the applicable Pari Passu Obligation, one hundred percent (100%) of the principal due on the applicable Pari Passu Obligation with respect to such sub-account on the next Annual Payment Date for the applicable Pari Passu Obligation; provided that if the principal on any applicable Pari Pass Obligation is payable on a semi-annual basis, clause (ii) shall read “the principal due on the applicable Pari Passu Obligation with respect to such account on the next semi-annual principal payment date for such Pari Passu Obligations”, *plus* (iii) any fees, costs, expenses and other amounts then due and payable under the issuing document for the applicable Pass Passu Obligation with respect to such sub-account.

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

**“Annual Payment Date”** means (a) for the TIFIA Loan, each July 1 or if such day is not a Business Day, then the Business Day immediately succeeding such date, commencing July 1, 2026 and (b) for any Pari Passu Obligations, the date on which principal is payable on such Pari Passu Obligations as set forth in, and commencing from the initial principal payment date provided in, the documents pursuant to which such Pari Passu Obligations were incurred.

**“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(f) (*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.

**“Assumed Variable Rate”** means, as of the date of calculation, (a) with respect to indebtedness issued by the Borrower that bears interest at a tax-exempt Variable Interest Rate, a rate equal to the highest twelve (12)-month rolling average of the SIFMA Swap Index over the preceding ten (10) years, and (b) with respect to indebtedness issued by the Borrower that bears interest at a taxable Variable Interest Rate, a rate equal to the highest twelve (12)-month rolling average of the Federal Funds Rate over the preceding ten (10) years. If either of the foregoing indices ceases to be published, the applicable index shall be an index which the TIFIA Lender, in consultation with the Borrower, determines most closely replicates the applicable former index.

**“Authorizing Legislation”** means (a) California Assembly Bill No. 730, Chapter 394, adopted September 27, 2013 and (b) the California Revenue Bond Law of 1941 (Chapter 6, Section 54300 et. seq. of Part 1 of Division 2 of Title 5 of the California Government Code).<sup>1</sup>

**“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 the Borrower,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower 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 the Borrower 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) the Borrower 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

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<sup>1</sup> Note to Borrower: Please confirm this definition.

unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make two (2) consecutive payments of TIFIA 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) (i) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the TIFIA Loan or any Obligations, or (ii) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or

(d) the Collateral Agent shall transfer, pursuant to directions issued by the Secured Lenders, funds on deposit in any of the Project Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or the Other Financing Documents for application to the prepayment or repayment of any principal amount of the TIFIA Loan or any Obligations other than in accordance with the provisions of this Agreement or the Other Financing Documents.

**“Base Case Financial Model”** means a financial model prepared by the Borrower that includes (a) for each time period through the Final Maturity Date, a forecast of Revenues and the Borrower’s expenditures and funding obligations, and (b) the Project Budget, which model, in each case in clauses (a) and (b) above, shall be based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of the Effective Date, and 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.

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

**“Borrower Fiscal Year”** means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the TIFIA Lender, as provided in Section 16(f) (*Organizational Documents; Fiscal Year*).

**“Borrower’s Authorized Representative”** means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which



commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York, Monterey County, California or Los Angeles, California.

**“Calculation Date”** means each January 1 and July 1 occurring after the Effective Date.

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

**“Capital Appreciation Obligations”** means any Obligations as to which interest is payable only at the maturity or prior redemption of such Permitted Debt.

**“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.

**“CASA”** means that certain Collateral Accounts and Security Agreement, dated as of [\_\_\_], 2020, by and among the Borrower, the TIFIA Lender, the Collateral Agent, the Securities Intermediary (as defined therein), and the other Secured Parties party thereto from time to time, including any Accession Agreement (as defined in the CASA) thereto executed in accordance with the CASA.

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

**“Collateral”** means all of the right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to (a) the LTF Funds allocated to the Borrower, whether now allocated or hereafter acquired except (i) LTF Funds allocated to the Borrower prior to the effective date of this Agreement, and (ii) LTF Funds released to the Borrower by the Collateral Agent pursuant to Section 5.03(d) of the CASA and (b) the Project Accounts (other than those sub-accounts of the Senior Debt Service Account or the Senior Debt Service Reserve Account that exclusively secure any Pari Passu Obligations), including the TIFIA Debt Service Sub-Account and the TIFIA Debt Service Reserve Sub-Account, all security entitlements carried therein, and all cash, cash equivalents, Permitted Investments (as defined in the CASA), instruments, Securities (as defined in the CASA) and other funds or amounts on deposit in the Project Accounts.

**“Collateral Agent”** means U.S. Bank National Association, a national banking association.

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

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

**“Construction-Related Contracts”** means (a) that certain Agreement, dated as of February 5, 2020, between the Borrower and Diede Construction, Incorporated, as amended or

supplemented from time to time, (b) [\_\_\_\_]<sup>2</sup>, and (c) any other design or construction contract related to the design and construction of the Project entered into by the Borrower from time to time after the Effective Date.

**“Construction-Related Contract Party”** means any Person (other than the Borrower) party to a Constructed-Related Contract.

**“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 21(a)(iii)(B) (*Financial Plan*).

**“Consulting Engineer”** means an engineering firm selected by the Borrower, subject to Section 22(d).

**“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.

**“CPI”** means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2020 as the base period.

**“Cross Covenant Default”** has the meaning provided in Section 19(a)(vi) (*Cross Default to Financing Documents*).

**“Cross Misrepresentation Default”** has the meaning provided in Section 19(a)(vi) (*Cross Default to Financing Documents*).

**“Debt Service”** means, with respect to Pari Passu Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of such Pari Passu Obligations accruing and payable in respect of such period. In determining the principal and interest amounts of Pari Passu Obligations due in such period (unless a subsection below of this definition applies for purposes of determining such amounts), payment shall be assumed to be made in accordance with any debt service schedule established for such Pari Passu Obligations, including any balloon or bullet maturities (which shall be treated as being paid in full on their respective due dates), as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

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<sup>2</sup> Note to Borrower: Please insert a description of any other contract currently in effect that is related to the design and construction of the Project, or confirm that there are none besides the Deide contract.

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

(a) any Variable Interest Rate Debt for which the interest rate payable thereon has not yet been determined shall be deemed to bear interest at all times prior to the maturity date thereof at the Assumed Variable Rate;

(b) any Put Obligations outstanding during such period which by its terms is required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the earliest date as of which the holder of such Put Obligations may tender such Put Obligations to the Borrower, as provided in the applicable issuing document for such debt, and (iii) if the Liquidity Facility securing such Put Obligations expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Liquidity Facility;

(c) the principal amount of any Put Obligations tendered for payment by the Borrower that is required to be paid by the Borrower and that has not yet been purchased in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender; and

(d) Extendible Maturity Debt outstanding during such period shall be deemed to mature on the earlier of the stated maturity date or the date to which such stated maturity date has been extended, unless such extension is not exercisable at the discretion of the Borrower.

**“Debt Service Payment Commencement Date”** the first Semi-Annual Payment Date following the initial draw on the TIFIA Loan.

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

**“Default Rate”** means an interest rate equal to the sum of (a) the TIFIA Interest Rate plus (b) two percent (2.00%).

**“Deferred Interest Obligations”** means any Obligations (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 Interest Obligation 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 instrument authorizing the Permitted Debt.

**“Development Default”** means (a) the Borrower fails to diligently prosecute the work related to the Project and, if a Recovery Plan has been provided in accordance with Section 22(b)(ii) (*Recovery Plan*), in accordance with such Recovery Plan, or (b) the Borrower fails to complete the Project by September 1, 2022.

**“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, all of which shall arise from the following:

- (a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or
- (c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction;

provided, however, that Eligible Project Costs must be consistent with 23 U.S.C. § 601 *et seq.*, 49 U.S.C. § 5302(3) and all other applicable federal law.

**“Eligible Project Costs Documentation”** has the meaning provided in Section 4(c) (*Disbursement Conditions*).

**“Environmental Laws”** has the meaning provided in Section 13(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 19(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.

**“Existing Indebtedness”** means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date and that is secured by or paid from the Revenues or the Collateral, as listed and described in **Schedule III**.

**“Extendible Maturity Debt”** means debt the maturity of which may be extended in accordance with the applicable issuing document for such debt.

**“Farebox Recovery Ratio”** means, as of any applicable date, the minimum farebox recovery ratio the Borrower is required to comply with pursuant to the TDA and any other applicable law.

**“Farebox Revenues”** means all farebox revenues and contract service revenues received by or on behalf of the Borrower in connection with the operation of the transit vehicles owned or leased by the Borrower, including:

- (a) revenues earned under contractual arrangements with public or private entities, either (i) for transit fares for a specified group of employees, members, or clients, or (ii) to guarantee a minimum revenue on a line operated especially for the benefit of the paying entity (e.g., an employer, shopping center, university, etc.);
- (b) cash donations made by individual passengers or community organizations in lieu of a prescribed fare;
- (c) passenger fares collected by the Borrower;
- (d) fare subsidies from a public or private entity;
- (e) local support, including passenger donations and local business contributions made to benefit employees, customers, visitors, or residents;
- (f) parking revenues used as fare subsidies; and
- (g) support from private non-profits to supplement discount or zero fares.

**“Federal Fiscal Year”** or **“FFY”** means the fiscal year of the Federal 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.

**“Federal Funds Rate”** means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day.

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

**“Final Maturity Date”** means the earlier of (a) *[insert specified date]* and (b) the Payment Date occurring on or immediately prior to the thirty-fifth (35th) anniversary of the Substantial Completion Date.

**“Financial Plan”** means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 21(a) (*Financial Plan*) and (b) any updates thereto required pursuant to Section 21(a) (*Financial Plan*).

**“Financial Statements”** has the meaning provided in Section 13(x) (*Financial Statements*).

**“FTA”** means the Federal Transit Administration, a modal agency of the USDOT.

**“FTA Master Agreements”** means, as of any applicable date, all of the following in effect as of such date: (a) the Federal Transit Administration Master Agreement, FTA MA (26), dated October 1, 2019, as the same may be supplemented or amended from time to time, (b) any other Federal Transit Administration Master Agreement that may be applicable to any federal funds awarded in respect of the Project after the Effective Date, as each may be supplemented or amended from time to time, and/or (c) any award notification for federal funds awarded in respect of the Project that contains special conditions or requirements, if issued.

**“FTA Project Management Oversight Requirements”** means the requirements and conditions for project management oversight procedures set forth in 49 U.S.C. § 5327 and in 49 C.F.R. part 633.

**“FTA Regional Office”** means the United States Department of Transportation, Federal Transit Administration, Region IX Office.

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

**“Government Obligations”** means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal 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 Federal 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.

“**Indemnatee**” has the meaning provided in Section 17 (*Indemnification*).

“**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 Interest Obligation, the date determined by the instrument authorizing such Deferred Interest Obligation after which interest accruing on such Deferred Interest Obligation shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such authorizing instrument.

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

“**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.

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

“**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*).

“**LTF Funds**” means Local Transportation Funds distributed by the State pursuant to the TDA.

“**MADS**” means the maximum amount of TIFIA Debt Service and Debt Service in respect of all Pari Passu Obligations payable, in the aggregate, during any year while the TIFIA Loan or any such Pari Passu Obligations are (or are scheduled to be) outstanding.

“**Material Adverse Effect**” means a material adverse effect on (a) the Project (until the Substantial Completion Date) or the Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower (c) the legality, validity or enforceability of

any material provision of any Other Financing Document or TIFIA Loan Document, (d) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any Other Financing Document or TIFIA Loan Document to which it is a party, (e) the validity, enforceability or priority of the Liens provided pursuant to the Authorizing Legislation or under the CASA on the Collateral in favor of the Secured Parties or (f) the TIFIA Lender's rights or remedies available under any TIFIA Loan Document.

**“Measure Q Revenues”** means any Measure Q sales tax revenues received by or on behalf of the Borrower.<sup>3</sup>

**“Measure X Funding Agreement”** means that certain Regional Funding Agreement, dated as of May 27, 2020, by and between the Borrower and TAMC, as amended in September 2020.

**“Measure X Revenues”** means any sales tax revenues allocated to, and received by or on behalf of the Borrower, pursuant to the Transportation Safety & Investment Plan Measure X (TAMC Ordinance No. 2016-01) that authorized TAMC to impose and administer the proceeds from a three-eighths cent transaction and use tax.<sup>4</sup>

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

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

**“NEPA Determination”** means the Categorical Exclusion for the Project issued by the FTA Regional Office on March 29, 2018 in accordance with NEPA.

**“Obligations”** means, as of any date, issued and outstanding Pari Passu Obligations and Subordinated Obligations.

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

**“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

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<sup>3</sup> Note to Borrower: Please confirm this definition or revise as necessary.

<sup>4</sup> Note to Borrower: Please confirm this definition or revise as necessary.



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. The “Organizational Documents” of the Borrower shall include California Assembly Bill No. 644, Chapter 460, the Monterey-Salinas Transit District Act, adopted October 11, 2009.

**“Other Financing Documents”** means (a) the TAMC Loan Agreement, (b) each indenture, contract or other definitive document pursuant to which any Existing Indebtedness is issued, (c) with respect to any indebtedness issued by the Borrower after the Effective Date that is secured by or paid from the Revenues or the Collateral, the indenture, contract or other definitive document pursuant to which any such indebtedness is issued by the Borrower after the Effective Date, (d) each Liquidity Facility, and (e) each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

**“Other Revenue Transfer Conditions”** means, as of any date, that:

(a) amounts on deposit in the applicable sub-accounts of the Senior Debt Service Account are at least equal to the Adjusted Debt Service Amount for the TIFIA Debt Service Sub-Account and each Pari Passu Debt Service Sub-Account; and

(b) (i) amounts on deposit in the TIFIA Debt Service Reserve Sub-Account are at least equal to the TIFIA Debt Service Reserve Required Balance and (ii) amounts on deposit in each Pari Passu Debt Service Reserve Sub-Account are at least equal to the Pari Passu Debt Service Reserve Required Balance for such sub-account.

**“Other Revenues”** means any revenues of the Borrower (other than LTF Funds allocated to the Borrower, Measure Q Revenues and federal grant funds), including (a) all STA Funds allocated to the Borrower, (b) all Farebox Revenues received by or on behalf of the Borrower, (c) all Measure X Revenues, (d) all income derived from Permitted Investments, (e) proceeds from business interruption and delay in start-up insurance policies, (f) revenue from any lease or other contract (including advertising revenues), (g) the proceeds of any sale or other disposition of assets of the Borrower permitted under the TIFIA Loan Documents and the Other Financing Documents, and (h) all net cash payments received by the Borrower under or in connection with any hedging agreements.

**“Outstanding TIFIA Loan Balance”** means the aggregate principal amount drawn by the Borrower and then outstanding 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*).

**“Pari Passu Debt Service Reserve Required Balance”** means, at any time, for a Pari Passu Debt Service Reserve Sub-Account established for any Pari Passu Obligation, the amount required to be on deposit in such Pari Passu Debt Service Reserve Sub-Account as set forth in the documents pursuant to which the applicable Pari Passu Obligations were incurred.

**“Pari Passu Debt Service Reserve Sub-Account”** means any sub-account of the Senior Debt Service Reserve Account (other than the TIFIA Debt Service Reserve Sub-Account) established pursuant to the CASA for a series of Pari Passu Obligations.

**“Pari Passu Debt Service Sub-Account”** means any sub-account of the Senior Debt Service Account (other than the TIFIA Debt Service Sub-Account) established pursuant to the CASA for a series of Pari Passu Obligations.

**“Pari Passu Obligations”** means (a) Existing Indebtedness that is *pari passu* with the TIFIA Note, if any, and (b) any Additional Obligations that are *pari passu* with the TIFIA Note.

**“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 (January 1 and July 1) and each Annual Payment Date (July 1).

**“Payment Default”** has the meaning provided in Section 19(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:

- (a) Existing Indebtedness;
- (b) the TIFIA Loan;
- (c) Additional Obligations permitted under Section 16(a) (*Indebtedness*); and
- (d) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that are treated as operating expenses in the Borrower’s annual budget, which obligations and leases do not require payments by the Borrower in any Borrower Fiscal Year in excess of \$2,000,000 in the aggregate (inflated annually by CPI), including the obligations incurred to finance the acquisition of buses or administrative suites for the Borrower that are outstanding on the Effective Date.

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

- (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 Federal Government;
- (c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;
- (d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Nationally Recognized Rating Agency; and
- (e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Nationally Recognized Rating Agency equal to the then applicable rating of the United States of America by such Nationally Recognized Rating Agency.

**“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.

**“Project”** means the new operations and maintenance facility for transit vehicles that primarily serve southern Monterey County, California that is to be constructed and owned by the Borrower and located at 179 San Antonio Drive in King City, California.

**“Project Accounts”** has the meaning provided in the CASA.

**“Project Budget”** means the budget for the Project in the aggregate amount of \$[\_\_\_\_\_] 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 subject to the reporting requirements in Section 22(b) (*Reporting*).

**“Projected Substantial Completion Date”** means September 1, 2021.

**“Put Obligations”** means any debt which by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof

either (a) by the Borrower and by the Person and/or from the source specified in the applicable issuing document for such debt or (b) without recourse to the Borrower, by the Person and/or from the source specified in the applicable issuing document for such debt.

**“Qualified Issuer”** means (i) with respect to a letter of credit, 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 and (ii) with respect to a surety instrument, an insurance company or other financial institution that is authorized and qualified to do business by the state insurance commissioner of its jurisdiction of organization and of the State and that has a financial strength rating of at least "A-" or its equivalent from A.M. Best or a Nationally Recognized Rating Agency and a financial size category rating of at least VII or its equivalent from A.M. Best or a Nationally Recognized Rating Agency.

**“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.

**“Recovery Plan”** means a recovery plan with respect to the construction of the Project that has been prepared by the Borrower and delivered to the TIFIA Lender and the FTA Regional Office, which plan includes a certificate from the Borrower’s Authorized Representative concluding that Substantial Completion is likely to occur by the date specified in the recovery plan.

**“Related Documents”** means the Other Financing Documents, the TIFIA Loan Documents and the Measure X Funding Agreement.

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

**“Revenue Account”** has the meaning provided in the CASA.

**“Revenues”** means (a) all LTF Funds allocated to the Borrower and (b) all Other Revenues received by or on behalf of the Borrower.

**“Revised Financial Model”** means an updated version of the Base Case Financial Model, in form and substance satisfactory to the TIFIA Lender, taking into account changes in projected Revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

**“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 Federal Government, including those administered by OFAC or the U.S. Department of State.

**“Secretary”** means the United States Secretary of Transportation.

**“Secured Lender”** means, when used with respect to the TIFIA Note, the TIFIA Lender and, when used with respect to any other secured indebtedness issued by the Borrower from time to time, the owner of such indebtedness.

**“Secured Obligations”** means the obligations of the Borrower under this Agreement and the TIFIA Note, the Pari Passu Obligations and the Subordinated Obligations.

**“Secured Parties”** means the Collateral Agent, the TIFIA Lender, and any other Secured Lenders.

**“Semi-Annual Payment Date”** means (a) for the TIFIA Loan, each January 1 and July 1 or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing on the Debt Service Payment Commencement Date and (b) for any other Pari Passu Obligations, the date or dates on which interest is payable on such Pari Passu Obligations as set forth in, and commencing from the initial interest payment date provided in, the documents pursuant to which such Pari Passu Obligations were incurred.

**“Senior Debt Service Account”** has the meaning provided in the CASA.

**“Senior Debt Service Coverage Ratio (LTF Funds)”** means, for any Calculation Period, the ratio of (a) LTF Funds deposited (or projected to be deposited, as applicable) by or on behalf of the Borrower into the Revenue Account during such Calculation Period to (b) MADS.

**“Senior Debt Service Reserve Account”** has the meaning provided in the CASA.

**“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.

**“STA Funds”** means State Transit Assistance funds distributed by the State pursuant to the TDA.

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

**“Subordinated Obligations”** means indebtedness of the Borrower that is subordinate to the TIFIA Loan and the Pari Passu Obligations in right of payment and in lien priority, payable solely from Revenues remaining after the payment of all higher priority Obligations in accordance with Section 5.03(b) of the CASA, and issued on terms and conditions satisfactory to the TIFIA Lender.

**“Substantial Completion”** means (a) all work under the Construction-Related Contracts for the Project (other than “punchlist” items and work which is to be done after the Project has passed its “acceptance tests” or “performance tests” (however defined under such Construction-

Related Contracts)) has been completed substantially in accordance with such Construction-Related Contracts and the requirements of all Governmental Approvals related thereto and (b) the “acceptance tests” or “performance tests” (however defined) under such applicable Construction-Related Contracts have been performed and successfully completed and the Project has achieved the minimum levels specified in such Construction-Related Contracts for such “acceptance tests” or “performance tests”.

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

**“TAMC”** means the Transportation Agency for Monterey County, a Regional Transportation Planning Agency, created pursuant to the laws of the State.

**“TAMC Irrevocable Instruction”** means that certain Agreement for Irrevocable Direction to Deposit LTF Funds, in the form of **Exhibit M**, dated as of [\_\_\_\_], 2020, among the Borrower, TAMC and the other signatories thereto.

**“TAMC Loan”** means the loan under the TAMC Loan Agreement.

**“TAMC Loan Agreement”** means that certain Loan Agreement, dated as of February 26, 2020, between the Borrower and TAMC.

**“TDA”** means California Government Code Section 29530 – 29536, California Public Utilities Code Section 99200 – 99408, and Title 21 California Code of Regulations Section 6600 – 6756.

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

**“TIFIA Debt Service”** means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (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 TIFIA Interest Rate (or, as applicable, the Default Rate), in each case due and payable on such Payment Date in accordance with the provisions of Section 9(b) (*Payment of TIFIA Debt Service*).

**“TIFIA Debt Service Sub-Account”** has the meaning provided in the CASA.

**“TIFIA Debt Service Reserve Required Balance”** means, as of any date, an amount equal to fifty percent (50%) of the principal and interest payments on the TIFIA Loan due and payable during the then-current Borrower Fiscal Year.

**“TIFIA Debt Service Reserve Sub-Account”** has the meaning provided in the CASA.

**“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 26 (*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 \$8,449,000, 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 Note, the CASA, all filings, recordings or registrations required by the other TIFIA Loan Documents to be filed or made in respect of the CASA, the TAMC Irrevocable Instruction, and the FTA Master Agreements.

**“TIFIA Note”** means the promissory note delivered by the Borrower in substantially the form of **Exhibit A**.

**“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 Other Financing Documents or the TIFIA Loan Documents to be paid into any fund or account upon the incurrence of the TIFIA Loan or any Pari Passu Obligations, in each case in connection with the Project; (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 Liquidity 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.

**“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 the same may, from time to time, be in effect in the State of California.

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

**“Valuation Date”** means the date or dates on or prior to the Interest Commencement Date set forth in the instrument authorizing any Deferred Interest Obligations on which specific amounts for such date or dates are assigned to such Deferred Interest Obligations in accordance with the instrument authorizing such Deferred Interest Obligations.

**“Variable Interest Rate”** means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the instrument pursuant to which such Permitted Debt is incurred. Such instrument 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 Debt”** means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity.

**Section 2. Interpretation.** Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

**Section 3. TIFIA Loan Amount.** The principal amount of the TIFIA Loan shall not exceed \$8,449,000. TIFIA Loan proceeds shall be disbursed from time-to-time in accordance



with Section 4 (*Disbursement Conditions*) and Section 12(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, and proceeds from the initial disbursement of the TIFIA Loan shall be used to pay or redeem the TAMC Loan in full. If the Borrower intends to utilize the TIFIA Loan proceeds to make progress payments for the Project construction work performed under the Construction-Related Contracts, 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 12(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 FTA Regional Office on or before the first (1<sup>st</sup>) Business Day of each month for which a disbursement is requested. If the TIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15<sup>th</sup>) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15<sup>th</sup>) day is not a Business Day. Express TIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Two** to **Exhibit D**. In no event shall disbursements be made more than once each month.

(c) If the Borrower anticipates using a portion of the proceeds of the TIFIA Loan to repay the outstanding principal amount of, and interest on, the TAMC Loan, the Borrower shall deliver by no later than the date that is thirty (30) days prior to the date it submits its initial Requisition hereunder, and concurrently to the TIFIA Lender, the FTA Regional Office, and the Servicer (if any), invoices and records evidencing Eligible Project Costs (the “**Eligible Project Costs Documentation**”) in amounts at least equal to such outstanding principal amount of, plus interest due and payable on, the TAMC Loan, irrespective of whether such costs were actually paid with the proceeds of the TAMC Loan.

(d) When the Borrower delivers Eligible Project Costs Documentation to the TIFIA Lender, the FTA Regional Office, and the Servicer (if any), the Borrower shall also deliver to such entities a certificate, duly executed by the Borrower’s Authorized Representative, certifying as to the following:

- (i) the amount of Eligible Project Costs financed from the proceeds of the TAMC Loan for the period of time for which such Eligible Project Costs Documentation is being provided;

(ii) that such proceeds of the TAMC Loan were expended solely in connection with the payment or reimbursement of Eligible Project Costs;

(iii) the amount of Eligible Project Costs paid by or on behalf of the Borrower from sources other than the TAMC Loan and identifying such sources; and

(iv) that there does not currently exist any Event of Default or Default or, if there does currently exist an Event of Default or Default, the certificate shall specify all the actions that the Borrower is taking to remedy such Event of Default or Default.

(e) The Eligible Project Costs Documentation submitted pursuant to Section 4(c) and the certificate delivered pursuant to Section 4(d) must be satisfactory to the TIFIA Lender. The Eligible Project Costs Documentation must provide sufficient detail to enable the TIFIA Lender to verify that such costs are Eligible Project Costs paid by or on behalf of the Borrower. The Eligible Project Costs Documentation and the certificate must provide sufficient detail to enable the TIFIA Lender to verify that proceeds of the TAMC Loan were expended for Eligible Project Costs for the Project and to audit such other Eligible Project Costs paid by or on behalf of the Borrower.

(f) 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.

(g) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 12 (*Conditions Precedent*) or **Exhibit D**), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

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

**Section 6.** Interest Rate. The interest rate with respect to the Outstanding TIFIA Loan Balance (the "**TIFIA Interest Rate**") shall be [\_\_\_\_\_] percent ([\_\_\_\_\_]%)<sup>5</sup> per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued

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<sup>5</sup> Note to Draft: On the Effective Date, TIFIA Lender will enter an amount equal to one half the interest rate of securities of a similar maturity as published in the United States Treasury Bureau of Public Debt's daily rate table for State and Local Government Series (SLGS) securities plus one basis point (.01%).

thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date the Outstanding TIFIA Loan Balance and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

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

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

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** from time-to-time to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit G** as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

**Section 8. Security and Priority; Flow of Funds.**

(a) As security for the TIFIA Loan, the Borrower shall (i) pledge, assign and grant to the Collateral Agent for the benefit of the TIFIA Lender, a senior Lien on the Collateral described in clause (a) of the definition thereof and (ii) assign and grant to the Collateral Agent for the benefit of the TIFIA Lender, a senior Lien on the Collateral described in clause (b) of the definition thereof, including an exclusive Lien on the TIFIA Debt Service Sub-Account and the

TIFIA Debt Service Reserve Sub-Account and the amounts on deposit in each such account, in each case in accordance with the provisions of the CASA. The TIFIA Loan shall be secured by the Liens on the Collateral and shall be *pari passu* with the Liens on the Collateral in favor of the Pari Passu Obligations. In addition to the foregoing, for so long as the TIFIA Loan remains outstanding, the Borrower shall cause all LTF Funds allocable to it to be deposited to the Revenue Account in accordance with this Agreement, the CASA and the other applicable TIFIA Loan Documents to ensure the timely payment of all TIFIA Debt Service and other amounts due and payable hereunder or under such other TIFIA Loan Documents.

(b) Except (i) for the Liens granted pursuant to the Other Financing Documents or the TIFIA Loan Documents in respect of Permitted Debt described in clauses (a) through (c) of the definition thereof, or (ii) to the extent otherwise provided in clause (a) of this Section 8 (*Security and Priority; Flow of Funds*), the Collateral 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 CASA, 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 LTF Funds allocated to the Borrower 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*), the Other Financing Documents and the TIFIA Loan Documents and shall not apply any portion of the LTF Funds allocated to the Borrower in contravention of this Agreement, the Other Financing Documents or the TIFIA Loan Documents. The TIFIA Loan will be payable from all Revenues and will be a senior obligation of the Borrower in right of payment from (and claim on) all Revenues, *pari passu* with the Pari Passu Obligations.

(d) The CASA provides that all LTF Funds allocated to the Borrower shall be deposited in the Revenue Account and amounts on deposit in the Revenue Account shall be applied in the order of priority described in Section 5.03(b) of the CASA, a copy of which Section 5.03(b), as of the Effective Date, is attached as **Schedule IV** (all capitalized terms used in **Schedule IV** and not otherwise defined in this Agreement shall have the meanings ascribed in the CASA).

## **Section 9.     Payment of Principal and Interest.**

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

(b) Payment of TIFIA Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay TIFIA Debt

Service in the amounts set forth in respect of such Payment Date 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(c) (*Manner of Payment*).

(c) Manner of Payment. Payments under this Agreement and the TIFIA Note shall be made by wire transfer on or before each Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender pursuant to Section 36 (*Notices; Payment Instructions*), as modified in writing from time-to-time by the TIFIA Lender. The Borrower may make any such payment or portion thereof (or direct the Collateral Agent to make such payment) with funds then on deposit in the TIFIA Debt Service Sub-Account or, subject to Section 14(k)(ii) (*Reserve Accounts; Permitted Investments*), the TIFIA Debt Service Reserve Sub-Account.

(d) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 19 (*Events of Default and Remedies*)).

(e) TIFIA Note. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Note substantially in the form of **Exhibit A**, having a maximum principal amount of \$8,449,000 (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) Optional Prepayments. The Borrower may prepay the TIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in minimum principal amounts of \$100,000), 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(a) (*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.

(b) 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 an optional prepayment, the

TIFIA Lender shall surrender the TIFIA Note to the Borrower or its representative at the principal office of the TIFIA Lender or certify to the Borrower that the TIFIA Note has been destroyed in accordance with the TIFIA Lender's procedures. If the Borrower prepays only part of the unpaid balance of principal of the TIFIA Loan, such partial prepayments of principal shall be applied to reduce future payments due on the TIFIA Loan in inverse order of maturity. Following any partial prepayment of the TIFIA Loan, the TIFIA Lender may provide to the Borrower a modified **Exhibit G** pursuant to Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*). 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. Any principal amount of the TIFIA Loan that is subject to a voluntary prepayment notice (as described in Section 10(a) above) but that is not so paid on the applicable prepayment date shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

**Section 11. 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 FTA Regional Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law and with the terms of the FTA Master Agreements, to the extent applicable. The Borrower and TIFIA Lender mutually acknowledge that not every provision of the FTA Master Agreements will apply to the Project. The FTA Regional Office and the TIFIA Lender (a) will enforce only those federal laws, regulations, and guidance that apply to the Project, and (b) will not enforce federal laws, regulations, and guidance that do not apply to the Project. Application of any reference within the FTA Master Agreements to the common grant rule (2 C.F.R. Part 200) are limited to Subparts A, B, D, and F of the rule and 2 C.F.R. Parts 1200 and 1201, which modify the rule as applied by the USDOT. Any FTA Master Agreement terms included in the "Generally Applicable Provisions" found at Section 1 through Section 43 of the FTA Master Agreements may be applicable to the Project. "Special Provisions for the TIFIA Program and RRIF Program" found at Section 47 of the FTA Master Agreements are applicable to Project. The Borrower acknowledges and agrees that it has reviewed the FTA Master Agreements and shall comply as required thereby. 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 12. 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 each other TIFIA Loan Document (other than the FTA Master Agreements), each in form and substance satisfactory to the TIFIA Lender. To the extent that any Person other than the Borrower or the TIFIA Lender is party to, or acknowledges and agrees to, any TIFIA Loan Document (other than the FTA Master Agreements), the Borrower shall have delivered to the TIFIA Lender the executed signature page of each such other signatory to each such TIFIA Loan Document.

(ii) (A) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Other Financing 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 shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of this Section 12(a)(ii), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion); and (B) the Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of the FTA Master Agreements and the Measure X Funding Agreement, together with any amendments, waivers or modifications thereto, in each case that is in effect as of the Effective Date, and each such agreement shall be in full force and effect.

(iii) (A) 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**), (B) 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**), and (C) counsel to TAMC shall have rendered to the TIFIA Lender legal opinions in form and substance satisfactory to the TIFIA Lender in its sole discretion.

(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 Federal 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 Association of Monterey Bay Area 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 the sources of funding for, the Project.

(vi) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the

Effective Date, of the assignment by at least one (1) Nationally Recognized Rating Agency 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 J** (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(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.

(ix) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Construction-Related Contract that has been entered into as of the Effective Date, together with any amendments, waivers or modifications thereto and any related performance security instruments, 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.

(x) 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).

(xi) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on the Effective Date, which Base Case Financial Model shall (A) demonstrate that the Senior Debt Service Coverage Ratio (LTF Funds) for each Calculation Period through the Final Maturity Date is at least equal to 2.00:1.00, (B) demonstrate that Revenues in each Calculation Period through the Final Maturity Date are projected to be sufficient to satisfy all of the Borrower's funding obligations pursuant to Section 5.03(b) of the CASA, and (C) otherwise be in form and substance acceptable to the TIFIA Lender.

(xii) The Borrower shall have provided evidence reasonably satisfactory to the TIFIA Lender that TAMC has taken all necessary action to ensure that all LTF Funds allocable to the Borrower are deposited directly into the Revenue Account, as required under the TAMC Irrevocable Instruction.

(xiii) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant to the Authorizing Legislation, to



pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the TIFIA Loan Documents and the Other Financing 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 (other than the UCC-1 financing statement contemplated in Section 12(a)(xxiv) (*Conditions Precedent to Effectiveness*), which will be filed by the TIFIA Lender), and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Collateral Agent's Lien on the Collateral (for the benefit of the Secured Parties) to the extent contemplated by the TIFIA Loan Documents, the Other Financing Documents or the Authorizing Legislation, 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 TIFIA Loan Document, any Other Financing Document or any instruments, certificates or financing statements in connection with the foregoing.

(xiv) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender of compliance with NEPA, (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the TIFIA Lender of such compliance upon request by the TIFIA Lender and (C) complied with the requirements of 2 C.F.R. §§ 180.300 and 180.330 and shall have provided evidence satisfactory to the TIFIA Lender of such compliance upon request by the TIFIA Lender.

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

(xvi) 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](http://www.SAM.gov)).

(xvii) The Borrower shall have delivered to the TIFIA Lender (A) certificates of insurance or other acceptable documentation evidencing (1) that the Borrower, and as applicable, the Construction-Related Contract Parties, have in effect as of the Effective Date insurance with respect to the Project and the Borrower, as applicable, that meets the requirements of Section 15(f) (*Insurance*) and (2) that each liability policy (other than workers' compensation insurance) reflects the TIFIA Lender as an additional insured and (B) at the TIFIA Lender's request, copies of such insurance policies.

(xviii) 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 and the Authorizing Legislation, each as in effect on the

Effective Date (and certified by the Secretary of State of the State or the state of its formation, to the extent applicable), which Organizational Documents and Authorizing Legislation shall each 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 relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents.

(xix) 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 FTA Regional Office to review such costs.

(xx) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document to which the Borrower is a party 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).

(xxi) 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, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) 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, does not exceed eighty percent (80%) of Eligible Project Costs.

(xxii) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Collateral Agent in the form attached hereto as **Exhibit I**.

(xxiii) 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 L** in accordance with 49 C.F.R. §20.100(b).

(xxiv) The Borrower shall have authorized the filing of a UCC-1 financing statement covering the Project Accounts, satisfactory to the TIFIA Lender and the Collateral Agent in form and substance, with the Secretary of State of the State of California.

(xxv) The Borrower shall have delivered to the TIFIA Lender a duly executed waiver and consent from Mechanics Bank with respect to the Existing Indebtedness described in Section II (other than item 8) of **Schedule III**, in form and substance satisfactory to the TIFIA Lender.

(xxvi) 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).

(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) Solely with respect to the initial disbursement under the TIFIA Loan, the Borrower shall have delivered a payoff and release letter, in form and substance reasonably satisfactory to the TIFIA Lender and executed by TAMC, providing that upon receipt of the proceeds of the initial disbursement under the TIFIA Loan in the amount requested by the Borrower in the applicable Requisition, the TAMC Loan shall be terminated for all purposes of the TAMC Loan Agreement and any Other Financing Documents and that the Borrower shall have no further right or ability to borrow any amounts in respect of the TAMC Loan. The Borrower shall provide to the TIFIA Lender confirmation of TAMC's receipt of the proceeds of the initial disbursement under the TIFIA Loan on the same date as such receipt.

(ii) 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 21(a) (*Financial Plan*).

(iii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have delivered to the TIFIA Lender certified, complete and fully executed copies of any Other Financing Document, including any amendment, modification or supplement thereto, entered into after the Effective Date.

(iv) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all Construction-Related Contracts, including any amendment, modification or supplement thereto and related performance security instrument, entered into after the Effective Date.

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

(vi) Each of the insurance policies obtained and other insurance arrangements maintained by the Borrower or the Construction-Related Contract Parties in satisfaction of the conditions in Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

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

(viii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(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 and any additional required documentation, in each case, that complies with the provisions of Section 4 (*Disbursement Conditions*), and the TIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition.

**Section 13. Representations and Warranties of Borrower.** The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (*Officer's Authorization*) and Section 13(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 special purpose district 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 which the Borrower is a party, to execute and deliver the TIFIA Note, 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 to which the Borrower is a party.

(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 (including the Authorizing Legislation and the TDA), or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower other than the Liens granted pursuant to the CASA.

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

threatened against, or affecting any of the Construction-Related Contract 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 in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Revised Financial Model, to the extent any Revised Financial Model has been submitted to 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 CASA and the Authorizing Legislation establish, in favor of the Collateral Agent for the benefit of the TIFIA Lender, the valid and binding Liens on the Collateral that they purport to create, irrespective of whether any Person has notice of the pledge or grant of security interest, as applicable, and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Collateral and not *pari passu* with any obligations other than the Pari Passu Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the other TIFIA Loan Documents, and applicable laws for the pledge or grant of security interest, as applicable, of the Collateral pursuant to and in accordance with the TIFIA Loan Documents. The Borrower is not in breach of any covenants set forth in Section 15(a) (*Securing Liens*) or in the TIFIA Loan 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) no filing, recordation or any other action is necessary to establish and perfect a legal, valid, binding, and enforceable Lien on the Collateral in favor of the Collateral Agent (for the benefit of the Secured Lenders) to the extent contemplated by the TIFIA Loan Documents, (ii) all applicable UCC-1 financing statements have been recorded or filed for record in such manner and in such places to notify third parties of the Collateral Agent's interest in the Project Accounts, and (iii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any TIFIA Loan Documents, including any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Collateral described in clause (a) of the definition thereof granted pursuant to the TIFIA Loan Documents is governed by Article 9 of the UCC.

(h) No Debarment; Compliance with Flowdown Requirements. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*). The Borrower has fully complied with its obligations under 2 C.F.R. Part 180, Subpart C, including 2 C.F.R. §§ 180.300 and 180.330 and 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, Subpart C and 2 C.F.R. §1200.332.

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

Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

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

(k) Transportation Improvement Program. The Project has been included in (i) the metropolitan transportation improvement program adopted by the Association of Monterey Bay Area 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 the sources of funding for, the Project.

(l) Credit Ratings. The TIFIA Loan has received a public Investment Grade Rating from at least one (1) Nationally Recognized Rating Agency and written evidence of such rating 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, and no event of default (howsoever described or designated) of the Borrower under any Related Document 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) Construction-Related Contracts. Each Construction-Related 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 such Construction-Related Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Construction-Related Contract (including 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 Construction-Related Contract Party, the right to terminate such Construction-Related Contract. The Borrower is not in breach of, or in default under, any Construction-Related Contract, and, to the knowledge of the Borrower, no Construction-Related Contract Party is in breach of, or in default under, any material term of such Construction-Related Contract.

(p) Information. The information furnished by the Borrower to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(q) OFAC; Anti-Corruption Laws.

(i) None of the Borrower nor, to the knowledge of the Borrower, any Construction-Related Contract Party is a Sanctioned Person.

(ii) None of the Borrower nor, to the knowledge of the Borrower, any Construction-Related Contract 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 Construction-Related Contract 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, the FTA Master Agreements and all applicable laws (other than Environmental Laws, which are addressed in Section 13(s) (*Environmental Matters*)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower's knowledge, each Construction-Related Contract 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 (i) the Borrower or (ii) to the Borrower's knowledge, solely in respect of the Project, any Construction-Related Contract 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 Construction-Related Contract 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) Insurance. The Borrower is in compliance with the requirements of Section 15(f) (*Insurance*) and all insurance obligations required under each Related Document as of the date on which this representation and warranty is made.

(u) No Liens. Except for the Liens granted pursuant to the CASA, 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 Collateral.

(v) 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.

(w) 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.

(x) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the TIFIA Lender pursuant to Section 21(b) (*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.

(y) Taxes. [The Borrower is not required to file tax returns with any Governmental Authority.]<sup>6</sup>

(z) 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.

(aa) Sufficient Funds. The aggregate of (i) the undrawn portion of the TIFIA Loan, (ii) all funds that are undrawn but fully and completely committed under the Other Financing Documents, and (iii) all funds available under any other unused funding that are committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(bb) Sovereign Immunity. Pursuant to California Government Code Section 814 et seq., the Borrower can sue and be sued in respect of its contractual obligations, and judgments against the Borrower can be legally enforced. The defense of sovereign immunity is not available to the Borrower in any proceedings in any court of competent jurisdiction relating to the enforcement of (or collection on) the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby.

(cc) Patriot Act. [The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.]<sup>7</sup>

(dd) Irrevocable Instruction. The TAMC Irrevocable Instruction is in full force and effect. To the knowledge of the Borrower, TAMC is (and has been since the most recent date as of which this representation and warranty was made) in full compliance with the TAMC Irrevocable Instruction.

**Section 14. Representations and Warranties of TIFIA Lender**. The TIFIA Lender represents and warrants that:

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<sup>6</sup> Note to Borrower: Please confirm whether the Borrower is required to file tax returns.

<sup>7</sup> Note to Borrower: Please confirm that the Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

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

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

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

**Section 15.** Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Note 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 Collateral (whether now existing or hereafter arising) granted to the Collateral Agent for the benefit of the TIFIA Lender pursuant to the TIFIA Loan Documents, or intended so to be granted pursuant to the TIFIA Loan Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Collateral 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 TIFIA Loan Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Collateral granted pursuant to the TIFIA Loan Documents and all the rights of the Collateral Agent for the benefit of the Secured Lenders under the TIFIA Loan Documents against all claims and demands of all Persons other than the Secured Lenders.

(b) Copies of Documents.

(i) The Borrower shall provide to the TIFIA Lender a copy of any draft Other Financing Documents in connection with the incurrence of any Permitted Debt or indebtedness subject to approval by the TIFIA Lender pursuant to Section 16(a) (*Indebtedness*), in each case at least thirty (30) days prior to the incurrence of such indebtedness. The Borrower shall provide to the TIFIA Lender a fully executed or final version of each such Other Financing Document (or other comparable transaction documentation) within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (A) 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 or the Collateral, (B) all notices and other written communications, other than those that are non-substantive or ministerial in nature, received by it from the Collateral Agent or any Secured Lender, and (C) all reports, notices and other written materials, other than those that are non-substantive or ministerial in nature, required to be sent to the Collateral Agent or any Secured Lender under the TIFIA Loan Documents or the Other Financing Documents; 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.

(iii) Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document or Construction-Related Contract (including proposed change orders to the Construction-Related Contract described in clause (a) of the definition thereof (or any replacement of such contract) that increase the contract price for such Construction-Related Contract by an amount that is greater than ten percent (10%) of the original contract price for such Construction-Related Contract) (other than proposed amendments, modifications, replacements or supplements that are ministerial in nature and do not change any substantive provision of such Related Document or Construction-Related Contract) at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification or supplement to, or replacement of, any Related Document or Construction-Related Contract (including change orders to the Construction-Related Contract described in clause (a) of the definition thereof (or any replacement of such contract) that increase the contract price for such Construction-Related Contract by an amount that is greater than ten percent (10%) of the original contract price for such Construction-Related Contract) within five (5) Business Days after execution thereof.

(iv) If the Borrower enters into a Construction-Related Contract after the Effective Date, the Borrower shall provide to the TIFIA Lender an executed version of such Construction-Related Contract, together with any related performance security instruments, contracts, side letters or other understandings, promptly following the full execution thereof.

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

(d) Prosecution of Work; Verification Requirements.

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

(ii) The Borrower shall comply, and shall require all of its contractors and subcontractors for the Project to comply, with the applicable requirements set forth in 2 C.F.R. Part 180, Subpart C, including 2 C.F.R. §§ 180.300, 180.320 and 180.330, and in 2 C.F.R. §1200.332.

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the Project in a reasonable and prudent manner and (B) substantially in accordance with the regulations, standards and guidelines of the applicable USDOT modal agency, and (ii) maintain the Project in good repair, working order and condition and in accordance with the requirements of all other applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance.

(i) The Borrower shall at all times maintain insurance with responsible insurers, in amounts and with coverages as are customarily maintained in the United States of America by entities similar to the Borrower, or as is required under any Construction-Related Contract or applicable law (e.g., casualty, commercial general liability, excess umbrella liability, automobile liability and workers' compensation). During the construction of the Project, the Borrower shall maintain or cause to be maintained appropriate casualty and liability insurance covering the Borrower and the Project, including a builders all-risk policy and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Construction-Related Contract Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Construction-Related Contract.

(ii) The Borrower shall cause all liability insurance policies that it maintains, other than workers' compensation insurance, to reflect the TIFIA Lender as an additional insured.

(iii) 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 or amounts obtained by the Borrower stemming from such event to rebuild, repair or replace the Project, as applicable, within a reasonable time period, unless such repair, rebuilding or replacement is reasonably determined to be financially unfeasible or the Project, as repaired, rebuilt or replaced, shall be determined to be no longer economically viable, in each case based on the determination of the Borrower and, if a Consulting Engineer has been retained as of such time, based on a written report prepared by a Consulting Engineer; provided, however, that loss proceeds must in any event be applied in accordance with all federal disposition rules, including those set forth in the FTA Master Agreements and 2 C.F.R. Part 200.

(g) Notices.

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

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

(B) Ratings Changes: any change in the rating assigned to the TIFIA Loan, any Pari Passu Obligations or any Subordinated Obligations by any Nationally Recognized Rating Agency that has provided a rating on such indebtedness, the Borrower, or the Collateral;

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

(D) Construction-Related Contract Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Construction-Related Contract;

(E) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of \$2,000,000 (inflated annually by CPI) that are payable from Revenues or the Collateral and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage), either individually or in the aggregate;

(F) 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;

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

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

(I) Project Changes: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of total forecasted Eligible Project Costs or (2) any proposed change to the construction schedule for the Project in excess of five percent (5%) of the total number of days reflected in the Construction Schedule attached as **Schedule II**;

(J) 2 C.F.R. Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 12(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;

(K) Material Events: the filing of (together with a copy of) any notice to the Municipal Securities Rulemaking Board of any of the events described in clause (b)(5)(i)(C) of Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule);

(L) Farebox Recovery Ratio: any reduction in the Farebox Revenues received by or on behalf of the Borrower that causes the Borrower's actual farebox recovery ratio to fall below the then-applicable Farebox Recovery Ratio, as determined pursuant to the TDA;

(M) Farebox Revenue Policy: any material change to the Borrower's Farebox Revenue policies that could reduce the amount of Farebox Revenues received by or on behalf of the Borrower;

(N) LTF Funds and STA Funds Availability:

1. any suspension, impairment or discontinuance of the availability of LTF Funds to the Borrower for any reason; and
2. any material change to the TDA or any other material change or action that affects the allocation process or the amount available for allocation for LTF Funds or STA Funds, including any change that would result in the Borrower not being the sole recipient of (x) the public transit share of LTF Funds for Monterey County or (y) STA Funds for Monterey County;

(O) Measure X Revenues Availability:

1. any suspension, impairment or discontinuance of the availability of Measure X Revenues to the Borrower for any reason;
2. any material breach or default or event of default on the part of the Borrower or TAMC under the Measure X Funding Agreement; and
3. any material change to the Transportation Safety and Investment Plan that is administered by TAMC that affects the allocation process or the amount available for allocation for Measure X Revenues; and

(P) 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 15(g)(i) (*Notice*).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g)(i) (*Notice*) (other than in Section 15(g)(i)(A) (*Substantial Completion*), or Section 15(g)(i)(B) (*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.<sup>8</sup>

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a special purpose district under the laws of the State.

(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 Loan, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the TIFIA Loan 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.

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<sup>8</sup> Note to Borrower: If the law is changed or another change impacts the availability of LTF and/or STA funds to the Borrower, the TIFIA Lender will want to know how the Borrower intends to address such change, including any alternative funding sources that will be utilized.



(k) Reserve Accounts; Permitted Investments.

(i) The Borrower shall fund the TIFIA Debt Service Reserve Sub-Account in an amount equal to the TIFIA Debt Service Reserve Required Balance by no later than [the first Business Day following the Initial LTF Funds Deposit Date (as defined in the CASA)].

(ii) The Borrower shall maintain the TIFIA Debt Service Reserve Sub-Account in an amount equal to the TIFIA Debt Service Reserve Required Balance and each Pari Passu Debt Service Reserve Sub-Account in an amount equal to the applicable Pari Passu Debt Service Reserve Required Balance for such sub-account, in each case in accordance with the provisions of this Agreement and the applicable TIFIA Loan Documents and Other Financing Documents. Amounts in the TIFIA Debt Service Reserve Sub-Account shall be made available to ensure the timely payment of TIFIA Debt Service on the TIFIA Loan and amounts in any Pari Passu Debt Service Reserve Sub-Account shall be made available to ensure the timely payment of Debt Service on the applicable Pari Passu Obligations; provided that the Borrower shall be required to utilize any legally available Revenues to make timely payment of TIFIA Debt Service prior to utilizing funds in the TIFIA Debt Service Reserve Sub-Account for such purpose.

(iii) Amounts on deposit in the Project Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Debt Service Reserve Sub-Account, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the TIFIA Debt Service Sub-Account or in any debt service account in respect of other Obligations corresponding to amounts needed for the payment of interest, not later than the next date (Semi-Annual Payment Date with respect to TIFIA Debt Service) on which interest is due and payable with respect to any such Obligations, (C) with respect to Permitted Investments maintained in the TIFIA Debt Service Sub-Account or in any debt service account for other Obligations corresponding to amounts needed for the repayment of principal, not later than the next date on which principal is due and payable with respect to any such Obligations, and (D) with respect to any other Project Account, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment. The Borrower shall, promptly but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(iv) The Borrower may replace all or a portion of the required balance of the TIFIA Debt Service Reserve Sub-Account, in accordance with the terms of the applicable TIFIA Loan Documents, with a letter of credit or surety instrument issued by a Qualified Issuer. If at any time an issuer of such letter of credit or surety instrument securing the TIFIA Debt Service Reserve Sub-Account ceases to be a Qualified Issuer, the Borrower shall cause such letter of credit or surety instrument to be replaced by a new letter of credit or surety instrument issued by a Qualified Issuer within thirty (30) calendar days of the date on which the current issuer ceased to be a Qualified Issuer, or

the Collateral Agent shall be permitted to immediately draw the full amount of such letter of credit or surety instrument and deposit the proceeds of such drawing into the TIFIA Debt Service Reserve Sub-Account. Any new letter of credit or surety instrument shall have the same terms and conditions (including expiration date and face amount) as the letter of credit or surety instrument being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit or surety instrument securing the TIFIA Debt Service Reserve Sub-Account is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit or surety instrument with a new letter of credit or surety instrument issued by a Qualified Issuer at least ten (10) Business Days prior to the stated expiry date of the existing letter of credit or surety instrument and such new letter of credit or surety instrument shall be in an amount equal to at least the amount of expiring letter of credit or surety instrument. If the Borrower fails to provide such new letter of credit or surety instrument by the date required above, the Collateral Agent shall (and the TIFIA Lender shall have the right to direct the Collateral Agent to) immediately draw the full undrawn amount of the existing letter of credit or surety instrument and deposit the proceeds of such drawing into the TIFIA Debt Service Reserve Sub-Account. If any letter of credit or surety reimbursement or indemnification obligations will be payable from the Revenues, the face amount of any such letter of credit or surety instrument (and, without duplication, any actual reimbursement or indemnification obligation following a draw on or disbursement under any such letter of credit or surety instrument) shall be treated as outstanding indebtedness of the Borrower for all purposes hereunder and the amount of any reimbursement or indemnity payment in any Calculation Period will be added to the calculation of Debt Service for such Calculation Period.

(l) Collection of Revenues.

(i) The Borrower shall at all times levy, charge and collect Farebox Revenues from its customers in accordance with its internal policies. The Borrower shall take all reasonable actions necessary to (A) ensure that it remains eligible under all applicable laws and TAMC guidelines to receive LTF Funds and STA Funds, (B) maintain compliance with the then-applicable Farebox Recovery Ratio and ensure that LTF Funds and STA Funds allocable to the Borrower are not subject to reduction due to any act or omission of the Borrower and (C) apply for or otherwise request LTF Funds and STA Funds from TAMC, in each case in accordance with all applicable TAMC guidelines. The Borrower shall take all reasonable actions necessary to (A) ensure that it remains eligible under the Transportation Safety and Investment Plan that is administered by TAMC and all applicable TAMC guidelines to receive Measure X Revenues and to ensure that Measure X Revenues allocable to the Borrower are not subject to reduction due to any act or omission of the Borrower and (B) comply with the Measure X Funding Agreement and request disbursements of Measure X Revenues in accordance therewith.

(ii) The Borrower shall budget and apply for LTF Funds in each Borrower Fiscal Year in amounts at least sufficient to pay 2.0x (A) all TIFIA Debt Service due and payable during such Borrower Fiscal Year *plus* (B) all Debt Service due and payable in respect of all outstanding Pari Passu Obligations during such Borrower Fiscal Year. In the event that TAMC allocates to the Borrower an amount of LTF Funds

that is lower than the amount requested by the Borrower, the Borrower shall deliver to the TIFIA Lender written notice of such event within five (5) Business Days after the date of such allocation, which notice shall include an explanation for the reasons for such shortfall in allocation of LTF Funds to the Borrower.

(iii) Pursuant to the TAMC Irrevocable Instruction, the Borrower shall instruct TAMC to transfer all LTF Funds allocated to the Borrower to the Collateral Agent to be deposited in the Revenue Account immediately upon allocation from TAMC but no less frequently than on a monthly basis. The Borrower shall ensure that the TAMC Irrevocable Instruction remains in full force and effect at all times while the TIFIA Loan remains outstanding. The Borrower shall use all commercially reasonable efforts to ensure that TAMC maintains compliance with the TAMC Irrevocable Instruction at all times while the TIFIA Loan remains outstanding. Except for LTF Funds that have been released to the Borrower pursuant to the CASA, the Borrower shall receive and hold in trust for (and remit immediately to) the Collateral Agent any LTF Funds allocated to the Borrower that are paid to the Borrower and not directly to the Revenue Account.

(iv) On each Transfer Date (as defined in the CASA) and, with respect to funds deposited to the Revenue Account in accordance with Section 5.03(a)(ii) of the CASA, on any date on which such funds are deposited into the Revenue Account, the Borrower shall cause the Collateral Agent to make the deposits pursuant to clauses *First* through *Second* in Section 5.03(b) of the CASA in the amounts required to meet the Other Revenue Transfer Conditions, to the full extent that funds are available in the Revenue Account to make such deposits.

(v) If, as of the second day of any Payment Period, LTF Funds on deposit in the Senior Debt Service Account (or the applicable sub-accounts thereunder), the TIFIA Debt Service Reserve Sub-Account, or any Pari Passu Debt Service Reserve Sub-Account are not sufficient to satisfy each of the Other Revenue Transfer Conditions, the Borrower (A) shall promptly (and in any case within five (5) Business Days after the second day of the applicable Payment Period) deposit (or cause to be deposited) Other Revenues to the Revenue Account in such amounts as needed to satisfy the Other Revenue Transfer Conditions and, if necessary, continue to deposit (or cause to be deposited) Other Revenues to the Revenue Account until the Other Revenue Transfer Conditions are satisfied, and (B) shall instruct the Collateral Agent to deposit such funds into the applicable accounts as needed to meet the Borrower's funding obligations pursuant to clauses *First* through *Second* in Section 5.03(b) of the CASA by the applicable Payment Date or other applicable date set forth in Section 5.03(b) of the CASA.

(vi) In the event that the availability of LTF Funds to the Borrower are suspended, impaired or discontinued for any reason, the Borrower shall deliver to the TIFIA Lender written notice of such event and an explanation for the reasons for such suspension, impairment or discontinuance. Upon receipt of such notice by the TIFIA Lender, the Borrower and the TIFIA Lender shall cooperate in good faith to amend the TIFIA Loan Documents as necessary to account for an appropriate replacement to LTF

Funds, and to the extent necessary, the Borrower shall use its best efforts to cause the Collateral Agent and each other Secured Party to execute any such amendment to the TIFIA Loan Documents to which the Collateral Agent or such other Secured Party, as applicable, is required to be a party or to acknowledge or agree thereto.

(m) [Reserved.]

(n) Compliance with Law. The Borrower shall comply in all material respects with all applicable material federal and State laws, including (i) all items set forth in **Exhibit E**, to the extent applicable and (ii) the terms and conditions of the FTA Master Agreements, which have no expiration date and which continue to apply until modified or superseded as outlined therein.

(o) 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 such properties or any part thereof or on the Revenues or the Collateral; 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.

(p) [Reserved].

(q) 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.

(r) Immunity. Consistent with California Government Code Section 814 et seq., the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

(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.<sup>9</sup>

(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 paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

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

**Section 16.** Negative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Note 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 (including financing leases (other than leases described in clause (d) of the definition of Permitted Debt), certificates of participation, and Liquidity Facilities) that is secured (in whole or in part) by the Collateral or that is otherwise payable (in whole or in part) from Revenues; provided that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Collateral or the Revenues, including Permitted Debt, without the prior written consent of the TIFIA Lender, following the occurrence, and during the continuation, of an Event of Default. With respect to a Liquidity Facility, the amount of indebtedness assigned to such Liquidity Facility shall be the maximum amount that can be drawn or claimed against such Liquidity Facility.

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<sup>9</sup> Note to Draft: Subject to modification in accordance with the representation in 13(cc) (*Patriot Act*).

(ii) The Borrower shall not issue indebtedness for borrowed money that is senior to the TIFIA Loan in right of payment from any Revenues.

(iii) Prior to the incurrence of Permitted Debt described in clause (c) of the definition thereof or any Subordinated Obligations consented to by the TIFIA Lender in accordance with clause (iv) below, the Borrower shall deliver to the TIFIA Lender (A) a Revised Financial Model that takes into account the proposed indebtedness, which Revised Financial Model shall reflect and be based on the actual amortization schedules for such proposed indebtedness and all outstanding Obligations in accordance with their respective terms and shall otherwise be in form and substance satisfactory to the TIFIA Lender, and (B) a certificate signed by the Borrower's Authorized Representative, demonstrating to the TIFIA Lender's satisfaction that such proposed indebtedness (1) is authorized pursuant to this Section 16(a) (*Indebtedness*) and (2) satisfies the requirements, as applicable, set forth in the definitions of "Permitted Debt," "Additional Obligations," and "Subordinated Obligations."

(iv) The Borrower shall not issue any Subordinated Obligations without the prior written consent of the TIFIA Lender; provided, that in no event shall the TIFIA Lender approve any Subordinated Obligations that (a) are subject to acceleration by the holder thereof or (b) provide rights for the holder thereof to participate in the instruction or direction of the Collateral Agent under the CASA.

(v) To the extent any Permitted Debt consists of Put Obligations, the Borrower must maintain a Liquidity Facility that will pay any amounts payable by the Borrower in respect of such Put Obligations.

(vi) The Borrower shall not issue or incur Additional Obligations unless the LTF Funds allocated to the Borrower and deposited into the Revenue Account during any twelve (12) consecutive months during the eighteen (18) months prior to the date of the issuance of such Additional Obligations were at least equal to 2.0x MADS (with MADS including the projected debt service for such Additional Obligations).

(vii) The Borrower shall deliver to the TIFIA Lender a copy of the fully executed Accession Agreement (as defined in the CASA) delivered pursuant to Sections 9.01 and 9.02 of the CASA in connection with the issuance of any Additional Obligations, promptly upon the execution thereof.

(viii) The Borrower shall not issue or incur any (A) Capital Appreciation Obligations, (B) Deferred Interest Obligations, or (C) Obligations that bear interest at a variable interest rate, in each case, without the prior written consent of the TIFIA Lender.

(b) No Lien Extinguishment; 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, impair, or transfer the Liens on the Collateral granted pursuant to the CASA, (ii) terminate, assign, amend, modify, replace, or supplement any Related Document (other than the TAMC Irrevocable Instruction) in a manner that (A) could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan or (B) is inconsistent with

this Agreement or the CASA, (iii) waive or permit a waiver of any provision of any Related Document (other than the TAMC Irrevocable Instruction) in a manner that (A) could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan or (B) is inconsistent with this Agreement or the CASA, or (iv) terminate, assign, amend, modify, replace, supplement, waive or permit a waiver of any provision of the TAMC Irrevocable Instruction.

(c) No Prohibited Liens.

(i) Except for the Liens granted pursuant to the CASA in respect of Permitted Debt, the Borrower shall not create, incur, assume or permit to exist any Lien on the Collateral or the Borrower's rights therein. The Borrower shall not collaterally assign or otherwise pledge its rights to receive Farebox Revenues, STA Funds or Measure X Revenues without the TIFIA Lender's prior written consent; provided that the TIFIA Lender shall not consent to any such collateral assignment or pledge unless as a condition to such consent the Borrower collaterally assigns or otherwise legally pledges its right to receive Farebox Revenues, STA Funds or Measure X Revenues, as applicable, to the TIFIA Lender.

(ii) Except for the Liens on the Collateral granted pursuant to the CASA, the Borrower shall not create, incur, assume or permit to exist any Lien on any right or interest of the Borrower in or to any asset or property to secure any Pari Passu Obligations (other than a debt service reserve account that exclusively secures such Pari Passu Obligations), unless it has assigned and granted, or concurrently assigns and grants, a Lien on such assets to secure the TIFIA Loan on a *pari passu* basis.

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

(e) 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 Federal Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Federal 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*).

(f) Acquisitions; Change in Legal Structure; Sale of Assets; Transactions with Third Parties. The Borrower shall not, and shall not agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person (excluding purchases or other acquisitions of inventory or materials or spare parts

or Capital Expenditures, each in the ordinary course of business) to the extent such acquisition or purchase could reasonably be expected to have a Material Adverse Effect;

(ii) reorganize, consolidate with, or merge into another Person unless (A) such merger or consolidation is with or into another transit district or agency in the State, and, in each case, including reorganization, would not reasonably be expected to adversely affect or impair to any extent or in any manner (1) the Revenues or other elements of the Collateral, or (2) the availability of the Revenues for the payment and security of the obligations of the Borrower under this Agreement and the other TIFIA Loan Documents; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender;

(iii) sell, lease, or assign its rights in and to the transit system operated by the Borrower or to the Project, or its material assets or its rights or obligations under any Related Document in a transaction not described in sub-clause (A) of Section 16(f)(ii) above, to the extent such sale, lease or assignment could reasonably be expected to have a Material Adverse Effect; or

(iv) otherwise engage in a transaction with any other Person (including any other Governmental Authority of or in the State) to the extent such transaction could reasonably be expected to have a Material Adverse Effect.

(g) No Defeasance of TIFIA Loan. The Borrower shall not defease the TIFIA Loan without the prior written consent of the TIFIA Lender.

(h) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement, the other Related Documents and the Construction-Related Contracts; or



(C) make a payment, directly or indirectly, to any Construction-Related Contract Party that has violated any of the laws referenced in Section 16(h)(i) (*OFAC Compliance*) or that is a Sanctioned Person.

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

(i) 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 without the prior written consent of the TIFIA Lender.

**Section 17. Indemnification.** 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 “**Indemnatee**”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnatee has the right to retain its own counsel, at the Borrower’s expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 17 (*Indemnification*) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17

(*Indemnification*). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 (*Indemnification*) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 (*Indemnification*) shall survive the payment or prepayment in full or transfer of the TIFIA Note, 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 17 (*Indemnification*)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

**Section 18.** Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 18 (*Sale of TIFIA Loan*). Any such sale or reoffering shall be on such terms as the TIFIA Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 29 (*Amendments and Waivers*). The TIFIA Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 (*Sale of TIFIA Loan*) shall not (x) obligate the TIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

**Section 19.** 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 (A) any amount of principal 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*)) when due and payable or (B) any fee or other amount payable hereunder within five (5) Business Days after such fee or other amount becomes due and payable (each such failure, a "**Payment Default**").

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the TIFIA

Note or the CASA (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, or (B) the Borrower's knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii) (*Covenant Default*), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(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 19 (*Events of Default and Remedies*).

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 19(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 13(h) (*No Debarment*), Section 13(j) (*Compliance with Federal Requirements*), Section 13(k) (*Transportation Improvement Program*), Section 13(q) (*OFAC; Anti-Corruption Laws*), Section 13(cc) (*Patriot Act*) or Section 13(dd) (*Irrevocable Instructions*);
- (C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;
- (D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;
- (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

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

(v) Acceleration of Other Obligations. Any acceleration shall occur of the maturity of any Pari Passu Obligations or Subordinated Obligations.

(vi) Events of Default under Other Financing Documents. Any default under (and as defined in) any Other Financing Document shall occur and shall not have been cured by the Borrower or waived in writing in accordance with the requirements of the applicable Other Financing Document within the applicable cure period (if any) provided under such Other Financing Document.

(vii) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$5,000,000 (inflated annually by CPI) that are payable from Revenues or the Collateral and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(viii) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a special purpose district 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 and the Other Financing Documents, including the payment of all Secured Obligations.

(ix) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the Borrower.

(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 the Borrower contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any TIFIA Loan Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Collateral other than as a result of actions or a failure to act by, and within the control of, the Collateral Agent or any Secured Party, and with the priority purported to be created thereby.

(xii) Authorizing Legislation. The Authorizing Legislation shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(xiii) TDA. The TDA shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(b) Upon the occurrence of an Event of Default described in Section 19(a)(iii) (*Development Default*), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and/or (iii) request that the Borrower repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Note or the other TIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

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

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

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in

any Federal 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 19 (*Events of Default and Remedies*) shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Note or the other TIFIA Loan Documents, all of which shall survive any such action.

**Section 20. 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 20(b) (*Inspections*) 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 20(b) (*Inspections*) 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 Collateral, 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 Note (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Collateral, 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, the Collateral or the Revenues that the TIFIA Lender may reasonably request from time to time.

(d) 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 2020

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 21. Financial Plan, Statements, and Reports.**

(a) Financial Plan. The Borrower shall provide a Financial Plan to the TIFIA Lender and the FTA Regional Office within sixty (60) days after the Effective Date and annually thereafter until the TIFIA Loan has been repaid in full, in each case not later than the date of delivery of the Borrower's annual audited financial statements in accordance with Section 21(b) (*Financial Statements*). 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.

(i) 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 LTF Funds to be received by or on behalf of the Borrower, in the aggregate, shall be sufficient to meet the Loan Amortization Schedule and to meet the Borrower's debt service obligations with respect to any other Permitted Debt, including all debt service obligations pursuant to the Other Financing Documents; and (C) an electronic copy of a Revised Financial Model for the period from the Effective Date through the end of the fifth (5th) Borrower Fiscal Year after the current Borrower Fiscal Year, in substantially the form of the Base Case Financial Model, based upon assumptions and projections with respect to the Revenues and expenses of the Borrower as of the most recent practicable date prior to the delivery of such Revised Financial Model.

(ii) Each Financial Plan shall:

(A) provide a narrative that, in reasonable detail, (1) identifies any potential Revenues or funding shortfalls and (2) describes any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Collateral, the Revenues, operational contracts, and third-party transactions;

(B) provide (1) the current balance of each of the accounts and subaccounts established under the CASA and any other accounts of the Borrower and (2) the amounts deposited into each of the accounts and subaccounts established under the CASA and any other accounts of the Borrower and the

amount disbursed from such funds and accounts, in each case during the prior Borrower Fiscal Year;

(C) provide the actual Senior Debt Service Coverage Ratio (LTF Funds) for the prior Calculation Period;

(D) provide the total LTF Funds (1) available to be claimed by the Borrower, (2) budgeted for by the Borrower, (3) claimed by the Borrower, and (4) allocated to the Borrower, in each case during the prior Borrower Fiscal Year; and

(E) provide the current estimate of Farebox Revenues received by or on behalf of the Borrower, the Borrower's current farebox recovery ratio and the then-applicable Farebox Recovery Ratio, as determined pursuant to the TDA.

(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, and identify any significant cost changes since the previous Financial Plan;

(B) provide updates to the Construction Schedule and discuss reasons for any changes to the expected completion of any 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, and discuss reasons for and implications of the funding changes; and

(D) provide the total value of approved changes in Project design or scope, and provide a listing of each individual change valued at ten percent (10%) of Total Project Costs or more, setting forth the rationale or need for the proposed change and describing the impact of such change on the Project.

(iv) Any schedule or other description of projected or actual Revenues of the Borrower in the Financial Plan shall be broken down by each major category of Revenues (e.g., LTF Funds, Farebox Revenues, etc.).

(b) Financial Statements.

(i) The Borrower shall furnish to the TIFIA Lender:

(A) as soon as available, but no later than five (5) Business Days after presentment to the Borrower's board (and in any case no later than the last Business Day of each month), an unaudited income statement of the Borrower as of the end of the preceding month and the related unaudited statements of operations and of cash flow of the Borrower for such period and for the portion of



the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, in each case in form and substance satisfactory to the TIFIA Lender[ and as presented each month to the Borrower's board by the General Manager/CEO or chief financial officer of the Borrower or any Borrower's Authorized Representative];<sup>10</sup> and

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

(ii) All such audited financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and 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).

(c) Officer's Certificate. The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited financial statements or interim unaudited operating and financial results of the Borrower pursuant to Section 21(b) (*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 annual or other period (as the case may be) covered by such financial statements or operating and financial results, as applicable, there occurred any Event of Default or event that, with the giving of notice or the passage of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

## **Section 22. Oversight and Monitoring.**

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with the FTA Master Agreements. The Borrower's oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the FTA Master Agreements, which may be amended

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<sup>10</sup> **Note to Borrower:** Acceptance of this approach contingent on modifications to board presentations in form and substance satisfactory to the TIFIA Lender.

from time to time upon mutual agreement of the Borrower and the FTA Regional 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 and the FTA Regional Office in the conduct of such monitoring by promptly providing the TIFIA Lender and the FTA Regional Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FTA Regional Office, or its agents, including any consulting engineer reports, documentation or information.

(b) Reporting.

(i) Quarterly Construction Progress Report. On or before the thirtieth (30<sup>th</sup>) day following the end of each calendar quarter during the Construction Period, the Borrower shall deliver to the TIFIA Lender a report (which may consist in whole or in part of reports received by Borrower from one or more of its contractors) that:

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

(B) provides a revised Project Budget updated through the end of the preceding calendar quarter;

(C) 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, taking into account any changes to the amount of Total Project Costs that are reflected in such quarterly construction progress report (or prior quarterly construction progress reports);

(D) to the extent there has been any change (increase or decrease) to the Total Project Costs needed to achieve Substantial Completion since the most recent quarterly construction progress report, provides a narrative description of such changes (specifying the amounts of such changes) and, in the case of any increase to the Total Project Costs, a narrative description of (1) which line items of the Project Budget have been affected by such cost increases (and the extent of any overruns with respect to such line items), (2) any material change orders granted or pending under the Construction-Related Contracts with respect to such cost increases, and (3) how the Borrower will pay for such increased Total Project Costs;

(E) 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;

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

(G) 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;

(H) 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;

(I) specifies any proposed or pending change orders;

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

(K) includes a copy of each report delivered by a Construction-Related Contract Party to the Borrower that has not previously been delivered to the TIFIA Lender in a prior report delivered pursuant to this Section 22(b)(i) (*Quarterly Construction Progress Report*); and

(L) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request.

(ii) Recovery Plan. If the quarterly construction progress report described in Section 22(b)(i) (*Quarterly Construction Progress Report*) or the monthly report issued pursuant to the FTA Project Management Oversight Requirements indicates either a failure to maintain the Construction Schedule, including a failure to achieve Substantial Completion by the Projected Substantial Completion Date or the anticipated Substantial Completion Date set forth in the previous quarterly construction progress report provided pursuant to Section 22(b)(i) (*Quarterly Construction Progress Report*), or actual or projected Eligible Project Cost overruns in excess of five percent (5%) of the Eligible Project Costs reflected in the Project Budget, or both, then the Borrower shall notify the TIFIA Lender and the FTA Regional Office of such failure and shall, upon request by the TIFIA Lender or the FTA Regional Office, provide the TIFIA Lender and the FTA Regional Office within thirty (30) days of receipt of such request, a Recovery Plan for review and acceptance by the TIFIA Lender and the FTA Regional Office.

(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, the Collateral or the Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements, documentation and other information related thereto requested by the TIFIA Lender. The Borrower shall respond, and use commercially reasonable efforts to cause the Construction-Related Contract Parties to respond, to the TIFIA Lender's inquiries regarding the construction of the Project.

(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 22(c).

(d) Consulting Engineer.

(i) If requested in writing by the TIFIA Lender (in circumstances where the Borrower does not already have a designated Consulting Engineer), the Borrower shall hire and retain a Consulting Engineer until final acceptance of the Project by the Borrower.

(ii) Any Consulting Engineer retained by the Borrower shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower of its obligations under this Agreement and the Related Documents.

(iii) The Borrower may designate or replace the Consulting Engineer; provided, that the TIFIA Lender shall have the right to object to any such Consulting Engineer (and the Borrower shall not retain any proposed Consulting Engineer if the TIFIA Lender has objected in writing to such proposed Consulting Engineer). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days' advance written notice of any proposed initial or replacement Consulting Engineer, together with supporting information concerning the qualifications of the proposed Consulting Engineer. The Borrower may designate the proposed Consulting Engineer unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Borrower's notice above. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed Consulting Engineer. The Borrower shall pay for all services performed by the Consulting Engineer.

**Section 23.** 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 24.** No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Federal 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 Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (*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 25. 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 26. 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, the further delegation of authority, dated August 31, 2016 (the "**Delegation**") by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau, the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

**Section 27. 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 Note. 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 Note. 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 28. Fees and Expenses.** 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 any technical or 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, administration, 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:

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

(b) 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 or with respect to, this Agreement, any other Related Document, or the Collateral, 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;

(c) any ongoing oversight and monitoring of the TIFIA Loan, the Borrower or the Project by the TIFIA Lender as provided for herein; and

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

The obligations of the Borrower under this Section 28 (*Fees and Expenses*) shall survive the payment or prepayment in full or transfer of the TIFIA Note, 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 29. 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 30. 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 31. 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 32. Successors and Assigns.** This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or

obligations hereunder nor any interest therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the TIFIA Lender.

**Section 33. 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 34. 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 35. 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 36 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures for this Agreement or for any document or instrument delivered in connection herewith may be made by electronic means, if accompanied by an email from the applicable signatory, contemporaneous or otherwise, confirming the use of such means.

**Section 36. Notices; Payment Instructions.** Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to TIFIA Lender:

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

with copies to:

Region IX Office  
Federal Transit Administration  
San Francisco Federal Building  
90 7th Street  
Suite 15-300  
San Francisco, CA 94103  
Attention: Ray Tellis, Regional  
Administrator

If to Borrower:

Monterey-Salinas Transit District  
19 Upper Ragsdale Dr., Suite 200,  
Monterey, CA 93940  
Attention: Lisa Rheinheimer, Assistant  
General Manager  
Email: lrheinheimer@mst.org

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, if any. The Borrower shall make any payments hereunder or under the TIFIA Note in accordance with Section 9(c) (*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 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

**Section 37.** Effectiveness. This Agreement shall be effective on the Effective Date.

**Section 38.** 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 17 (*Indemnification*), the reporting and record keeping requirements of Section 20(b) (*Inspections*) and Section 20(c) (*Reports and Records*), and the payment requirements of Section 28 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.



**Section 39.** Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

*[Signature pages follow]*

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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.

**MONTEREY-SALINAS TRANSIT  
DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to TIFIA Loan Agreement – Monterey-Salinas Transit District South County  
Operations and Maintenance Facility Project]*

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

By: \_\_\_\_\_  
Name: Dr. Morteza Farajian  
Title: Executive Director

*[Signature Page to TIFIA Loan Agreement – Monterey-Salinas Transit District South County  
Operations and Maintenance Facility Project]*

**SCHEDULE I**

**PROJECT BUDGET**

[To be provided by Borrower.]

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**SCHEDULE II**  
**CONSTRUCTION SCHEDULE**

[To be provided by Borrower.].

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**SCHEDULE III**  
**EXISTING INDEBTEDNESS**

**I. Pari Passu Obligations**

None.

**II. Subordinated Obligations**

	<b>Dated</b>	<b>Obligation</b>	<b>Original/ Authorized Amount</b>	<b>Purpose</b>	<b>Lender</b>	<b>Outstanding Amount<sup>11</sup></b>	<b>Final Maturity</b>
1.	7/2/2018	Promissory Note #1	\$ 729,938	Bus Acquisition	Mechanics Bank*	\$ 469,378	7/2/2023
2.	7/17/2018	Promissory Note #3	\$ 486,625	Bus Acquisition	Mechanics Bank*	\$ 313,608	7/17/2023
3.	8/3/2018	Promissory Note #4	\$ 243,313	Bus Acquisition	Mechanics Bank*	\$ 160,652	8/1/2023
4.	8/7/2018	Promissory Note #5	\$ 486,625	Bus Acquisition	Mechanics Bank*	\$ 320,342	8/7/2023
5.	8/23/2018	Promissory Note #6	\$ 486,625	Bus Acquisition	Mechanics Bank*	\$ 320,961	8/23/2023
6.	9/11/2018	Promissory Note #7	\$ 486,625	Bus Acquisition	Mechanics Bank*	\$ 328,215	9/11/2023
7.	1/15/2016	Promissory Note	\$1,860,000	Admin HQ – Suite 200	Mechanics Bank*	\$1,143,980	1/15/2026
8.	1/19/2018	Promissory Note Secured by Deed of Trust	\$ 839,767	Admin HQ – Suite 200	Pinckney Trust (seller)	\$ 657,766	2/1/2021
9.	3/06/2020	Promissory Note	\$1,500,000	Revolving Line of Credit	Mechanics Bank*	\$ --	2/28/2021

\*Formally Rabobank.

<sup>11</sup> As of the Effective Date [Note to Borrower: Please confirm the listed outstanding amounts are as of the Effective Date.]

## **SCHEDULE IV**

### **SECTION 5.03(b) OF THE CASA**

Section 5.03(b) of the CASA, as of the Effective Date, is copied below.

#### **Section 5.03. Revenue Account.**

...

(b) *[Insert Section 5.03(b) from the final version of the CASA]*

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**EXHIBIT A**  
**FORM OF TIFIA NOTE**  
**MONTEREY-SALINAS TRANSIT DISTRICT**  
**SOUTH COUNTY OPERATIONS AND MAINTENANCE FACILITY PROJECT**

(TIFIA – 2020-[\_\_\_\_])

**TIFIA NOTE**

**Maximum Principal Amount: \$8,449,000**

**Effective Date:** \_\_\_\_\_

**Due:** \_\_\_\_\_

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

The issuance of this TIFIA Note was authorized pursuant to Resolution No. 2021-11 adopted by the Board of Directors (the “**Board**”) of the Borrower at a regular meeting of the Board held on October 12, 2020.



Payments hereon are to be made in accordance with Section 9(c) (*Manner of Payment*) and Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts.

This TIFIA Note has been executed under and pursuant to the TIFIA Loan Agreement and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder. All capitalized terms used in this TIFIA Note and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This TIFIA Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$100,000), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Note in accordance with the TIFIA Loan Agreement.

Payment of the obligations of the Borrower under this TIFIA Note is secured pursuant to the CASA and the TIFIA Loan Agreement and is payable solely from the revenues and other funds pledged and otherwise available to make payment as provided in the TIFIA Loan Agreement, and the Borrower is not obligated to pay such obligations except from such revenues and other funds.

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

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

IN WITNESS WHEREOF, the MONTEREY-SALINAS TRANSIT DISTRICT has caused this TIFIA Note to be executed in its name and attested by its duly authorized officer, all as of the Effective Date set forth above.

**MONTEREY-SALINAS TRANSIT  
DISTRICT**

By \_\_\_\_\_

Name: Carl Sedoryk  
Title: General Manager/CEO

ATTEST:

\_\_\_\_\_  
Secretary

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(FORM OF ASSIGNMENT)

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

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

the within note and all rights thereunder.

Dated: \_\_\_\_\_

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

**EXHIBIT B**  
**ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE**

[To be provided by Borrower.]

<b>Borrower Fiscal Year</b>	<b>Amount</b>
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	\$
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## EXHIBIT C

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

The undersigned, on behalf of the Monterey-Salinas Transit District (the “**Borrower**”), hereby certifies that the Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995):

(a) Are not presently excluded (as defined in 2 C.F.R. § 180.940) or disqualified (as defined in 2 C.F.R. § 180.935);

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) or private transaction or agreement; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, receiving stolen property, tax evasion, obstruction of justice, or any other offense, indicating a lack of business integrity or business honesty that seriously and directly affects the Borrower's obligations under the TIFIA Loan Agreement (the “**TIFIA Loan Agreement**”), dated as of [\_\_\_\_], 2020 between the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, and the Borrower, as the same may be amended from time to time;

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

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

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

Dated: [\_\_\_\_], 2020

**MONTEREY-SALINAS TRANSIT DISTRICT**<sup>12</sup>

By: \_\_\_\_\_

Name:

Title:

<sup>12</sup> To be executed by Borrower's Authorized Representative.

## EXHIBIT D

### REQUISITION PROCEDURES

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

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as Appendix One to this **Exhibit D**. Supporting documentation should be submitted with the Requisition.

All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first (1<sup>st</sup>) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15<sup>th</sup>) day of such calendar month or, if such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the TIFIA Lender, the TIFIA Lender will notify the Borrower of such approval and of the amount so approved.

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

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan;
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid. If a Consulting Engineer is retained as of such date by the Borrower, pursuant to Section 22(d) (*Consulting Engineer*) of the TIFIA Loan Agreement or otherwise, such documentation shall include the most recent certificate of or report prepared by the Consulting Engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender); or

(e) submitted prior to the date that is one (1) month after the related Eligible Project Costs Documentation was delivered to the TIFIA Lender and the Servicer (if any), if applicable.

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

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

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

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

(b) the Borrower:

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

(ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or 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*) or Section 12(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, including Eligible Project Costs Documentation, if applicable, at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA

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

Section 5. Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the TIFIA Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower (even if such disbursement has been approved by the TIFIA Lender), in each case if the TIFIA Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.



## APPENDIX ONE TO EXHIBIT D

### FORM OF REQUISITION

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

Region IX Office  
Federal Transit Administration  
San Francisco Federal Building  
90 7th Street  
Suite 15-300  
San Francisco, CA 94103  
Attention: Ray Tellis, Regional Administrator

[Loan Servicer]  
[Address]  
[Attention]

Re: Monterey-Salinas Transit District South County Operations and Maintenance Facility  
Project (TIFIA – 2020-[\_\_\_\_])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [\_\_\_\_], 2020 (the “**TIFIA Loan Agreement**”), by and between the MONTEREY-SALINAS TRANSIT DISTRICT (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[\_\_\_\_\_] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [\_\_\_\_\_].
2. The requested date of disbursement is [\_\_\_\_\_] 15, 20[\_\_\_] (the “**Disbursement Date**”)[, which is the first Business Day following [\_\_\_\_\_] 15, 20[\_\_\_\_\_]].
3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, \$[\_\_\_\_\_].

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 and other insurance arrangements maintained by the Borrower, and as applicable, the Construction-Related Contract Parties, in satisfaction of the condition in Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the TIFIA Lender and the FTA Regional Office and in accordance with the highest standards of the Borrower's industry.
10. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event or condition that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, has occurred since September 9, 2020 and is continuing.

13. [A copy of the most recent certificate or report of the Consulting Engineer delivered pursuant to the TIFIA Loan Agreement has been delivered to each of the above named addressees.]<sup>13</sup>
14. A copy of the quarterly construction progress report pursuant to Section 22(b)(i) (*Quarterly Construction Progress Report*) of the TIFIA Loan Agreement for the quarter preceding the date of the applicable Requisition has been delivered to each of the above named addressees.
15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Federal 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.

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<sup>13</sup> Include when applicable.

[Add wire instructions for [Borrower].]

Date: \_\_\_\_\_

MONTEREY-SALINAS TRANSIT  
DISTRICT<sup>14</sup>

By: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

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<sup>14</sup> To be executed by the Borrower's Authorized Representative.

## APPENDIX TWO TO EXHIBIT D

### [APPROVAL/DISAPPROVAL] OF THE TIFIA LENDER (To be delivered to the Borrower)

Requisition Number [●] is [approved in the amount of \$[●]] [approved in part in the amount of \$[●]] [not approved]<sup>15</sup> by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [\_\_\_\_], 2020, by and between the Monterey-Salinas Transit District (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:

---

<sup>15</sup> 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.]**

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## **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 34; 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 20);
- (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 C.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 the FTA Regional Office'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 49 U.S.C. § 5323(j) and implementing regulations (49 C.F.R. Part 661);
- (xiv) The requirements of 49 U.S.C. Chapter 53 and 49 C.F.R. Part 600;

(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 25 relating to the Disadvantaged Business Enterprise program.

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**EXHIBIT F**

**[Reserved.]**

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**EXHIBIT G**

**TIFIA DEBT SERVICE**

[To be provided on the closing date.]

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## **EXHIBIT H-1**

### **OPINIONS REQUIRED OF COUNSEL TO BORROWER**

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that:

(a) the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents<sup>16</sup> 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 such's counsel's knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other

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<sup>16</sup> If the TAMC Irrevocable Instruction is not covered by the Borrower's counsel opinion, it will need to be covered by the bond counsel opinion.

Governmental Authority in connection with the Related Documents or the Project that are pending.

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## **EXHIBIT H-2**

### **OPINIONS REQUIRED FROM BOND COUNSEL TO BORROWER**

An opinion of bond counsel to the Borrower, dated as of the Effective Date, to the effect that:

(a) each of the TIFIA Note, this Agreement, and the CASA 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) electronic delivery of an executed counterpart of a signature page of any TIFIA Loan Document is effective as delivery of an original executed counterpart of such TIFIA Loan Document, and any printed or copied versions of any signature page so delivered has the same force and effect as an originally signed version of such signature page in compliance with applicable laws. Signatures for any of the TIFIA Loan Documents may be made by electronic means, if accompanied by an email, contemporaneous or otherwise, confirming the use of such means;

(c) each TIFIA Loan Document 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;

(d) the TIFIA Note is (i) secured by the Collateral, (ii) enforceable under the laws of the State without any further action by the Borrower or any other Person, and (iii) is a senior obligation of the Borrower and ranks *pari passu* in right of payment and right of security with all Pari Passu Obligations;

(e) the CASA creates the valid and binding assignment and pledge (as applicable) of the Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Note, irrespective of whether any party has notice of the pledge or grant of security interest, as applicable, and without the need for any physical delivery, recordation, filing or further act and no filing, recordation or any other action is necessary to establish and perfect a legal, valid, binding, and enforceable Lien on the Collateral in favor of the Collateral Agent (for the benefit of the Secured Lenders) to the extent contemplated by the TIFIA Loan Documents;

(f) all actions by the Borrower that are required for the use of Revenues as required under the CASA and under the TIFIA Loan Agreement have been duly and lawfully made;

(g) the Borrower has complied with the requirements of State law, including the Authorizing Legislation, to lawfully assign and pledge (as applicable) the Collateral and use the Revenues as required by the terms of the TIFIA Loan Agreement; 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 Note or by the Collateral Agent under the CASA.

## EXHIBIT I

### FORM OF CERTIFICATE OF COLLATERAL AGENT

#### MONTEREY-SALINAS TRANSIT DISTRICT

**TIFIA Note,  
South County Operations and Maintenance Facility Project  
(TIFIA – 2020-[\_\_\_\_])**

The undersigned, U.S. Bank National Association (the “*Collateral Agent*”), by its duly appointed, qualified and acting [\_\_\_\_], certifies with respect to the above referenced note (the “*TIFIA Note*”) dated as of [\_\_\_\_], 2020, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the CASA (as defined below)):

1. That the Collateral Agent 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.
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Collateral Agent of its duties and obligations under the CASA have been obtained by the Collateral Agent and are in full force and effect.
3. That the CASA was executed 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 the CASA and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute the CASA, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Collateral Agent, to establish and maintain the Project Accounts and to accept the Revenues that have been or will be conveyed to it under the CASA, has accepted the Revenues so conveyed and in so accepting the Revenues and so acting has not and will not violate any provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex One is a full, true and correct copy of excerpts from the bylaws of the Collateral Agent and other applicable documents that evidence the Collateral Agent’s powers to enter into the CASA and to fulfill its obligations under the CASA and the TIFIA Loan Agreement and the authority of the officers referred to above to act on behalf of the Collateral Agent; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Collateral Agent pursuant to that certain Collateral Accounts and Security Agreement (the “**CASA**”), dated as of [\_\_\_\_], 2020 by and among the Monterey-Salinas Transit District (the “**Borrower**”), the TIFIA Noteholder (as defined below), the Collateral Agent, the Securities Intermediary (as defined therein), and the other secured parties party thereto from time to time.
7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [\_\_\_\_], 2020 (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 Noteholder**”).
8. That the Collateral Agent also accepts its appointment and agrees to perform the duties and responsibilities of Collateral Agent for and in respect of the TIFIA Note as set forth in the CASA and the TIFIA Loan Agreement. In accepting such duties and responsibilities, the Collateral Agent shall be entitled to all of the privileges, immunities, rights and protections set forth in Article II of the CASA.
9. That the TIFIA Debt Service Sub-Account, the TIFIA Debt Service Reserve Sub-Account, and the other Project Accounts to be established on or prior to the date hereof pursuant to the terms of the CASA, have been established as provided in the CASA.

[SIGNATURE PAGE FOLLOWS]

Dated: [\_\_\_\_], 2020

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Its:

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**ANNEX ONE TO EXHIBIT I**

**OFFICERS OF COLLATERAL AGENT AND BYLAWS OF COLLATERAL AGENT**

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**EXHIBIT J**  
**FORM OF BORROWER'S OFFICER'S CERTIFICATE**

Reference is made to that certain TIFIA Loan Agreement, dated as of [\_\_\_\_], 2020 (the "TIFIA Loan Agreement"), by and among the Monterey-Salinas Transit District (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

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

- (a) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) attached hereto as Exhibit A-1 are complete and fully executed copies of each Other Financing 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 and (ii) attached hereto as Exhibit A-2 are complete and fully executed copies of the FTA Master Agreements and the Measure X Funding Agreement, together with any amendments, waivers or modifications thereto, in each case that is in effect as of the Effective Date, and each such agreement is in full force and effect;
- (b) pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the TIFIA Loan Documents, and who have been appointed a Borrower's Authorized Representative in accordance with Section 25 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (c) 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 such funds shall be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion;
- (d) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit C are true, correct and complete copies of each Construction-Related Contract and any related performance security instruments, in each case that has been executed on or prior to the Effective Date (as listed below), and each such Construction-Related Contract is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Exhibit C:

1. [*Construction-Related Contracts*]

- (e) the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (f) pursuant to Section 12(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit D is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that the Senior Debt Service Coverage Ratio (LTF Funds) for each Calculation Period through the Final Maturity Date is at least equal to 2.00:1.00, and (ii) demonstrates that Revenues in each Calculation Period through the Final Maturity Date are projected to be sufficient to satisfy all of the Borrower's funding obligations pursuant to Section 5.03(b) of the CASA;
- (g) pursuant to Section 12(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that (i) the Borrower is authorized, pursuant to the Authorizing Legislation, to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the TIFIA Loan Documents and the Other Financing Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (ii) it has 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 (other than the UCC-1 financing statement contemplated in Section 12(a)(xxiv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, which will be filed by the TIFIA Lender), and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Collateral Agent's Lien on the Collateral (for the benefit of the Secured Parties) to the extent contemplated by the TIFIA Loan Documents, the Other Financing Documents or the Authorizing Legislation, and (iii) it has 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 TIFIA Loan Document, any Other Financing Document or any instruments, certificates or financing statements in connection with the foregoing;
- (h) pursuant to Section 12(a)(xiv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that it has (i) 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, if previously requested by the TIFIA Lender, has provided sufficient evidence of such compliance and (ii) complied with the requirements of 2 C.F.R. §§ 180.300 and 180.330 and, if previously requested by the TIFIA Lender, has provided sufficient evidence of such compliance;
- (i) pursuant to Section 12(a)(xiv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit E is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;
- (j) pursuant to Section 12(a)(xvi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 94-2222398

and attached hereto as Exhibit F-1 is evidence thereof, (ii) the Borrower's Data Universal Numbering System number is 073957813, 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 F-2 is evidence of each of (ii) and (iii);

- (k) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit G are true, correct and complete copies of certificates of insurance or other acceptable documentation that demonstrate satisfaction of the insurance requirements of Section 12(a)(xvii) of the TIFIA Loan Agreement;
- (l) pursuant to Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as (i) Exhibit H-1 is a copy of the Borrower's Organizational Documents and the Authorizing Legislation, each as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents and Authorizing Legislation are each in full force and effect and have not been amended since the date of the last amendment thereto shown in Exhibit H-1, (ii) Exhibit H-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, and (iii) Exhibit H-3 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents;
- (m) 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;
- (n) (i) the maximum principal amount of the TIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) 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, does not exceed eighty percent (80%) of Eligible Project Costs; and
- (o) pursuant to Section 12(a)(i) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit I is a complete and fully executed copy of the TAMC Irrevocable Instruction, and such instruction is in full force and effect.

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

**MONTEREY-SALINAS TRANSIT DISTRICT**

By: \_\_\_\_\_

Name:

Title: Authorized Person <sup>17</sup>

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<sup>17</sup> To be executed by Borrower's Authorized Representative.

**EXHIBIT B TO EXHIBIT J**

**INCUMBENCY CERTIFICATE**

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

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

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**MONTEREY-SALINAS TRANSIT DISTRICT**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT K**  
**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

*[Letterhead of Borrower]*

*[Date]*

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

**Project:** Monterey-Salinas Transit District South County Operations and Maintenance Facility Project (TIFIA – 2020-[\_\_\_\_])

Dear Director:

This Notice is provided pursuant to Section 15(g)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “**TIFIA Loan Agreement**”), dated as of [\_\_\_\_], 2020, by and between the Monterey-Salinas Transit District (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:

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## EXHIBIT L

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

The undersigned, on behalf of the Monterey-Salinas Transit District (the “**Borrower**”), hereby certifies, to the best of his or her knowledge and belief, that:

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

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

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

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into this 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.

Unless otherwise defined herein, all capitalized terms in this certificate have the meanings assigned to those terms in that certain TIFIA Loan Agreement, dated as of [\_\_\_\_], 2020, 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**”).

Dated: [\_\_\_\_], 2020

**MONTEREY-SALINAS TRANSIT DISTRICT**<sup>18</sup>

By: \_\_\_\_\_  
Name:

<sup>18</sup> To be executed by Borrower’s Authorized Representative.

Title:

DRAFT

Exhibit L

## **EXHIBIT M**

### **FORM OF TAMC IRREVOCABLE INSTRUCTION**

[Final form of TAMC Irrevocable Instruction to be inserted.]

DRAFT