Note meeting time change to 9:00 a.m.

Friday, December 2, 2011
9 a.m. to 12 noon
SANDAG Board Room
401 B Street, 7th Floor
San Diego

AGENDA HIGHLIGHTS

- ACQUISITION OF SOUTH BAY EXPRESSWAY ASSETS: REVIEW OF DRAFT DOCUMENTS, MODELING RESULTS, TOLL ALTERNATIVES, AND AUTHORIZATION FOR DAY ONE OPERATIONS SERVICE PROVIDER

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1. PUBLIC COMMENTS/COMMUNICATIONS/MEMBER COMMENTS

Public comments under this agenda item will be limited to five public speakers. Members of the public shall have the opportunity to address the Board on any issue within the jurisdiction of SANDAG that is not on this agenda. Other public comments will be heard during the items under the heading “Reports.” Anyone desiring to speak shall reserve time by completing a “Request to Speak” form and giving it to the Clerk of the Board prior to speaking. Public speakers should notify the Clerk of the Board if they have a handout for distribution to Board members. Public speakers are limited to three minutes or less per person. Board members also may provide information and announcements under this agenda item.

REPORTS (2)

+2. ACQUISITION OF SOUTH BAY EXPRESSWAY ASSETS: REVIEW OF DRAFT DOCUMENTS, MODELING RESULTS, TOLL ALTERNATIVES, AND AUTHORIZATION FOR DAY ONE OPERATIONS SERVICE PROVIDER (First Vice Chair Jack Dale; Marney Cox)*

On November 18, 2011, the Board of Directors reviewed the due diligence efforts completed to date and the financing options related to the acquisition of the State Route 125 toll road. The Board of Directors is asked to discuss the draft purchase and financing related documents, including proposed amendments to the Development Franchise Agreement with Caltrans, review modeling results and toll alternatives, and authorize the Executive Director to execute an agreement with SBX to provide transitional operations services for six months following the closing on terms deemed favorable to SANDAG.

3. CONTINUED PUBLIC COMMENTS

If the five speaker limit for public comments was exceeded at the beginning of this agenda, other public comments will be taken at this time. Subjects of previous agenda items may not again be addressed under public comment.

4. UPCOMING MEETINGS

Please note that there will be two additional Board Business meetings in December: The next meetings are scheduled for Friday, December 9, 2011, at 9 a.m. and Friday, December 16, 2011, at 9 a.m.

5. ADJOURNMENT

+ next to an agenda item indicates an attachment
* next to an agenda item indicates a San Diego County Regional Transportation Commission item
ACQUISITION OF SOUTH BAY EXPRESSWAY ASSETS:
REVIEW OF DRAFT DOCUMENTS, MODELING RESULTS,
TOLL ALTERNATIVES, AND AUTHORIZATION FOR
DAY ONE OPERATIONS SERVICE PROVIDER

Introduction

Over the past year the SANDAG Board of Directors (Board) has been evaluating the possible purchase of the toll road franchise for State Route 125 (SR 125) from South Bay Expressway (SBX). In August 2011 the Board accepted the counter offer received from SBX, agreeing to acquire (by assuming the Caltrans franchise agreement) the SR 125 toll road franchise and other SBX assets for $344.5 million, subject to various conditions, including performance of due diligence work and a public meeting process concerning approvals and financing options.

The first portion of this report presents the legal team’s efforts to prepare for the closing, including preparation of the document drafts for the purchase and financing of the SR 125 assets and the proposed amendments to the Development Franchise Agreement (“DFA”) with Caltrans. The report then provides information regarding modeling results that have been used to prepare toll alternatives and that will be used to comply with the California Environmental Quality Act (CEQA). During discussions concerning the various asset purchase documents, SBX offered to provide transitional services to SANDAG on a cost reimbursement basis so that operations of the toll road can continue seamlessly under SANDAG ownership. Staff supports contracting with SBX to provide these services for a variety of reasons discussed in this report. In addition, the report summarizes the next steps for finalizing the documents, and the actions the Board of Directors will be asked to take on December 16, 2011, in order to complete the purchase by December 21, 2011.

Discussion

Legal Due Diligence

The legal team has reviewed thousands of pages of documentation in performing the legal due diligence, the various significant contracts and settlement agreements affecting SBX and SANDAG liabilities, and all five evaluation reports prepared by HNTB. Other people who have been involved in reviewing documents include Marney Cox (Chief Economist), Samuel Johnson (Principal Technology
Program Analyst), Lauren Warrem (Director of Finance), Renée Wasmund (Chief Deputy Executive Director) and Gary Gallegos (Executive Director). Based on these reviews, the negotiating team has taken steps to ensure that the risks that were identified for SANDAG are mitigated via contractual provisions in the documents discussed below.

1. **Summary of the Asset Purchase and Sale Agreement**

The document fundamentally incorporating the rights and obligations of the parties to this transaction is the Asset Purchase and Sale Agreement (the “APA”) and its exhibits (Attachment 1). The APA literally defines what assets SANDAG will acquire, when it anticipates closing the deal, how much SANDAG will pay and to whom; what liabilities SANDAG shall assume, how the excluded liabilities will be handled, what representations and warranties the parties give to one another, what remedies the parties will have in the case of breach, and much more. The APA is the document that ensures that SANDAG would have the right and opportunity to access SBX’s documents and information to conduct and complete its due diligence, all the while requiring SBX to continue to maintain and operate the assets in the ordinary course pending the closing date. After the closing, the APA provides for a 6-month period for a seamless transition of the assets to SANDAG (subject to a separate transition agreement) and creates a vehicle by which SANDAG may bring on any of SBX’s employees via a third party contractor such as the one SANDAG uses for Interstate 15. The APA also states that any liabilities, contractual or otherwise, that SBX may have with respect to those employees remain with SBX. Some of the more pertinent provisions of the APA are addressed more fully below:

**Assets Being Acquired**

The APA defines the assets that SANDAG will acquire as the “Transferred Assets,” which are identified on attached Schedules and that generally consist of the following:

(a) the Assigned Contracts identified on Schedule 1.1(a), including the DFA;

(b) SBX’s rights under each Leased Real Property identified on Schedule 5.5(a), under each Owned Real Property identified on Schedule 5.5(b), and under each material patent, patent license, trade name, trademark, service mark or copyright related to the Transferred Assets identified on Schedule 5.6, together with all improvements, furniture, fixtures, equipment and other appurtenances thereto and all rights in respect thereof. The leased and owned real property includes the roadway right of way and SBX’s operations center building;

(c) the Equipment leased or owned by SBX to the extent primarily related to the Transferred Assets, such as the toll collection and traffic monitoring equipment, and any rights of SBX to the warranties and licenses received from manufacturers and sellers of such Equipment;

(d) all Permits to the extent transferable under Applicable Law, as are identified under Schedule 5.14;

(e) copies of all necessary Business Records;

(f) assignable rights of SBX, if any, under the Commercial General Liability policies (policy numbers 3676496-00 and 3676623-00) by Zurich American Insurance Company;

(g) all supplies owned by the SBX to the extent primarily related to the Transferred Assets;
(h) prepaid tolls and transponder deposits; and

(i) all accounts receivable related to toll violations arising prior to the closing date upon which SBX has not collected within 6 months after the Closing Date.

Purchase Price

The APA sets forth the purchase price as follows:

(a) $239,965,600 in cash to be wire transferred at the closing to an account designated by SBX and $7,500,000 in cash to be placed into an escrow account, as described below.

(b) a promissory note, substantially in the form attached as Exhibit E to the APA (the “Series D Loan”), in the principal amount of $1,445,850; and

(c) assumption of SBX’s indebtedness to the United States (TIFIA) in the amount of $92,534,400 pursuant to the terms of the Amended and Restated TIFIA Loan Documents.

Closing Documents

The APA requires the closing to take place at SANDAG’s offices on the second business day after the conditions to closing that are set forth in the APA have been satisfied or waived by the Party entitled to waive such condition. The conditions to closing generally require the parties to fulfill their obligations as set forth in the APA and include such fundamental requirements as SANDAG’s ability to receive Board approval for this transaction and the furnishing to the other party of the documents required by the APA, including, but not limited to, such important documents as:

(a) the Assignment of Lease with Caltrans;

(b) grant deeds, with the usual covenants, to the Owned Real Property included in the Transferred Assets;

(c) Caltrans’ consent to the assignment of the DFA and the Lease and Caltrans’ waiver of its right of first refusal with respect to the Operations Center, as identified on Schedule 5.5(b) attached to the APA;

(d) Caltrans’ acknowledgement of its obligation to enter into Airspace Option to Lease Agreements and Airspace Leases with SANDAG; and

(e) the SANDAG Release, as described below.

The Parties anticipate closing on December 21, 2011. If the closing does not occur on or before December 31, 2011, however, either party may walk away from this transaction.

Liabilities

Through the APA, SANDAG agrees to assume only those liabilities that relate to the Transferred Assets as they may arise after the closing date.
Escrow Fund

In the event that a liability should arise post closing for which SBX has an obligation to answer, SANDAG has secured an escrow fund that it may use to pay for such liabilities in an amount equal to $7,500,000, which shall be deducted from the purchase price and set aside into an escrow account. That amount shall remain in escrow for 6 months after the closing at which time the escrow amount will be reduced to $5,000,000. At 12 months after closing the escrow amount will be reduced again to $2,500,000 and any unclaimed remaining balance will be distributed to SBX after 18 months.

Notably, because the tolling software was identified during SANDAG's due diligence as an area of concern (as reflected in the November 18, 2011 SANDAG Board Report), during the 6-month period after closing, SANDAG negotiated the right to use the escrow funds for claims related to a malfunction with the tolling software up to a monetary limit of $1,500,000 for any such claims.

In the event that there is a bona fide dispute relative to SANDAG’s ability to use the escrow funds to pay for a given claim, the parties have agreed to set aside money for the claim until such time as the dispute is resolved or adjudicated.

Terms of Release

When SANDAG originally negotiated this transaction, it was careful to secure SBX’s agreement to release all claims in litigation or otherwise not only against SANDAG, but also against the County of San Diego and all cities within the County of San Diego. This release has been written into both the initial Letter of Acceptance and may now be found in Section 5.17 of the APA.

Items Still Under Discussion with SBX on the APA

1. Whether SBX will consent to expand the scope of “Excluded Liabilities” (those liabilities for which SANDAG shall not have any obligation to answer) to include the liabilities of SBX arising out of, relating to, in respect of or in connection with any representation, warranty or covenant of SBX contained in the APA or in any related document;

2. In a dispute relative to the use of the escrow fund, whether and what amount should be set aside to cover the fees and costs associated with the resolution of the dispute and whether SANDAG should be required to escrow an equal amount of its own funds to cover the possibility that SBX prevails on the dispute;

3. The proper test for establishing a malfunction with the tolling software and whether SANDAG would be able to utilize the escrow fund to recover consequential damages consisting of lost toll revenues up to a specified amount;

4. Whether SBX has provided or otherwise made available to SANDAG any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the Transferred Assets which are in its possession or control as related to compliance with Environmental Laws and liability issues concerning environmental permits and other environmental matters due to SBX’s actions or inactions prior to the sale;

5. Whether, in the case of the County of San Diego, SBX is entitled to a corresponding release and agreement to the dismissal of the pending litigation between the County and the Seller;
6. Whether the definition of “Seller’s Knowledge” should include RPA Advisers LLC (SBX’s financial adviser, which also functioned in that role throughout the bankruptcy); and

7. Agreed-upon Transition Services Agreement, Schedules, Exhibits and other attachments called-for by the APA.

2. **Summary of the Financing Documents**

As previously authorized by the Board, the purchase of SR 125 assets, if ultimately consummated, will be accomplished through the payment of approximately $247,500,000 to SBX. In addition, closing costs and fees of approximately $10,249,000 (including working capital of $3,000,000) will be paid. SANDAG will be required to assume the existing TIFIA loan, and issue a “Series D Note” to TIFIA in the principal amount of $1,445,850. Each of these aspects will have its own separate agreement and there will be a fourth agreement (Master Trust Agreement) which governs the interrelationships among the three independent financing pieces.

**Master Trust Agreement**

The primary function of the Master Trust Agreement (“MTA”) is to establish a flow of funds from project revenues through operating and capital expenses, and into the payment of the financing instruments. The MTA (Attachment 2) provides that all project revenues will be deposited with the Master Trustee (which will initially be US Bank, the same trustee SANDAG uses for its bond issuances). On a monthly basis, the Trustee will deposit funds to various accounts to the extent of available revenue in accordance with a budget for the project which the SANDAG Board of Directors will approve annually. The first two accounts to receive funds will be for ordinary and anticipated operating and capital expenses. The next two accounts to receive funds will be for the payment of expenses, interest and principal associated with the existing TIFIA loan. Remaining funds will next be applied to accounts for long-term maintenance and capital expenses, plus any unanticipated emergencies. The next account to receive funds will be dedicated to the repayment of the TransNet loan. It is important to note that even if the Board approves a swap between SR 125 and Interstate 805 (I-805) under the TransNet Ordinance, the MTA provides that SANDAG will receive the full value of the TransNet loan. In other words, even if the TransNet loan is partially repaid or forgiven through the swap, the TransNet account under the MTA will continue to receive funds as if no partial repayment or forgiveness had occurred and those funds will then be available to SANDAG for improvements to SR 125 as deemed appropriate by the Board. After the TransNet loan has been fully “satisfied” as described immediately above, the next account to receive funds is dedicated to Series D.

There are three other aspects of the MTA that are important to note:

a. The document establishes a “Rate Covenant” which obligates SANDAG to set toll rates at a level which ensures 110 percent coverage of the TIFIA repayment obligations. In other words, when it approves the annual budget, the Board must set the toll rates at a level where it is reasonably certain that project revenue will be sufficient to meet all of the ordinary and anticipated operating and capital expenses and still have income left over at 110 percent of the scheduled amortization of the current TIFIA loan (not including Series D). If SANDAG does not comply with the Rate Covenant, it must retain a traffic consultant and implement a different operational plan which the consultant believes is likely to result in Rate Covenant compliance;
b. The document also establishes a “Toll Covenant” which prohibits the SANDAG Board from reducing toll rates after the full “satisfaction” of the TransNet loan prior to the full repayment or expiration of the Series D Note, which occurs on December 31, 2042 (see Series D Agreement summary below); and

c. Like all of the financing documents, the MTA establishes a “firewall” between the SR 125 project and the rest of SANDAG’s operations. All of the financing documents specifically provide that SANDAG’s obligations are “non-recourse” and that the holders of all the financial obligations related to the Project can only look to the value of the Project itself for repayment in the event of a default.

Remaining issues under negotiation concerning the MTA include whether SANDAG will be permitted to issue additional variable rate debt junior to the TIFIA loan, but senior to the Series D obligations.

TIFIA Loan Agreement

SANDAG will assume the existing TIFIA loans on the SR 125 in the total amount of $92,534,400 via the Second Amended and Restated TIFIA Loan Agreement (Attachment 3). The loan is divided into three separate notes or “tranches,” each of which has different principal amounts, interest rates and/or payment commencement and due dates. The loans are secured by first liens on the Project Revenue, the contract rights related to the Project (such as under the Franchise Agreement), and a deed of trust on the leasehold interest in the roadway’s right of way. The loan agreement contains an amortization schedule under which the tranches are repaid in advance of their maturity dates. This amortization schedule provides the baseline for the Rate Covenant described in the MTA discussion and is the only permitted prepayment (absent TIFIA consent) of the existing TIFIA loan. If SANDAG does not meet the amortization schedule, SANDAG is NOT in default under the loan agreement. Rather, SANDAG can only default on its payment obligations if: (1) it does not pay a tranche by its stated maturity date, or (2) SANDAG fails to operate SR 125 in compliance with the Project Life Coverage Ratio (“PLCR”). The PLCR consists of the Present Value of Projected Net Revenues, plus the Fund Balances in Year of Calculation divided by the TIFIA Loan Balance.

Note that like all of the financing documents related to the SR 125 asset purchase, the legal team is endeavoring to ensure that the TIFIA Loan Agreement provides that SANDAG’s obligations are “non-recourse.” This means that SANDAG assets unrelated to the Project, such as TransNet revenues would not subject to liability such that TIFIA could only look to the value of the Project itself for repayment in the event of a default.

There are a few remaining issues being negotiated with TIFIA. These include, whether a “SANDAG knowledge” qualification in certain representations and warranties should be inserted in Section 13 to account for the fact that SANDAG is buying the project from SBX; determination of conditions under which SANDAG can issue additional project debt junior to the TIFIA loans (Section 15(a)); modification of indemnity obligations to provide that SANDAG’s liability is limited to its interest in the Project (Section 16); inclusion of an express non-recourse provision in the agreement recognizing that SANDAG’s liability for any obligation under the agreement is limited to SANDAG’s interest in the Project; and determining which of TIFIA’s closing and annual loan expenses SANDAG will reimburse (Section 27).
In addition, TIFIA is requiring SANDAG to obtain a rating from the Fitch rating agency for this loan. The rating results were not available at the time this report was mailed out. An update will be provided to the Board at this meeting.

TransNet Promissory Note

The TransNet loan documentation is in the form of a Promissory Note and is provided as Attachment 4 to this report. The terms of the Promissory Note call for SANDAG to borrow the Principal Amount of $255,749,000 from the San Diego County Regional Transportation Commission. Of this amount $252,749,000 will come from TransNet bond proceeds and $3,000,000 will come from TransNet cash on hand to cover initial operating and maintenance costs for the toll road. As required by the TransNet Ordinance, SANDAG will be required to ensure the TransNet revenues are made whole. Therefore, the interest rate SANDAG will be charged is 4.25 percent based on recent TransNet borrowing history. The Promissory Note is a permitted subordinated debt under the bond transaction documents for TransNet. The Promissory Note requires that the proceeds of the Promissory Note only be used for costs associated with the SR 125 toll road franchise.

Repayment of the Promissory Note will be made in accordance with the Payment Schedule (Exhibit A to Attachment 4), in the order of distribution described above for the cascade of Project funds under the MTA. The Commission will have a lien (subordinate to the TIFIA Loan) against the Project Revenues until the Promissory Note is repaid. The methods of repayment are included in Section 15 of the Note, which permits repayment of the Note in whole or in part by the Commission taking action to forgive or cancel all or a portion of the Principal Amount based on one or more amendments to the TransNet Ordinance to implement an exchange of one or more projects in the TransNet Ordinance Expenditure Plan for the SR 125 Transferred Assets. Following the proposed swap, the Payment Schedule would be revised.

Series D Agreement

The Series D Agreement (Attachment 5) provides that SANDAG will pay TIFIA, to the extent of available project revenue, $1,445,850 plus interest at the rate of 14 percent per year compounded semi-annually. Payments are only due, and can only be made, after full payment of the existing TIFIA loan and full satisfaction of the TransNet loan. Any amounts remaining unpaid as of December 31, 2042, are automatically forgiven. Prepayment of the Series D Note is possible, but only at the value the Note will have on December 31, 2042. The Series D loan is secured by a third lien (behind TIFIA and TransNet) on the project revenues, but no other project assets are pledged to Series D. The only event of default is SANDAG’s failure to maintain the Toll Covenant discussed above in the MTA section. The Series D Agreement further provides that SANDAG’s obligations are “non-recourse” and that the holders of Series D can only look to the revenues of the Project itself for repayment in the event of a default.

3. Summary of Proposed Amendments to the Development Franchise Agreement

At its August 2011 meeting, the Board of Directors was provided with a memorandum of SANDAG outside counsel, Lindborg & Mazor, LLP, with an Executive Summary of the DFA (Attachment 6). As stated in the memorandum, once the DFA is assigned to SANDAG, SANDAG will have the right, and the obligation, to operate SR 125 within Caltrans’ standards until 2042 in exchange for an annual payment of $120. Caltrans is additionally entitled to a percentage of profit above 18.5 percent, after deduction of all debt repayment, maintenance, operating and required expansion costs (calculated
on the basis of annual financial reports which SBX is required to send to Caltrans). It is not likely that this provision would ever be triggered, however, since SANDAG will not operate the toll road for profit. SANDAG will have the right to set the tolls and expand the roadway, enter airspace leases, and request that Caltrans provide certain maintenance services on a reimbursement basis. SANDAG will be required to operate and maintain the toll road to Caltrans standards and maintain insurance in an amount of at least $50 million. SANDAG has budgeted for these expenses and believes it will probably be able to obtain insurance at premium amounts lower than those paid by SBX.

The DFA contains numerous cross-indemnities between SBX and Caltrans addressing a variety of potential claims based on the design, construction and operation of SR 125, the existence of hazardous materials and other situations. In general, these indemnities are even-handed and impose ultimate liability on the party causing, or responsible for, the situation underlying the claim. These indemnification provisions will apply to SANDAG as franchisee. Staff is working with its insurance broker to obtain adequate insurance at competitive premium rates to cover the various liabilities and to budget for maintenance at the standards that will be required by Caltrans.

Staff has had several meetings with Caltrans to discuss potential amendments to the provisions of the DFA. Caltrans prefers not to spend the time negotiating exact revisions to the DFA until after the sale is consummated, but is willing to sign a Letter of Intent setting forth proposed amendments to the DFA. The amended DFA would be prepared during the 90 days following the closing. The draft Letter of Intent showing the proposed amendments to the DFA is provided as Attachment 7 to this report. The main themes of the changes are to: remove moot provisions regarding the development and construction phase of the toll road, modify applicable provisions in recognition of SANDAG being a public agency versus a private sector entity like SBX, and to maintain the status quo with regard to liability.

Modeling Results

At its August 26, 2011, Board of Directors meeting, the Board authorized staff to contract with traffic and revenue consultant, Stantec, to perform additional modeling services. The results of this work have been used to propose feasible tolling alternatives for the Board’s review and to ensure that the proposed amendments to the TransNet Ordinance, which call for a “swap” of funds currently planned for I-805 improvements to instead be used for the purchase of the SR 125 assets, will not cause any new significant environmental impacts under CEQA.

1. Transportation and Financial Modeling

In order to carry out a toll reduction on SR 125, the amount of debt payments SANDAG is making on the toll road will need to be reduced. This fundamental concept is where the concept of the “swap” was derived. In other words, without the swap, toll reductions are not possible. Since SANDAG will be borrowing approximately $250 million in TransNet bond proceeds, a reduction in the TransNet loan amount (via the swap) would allow SANDAG to reduce the tolls by as much as 50 percent over time. Below is a description of the transportation and financial modeling undertaken to ensure the feasibility of purchasing SR 125.

SANDAG has contracted with Stantec to carry out the traffic and revenue analysis. Stantec’s methodology for forecasting traffic and revenue relies in part on toll diversion algorithms that it has used on dozens of tolled facilities throughout the country. Initially, these procedures and relationships were empirically developed from stated preference surveys and, as part of Stantec’s process, they have been refined and adjusted to account for the socio-economic variations of our
particular study area. These adjustments, in conjunction with the SANDAG regional transportation networks and modeling information used for the 2050 RTP, allow Stantec to provide reasonable estimates of different tolling alternatives for the SR 125 Toll Road. To prepare for analyzing the traffic and revenue impacts from different tolling alternatives it was necessary to assess current traffic conditions and the market area to develop a “baseline” to compare the alternatives against. These steps are summarized below.

Current Conditions – Traffic Counts

To refine the traffic model Stantec conducted a comprehensive, independent traffic counting program throughout the South Bay on Caltrans, local facilities, and the toll road during the week of March 7, 2011, with the intent to provide a more focused and accurate picture of current traffic related to the SR 125 study area. Stantec used two counting techniques. The first relied on radar technology to collect traffic volumes, average speed, vehicle class information by travel lane, and detailed congestion analysis. Traditionally, this information would be collected by Caltrans through the PeMS detection system, but Caltrans does not have any detection equipment on the toll road facility. The second technique relies on anonymously tracking personal Bluetooth devices (e.g., cellphones, handheld videogames, iPods) to collect detailed origin-destination information; this information is extracted to assess the corridor travel patterns throughout the South Bay related to SR 125.1

Current Conditions – Market Analysis

One of Stantec’s initial tasks was to review existing SANDAG modeling related to toll road usage and toll sensitivity. Using SANDAG transportation model outputs, Stantec analyzed the trip patterns on SR 125 and I-805 and identified four major geographic market areas that are responsible for generating most of the trips on the toll road, identified as follows:

1. Local SR 125: area of 1 to 2 miles around the middle of the SBX facility;
2. Local West: area immediately west of the “Local SR 125”;
3. Local North: area north of the “Local SR 125”; and
4. Otay Mesa: area along SR 905 south of SR 125 including the border crossing

An analysis of these market areas shows that a majority of the traffic using the southern section of SR 125 originates or ends in the Local SR 125 area with less than half of the trips on the southern portion of the toll road ever reaching SR 54. The analysis also indicates nearly half of all trips between the Otay Mesa area and the Local SR 125 area will drive 10 miles on SR 905 and local roads to avoid paying the toll on SR 125.

On the northern section of the toll road, the majority of traffic is from the Local SR 125 area to points north of the toll road. In addition, approximately 17,000 trips each day travel west using local

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1 The anonymous nature of this technique is due to the use of MAC addresses as identifiers. MAC addresses are not associated with any specific user account (as is the case with cell phone probes) or any specific vehicle (as with automated toll tags). The MAC address is not linked to a specific person through any type of central database, thus minimizing privacy concerns. MAC addresses are assigned at the Bluetooth electronic chip manufacturers, and are not tracked through the sales chain. Additionally, people can control whether their Bluetooth enabled device can be detected. Users concerned with privacy can set options in their device (referred to as ‘Discovery Mode’ or ‘Visibility’) so that the device will not be detectable. Traffax Inc. implements Bluetooth traffic monitoring technology in full compliance with the IEEE international standards. The method of detection and information recorded does not circumvent any security or privacy protocols.
arterials and travel north on I-805 compared to 2,200 trips northbound on the SR 125 northern section. This 10 percent to 20 percent capture rate for the toll road is far below expectations for local trips using the north end of the toll road, which reflects potentially both the toll avoidance as well traffic congestion on SR 54.

The analysis shows that the SBX facility is only capturing a small portion of the potential roadway users. There is a clear potential for additional traffic to shift from both local roads and the highways to the SBX facility at lower toll levels.

Baseline Traffic and Revenue

The baseline traffic and revenue information serves three important purposes. First, it provides information to be used in analyzing the potential revenue generating capacity of the roadway, which directly impacts the value of the asset. Second, the baseline information provides a basis against which comparisons can be made to judge the tolling alternatives described in detail in the next section. The key statistics used for these comparisons are total potential revenue, toll transactions, average daily traffic on key segments, and level of service on parallel facilities. Finally, the baseline information most closely reflects traffic and revenue on the toll road under continued private ownership for the duration of the existing franchise agreement.

The baseline traffic and revenue base year and projections use the same networks as the 2050 Regional Transportation Plan. Included in the baseline, for example, is the addition of four lanes (2 HOV and 2 Managed Lanes) and a Direct Access Ramp on I-805 between SR 905 and SR 54 at a cost of $668 million; these improvements, scheduled to be fully completed by 2030, account for the LOS improvement from F to E shown in Table 1 below, a summary of the baseline traffic and revenue information. The toll rate schedule for SR 125 under this baseline was provided by SBX. The 2010 base year traffic and revenue information for all tolling alternatives, including the baseline, is the same, and comes from actual (observed) data.

Table 1: 2050 RTP Baseline

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<thead>
<tr>
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<th>SR 125</th>
<th>I-805</th>
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<tbody>
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<td></td>
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<td>2035</td>
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<td>Total Daily Toll Transactions</td>
<td>23,100</td>
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<td>Potential Annual Revenues ($1000)</td>
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<td>A</td>
<td>B</td>
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<tr>
<td>Current &amp; Forecasted Average Toll Rate per Transaction</td>
<td>$2.50</td>
<td>$6.20</td>
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2 The annual toll revenues based on the Stantec traffic forecasts are expected to grow at a compounded average growth rate (CAGR) near 5 percent. This estimate is lower than the 7 percent annual growth rate estimated by SBX traffic consultant during 2010. The Stantec estimated growth relies on a roughly equal growth in tolls and traffic over the study period.
Toll Rate Reduction Simulations and Monitoring Procedure

At the August 26 Board of Directors meeting staff presented a range of alternatives available to finance the purchase of SR 125; and as a further step, staff narrowed the choices down to two options: Option A, a toll revenue bond; and Option B, a TransNet loan/swap with a 50 percent toll reduction. The Board’s discussion focused on Option B because it would allow SANDAG to achieve more transportation related benefits, such as, improved mobility earlier than planned, lower program costs, and lower tolls\(^3\). The results from Option B are shown in the Table 2. Table 2 below provides some information upon which this alternative can be evaluated against the baseline, shown above. For example, under the loan/swap option daily transactions on SR 125 are projected to increase by 38 percent (58,100 vs. 42,000) compared to the baseline while annual toll revenues would decrease by 14 percent ($34,100 vs. $39,700). Also, under this option the Level of Service on I-805 is equal to the baseline (LOS E) despite having not built the two managed lanes on I-805 that are in the RTP. It is the attractiveness of SR125 at the lower toll that is responsible for the LOS E on I-805. This shift in traffic patterns would take advantage of the available capacity on SR 125 avoiding more the costly improvements to achieve the same LOS.

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<td>Current &amp; Forecasted Average Toll Rate per Transaction</td>
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However, some SANDAG Board members expressed concern over reducing tolls 50 percent (maximum reduction of range 40 percent to 50 percent) based on a model simulation. To address this concern staff requested Stantec simulate a range of toll reductions from a minimum of 25 percent to a maximum of 50 percent to evaluate the traffic response to lower tolls. The 25 percent reduction represents how far the toll rate can be lowered if there is no additional traffic.

\(^3\) The TransNet project swap reduces the debt outstanding on SR 125 from $344.5 million to $152 million; this smaller debt allows tolls to be lowered (estimates range between 40% to 50%) and the lower tolls attract users reducing congestion on I-805 and improving the level of service to LOS E from LOS F some 20 years earlier than planned.
attracted to the toll road after the toll rate has been lowered. The simulated toll reduction would target the mid-point of the range (45%) and occur in a sequence of steps over a period of time. This transition period would provide the SANDAG Board of Directors with the opportunity to manage the toll reduction and ensure that the model estimates of toll reduction can be achieved in practice; guarding against the possibility of having to raise toll rates because traffic and toll revenues did not respond the way the model estimated.

In addition, during the November 18 meeting the Board directed staff to return with a procedure that would monitor the transition period. The monitoring process would provide the Board with actual, observed data on revenue and traffic to compare against the model estimates, so a determination could be made as to whether the expected reaction to the toll reduction is in line with the actual reaction. The monitoring process would include not only toll revenue and traffic levels on SR 125 but also traffic levels on I-805 to determine if the expected level of service improvement expected is achieved.

TransNet Loan/Swap with Managed Toll Reductions

The TransNet Loan/Swap option adjusts the baseline assumptions in two ways: first, reducing tolls and second, only two of the four HOV/Managed Lanes (currently in the 2050 RTP) on I-805 south of SR 54 would be constructed. The simulated toll rate reduction is 45 percent (mid-point of the target range). The first toll rate reduction under SANDAG management is simulated to occur during the first year, a reduction of one-half the target rate (22.5%). On one hand, if toll revenue declines by the same proportion that the toll rate was reduced (the average toll rate is reduced by 22.5 percent results the same percent decline in toll revenue) there still would be sufficient revenue to cover the toll road’s financial obligations, however, no additional toll rate reductions would be possible. On the other hand, provided that traffic and revenue respond as expected to the reduced toll rate, after a transition period, the toll rate would continue to be reduced each year until the targeted 45 percent toll reduction is hit. This transition period would be specified by the SANDAG Board. In Stantec’s experience it takes time for the full effect of each toll rate reduction to manifest itself on the toll road as well as the entire transportation network in the market area. Stantec suggests allowing six to twelve months between toll rate changes; providing sufficient time for the change in toll rates to settle and for staff to analyze the effect and verify that the toll road revenue and traffic level of service is in line with the model’s estimates. The expected results from an approach like this are shown in the graph below. The graph illustrates how the toll rate reduction could be managed by SANDAG over time. The graph represents a 45 percent toll reduction that is implemented over a three-year time period.
2. **CEQA**

The proposed swap will require an amendment to the TransNet Ordinance, which would be scheduled for first and second readings between January and March 2012. The amendment would modify the Expenditure Plan in the TransNet Ordinance such that certain improvements on I-805, valued at approximately $192 million, would be removed from the Expenditure Plan based on modeling results confirming that the congestion relief on I-805 resulting from toll reductions on SR 125 would obviate the need for the managed lanes on I-805. The dollar value of these improvements would then be deducted from the loan amount from TransNet and reduce SANDAG’s debts on the toll road.

The Environmental Impact Report (EIR) prepared for the 2004 TransNet Ordinance is the same EIR that was used for the 2003 Regional Transportation Plan (RTP). Since the project analyzed under that EIR included the improvements to I-805 that would be removed via the swap, it is that EIR that will need to be updated to modify the project description. Because the modeling results establish that removal of the I-805 improvements and reduction of the toll will not cause a negative impact to the level of service on I-805 or SR 125, an addendum to the 2003 RTP EIR is proposed in order to satisfy CEQA requirements.

**SBX Operational Services**

The SANDAG and SBX negotiating teams have begun circulating drafts of the terms and conditions under which SBX would continue to provide services to operate the toll road for a six month transition period (the “Transition Services Agreement” or “TSA”). Under the TSA, SBX employees will continue to operate the toll road with oversight from SANDAG management. SBX has agreed to provide these services, without mark-up to SANDAG, which will help ensure a seamless transition for

---

4 The 2010 value of the two reversible HOV lanes project on I-805 is $212 million. This was adjusted to $192 million to account for the expenditure of $20 million for environmental and design work completed to date.
customers of the toll road. Other benefits to this approach include the additional time for SANDAG management to understand the operational issues of the toll road, additional time for SANDAG staff to obtain training from and ask questions of SBX management, and more time to negotiate a favorable contract with a third party contractor to provide operational services after the transition period. The Board is asked to authorize the Executive Director to execute a TSA with SBX on terms that benefit SANDAG and that are consistent with the objectives described above.

Next Steps

At the December 16 meeting staff will have substantially completed all of the purchase and financial transaction documents, and will likely be requesting that the Board take action on the following items: approval of a specific financing option and scheduling of a first and second reading of a TransNet Ordinance amendment; approval of the purchase and financial transactions documents; approval for the Executive Director or his designee to execute all documents necessary to close the purchase and financing transactions; approval of the CEQA findings; approval of the tolling scheme, and an amendment to the 2012 Budget related to SR 125 functions. Meeting this schedule will allow the transaction to close on or before the December 21, 2011, scheduled closing date.

GARY L. GALLEGOS
Executive Director

Attachments: 1. Asset Purchase and Sale Agreement
   2. Master Trust Agreement
   3. Second Amended and Restated TIFIA Loan Agreement
   4. TransNet Promissory Note (with Exhibit A)
   5. Series D Agreement
   6. Memorandum re: SBX Franchise Agreement: Executive Summary
   7. Letter of Intent re: Proposed Amendments to DFA

Key Staff Contacts:  Julie Wiley, (619) 699-6966, jwi@sandag.org
                      Marney Cox, (619) 699-1930, mco@sandag.org
ASSET PURCHASE AND SALE AGREEMENT

by and between

SOUTH BAY EXPRESSWAY, LLC

and

SAN DIEGO ASSOCIATION OF GOVERNMENTS

Dated as of [__________], 2011
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ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT, dated as of [____], 2011 (this “Agreement”), is made and entered into by and between, South Bay Expressway, LLC, a Delaware limited liability company (the “Seller”), and the San Diego Association of Governments, a California public agency (the “Purchaser”). The Seller and the Purchaser are sometimes herein referred to, collectively, as “Parties” and, individually, as a “Party”.

W I T N E S S E T H:

WHEREAS, pursuant to the Development Franchise Agreement for a Privatized Transportation Project (as amended, the “Franchise Agreement”) dated January 6, 1991 between California Transportation Ventures, Inc., a California corporation (“CTV”), and the State of California, Department of Transportation (“Caltrans”), as assigned by CTV to the Seller, the Seller has developed and constructed and currently operates a divided, limited access toll road in San Diego County, California, which is approximately 9.2 miles (15 kilometers) long, known as the South Bay Expressway (the “Project”); and

WHEREAS, the Parties desire to enter into this Agreement, pursuant to which, among other things, the Seller shall sell to the Purchaser, and the Purchaser shall purchase from the Seller, all of the Seller’s right, title and interest in and to the Franchise Agreement, the Project and other Transferred Assets (as defined herein), and the Purchaser shall assume from the Seller and, thereafter, pay, discharge and perform the Assumed Liabilities (as defined herein).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For the purposes of this Agreement, capitalized terms used herein shall have the meanings set forth in Exhibit A.

Section 1.2 Other Definitional Provisions.

(a) The words “hereof”, “herein”, and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.
(c) Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”.

(d) The terms “day” and “days” mean and refer to calendar day(s).

(e) The terms “year” and “years” mean and refer to calendar year(s).

(f) Any reference in this Agreement to $ shall mean United States dollars.

(g) Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(h) All Article, Section and Exhibit references herein are to Articles, Sections and Exhibits of this Agreement, unless otherwise specified.

(i) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule to which such disclosure may apply to the extent that the nature and scope of such disclosure makes clear on its face the relevance of such disclosure to such other Schedule(s). Disclosure of any item or matter on any Schedule shall not constitute an admission or indication that such item or matter is material or would have a Seller Material Adverse Effect. No disclosure on a Schedule relating to a possible breach or violation of any Contract, Law or Order shall be construed as an admission or indication that breach or violation exists or has actually occurred. The disclosure of a particular item of information in a Schedule shall not be taken as an admission by the Party making such disclosure that such disclosure is required to be made. Any capitalized terms used in any Schedule or Exhibit, but not otherwise defined therein, shall be defined as set forth in this Agreement.

(j) This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

(k) Unless specifically referenced otherwise herein, all time references in this Agreement shall be to California time.
ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale of Transferred Assets; Assumption of Assumed Liabilities.

(a) Transferred Assets. On the terms and subject to the conditions set forth herein and subject to Section 2.1(b), at the Closing, the Seller shall sell, convey, assign, transfer and deliver to the Purchaser, and the Purchaser shall purchase, acquire and accept from the Seller, free and clear of any and all Liens (other than Permitted Liens), all right, title and interest in and to the Transferred Assets as in existence on the Closing Date.

(b) Retained Assets. Notwithstanding anything herein to the contrary, the Seller shall retain all of its existing right, title and interest in and to any and all assets that are not Transferred Assets, and there shall be excluded from the sale, conveyance, assignment or transfer to Purchaser, and the Transferred Assets shall not include, the following assets whether tangible or intangible, real, personal or mixed (collectively, the “Retained Assets”):

(i) all cash and cash equivalents (including all cash and cash equivalents on deposit in bank accounts maintained by the Collateral Agent and by Wells Fargo Bank, National Association), marketable securities, prepaid expenses, advance payments, surety accounts, deposits and other similar prepaid items, payments in transit and undeposited funds;

(ii) all of Seller's accounts and notes receivable as of 11:59 p.m. on the Closing Date (which shall include payments and claims for payments for any trip and toll violation that took place on or with respect to the Project at any time prior to such time;

(iii) all of Seller's rights under Contracts that are not Assigned Contracts;

(iv) all rights of the Seller to the real property described on Schedule 2.1(b)(iv);

(v) all Tax returns of the Seller and all books and records (including working papers) related thereto, and any books and records which the Seller is required by Law to retain (the “Retained Books and Records”), provided that the Seller shall, upon the request of the Purchaser, provide the Purchaser with copies of such books and records pursuant to Section 7.1;

(vi) the vehicle provided by the Seller for use by Mr. Greg Hulsizer pursuant to Section 6.1 of the Employment Agreement, effective January 1, 2011, between the Seller and Mr. Greg Hulsizer;

(vii) all causes of action, lawsuits, judgments, claims, refunds or adjustments, rights of recovery, rights of set-off, rights of recoupment, demands and any other rights or claims of any nature with respect to the Retained Assets, (y) all other claims, refunds or adjustments, rights of recovery, rights of set-off and rights of recoupment relating to the Transferred Assets relating to acts or omissions that occurred prior to the Closing Date, and
(z) any and all defenses and counterclaims relating to acts or omissions under the Assigned Contracts that occurred prior to the Closing Date;

(viii) any of the rights of the Seller under this Agreement (or any agreements between the Seller and the Purchaser entered into on or after the date of this Agreement), other than rights transferred to the Purchaser pursuant hereto;

(ix) all rights to claims, refunds or adjustments with respect to the Retained Assets, all other refunds or adjustments relating to any proceeding before any Governmental Authority relating to the period prior to the Closing and all rights to insurance proceeds or other insurance recoveries (i) that relate to, or are reimbursement for, Seller's expenditures occurring prior to the Closing Date that result from the repair or replacement of damaged or destroyed property or that relate to events, circumstances or occurrences prior to the Closing Date (which for the avoidance of doubt shall include the proceeds of the Seller’s directors and officers insurance policy) or (ii) to the extent relating to Retained Assets or Excluded Liabilities;

(x) all insurance policies, other than assignable rights of the Seller, if any, under Commercial General Liability policies numbers 3676496-00 and 3676623-00 issued by Zurich American Insurance Company;

(xi) any and all tax refunds for the periods prior to the Closing Date;

(xii) all rights to recovery of collateral given to obtain the Existing Letters of Credit and rights to recover amounts drawn or paid on the Existing Letters of Credit;

(xiii) the Transferred Assets Purchase Price; and

(xiv) all rights, claims and causes of action relating to any Retained Asset within clauses (i) through (xiii) of this Section 2.1(b) or any Excluded Liability.

(c) Assumed Liabilities. At the Closing, on the terms and subject to the conditions set forth in this Agreement, the Purchaser shall assume, effective as of the Closing, and shall timely perform and otherwise discharge in accordance with their respective terms, the following Liabilities (collectively, the “Assumed Liabilities”): (i) the obligations of the Seller under the Assigned Contracts that, by the terms of such Assigned Contracts, arise after Closing, relate to periods following the Closing and are to be observed, paid, discharged or performed, as the case may be, in each case at any time after the Closing Date, but only to the extent that such Liabilities thereunder were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing; (ii) Liabilities and obligations of the Seller under the Permits that, by the terms of such Permits, arise after Closing, relate to periods following the Closing and are to be observed, paid, discharged or performed, as the case may be, in each case at any time after the Closing Date but only to the extent that such Liabilities and obligations thereunder were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing; (iii) Liabilities and obligations for real estate Taxes and assessments and any other Taxes relating to the Transferred Assets incurred after the
Closing Date; and (iv) all obligations arising from or relating to the Amended and Restated Loan Documents, as amended and restated by the Amended and Restated TIFIA Loan Documents.

(d) Customer Deposits and Liabilities. The Parties acknowledge that (i) any and all cash deposits in possession of the Seller as of 11:59 PM of the day immediately preceding the Closing Day representing prepaid tolls, transponder deposits, or other prepaid amounts by the customers of the Seller shall be transferred to the Purchaser on the Closing Date in connection with the Closing, and (ii) any and all Liabilities to the customers of the Seller related to such cash deposits shall constitute Assumed Liabilities and shall be deemed assumed by the Purchaser as of the Closing, without the need for any additional act on either Party’s part.

Section 2.2 Excluded Liabilities. Except for the Assumed Liabilities, the Purchaser will not assume, perform or be liable for, and the Seller shall retain and discharge in accordance with their respective terms, all Liabilities of the Seller that are not expressly Assumed Liabilities (the “Excluded Liabilities”), including, but not limited to the following liabilities of the Seller:

(a) all liabilities arising out of or in connection with Retained Assets;

(b) except as otherwise provided in Section 2.1, all liabilities for Taxes with respect to (i) the Seller’s assets, including, but not limited to Transferred Assets, Assumed Liabilities and operations relating to all taxable periods (or portions thereof) ending on or prior to the Closing Date; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby; or (iii) other Taxes of Seller of any kind or description that becomes a Liability of Purchaser under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law;

(c) except as otherwise provided in Section 2.1, all liabilities arising out of, relating to or with respect to the Transferred Assets for all periods up to and including the Closing Date, including but not limited to all claims for injury to a person or property that arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Seller, or by reason of the improper operation or maintenance of the Transferred Assets;

(d) all Liabilities in respect to any pending or threatened action arising out of, relating to or otherwise in respect to the operation or maintenance of the Transferred Assets to the extent such action relates to such operation or maintenance on or prior to the Closing Date;
(e) all Liabilities of Seller arising under or in connection with any express or implied employment contract, or benefit plan providing benefits, to any present or former employee of Seller on or prior to the Closing Date;

(f) all Liabilities of Seller for any present or former employees, agents or independent contractors of Seller, including, without limitation, all Liabilities associated with any claims for wages or other benefits, workers' compensation, severance, retention, termination or other payments arising prior to the Closing Date, whether based on contract, tort or any other cause of action;

(g) all Liabilities of Seller relating to or arising from unfulfilled commitments that do not constitute part of the Transferred Assets and are not assumed by the Purchaser pursuant to this Agreement;

(h) all Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same) arising prior to the Closing Date;

(i) all Liabilities under any contracts (i) other than an Assigned Contract; or (ii) to the extent such Liabilities arise out of or relate to a breach by Seller of any Assigned Contract prior to the Closing Date;

(j) all Liabilities associated with debt, loans or credit facilities of Seller owing to financial institutions prior to the Closing Date (except for all obligations arising from or relating to the Amended and Restated Loan Documents, as amended and restated by the Amended and Restated TIFIA Loan Documents);

(k) all Liabilities arising out of, relating to, in respect of or in connection with the failure by Seller to comply with any Law or Governmental Order;

(l) all Environmental Liabilities and Obligations relating to the Transferred Assets or any part thereof existing on or prior to the Closing Date;

(m) except as otherwise provided in Section 2.1, all accounts payable existing on the Closing Date (including, for the avoidance of doubt, (i) invoiced accounts payable and (ii) accrued but un invoiced accounts payable);

(n) all Liabilities of Seller arising out of, relating to, in respect of or in connection with any representation, warranty or covenant of Seller contained in this Agreement or in any document delivered pursuant hereto; and
(o) all Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement and the transactions contemplated hereby, including, without limitation, fees and expenses of Seller’s counsel, accountants, consultants, and advisors.

ARTICLE III

PURCHASE PRICE

Section 3.1 Purchase Price. The aggregate consideration for the Transferred Assets (the “Transferred Assets Purchase Price”) shall consist of the following:

(a) an amount in cash equal to $[239,965,600] (the “Closing Date Payment”);

(b) a promissory note, substantially in the form attached hereto as Exhibit E (the “Series D Promissory Note”), in the principal amount of $1,445,850;

(c) an amount in cash equal to $7,500,000 (the “Escrow Funds”), to be deposited with the Escrow Agent as provided in Section 3.6; and

(d) assumption of the Seller’s indebtedness to the United States in the amount of $[92,534,400], pursuant to the terms of the Amended and Restated TIFIA Loan Documents.

Section 3.2 Payment of Purchase Price. At the Closing, the Purchaser shall (a) make the Closing Date Payment by wire transfer of immediately available funds in the amount of the Closing Date Payment to an account designated in writing by the Seller, (b) deposit the Escrow Funds with the Escrow Agent, and (c) execute and deliver to the TIFIA Lender the original Series D Promissory Note and counterparts of each of the Amended and Restated TIFIA Loan Documents to which the Purchaser is a party (together with all of the documents required for the closing thereof by the terms thereof).

Section 3.3 Allocation of Purchase Price. Within sixty (60) days after the date hereof, the Seller shall prepare and deliver to the Purchaser an allocation of the Transferred Assets Purchase Price among the Transferred Assets in accordance with Section 1060 of the Code (the “Asset Acquisition Statement”). The Seller shall prepare and deliver to the Purchaser from time to time revised copies of the Asset Acquisition

1 The amount represents the cash portion of the Purchase Price if SANDAG does not elect to include the Excess Properties currently listed in draft Schedule 2.1(b)(iv) within the Transferred Assets, less the Escrow Funds ($7,500,000). If SANDAG elects to include the Excess Properties within the Transferred Assets, the purchase price (including the cash portion) is to be increased by $3,000,000. In addition, such amount is subject to adjustment for any changes in the TIFIA Loan Amount.

2 Subject to adjustment for repaid principal and accrued and unpaid interest through the Closing Date.
Statement (the “Revised Statement”) to report any matters on the Asset Acquisition Statement that need updating. The Purchaser shall have thirty (30) days after receipt of the Asset Acquisition Statement or, if applicable, the Revised Statement, to notify the Seller in writing of any objections setting forth the grounds for the Purchaser’s disagreement. If the Purchaser does not object in writing during such 30-day period, the Asset Acquisition Statement or, if applicable, the last Revised Statement, shall become final and binding on all Parties. If Purchaser notifies Seller in writing that Purchaser objects to one or more items reflected in the Asset Acquisition Statement or, if applicable, the Revised Statement, Seller and Purchaser shall negotiate in good faith to resolve such dispute. If Seller and Purchaser are unable to resolve such dispute within thirty (30) days, such dispute shall be referred to an independent third-party mediator hired to assist the Purchaser and Seller in resolving the dispute. The fees and expenses of such mediator shall be borne equally by Seller and Purchaser. Once an agreement is reached, the Asset Acquisition Statement or, if applicable, the last Revised Statement, shall become final and binding on all Parties (the “Final Allocation”). The Seller (and the Purchaser, if required by Applicable Law) hereto agree to file IRS Form 8594 consistent with the Final Allocation and in accordance with Section 1060 of the Code. No Party shall take any position inconsistent with the Final Allocation on any Tax Return or in any discussion with or proceeding before any Governmental Authority or otherwise.

Section 3.4 Withholding Tax. The Purchaser shall be entitled to deduct and withhold from the Purchase Price all Taxes that the Purchaser may be required to deduct and withhold pursuant to Applicable Law. All such withheld amounts shall be treated as delivered to the Seller hereunder.

Section 3.5 Pre-Closing Toll Proceeds. The Parties acknowledge that the Seller is entitled to proceeds of the collection of the tolls and related charges and penalties for the tolls and toll violations related to the Project which have been or should have been paid to the Seller prior to the Closing Date (the “Pre-Closing Toll Proceeds”) to the extent collected by or on behalf of the Seller during a six-month period after the Closing Date. During such six-month period, the Seller shall be entitled to enforce the collection of the Pre-Closing Toll Proceeds in accordance with Applicable Law, including by engaging a third party for such services, provided that doing so comports with Applicable Law. Upon the termination of such six-month period, the Pre-Closing Toll Proceeds which have not been collected by or on behalf of the Seller shall become part of the Transferred Assets, to be assigned and transferred to the Purchaser at that time, pursuant to an assignment of an accounts receivable agreement substantially in the form attached hereto as Exhibit I.

Section 3.6 Escrow Account.

(a) At the Closing, the Purchaser shall deposit the Escrow Funds with the Escrow Agent to be held, invested, safeguarded and released pursuant to the terms of the Escrow Agreement and in accordance with Section 3.6(c).
(b) The Escrow Agreement will provide that disbursements of the Escrow Funds shall only be made in accordance with written instructions jointly signed by the Purchaser and the Seller or pursuant to a judgment or court order issued by a court of competent jurisdiction or a final arbitration award pursuant to this Agreement.

(c) In the event that the Seller becomes obligated financially to the Purchaser under this Agreement for any claims related to, arising out of, or in connection with the Excluded Liabilities (other than any claims that are then subject to a bona fide dispute), at the Purchaser’s request, the Seller shall promptly execute a joint instruction letter with the Purchaser directing the Escrow Agent to disburse Escrow Funds to satisfy such obligations. In connection with the foregoing, the Purchaser hereby acknowledges and agrees that the Escrow Funds are and shall be the Purchaser’s sole recourse for any claims related to the Excluded Liabilities. In the event that any claim becomes the subject of a bona fide dispute, the Purchaser and the Seller shall promptly execute a joint instruction letter directing the Escrow Agent to retain Escrow Funds in an amount equal to (i) the disputed amount plus (ii) the amount of $50,000, which amount shall be a liquidated sum intended by the parties to represent the reasonable fees and costs of the prevailing party in any proceeding relating to such dispute (the “Disputed Claim Escrow Amount”). The Disputed Claim Escrow Amount shall remain in escrow until such time as the dispute is successfully resolved through a written settlement agreement or adjudicated as provided in the Escrow Agreement, even if such time period extends beyond eighteen (18) months after the Closing Date. Upon the resolution or adjudication of such dispute, the Purchaser and the Seller shall jointly instruct the Escrow Agent to disburse the Disputed Claim Escrow Amount to the party designated in the written settlement agreement or the document finally resolving the adjudication to receive such funds.

(d) In the event that the Purchaser is entitled to receive Escrow Funds pursuant to Section 3.7 (other than any claim for funds that is then subject to a bona fide dispute), at the Purchaser’s request, the Seller shall promptly execute a joint instruction letter with the Purchaser directing the Escrow Agent to disburse Escrow Funds in an amount not to exceed $1,500,000 in the aggregate to satisfy such obligations. In connection with the foregoing, the Purchaser hereby acknowledges and agrees that the Escrow Funds up to such amount are and shall be the Purchaser’s sole recourse for any claims related to the IT Malfunction.

(e) On the date which is 6 months after the Closing Date, the Purchaser and the Seller shall jointly instruct the Escrow Agent to disburse to the Seller the funds, if any, on deposit in the Escrow Account in excess of (i) $5,000,000 plus (ii) an amount equal to the aggregate amount of any claims submitted by the Purchaser in accordance with clauses (c) and (d) of this Section 3.6 that remain pending at such time.

(f) On the date which is 12 months after the Closing Date, the Purchaser and the Seller shall jointly instruct the Escrow Agent to disburse to the Seller the funds, if
any, on deposit in the Escrow Account in excess of (i) $2,500,000 plus (ii) an amount equal to the aggregate amount of any claims submitted by the Purchaser in accordance with clauses (c) and (d) of this Section 3.6 that remain pending at such time.

(g) On the date which is 18 months after the Closing Date, the Purchaser and the Seller shall jointly instruct the Escrow Agent to disburse to the Seller the remaining funds on deposit in the Escrow Account less an amount equal to the aggregate amount of any claims submitted by the Purchaser in accordance with clauses (c) and (d) of this Section 3.6 that remain pending at such.

Section 3.7 IT Malfunction. The parties acknowledge and agree that, during the Transition Period, the Purchaser shall use and operate the software used by the Seller as of the Closing Date for the purpose of identifying, recording and processing of toll transactions on the Project (the “Software”) in a manner consistent with the manner of operation of the Software by the Seller prior to the Closing Date; provided that the Purchaser shall have the right to change the rate of tolls charged to the users of the Project and make any and all modifications necessary to comply with the Payment Card Industry (PCI) current standards and/or California Assembly Bill (AB) 1268 for customer privacy, but shall make no other changes relative to the operation of the Software except as may be required by law or in order to prevent an interruption in operations. For as long as the Purchaser operates the Software in a manner consistent with the preceding sentence, in the event of any malfunction of the Software or an identified need to modify the software in order to comply with PCI current standards or AB1268 (collectively, the “IT Malfunction”) resulting in an inability by the Purchaser to identify, record or process toll transactions on the Project during the Transition Period at a rate of identification, recording and processing over the term of the Transition Period equal to ___%, or as necessary to modify the Software during the Transition Period to address the PCI and AB1268 requirements, the Purchaser shall be entitled to receive Escrow Funds up to a maximum limit of $1,500,000 to reimburse the Purchaser for the actual costs and expenses of addressing such IT Malfunction. The Purchaser shall use its reasonable efforts to mitigate the effects of any such IT Malfunction where the Purchaser seeks to utilize any of the Escrow Funds. Such reimbursement will not be available in the event that the cause of the IT Malfunction is not directly attributable to the Software or the PCI and AB1268 standards and requirements, or for any indirect or consequential damages (excluding loss of toll revenues) resulting from any such IT Malfunction. Under no circumstances shall the Purchaser be entitled to any remedy from the Seller (relating to the Escrow Funds or otherwise), nor shall the Seller have any liability to the Purchaser, with respect to any IT Malfunction that occurs after the Transition Period. Nothing herein shall preclude the Purchaser from a continuing use of the Escrow Funds after the Transition Period for an IT Malfunction identified prior to the termination of the Transition Period up to the identified maximum limit.
ARTICLE IV

CLOSING AND TERMINATION

Section 4.1 Time and Place of Closing. The closing of the purchase and sale of the Transferred Assets and the assumption of the Assumed Liabilities provided for in Article II (the “Closing”) shall take place at the offices of the Purchaser at 401 B Street, Suite 800, San Diego, CA 92101 at 10:00 a.m. local time, on the second (2nd) Business Day after the conditions to Closing set forth in Article IX (excluding conditions that, by their terms, cannot be satisfied until the Closing) have been satisfied (or waived by the Party entitled to waive such condition), or at such other place, date and time as the Parties may agree (“Closing Date”).

Section 4.2 Termination of Agreement. This Agreement may be terminated prior to the Closing Date as follows:

(a) At any time prior to the Closing Date by the joint written consent of the Seller and the Purchaser;

(b) By either the Seller or the Purchaser if the Closing has not occurred on or before December 31, 2011 (as such date may be extended by written agreement of the Parties, the “Outside Date”); provided, however, that the terminating Party is not in breach of its obligations hereunder in any material respect;

(c) By either the Seller or the Purchaser, if there shall be any Applicable Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited (and such Law is not overturned or otherwise made inapplicable to the transactions contemplated hereby within a period of one hundred twenty (120) days) or if an Order is entered by a Governmental Authority of competent jurisdiction having valid enforcement authority permanently restraining, prohibiting or enjoining either Party from consummating the transactions contemplated hereby and such Order shall become final and non-appealable;

(d) By the Purchaser, so long as the Purchaser is not then in breach of its obligations hereunder in any material respect, (i) upon a material breach of any covenant or agreement of the Seller set forth herein; (ii) if any representation or warranty of the Seller shall have been or becomes untrue in any material respect, in each case such that the conditions set forth in Section 9.2(a) or Section 9.2(b), as the case may be, would not be satisfied and such breach or untruth cannot be cured by the Outside Date; and (iii) if a Seller Material Adverse Effect shall have occurred after the date of this Agreement.

(e) By the Seller, so long as the Seller is not then in breach of its obligations under this Agreement in any material respect, (i) upon a breach of any covenant or agreement of the Purchaser set forth in this Agreement, or (ii) if any representation or warranty of the Purchaser shall have been or becomes untrue, in each case such that the conditions set forth in Section 9.3(a) or Section 9.3(b), as the case may
be, would not be satisfied and such breach or untruth cannot be cured by the Outside Date.

Section 4.3  Effect of Termination. No termination of this Agreement pursuant to Section 4.2 shall be effective until notice thereof is given to the non-terminating Party specifying the provision hereof pursuant to which such termination is made. If validly terminated pursuant to Section 4.2, this Agreement shall become wholly void and of no further force and effect without liability to the Purchaser or the Seller, or any of their respective Representatives, and each shall be fully released and discharged from any Liability or obligation under or resulting from this Agreement and the Purchaser shall have no other remedy or cause of action under or relating to this Agreement or any Applicable Law including for reimbursement of expenses, except that the obligations of the Parties under Sections 7.5 and 7.6 and Article XII of this Agreement shall remain in full force and effect.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller hereby represents and warrants to the Purchaser as follows:

Section 5.1  Organization and Good Standing. The Seller is an entity duly organized, validly existing, in good standing and duly qualified to transact business under the laws of the jurisdiction in which it was formed, and is duly qualified or licensed to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, and the Seller has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

Section 5.2  Authorization of Agreement. The Seller has the requisite power and authority to execute this Agreement and the Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Transaction Documents by the Seller, the performance by the Seller of its obligations hereunder and thereunder and the consummation by the Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Seller. This Agreement and the Transaction Documents have been duly executed and delivered by the Seller and, assuming due execution and delivery by the Purchaser, constitute valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms.

Section 5.3  No Violation; Consents

(a) Except as set forth on Schedule 5.3(a) and subject to receiving any consents or waivers referred to thereon or in Section 5.3(b), the execution and delivery by the Seller of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any
provision of the constituent documents of the Seller, (ii) conflict with, require the consent of a third party under, violate, require or accelerate the time of any payment by the Seller to any Person under, result in the breach of, constitute a default under, or give rise to any right of acceleration, cancellation or termination of any material right or obligation of the Seller under, any material Contract or other instrument to which the Seller is a party or by which the Seller or any of its properties or assets are bound, (iii) violate any Order of any Governmental Authority to which the Seller is bound or subject, (iv) violate any Applicable Law, or (v) except as provided for herein and for Permitted Liens, result in the imposition or creation of any Lien upon the Transferred Assets, other than, in the case of clauses (ii) through (v), any conflict, violation, breach, default, requirement for consents, rights of acceleration, cancellation, termination or Lien that would not have a Seller Material Adverse Effect.

(b) Except as set forth on Schedule 5.3(b), no Order or Permit issued by, or declaration or filing with, or notification to, or waiver or consent from any Governmental Authority is required on the part of the Seller in connection with the execution and delivery of this Agreement, or the compliance or performance by the Seller with any provision contained in this Agreement, except for any such requirements, the failure of which to be obtained or made would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect.

Section 5.4 Financial Information. The Seller has made available to the Purchaser the audited financial statements of the Seller as of and for the fiscal year ended June 2010 and shall provide to the Purchaser the audited financial statements of the Seller as of and for the fiscal year ended June 2011, and all quarterly and other interim unaudited financial statements and monthly operating reports of the Seller since that date. Such audited financial statements have been prepared in accordance with the books and records of the Seller as of the date indicated, and present fairly in all material respects the financial position of the Seller as of the date indicated, in conformity with GAAP, applied on a consistent basis throughout the relevant period (and, in the case of unaudited statements, subject to audit and year end adjustments).

Section 5.5 Title to Properties.

(a) Schedule 5.5(a) lists all leases and subleases of real property to which the Seller is a party constituting, in part, the Transferred Assets (the “Leased Real Property”). Such leases and subleases are valid, binding, enforceable and in full force and effect. The Seller has a good and marketable interest in, and enjoys quiet and undisturbed possession of, the Leased Real Property, free and clear of all Liens, except: (i) as set forth on Schedule 5.5(a) and (ii) Permitted Liens. Seller is not in breach or default under any such leases and subleases, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default. Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof. Seller has not received any written notice of a violation of governmental or regulatory laws affecting the Leased Real Property or similar matters which could reasonably be expected to materially adversely affect the ability to operate the Leased Real Property as currently
operated. True and correct copies of the leases and subleases of the Leased Real Property have been made available to the Purchaser.

(b) Schedule 5.5(b) lists all parcels of real property owned by the Seller that are necessary for the operation of the Project pursuant to the Franchise Agreement (together with all buildings, furniture, fixtures, equipment, structures and improvements situated thereon and all easements, rights-of-way and other rights and privileges appurtenant thereto owned by the Seller, collectively, the “Owned Real Property”). The Seller has delivered to the Purchaser copies of the deeds and other instruments (as recorded) by which the Seller acquired such parcels of Owned Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of Seller, if any, with respect to such parcels. Except as disclosed on Schedule 5.5(b), with respect to each parcel of Owned Real Property: (i) the Seller has good and marketable fee simple title, free and clear of all encumbrances other than Permitted Liens; (ii) the Seller has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; and (iii) there are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(c) The Seller does not hold any inchoate interest in any real property, except to the extent of any rights granted under Section 7.10 of the Franchise Agreement.

(d) The Leased Real Property and the Owned Real Property are sufficient for the continued operation of the Transferred Assets after the Closing Date in substantially the same manner as conducted prior to the Closing Date and constitutes all of the real property utilized by Seller for operation of the Project prior to Closing.

(e) Except as set forth on Schedule 5.5(e) and with such exceptions as would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect, the Seller has good and marketable title to the Transferred Assets constituting personal property, free and clear of all claims arising by, through or under the Seller, but not otherwise, other than the Permitted Liens.

Section 5.6 Intellectual Property. Except as set forth on Schedule 5.6, the Seller does not have any interest in any material patents, patent licenses, trade names, trademarks, service marks or copyrights related to the Transferred Assets. Except as set forth on Schedule 5.6, to the Seller’s Knowledge, the use of any intellectual property set forth on Schedule 5.6 by the Seller does not conflict with the asserted rights of others, with such exceptions as would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect.

Section 5.7 Material Contracts.

(a) A list of material Contracts currently in effect relating to the ownership and operation of the Transferred Assets to which the Seller is a party is set forth on Schedule 5.7(a), and consists of the following (the “Material Contracts”):
(i) all Contracts requiring a material capital expenditure or known commitment with respect to the Transferred Assets;

(ii) all Contracts under which the Seller is obligated to purchase, sell or lease real or material personal property to or from third parties;

(iii) all Contracts under which the Seller has (A) created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness for borrowed money, or (B) granted a Lien on the Transferred Assets, whether tangible or intangible, to secure such indebtedness for borrowed money, other than the Amended and Restated Loan Documents;

(iv) all Contracts between the Seller, on the one hand, and one or more of the Seller’s Affiliates, on the other hand;

(v) all Contracts establishing any joint venture, partnership, strategic alliance or other collaboration;

(vi) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(vii) all material promotional, market research, marketing, consulting and advertising Contracts;

(viii) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements), which are not cancellable without a material penalty or without more than 30 days' notice;

(ix) all Contracts with any Governmental Authority;

(x) all Contracts for the sale or transfer of any of the Transferred Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to acquire any of the Transferred Assets;

(xi) all powers of attorney with respect to any of the Transferred Assets;

(xii) all collective bargaining agreements or Contracts with any labor organization, union or association;

(xiii) all other Contracts that are material to the Transferred Assets or the operation thereof, other than the Assigned Contracts listed on Schedule 1.1(a); and

(xiv) any amendment related to any of the foregoing.

(b) Except as set forth on Schedule 5.7(b), all of the Material Contracts are in full force and effect and are the legal, valid and binding obligations of
the Seller and, to the Seller’s Knowledge, each other party thereto, with such exceptions that would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect. The Seller, and, to the Seller’s Knowledge, each other party to the Material Contracts, is not in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. To the Seller’s Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to the Purchaser. There are no material disputes pending or threatened under any Material Contract included in the Transferred Assets.

(c) Assigned Contracts. Other than as set forth on Schedule 5.7(c), neither the Seller nor, to the Seller’s Knowledge, any other party to any of the Assigned Contracts has commenced any action against any of the parties to such Assigned Contracts or given or received any written notice of any material default or violation under any Assigned Contract that was not withdrawn or dismissed. Each of the Assigned Contracts is, or will be at the Closing, valid, binding and in full force and effect against the Seller, except as otherwise set forth on Schedule 5.7(c).

Section 5.8 Litigation. Except as set forth on Schedule 5.8, there is no Action or Order pending or overtly threatened against the Seller which, if adversely determined, would have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect. To the Seller’s Knowledge, no event has occurred or circumstances exist that may give rise or serve as a basis for any such Action or Order.

Section 5.9 Compliance With Laws. Except as set forth on Schedule 5.9, and excluding any matters covered by Section 5.11, the Seller is in compliance with all Applicable Laws, except where the failure to be in compliance would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect. Except as set forth on Schedule 5.9, the Seller has all Permits from any Governmental Authority that are required to own and operate the Transferred Assets, except for those the absence of which would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect.

Section 5.10 Taxes. Except as set forth on Schedule 5.10:

(a) all material Tax Returns required to be filed by the Seller, to the extent primarily related to the Transferred Assets, on or prior to the Closing Date have been filed and all Taxes that were shown to be due on such Tax Returns have been paid, except where the failure to file such Tax Returns or to pay such Taxes would not have a Seller Material Adverse Effect. Such Tax Returns are, or will be, true, complete and correct in all respects;
(b) there are no outstanding agreements extending or waiving the statutory period of limitation applicable to any claim for, or the period for the collection or assessment or reassessment of, Taxes with respect to the Seller, to the extent related to the Transferred Assets, for any taxable period;

(c) the Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law;

(d) all deficiencies asserted, or assessments made, against the Seller as a result of any examinations by any taxing authority have been fully paid;

(e) the Seller is not a party to any Action by any taxing authority and there are no pending or threatened Actions by any taxing authority;

(f) the Seller is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2;

(g) none of the Transferred Assets is property that the Seller is required to treat as being owned by any other person pursuant to the so-called “safe harbor lease” provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended; and

(h) there are no Liens for Taxes upon the Transferred Assets, except for Permitted Liens nor is any taxing authority in the process of imposing any Liens for Taxes on any of the Transferred Assets (other than for current Taxes not yet due and payable).

Section 5.11 Environmental Matters. To the Seller’s Knowledge, except as set forth on Schedule 5.11 and except for facts, circumstances or conditions that would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect:

(a) the operations of the Seller, to the extent related to the Transferred Assets, are in compliance with applicable Environmental Laws, which compliance includes the possession and maintenance of, and compliance with, Permits required under applicable Environmental Laws, and all such Permits are in full force and effect and shall be maintained in full force and effect by the Seller through the Closing Date in accordance with the Environmental Laws. The Seller is not aware of any condition, event or circumstance that might prevent or impede, after the Closing Date, the ownership, lease, operation or use of the Transferred Assets. With respect to any such Permits, the Seller has undertaken, or will undertake prior to the Closing Date, all measures reasonably necessary to facilitate transferability of the same, and the Seller is not aware of any condition, event or circumstance that might prevent or impede the transferability of the same, and has not received any environmental notice or written communication regarding any material adverse change in the status or terms and conditions of same;
(b) the Seller, to the extent related to the Transferred Assets, is not the subject of any outstanding Order with any Governmental Authority respecting Environmental Laws;

(c) there are no investigations of the Seller, to the extent related to the Transferred Assets, or overtly threatened that could reasonably be expected to result in the Seller incurring any Environmental Liabilities and Obligations. The Seller has not received from any Person, with respect to the Transferred Assets, any: (i) environmental notice or Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date; and

(d) the Seller, to the extent related to the Transferred Assets, is not subject to any pending or overtly threatened Action, whether judicial or administrative, alleging noncompliance with or potential liability under any applicable Environmental Law.

(e) the Seller has not received a written complaint, Order, directive, Claim, citation or notice of violation from any Government Authority or any other Person with respect to any material release, spill, leak, discharge or emission of any Hazardous Materials to the air, surface water, groundwater or soil of any of the Owned Real Property or the Leased Real Property.

(f) to the Seller’s Knowledge, no Hazardous Materials have been released into the air, surface water, groundwater or soil of the Leased Real Property or Owned Real Property or into soil or groundwater of adjacent locations that would reasonably be expected to have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect, and the Seller has not received any environmental notice that any of the Transferred Assets, or any real property currently or formerly owned, leased or operated by the Seller in connection with the Transferred Assets (including soils, groundwater, surface water, buildings and other structure located thereon), has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by the Seller;

(g) none of the Transferred Assets, or any real property currently or formerly owned, leased or operated by the Seller in connection with the Transferred Assets, is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list;

(h) the Seller has not retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law as they may relate to the Transferred Assets;

(i) the Seller has provided or otherwise made available to the Purchaser any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with
respect to the Transferred Assets which are in the possession or control of the Seller related to compliance with Environmental Laws, Environmental Liabilities and Obligations, including Claims or any environmental notice or the release of Hazardous Materials;

(j) to the Seller’s Knowledge, the environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the Transferred Assets prepared by or for the Project in the last 10 years and provided to the Purchaser do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Seller makes no such representation with respect to historical data dating back further than 10 years; and

(k) The Seller is not aware of, and does not reasonably anticipate, as of the Closing Date, any condition, event or circumstance concerning the release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the Transferred Assets as currently carried out.

Section 5.12 Insurance. Set forth on Schedule 5.12 is a list of all material policies of insurance by which the Transferred Assets are covered as of the Closing Date and the claims history for the Seller for the period from January 1, 2008 and to and including the date hereof involving claims in excess of $50,000 per claim. Except as set forth on Schedule 5.12, all such policies are in full force and effect and there are no claims pending as of the date hereof under any of such policies where underwriters have questioned, denied, reserved their rights or disclaimed coverage under such policy with such exceptions that would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect. Neither the Seller nor any of its Affiliates have received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such insurance policies. All premiums due on such insurance policies have either been paid or, if not yet due, accrued. All such insurance policies (a) are in full force and effect and enforceable in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. The Seller is not in default under, and has not otherwise failed to comply with, any provision contained in any of its insurance policies. The insurance policies are sufficient for compliance with all applicable Laws and Contracts to which Seller is a party or by which it is bound. True and complete copies of the insurance policies have been made available to Purchaser.

Section 5.13 Financial Advisors. The Seller is not liable for any investment banking fee, finder’s fee, brokerage payment or other like payment in connection with the origination, negotiation or consummation of the transactions contemplated herein that will be the obligation of the Purchaser.

Section 5.14 Permits. Schedule 5.14 sets forth a complete and correct list of all material Permits which, to the Seller’s Knowledge, are required for ownership, use and
operation of the Transferred Assets. Said Permits are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any such Permit.

Section 5.15 Franchise Agreement. With respect to certain matters set forth in the Franchise Agreement (capitalized terms used in this Section 5.15, and not otherwise defined in this Agreement, have the same meaning as in the Franchise Agreement), except as set forth on Schedule 5.15:

(a) Caltrans has issued a Notice of Acceptance with respect to Transportation Facility I, dated as of November 16, 2007, and with respect to Transportation Facility II, dated as of [__________];

(b) Transportation Facility I has been operated continuously by the Seller since the Transfer Date(s) thereof;

(c) The Transfer Date for the Transportation Facility I is November 16, 2007; the Seller commenced toll operations with respect thereto on or about January 4, 2008;

(d) All franchise fees due Caltrans through the Closing Date have been fully paid;

(e) To the Seller’s Knowledge, Schedule 5.15(e) is a list of all excess Developer Funded Parcels subject to Section 7.10 of the Franchise Agreement;

(f) Other than with respect to the Owned Real Property, Seller has not retained, and does not currently hold, title to any parcel of real property comprising all or any portion of a Transportation Facility constructed under the Franchise Agreement;

(g) No Airspace Option to Lease Agreement has been executed or is in force and effect;

(h) No Airspace Leases have been executed or are in force and effect;

(i) Any work of improvement constructed pursuant to the Franchise Agreement, including but not limited to those works of improvement commonly known as the Sweetwater Park Betterments and the Sweetwater Pedestrian/Equestrian Bridge, have been fully completed in accordance with the plans and specifications therefore and all sums due on account of the construction thereof have been fully paid; and

(j) The Seller has not received any demand for defense or indemnity under the Franchise Agreement and the Seller is unaware of any event under which a demand for defense or indemnity under the Franchise Agreement could be reasonably made.
Section 5.16  Bankruptcy.  Other than the Chapter 11 bankruptcy cases filed by CTV and the Seller’s predecessor in the United States Bankruptcy Court for the Southern District of California (docket No. 10-04516-LA11), there are no bankruptcy, reorganization or arrangement proceedings involving the Seller that are pending or being contemplated by the Seller.

Section 5.17  Claims.  All claims in litigation or otherwise by the Seller against the Purchaser (other than any claims which may arise after the Closing Date), the County of San Diego, and all cities within the County of San Diego will be released upon the execution and delivery of the SANDAG Release, including a release and agreement to dismiss the pending litigation against the County of San Diego.  To the Seller's Knowledge, all claims by Caltrans and Otay River Contractors against the Seller have been released, except for any claims by Caltrans under any agreements between the Seller and Caltrans in effect as of the date hereof and arising in the ordinary course of business subsequent to April 29, 2011.

Section 5.18  Full Disclosure.  No representation or warranty by Seller in this Agreement contains any untrue statement of a material fact.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser hereby represents and warrants to the Seller as follows:

Section 6.1  Organization and Good Standing.  The Purchaser is a public agency, duly organized, validly existing and in good standing under the laws of the State of California.

Section 6.2  Authorization of Agreement.  The Purchaser has the requisite power and authority to execute this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby.  The execution and delivery of this Agreement and the other Transaction Documents to which the Purchaser is a party and the consummation by the Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Purchaser.  This Agreement and the other Transaction Documents to which it is a party have been duly executed and delivered by the Purchaser and, assuming due execution and delivery by the Seller, constitute valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms.

Section 6.3  No Violation; Consents.

(a)  The execution and delivery by the Purchaser of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any provision of the governing documents of the Purchaser, (ii) conflict with, require the
consent of a third party that has not been obtained, violate, result in the breach of, constitute a default under, or give rise to any right of acceleration, cancellation or termination of any material right or obligation of the Purchaser under any material agreement or other instrument to which the Purchaser is a party or by which the Purchaser or any of its properties or assets are bound, (iii) violate any Order of any Governmental Authority to which the Purchaser is bound or subject, or (iv) violate any Applicable Law, other than, in the case of clauses (ii) through (iv), any conflict, violation, breach, default, requirement for consents, rights of acceleration, cancellation, termination or Lien that would not have a Purchaser Material Adverse Effect.

(b) No Order or Permit issued by, or declaration or filing with, or notification to, or waiver or consent from, any Governmental Authority other than the Purchaser and/or the San Diego County Regional Transportation Commission is required on the part of the Purchaser in connection with the execution and delivery of this Agreement, or the compliance or performance by the Purchaser with any of the provisions contained in this Agreement.

Section 6.4 Litigation. There is no Action or Order pending or, to the knowledge of the Purchaser, overtly threatened against the Purchaser or any of its Affiliates that would have a Purchaser Material Adverse Effect.

Section 6.5 Financial Capability. The Purchaser has and will have on the Closing Date sufficient cash and cash equivalents and/or existing credit facilities with sufficient borrowing capacity thereunder (and has provided the Seller with satisfactory evidence thereof) to purchase the Transferred Assets and to consummate the transactions contemplated by this Agreement, including the payment of all fees and expenses contemplated as Purchaser responsibilities hereunder.

Section 6.6 Bankruptcy. There are no bankruptcy, reorganization or arrangement proceedings involving the Purchaser that are pending or being contemplated by the Purchaser.

Section 6.7 Financial Advisors. Except as provided in Section 12.3, the Purchaser is not liable for any investment banking fee, finder’s fee, brokerage payment or other like payment in connection with the origination, negotiation or consummation of the transactions contemplated herein that will be the obligation of the Seller.

Section 6.8 Status of Purchaser. The Purchaser is a “political subdivision” of the State of California for the purposes of Section 11922 of California Revenue and Taxation Code.

ARTICLE VII

COVENANTS

Section 7.1 Access to Information. Prior to the Closing, the Seller shall (i) afford the Purchaser and its Representatives full and free access to and the right to inspect all the Leased Real Property and Owned Real Property, and reasonable access,
during normal business hours and upon 48 hour advance written notice, to personal property, Intellectual Property, assets, premises, Contracts, books, records and personnel of the Seller, to the extent related to the Transferred Assets; (ii) furnish Purchaser and its Representatives with such financial, operating and other data and information related to the Transferred Assets as Purchaser or any of its Representatives may reasonably request; and (iii) instruct the Representatives of the Seller to cooperate with the Purchaser in its investigation. Without limiting the foregoing, Seller shall permit Purchaser and its Representatives to conduct environmental due diligence of the Leased Real Property and Owned Real Property, including the collecting and analysis of samples of indoor or outdoor air, surface water, groundwater or surface or subsurface land on, at, in, under or therefrom. No investigation by the Purchaser or other information received by the Purchaser shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Seller relative to the transaction contemplated hereby.

The above notwithstanding, the Seller shall not be obligated to provide (i) access or information in violation of Applicable Law, (ii) bids, letters of intent, expressions of interest or other proposals, if any, received from other Persons in connection with the transactions contemplated by this Agreement, provided that such bids, letters of intent, expressions of interest or other proposals, if any, were provided to Seller prior to the operative date of the Letter Agreement, or other transactions not related to the sale of the Transferred Assets, and information and analysis relating to any of such communications or (iii) any information, the disclosure of which would jeopardize any privilege available to the Seller or its Affiliates relating to such information or would cause the Seller or its Affiliates to breach a confidentiality obligation to which it is bound. In connection with the access afforded by the Seller to the Purchaser and to its Representatives, the Purchaser’s Representatives shall cooperate with the Seller’s Representatives and shall use their commercially reasonable efforts to minimize any disruption of the business of the Seller. The Purchaser agrees to abide by any safety rules or rules of conduct reasonably imposed by the Seller with respect to such access and any information furnished to them or their Representatives pursuant to this Section 7.1. The Purchaser shall indemnify, defend and hold harmless the Seller from and against any and all losses asserted against or suffered by them relating to, resulting from, or arising out of, examinations or inspections made by the Purchaser or its Representatives pursuant to this Section 7.1.

Section 7.2 Conduct of Business Pending the Closing. Except as otherwise required by Applicable Law, expressly contemplated by this Agreement and the Schedules attached hereto or with the prior written consent of the Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), and except for any violations that, in the aggregate, would not have a Seller Material Adverse Effect or a Purchaser Material Adverse Effect, during the period from the date hereof to and through the Closing Date, the Seller (i) shall conduct the business, affairs and operations in a normal course of business and in a manner consistent with its method of operation for prior periods; (ii) shall not distribute any of its assets to any equity holder, nor declare or pay any dividends, or redeem, purchase or issue any equity interests of the Seller, (iii) shall use commercially reasonable efforts to preserve in all material respects the Transferred Assets, and (iv) shall not enter into any material commitment or incur any indebtedness (other than any Permitted Indebtedness) or dispose of any material asset.
other than in the ordinary course of business, or take any action that could reasonably be expected to frustrate the purpose of the transactions contemplated hereby. Without limiting the foregoing, from the date hereof until the Closing Date, Seller shall:

(a) preserve and maintain all Permits required to conduct the business, affairs and operations as currently conducted or the ownership and use of the Transferred Assets;

(b) pay the debts, Taxes and other obligations of the Seller when due;

(c) continue to collect tolls in a manner consistent with past practice;

(d) maintain the properties and assets included in the Transferred Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(e) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;

(f) defend and protect the properties and assets included in the Transferred Assets from infringement or usurpation;

(g) perform all of its obligations under all Assigned Contracts;

(h) maintain the Business Records in accordance with past practice;

(i) comply in all material respects with all Laws applicable to the conduct of the business or the ownership, use and operation of the Transferred Assets; and

(j) not take or permit any action that would cause a Seller Material Adverse Effect or a Purchaser Material Adverse Effect to occur.

Section 7.3 Appropriate Action; Filings. Through the Closing Date, the Seller and the Purchaser shall cooperate with each other and use commercially reasonable efforts (i) to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary, proper or advisable on its part under this Agreement, Applicable Law or otherwise to consummate and make effective the transactions contemplated hereby, (ii) to obtain promptly from any Governmental Authority any Permits required to be obtained by the Seller or the Purchaser in connection with the authorization, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, (iii) to promptly make all necessary filings and thereafter make any other required submissions with respect to this Agreement and prompt consummation of the transactions contemplated hereby required under any Applicable Law, (iv) to provide prompt notification to the other Party of any actions pursuant to clauses (i) through (iii) of this Section 7.3; provided, however, that nothing in this Section 7.3 shall be construed as altering the rights of the Seller under
Section 7.5: and provided, further, that neither the Purchaser nor the Seller shall be obligated to pay any consideration to obtain any approvals or consents from third parties.

Section 7.4 Preservation of Records; Transition; Cooperation.

(a) The Seller shall transfer to the Purchaser all of the Seller’s business records, including but not limited to, files stored by the Seller on Box.Net related to due diligence, who shall preserve and keep in its possession or under its control all records so transferred or otherwise held by it on and after the date hereof relating to the Transferred Assets for a period of three (3) years or such longer period as may be required by the Amended and Restated TIFIA Loan Documents or Applicable Law; and shall make such records and personnel available to the other Party as may reasonably be required by such Party, including in connection with any insurance claims or legal proceedings involving the Transferred Assets, or any governmental investigations of the Seller or the Purchaser related to the Transferred Assets or in order to enable the Seller or the Purchaser to comply with their respective obligations hereunder and each other agreement, document or instrument contemplated hereby or thereby or otherwise; provided, however, that in no event shall any Party be obligated to provide any information the disclosure of which would jeopardize any privilege available to such Party or any of its Affiliates relating to such information or which would cause such Party or any of its Affiliates to breach a confidentiality obligation to which it is bound. The Purchaser acknowledges that the Seller or its Affiliates shall be entitled to copy any such records, at the Seller’s sole cost and expense, and to retain such records. After the expiration of any applicable retention period, before the Purchaser shall dispose of any of such records, at least ninety (90) days’ prior written notice to such effect shall be given by the Purchaser to the Seller or its successor (or a Person designated by the Seller) and the Seller or its successor (or a Person designated by the Seller) shall have the opportunity (but not the obligation), at its sole cost and expense, to remove and retain all or any part of such records as it may select with the Purchaser’s consent, which shall not be unreasonably withheld.

(b) During the Transition Period, the Parties shall reasonably cooperate with each other in all matters relating to the transition of the Project to the Purchaser (including pursuant to the terms of the Transition Services Agreement). Without limiting the generality of the foregoing, during such period, the Purchaser shall (i) provide the Seller a reasonable accommodation at the Operations Center as provided in the Transition Services Agreement, and (ii) forward to the Seller any and all correspondence addressed to the Seller or relating to the Retained Assets or the Excluded Liabilities. Nothing herein shall require Purchaser to provide assistance to the Seller in collecting Pre-Closing Toll Proceeds pursuant to Section 3.5 except as provided in the Transition Services Agreement.

(c) The Seller confirms that it will retain from the cash portion of the Transferred Assets Purchase Price, and hold back from distributions to its members after Closing, funds estimated by the Seller to be sufficient to pay Excluded Liabilities that remain unpaid on the Closing Date and to pay costs and expenses in connection with closing the Seller’s business and winding up its affairs, including costs of disposing of
Retained Assets and discharging all of the Seller’s liabilities. The Seller agrees to share with the Purchaser the estimates of Seller as to all such costs, expenses and liabilities and the Seller’s reasonable provision of cash reserves for payment thereof.

Section 7.5 Confidentiality. The Parties agree that until the Closing, all information disclosed by either Party and its Affiliates to another Party and its Affiliates in connection with the transaction contemplated hereby shall be held in confidence consistent with the Confidentiality Agreement executed by the Parties on or about September 6, 2011. Notwithstanding the foregoing, the Purchaser and the Seller hereby acknowledge that the TIFIA Lender is subject to the Freedom of Information Act (5 U.S.C. § 552), to the extent applicable, and the Purchaser is subject to the California Public Records Act (Cal. Govt. Code §§ 6250 - 6276.48). Furthermore, the Seller acknowledges that analysis and opinions formed by the Purchaser and its advisors based on information disclosed in the transaction contemplated hereby may be disclosed to public prior to the Closing due to the Purchaser being subject to the California open meetings law known as the Ralph M. Brown Act (Cal. Govt. Code §§ 54950 – 54963).

Section 7.6 Exclusivity. The Seller agrees that during the term of this Agreement:

(a) the Seller shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. The Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal;

(b) In addition to its obligations hereunder, the Seller shall promptly (and in any event within three (3) business days after receipt thereof by the Seller or its Representatives) advise the Purchaser orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same; and

(c) The Seller agrees that the rights and remedies for noncompliance with this Section 7.6 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Purchaser and that money damages would not provide an adequate remedy to the Purchaser.

Section 7.7 Public Announcements. Prior to the Closing Date, neither the Seller, the Purchaser nor any of their respective Affiliates, or any of their
Representatives, shall issue any press release or public statement concerning this Agreement or the transactions contemplated hereby without prior written notice to the other Party, and the Party intending to make such release shall use its commercially reasonable efforts consistent with Applicable Law, Order or obligation to consult with the other Party with respect to the text thereof. The Seller acknowledges that the Purchaser is a public entity subject to open meetings laws and laws of disclosure, as applicable.

Section 7.8 Further Assurances. The Seller and the Purchaser agree that from and after the Closing Date, each of them shall execute and deliver such further instruments of conveyance and transfer and take such other action as may reasonably be requested by either Party to carry out the purposes and intents hereof, at the expense of the requesting Party.

Section 7.9 Third Party Consents. With respect to any approval or consent required to be obtained in connection with the consummation of the transactions contemplated hereunder, as soon as practicable after execution of this Agreement, (i) the Seller shall use commercially reasonable efforts to obtain any third party consents to the transactions contemplated herein, and (ii) the Purchaser shall reasonably cooperate with the Seller’s efforts to obtain such consents. Neither Party shall be obligated to pay any consideration to obtain any consents from third parties.

Section 7.10 Supplements to Schedules and Exhibits. The Parties may, from time to time prior to or at the Closing by written notice to the Purchaser, supplement or amend the Schedules and Exhibits. Such supplements or amendments shall be effective to cure and correct, for all purposes, any breach of any representation or warranty which would have existed if the Seller had not made such supplements or amendments, so long as such supplements or amendments individually, or in the aggregate, do not reflect events which would constitute a Seller Material Adverse Effect or a Purchaser Material Adverse Effect; provided, however, if the Purchaser shall not object, within fifteen (15) days after receiving notice thereof, to such breach constituting a Seller Material Adverse Effect or a Purchaser Material Adverse Effect, then the Purchaser shall be deemed to have waived its right to claim that the events constitute a Seller Material Adverse Effect or a Purchaser Material Adverse Effect. All references to Schedules and Exhibits that are supplemented or amended pursuant to this Section 7.10 shall be deemed to be a reference to such Schedules and Exhibits as supplemented or amended.

Section 7.11 Transfer Taxes. All sales, transfer, filing, recordation, registration, documentary, stamp or similar Taxes and fees (collectively, “Transfer Taxes”) due and payable in connection with the transfer of the Transferred Assets and assignment and assumption of the Assumed Liabilities contemplated hereunder, if any, shall be paid by Seller when due.

Section 7.12 Replacement Letters of Credit. If necessary to the maintenance of Permits required for ownership, use and operation of the Transferred Assets, the Purchaser shall arrange for the letters of credit, performance bonds, guarantees and similar assurances set forth on Schedule 7.12 that relate to Contracts to be assigned to and assumed by the Purchaser on the Closing Date (the “Existing Letters of Credit”) to be
replaced with other letters of credit, performance bonds, guarantees or assurances, as applicable, with the same or, to the extent acceptable to the applicable counterparty, substantially similar terms (collectively, the “Replacement Letters of Credit”).

Section 7.13 Further Assurances. In addition to documents to be delivered under Section 10.1, at any time after the Closing Date, each Party shall execute and deliver such further documents as the other Party or its counsel may reasonably request to effectuate the purposes of this Agreement.

ARTICLE VIII

EMPLOYEE AND EMPLOYEE BENEFITS MATTERS

Section 8.1 Employment.

(a) The Purchaser intends to contract with a third-party service provider to operate the Project following the end of the Transition Period. No later than fifteen (15) days prior to the end of the Transition Period, the Purchaser shall provide the Seller with a list of positions for which its third-party service provider intends to interview the Seller’s employees. The Seller shall make such list available to the Seller’s employees and inform them of the third-party provider’s intentions to interview persons in those positions. By no later than ten (10) days prior to the end of the Transition Period, the Purchaser or such third-party service provider, as applicable, may interview each of the employees who apply for or express interest in employment in such identified positions. Purchaser’s third-party provider may offer employment to such employees who meet the requirements of the Purchaser and its third-party service provider. The third-party service provider shall have no obligation to offer employment to any of the Seller’s employees. No later than five (5) days prior to the end of the Transition Period, the Purchaser or its third-party service provider shall provide notice to the Seller identifying any of the Seller’s employees to whom the third-party service provider had made an offer of employment. The Seller shall terminate any of said employees who agree to accept the offer of employment extended by the Purchaser’s third-party service provider (the “Employees”) in a manner and on the earliest date consistent with applicable laws and as necessary to effectuate the purpose of this Agreement.

(b) Except as required by Applicable Law, the Seller shall be solely responsible for all Liabilities with respect to its employees, including the Employees, attributable to their accrued and unused vacation, sick days and personal days through the Closing Date. Purchaser shall have no obligations whatsoever for any compensation or other amounts payable to any of the Seller's employees, including without limitation, former employees of Seller and the Employees, including without limitation, hourly pay, commission, bonus, salary, accrued vacations, fringe, pension or profit sharing benefits, retirement benefits, or severance pay payable for any period relating to the service with Seller at any time prior to the Closing Date and Seller shall pay all such amounts to all entitled employees on or prior to the Closing Date.
(c) Seller shall remain solely responsible for the satisfaction of all claims for retirement, medical, dental, life insurance, health accident, disability benefits, or any other benefit related to employment brought by or in respect to its employees, including former employees and the Employees, or agents of Seller which claims relate to events occurring prior to the Closing Date. Seller shall also remain solely responsible for all worker's compensation claims or Liabilities of any employees, including former employees and the Employees, or agents of Seller which relate to events occurring prior to the Closing Date. Seller shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(d) To the extent the Seller is obligated to pay any severance payment to any of its employees, including former employees and the Employees, pursuant to the terms of an employment contract with such employee for any reason, the Seller shall be responsible for any such severance payment.

(e) Pursuant to the “Standard Procedure” provided in section 4 of Revenue Procedure 2004-53, (i) the Purchaser and the Seller shall report on a predecessor/successor basis as set forth therein, (ii) the Seller will not be relieved from filing a Form W-2, 1099 or any other tax documentation with respect to any employee of the Seller, including former employees and the Employees.

ARTICLE IX
CONDITIONS TO CLOSING

Section 9.1 Conditions Precedent to Obligations of Each Party. The respective obligations of the Seller, on the one hand, and the Purchaser, on the other hand, to consummate the transactions contemplated hereby are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions:

(a) there shall not have been in effect any Order by a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby or causing any of the transactions contemplated hereunder to be rescinded following completion thereof;

(b) Caltrans shall have provided its written consent to the assignment and assumption by the Purchaser of the Franchise Agreement and the Lease in form and substance reasonably satisfactory to the Parties; and

(c) all Liens on the Transferred Assets granted by the Seller pursuant to the Amended and Restated Loan Documents shall have been modified to secure performance of the Purchaser’s obligations pursuant to the Amended and Restated TIFIA Loan Documents and the Promissory Notes. In connection with the foregoing, the TIFIA Lender shall have received such endorsements to, or a replacement of, the Existing Title Policy as the TIFIA Lender shall reasonably require. All costs of said title endorsements to, or the replacement of, the Existing Title Policy, as applicable, shall be shared equally by the Purchaser and the Seller.
Section 9.2 Conditions Precedent to Obligations of the Purchaser. The obligation of the Purchaser to consummate the transactions contemplated hereby is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Purchaser, in whole or in part, subject to Applicable Law):

(a) the representations and warranties of the Seller contained herein shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date, except those representations and warranties of the Seller that speak as of a certain date, which representations and warranties shall have been true and correct in all material respects as of such date;

(b) the Seller shall have performed and complied in all material respects with all obligations, conditions and covenants required by this Agreement and any and all other documents necessary to consummate this transaction and contemplated hereby to be performed or complied with by the Seller on or prior to the Closing Date;

(c) since August 11, 2011, there shall not have been any Material Adverse Change to the Transferred Assets, excluding any change, circumstance or event to the extent resulting from (i) (A) the condition of the economy, labor or the securities markets in general, or any outbreak of hostilities, terrorist activities or war; (B) the announcements, pendency or consummation of the sale of the Transferred Assets or any other action by the Purchaser or its Affiliates contemplated or required hereunder; (C) any changes in general economic (including changes in commodity prices or foreign exchange rates), political or regulatory conditions in the California highway transportation industry; (D) the effect of any changes in Applicable Laws or accounting rules, or (E) or reduction in traffic volume in connection with the Project to the extent not caused by the failure of the Seller to operate the Project consistent with past practices, or (ii) any material breach by the Purchaser of any covenant or agreement herein or from any representation or warranty of the Purchaser having been or having become untrue in any material respect;

(d) the Seller shall have waived or released the Purchaser, the County of San Diego, and all cities within the County of San Diego from any and all claims asserted by the Seller in litigation, including a release and agreement to dismiss the pending litigation against the County of San Diego pursuant to the SANDAG Release substantially in the form attached hereto as Exhibit H;

(e) the Purchaser shall have been furnished with the documents referred to in Section 10.1 and shall have successfully obtained the financing necessary to consummate this transaction;

(f) the Purchaser shall have obtained approval, in one or more public, noticed meetings by its Board of Directors, of the transaction contemplated hereby, including, but not limited to, the approval of the Amended and Restated TIFIA Loan Documents and the Series D Promissory Note;
(g) all Liens relating to the Transferred Assets other than Permitted Liens shall have been released in full;

(h) no action shall have been commenced against the Purchaser or the Seller which would prevent the Closing and no injunction or restraining order shall have been issued which restrains or prohibits the transaction contemplated hereby;

(i) the Purchaser shall have received all Permits that are necessary for it to own, use and operate the Transferred Assets; and

(j) If required by the Purchaser, the Purchaser shall have received an owner's title insurance policy with respect to each Owned Real Property included in the Transferred Assets, issued by a nationally recognized title insurance company acceptable to Purchaser, written as of the Closing Date, insuring the Purchaser in such amounts and together with such endorsements, and otherwise in such form, as the Purchaser shall reasonably require. Such title insurance policy shall insure fee simple title to each such Owned Real Property, free and clear of all encumbrances and Liens other than Permitted Liens. The cost of any such title insurance policy shall be shared equally by the Purchaser and the Seller.

Section 9.3 Conditions Precedent to Obligations of the Seller. The obligation of the Seller to consummate the transactions contemplated hereby is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Seller, in whole or in part, subject to Applicable Law):

(a) the representations and warranties of the Purchaser contained herein shall be true and correct in all material respects on and as of the Closing Date, except those representations and warranties of the Purchaser that speak as of a certain date, which representations and warranties shall have been true and correct in all material respects as of such date;

(b) the Purchaser shall have performed and complied in all material respects with all material obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date;

(c) to the extent required pursuant to Section 7.12, the Purchaser shall have arranged for the Existing Letters of Credit to be replaced with the Replacement Letters of Credit or, at its sole option, cash collateral; and

(d) the Seller shall have been furnished with the documents referred to in Section 10.2.

If the Seller decides to waive the condition set forth in Section 9.3(c), then from the Closing, and to the extent necessary, (i) the Purchaser shall continue to use its best efforts to obtain Replacement Letters of Credit that it did not obtain prior to the Closing and (ii) until Replacement Letters of Credit have been provided for all Existing Letters of Credit relating to Contracts that will be assumed by the Purchaser as of the Closing, the Purchaser may post cash collateral with the Seller securing the Existing
Letters of Credit in an aggregate amount equal to the outstanding face amount of the Existing Letters of Credit.

Section 9.4  Frustration of Closing Conditions. Neither the Seller nor the Purchaser may rely on the failure of any condition set forth in Section 9.1, 9.2 or 9.3, as the case may be, if such failure was caused by such Party’s failure to comply with any provision of this Agreement.

ARTICLE X

DOCUMENTS TO BE DELIVERED

Section 10.1 Documents to Be Delivered by the Seller. At the Closing, the Seller shall deliver, or cause to be delivered, to the Purchaser the following:

(a) the Bill of Sale, Assignment and Assumption Agreement substantially in the form of Exhibit B attached hereto (the “Assignment Agreement”), and such other instruments of conveyance reasonably necessary for the transfer of the Transferred Assets, duly executed by the Seller;

(b) the Assignment of Lease duly executed by the Seller;

(c) grant deeds, with the usual covenants, to the Owned Real Property included in the Transferred Assets, duly executed by the Seller;

(d) duly executed counterparts to each other Transaction Document (other than this Agreement);

(e) Caltrans’ consent to the assignment of the Franchise Agreement and the Lease and Caltrans’ waiver of its right of first refusal with respect to the Operations Center, as identified on Schedule 5.5(b);

(f) Caltrans’ acknowledgement of its obligation to enter into Airspace Option to Lease Agreements and Airspace Leases with Purchaser;

(g) Subject to Section 7.9, to the extent obtained by the Seller, each consent to the assignment of the Assigned Contracts, duly executed by the non-Seller party(ies) to such contracts;

(h) a certificate, dated the Closing Date and signed by a duly authorized officer of the Seller, that each of the conditions set forth in Section 9.2 has been satisfied;

(i) a certificate of the Secretary (or equivalent officer) of the Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of the Seller authorizing the execution, delivery and performance of this Agreement and all other transaction documents and the consummation of the transaction contemplated hereby and thereby, and that all such resolutions are in full
force and effect and are all the resolutions adopted in connection with the transaction contemplated hereby and thereby;

(j) a certificate of the Secretary (or equivalent officer) of the Seller certifying the names and signatures of the officers of the Seller authorized to sign this Agreement and all the other documents to be delivered hereunder; and

(k) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign person within the meaning of Section 1445 of the Code duly executed by the Seller;

(l) an opinion of Seller’s counsel, dated as of the date of Closing, substantially in the form of Exhibit G;

(m) any releases by the Bank Lenders of their interests under the Existing Security Documents, in form and substance reasonably acceptable to the Purchaser and duly executed by the Bank Lenders and the Collateral Agent;

(n) the SANDAG Release, dated as of the Closing Date, substantially in the form of Exhibit H; and

(o) such other documents and instruments as the Purchaser reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 10.2 Documents to Be Delivered by the Purchaser. At the Closing, the Purchaser shall deliver to the Seller the following:

(a) evidence of the wire transfer referred to in Section 3.2;

(b) evidence of the deposit of the Escrow Funds with the Escrow Agent;

(c) the TransNet Loan Documents and other documents required thereunder to be delivered by the Purchaser on such date, each, duly executed by the Purchaser;

(d) the Master Trust Indenture, duly executed by the Purchaser;

(e) the Series D Promissory Note, duly executed by the Purchaser;

(f) the Amended and Restated TIFIA Loan Documents and other documents required thereunder to be delivered by the Purchaser on such date, each duly executed by the Purchaser;

(g) the Assignment Agreement, duly executed by the Purchaser, and such other instruments of assumption as may be reasonably required by the Seller for the effective assumption by the Purchaser of the Assumed Liabilities;
(h) the Assignment of Lease duly executed by the Purchaser;

(i) the Transition Services Agreement duly executed by the Purchaser and the Seller,

(j) a certificate, dated the Closing Date and signed by a duly authorized officer of the Purchaser, that each of the conditions set forth in Section 9.3 have been satisfied;

(k) a certificate of the Secretary (or equivalent officer) of the Purchaser certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of the Purchaser authorizing the execution, delivery and performance of this Agreement and all other transaction documents and the consummation of the transaction contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transaction contemplated hereby and thereby;

(l) a certificate of the Secretary (or equivalent officer) of the Purchaser certifying the names and signatures of the officers of the Purchaser authorized to sign this Agreement and all the other documents to be delivered hereunder; and

(m) such other documents and instruments as the Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE XI

LIMITATIONS

Section 11.1 Purchaser’s Review.

(a) No Reliance. The Purchaser has reviewed and has had access to all documents, records and information which it has desired to review, and has had the opportunity to ask questions, and has received sufficient answers, in connection with its decision to enter into this Agreement, and to consummate the transactions contemplated hereby. In connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, the Purchaser has not relied upon, and the Purchaser expressly waives and releases the Seller from any Liability for any claims (including claims based upon fraudulent inducement) relating to or arising from, any representation, warranty, statement, advice, document, projection, or other information of any type provided by the Seller or its Affiliates or any of their respective Representatives, except for those representations and warranties expressly set forth in Article V. In deciding to enter into this Agreement, and to consummate the transactions contemplated hereby, the Purchaser has relied solely upon its own knowledge, investigation, judgment and analysis (and that of its Representatives) and not on any disclosure or representation made by, or any duty to disclose on the part of, the Seller or its Affiliates or any of their respective Representatives, other than the express representations and warranties of the Seller set forth in Article V.
(b) **Limited Duties.** Any and all duties and obligations which any Party may have to any other Party with respect to or in connection with the Transferred Assets, this Agreement or the transactions contemplated hereby are limited to those specifically set forth in this Agreement. Neither the duties nor obligations of any Party, nor the rights of any Party, shall be expanded beyond the terms of this Agreement on the basis of any legal or equitable principle or on any other basis whatsoever. Neither any equitable or legal principle nor any implied obligation of good faith or fair dealing nor any other matter requires any Party to incur, suffer or perform any act, condition or obligation contrary to the terms of this Agreement, whether or not existing and whether foreseeable or unforeseeable. Each of the Parties acknowledges that it would be unfair, and that it does not intend, to increase any of the obligations of the other Party on the basis of any implied obligation or otherwise.

Section 11.2 **LIMITATION OF REPRESENTATIONS AND WARRANTIES.**

(a) **EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE V, SELLER IS NOT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING SELLER, THE TRANSFERRED ASSETS OR LIABILITIES OF SELLER AND IT IS UNDERSTOOD THAT PURCHASER, WITH SUCH EXCEPTIONS, TAKES THE TRANSFERRED ASSETS “AS IS” AND “WHERE IS”.** PURCHASER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER HAS NOT MADE, AND SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES, AND PURCHASER HEREBY EXPRESSLY WAIVES, ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE RELATING TO, AND PURCHASER HEREBY EXPRESSLY WAIVES AND RELINQUISHES ANY AND ALL RIGHTS, CLAIMS AND CAUSES OF ACTION AGAINST SELLER AND ITS AFFILIATES AND EACH OF THEIR RESPECTIVE REPRESENTATIVES IN CONNECTION WITH THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) HERETOFORE FURNISHED TO PURCHASER OR ITS REPRESENTATIVES BY OR ON BEHALF OF SELLER OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE REPRESENTATIVES IN CONNECTION THERewith. WITHOUT LIMITING THE FOREGOING, SELLER IS NOT MAKING ANY REPRESENTATION OR WARRANTY TO PURCHASER WITH RESPECT TO ANY FINANCIAL PROJECTION OR FORECAST RELATING TO THE TRANSFERRED ASSETS OR LIABILITIES OF SELLER.

Section 11.3 **NO CONSEQUENTIAL OR PUNITIVE DAMAGES.** NO PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO THE OTHER PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING LOSS OF REVENUE OR INCOME, DAMAGES BASED ON ANY MULTIPLIER OF PROFITS OR OTHER VALUATION METRIC, COST OF
CAPITAL, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY.

Section 11.4 No Recourse. No past, present or future Representative and/or Affiliate of the Seller or any Affiliate thereof shall have any Liability to the Purchaser for any obligations of the Seller hereunder.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Nonsurvival of Representations and Warranties. No representation or warranty or pre-closing covenant of any Party made herein, in any Transaction Document or in any other instrument delivered pursuant to this Agreement shall survive beyond the Closing and there shall be no Liability in respect thereof, whether such Liability has accrued prior to or after the Closing, on the part of any Party or any of its Representatives. Except as set forth in Section 12.2, no representation or warranty or pre-closing covenant of any Party made herein, in any Transaction Document or in any other instrument delivered pursuant to this Agreement shall survive beyond the termination of this Agreement and there shall be no Liability in respect thereof, whether such Liability has accrued prior to or after such termination, on the part of any Party or any of its Representatives.

Section 12.2 Remedies.

(i) The Parties acknowledge and agree that, in addition to the remedies set forth in subsection (c), below, and any other remedies available under Applicable Law, either Party shall have the right to terminate this Agreement pursuant to and to the extent permitted by Section 4.2(b), (d) or (e) upon a breach of any representation or warranty or pre-closing covenant of any Party made herein, in any Transaction Document or in any other instrument delivered pursuant to this Agreement.

(b) If any Party seeks to enforce the terms and provisions of this Agreement, then the prevailing Party in such Action shall be entitled to recover from the non-prevailing Party, in addition to the remedies provided in Section 12.2(a) or (c), all costs incurred in connection with such Action, including reasonable legal fees, expenses and costs incurred at the trial court, all appellate courts and during negotiations.

(c) The Seller acknowledges and agrees that the breach of this Agreement would cause irreparable damage to the Purchaser and that the Purchaser would not have an adequate remedy at law. Therefore, the obligations of the Seller hereunder, including its obligation to sell the Transferred Assets to the Purchaser, shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith.

Section 12.3 Expenses. Except as otherwise set forth in this Agreement, each of the Seller and the Purchaser shall bear its own expenses (including attorneys’ fees)
incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated hereby and the consummation of the transactions contemplated hereby and thereby; it being acknowledged and agreed that the fees of the special counsel and financial advisor to the TIFIA Lender incurred in connection with the negotiation and execution of the Amended and Restated TIFIA Loan Documents, if required by TIFIA, shall be borne by the Purchaser. The fees for the services of the Escrow Agent under the Escrow Agreement and reimbursement of the Escrow Agent for out-of-pocket expenses shall be paid equally by the Seller and the Purchaser.

Section 12.4 Submission to Jurisdiction.

(a) The Parties agree to and hereby unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego and any appellate court from any thereof, for the resolution of any such claim or dispute.

(b) The Parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in any court specified in subsection (a) above, or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the Parties hereby consents to process being served by any Party in any suit, Action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 12.11; provided, however, that such service shall not be effective until the actual receipt thereof by the Party being served.

Section 12.5 No Right of Set-Off. Except with respect to the Escrowed Funds, Purchaser for itself and for its Affiliates, successors and assigns hereby unconditionally and irrevocably waives any rights of set-off, netting, offset, recoupment, or similar rights that the Purchaser or any of its Affiliates, successors and assigns has or may have with respect to the payment of the Transferred Assets Purchase Price or any other payments to be made by the Purchaser pursuant to this Agreement or any other document or instrument delivered by the Purchaser in connection herewith.

Section 12.6 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 12.7 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits hereto), the other Transaction Documents represent the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes the Letter Agreement, which is hereby terminated in all respects (including paragraphs 8 through 11 thereof). This Agreement can be amended,
supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 12.8 Governing Law. THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, AND ANY CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED, AND DETERMINED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION).

Section 12.9 Table of Contents and Headings. The table of contents and section headings of this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Agreement.

Section 12.10 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the fourth day after mailing if mailed by certified mail, return receipt requested, or (iii) the day of transmission, if sent by facsimile or telecopy during regular business hours or the Business Day after transmission, if sent after regular business hours (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the Parties at the following addresses or facsimile numbers (or to such other address or facsimile number as a Party may have specified by notice given to the other Party pursuant to this provision):

If to the Seller:

South Bay Exppressway, LLC
c/o RPA Advisers, LLC
45 Eisenhower Drive
Paramus, NJ 07652
Section 12.11 Severability. If any term or provision of this Agreement is invalid, illegal or incapable of being enforced by Law or public policy, all other terms and provisions hereof shall nevertheless remain in full force and effect so long as the legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 12.12 Binding Effect; Assignment. This Agreement shall be binding solely upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Other than with respect to Section 11.4, nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person not a Party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by the Seller or the Purchaser (by operation of law or otherwise)
without the prior written consent of the other Party and any attempted assignment without
the required consents shall be void.

Section 12.13 Counterparts. This Agreement may be executed in any number of
counterparts, each of which shall be deemed an original, but all of which together shall
constitute one and the same instrument.

[The Remainder of This Page Is Intentionally Left Blank.]
IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its respective officers thereunto duly authorized, as applicable, all as of the date first above written.

South Bay Expressway, LLC

By: ______________________________________
Name: Greg Hulsizer
Title: Chief Executive Officer

San Diego Association of Governments

By: ______________________________________
Name: 
Title:
DEFINITIONS

When used in this Agreement, the following terms shall have the respective meanings specified therefor below.

“Acquisition Proposal” means any inquiry, proposal or offer from any Person (other than the Purchaser or any of its Affiliates) relating to the direct or indirect disposition, whether by transfer, sale, merger or otherwise, of all or any portion of the Transferred Assets.

“Action” means any action, suit, arbitration, claim, inquiry, proceeding or investigation by or before any Governmental Authority of any nature, civil, criminal, regulatory or otherwise, in law or in equity.

“Affiliate” (and, with a correlative meaning “affiliated”) means, with respect to any Person, any direct or indirect subsidiary of such Person, and any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such first Person. As used in this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).

“Agreement” shall have the meaning set forth in the preamble hereto.

“Amended and Restated Loan Documents” means, collectively, the Amended and Restated Construction and Term Loan Agreement and TIFIA Loan Agreement dated as of April 28, 2011, among the Seller, the TIFIA Lender, Banco Bilbao Vizcaya Argentaria, S.A., New York Branch, as administrative agent, and the financial institutions identified therein, and the documents executed in connection therewith.

“Amended and Restated TIFIA Loan Agreement” means the Amended and Restated TIFIA Loan Agreement between the Purchaser and the TIFIA Lender, dated as of the Closing Date, in form and substance satisfactory to the TIFIA Lender.

“Amended and Restated TIFIA Loan Documents” means, collectively, the Amended and Restated TIFIA Loan Agreement, any Promissory Notes issued to the TIFIA Lender, [and all of the documents required for the closing thereunder by the terms thereof].

“Applicable Law” means, with respect to any Person, any Law applicable to such Person or its business, properties or assets.

“Asset Acquisition Statement” shall have the meaning set forth in Section 3.3.

“Assigned Contracts” means all Contracts set forth on Schedule 1.1(a).
“Assignment Agreement” shall have the meaning set forth in Section 10.1(a).

“Assignment of Lease” means that certain Assignment and Assumption of Lease in substantially the form attached hereto as Exhibit C to be entered into by the Seller and the Purchaser pursuant to which the Seller assigns to the Purchaser as of the Closing all of the Seller’s rights, title and interest in, and the Purchaser assumes the obligations under, that certain lease dated as of November 16, 2007 (as amended, restated or modified from time to time) between Caltrans and the Seller (as successor in interest to the original lessee thereunder.

“Assumed Liabilities” shall have the meaning set forth in Section 2.1(c).

“Bank Lenders” means, collectively, the lenders under the Amended and Restated Loan Documents, other than the TIFIA Lender.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in San Diego are authorized or required by Law to close. Any event the scheduled occurrence of which would fall on a day that is not a Business Day shall be deferred until the next succeeding Business Day.

“Business Records” means all books, files and records to the extent primarily related to the Transferred Assets, including customer lists, historical customer files, reports, plans, data, accounting and tax records, test results, product specifications, drawings, diagrams, training manuals, engineering data, safety and environmental reports and documents, maintenance schedules, operating and production records, inventory records, business plans, and marketing and all other studies, documents and records but excluding any Retained Books and Records; provided, that “Business Records” shall not include duplicate copies of such Business Records retained by the Seller subject to the obligations relating to the use and disclosure thereof set forth herein.

“Caltrans” means the State of California, Department of Transportation.

“Claim” means any obligation, liability, claim (including any claim for damage to property or injury to or death of any persons), lien or encumbrance, loss, damage, cost or expense.

“Closing” shall have the meaning set forth in Section 4.1.

“Closing Date” shall have the meaning set forth in Section 4.1.

“Closing Date Payment” shall have the meaning set forth in Section 3.2.


“Collateral Agent” means Wells Fargo Bank, National Association, or any Person appointed to replace such Person with the authority to exercise and perform the rights and duties of the Collateral Agent under the Amended and Restated Loan Documents.
“Collection Account” means account number 4121555007 in the name of the Seller maintained by the Wells Fargo Bank, National Association.

“Contract” means any written contract, indenture, note, bond, loan, instrument, lease, commitment or other agreement.

“Employees” shall have the meaning set forth in Section 8.1(a).


“Environmental Liabilities and Obligations” means all Liabilities arising from any impairment or damage to the environment or failure to comply with Environmental Laws in connection with the prior or ongoing ownership or operation of the Transferred Assets including Liabilities related to:

(a) the transportation, storage, use or disposal of Hazardous Materials or waste;

(b) the Release of Hazardous Materials or waste;

(c) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments;

(d) any other obligations imposed under Environmental Laws with respect to the Transferred Assets; and

(e) all obligations with respect to personal injury, property damages, wrongful death and other damages and losses arising under Applicable Law as a result of any of the matters identified in subparagraphs (a) – (d) of this paragraph.

“Equipment” means all fixtures, equipment, vehicles, leasehold improvements, and other tangible personal property owned or used by the Seller listed on Schedule 1.1(b).

“Escrow Agent” means [______________].

“Escrow Agreement” means the Escrow Agreement among the Purchaser, the Seller and the Escrow Agent, substantially in the form of Exhibit D hereto.
“Escrow Funds” shall have the meaning set forth in Section 3.1(c).

“Existing Letters of Credit” shall have the meaning set forth in Section 7.11.

“Existing Title Policy” means that certain ALTA Lender’s Policy of Title Insurance dated as of ______ issued by Chicago Title Company as Policy No. ______.

“Excluded Liabilities” shall have the meaning set forth in Section 2.2.

“Final Allocation” shall have the meaning set forth in Section 3.3.


“GAAP” means United States generally accepted accounting principles as in effect during the time period of the relevant financial statement.

“Governmental Authority” means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to United States federal, state or local government, including any governmental authority, agency, department, board, commission or instrumentality or any political subdivision thereof, and any tribunal, court or arbitrator(s) of competent jurisdiction.

“Hazardous Materials” means all substances defined as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “pollutants,” “toxic wastes,” “toxic substances” or “contaminants” or regulated under Environmental Laws.

“IRS” means the United States Internal Revenue Service.

“IT Malfunction” shall have the meaning set forth in Section 3.7.

“Law” means any federal, state or local law (including common law), statute, code, ordinance, rule, regulation or other requirement enacted, promulgated, issued or entered by a Governmental Authority.

“Leased Real Property” shall have the meaning set forth in Section 5.5(a).

“Liabilities” means any and all debts, losses, liabilities, claims, damages, expenses, fines, costs, royalties, proceedings, deficiencies or obligations (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due, and whether or not resulting from third party claims, and any reasonable out-of-pocket costs and expenses (including reasonable legal counsels’, accountants’, or other fees and expenses incurred in defending any action or in investigating any of the same or in asserting any rights hereunder).

“Lien” means any lien (statutory or other), pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, transfer restriction under any shareholder or similar agreement or conditional sale agreement or encumbrance.

“Master Trust Indenture” means [TBD].

“Material Adverse Change” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to the operation, prospects, condition (financial, physical or otherwise) or value of the Transferred Assets.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award.

“Outside Date” shall have the meaning set forth in Section 4.2(b).

“Owned Real Property” shall have the meaning set forth in Section 5(b).

“Party” or “Parties” shall have the meaning set forth in the preamble hereto.

“Permits” means any approvals, authorizations, consents, licenses, permits or certificates.

“Permitted Liens” means:

(a) to the extent that they do not materially interfere with the present occupancy of the Leased Real Property or the expected use of such Leased Real Property, easements, restrictive covenants, and rights-of-way on, over or in respect of any of the Transferred Assets, servitudes, permits, surface leases and other rights with respect to surface operations;

(b) all rights reserved to or vested in any Governmental Authority to control or regulate the Transferred Assets and all obligations and duties under all Applicable Laws or under any permit issued by any Governmental Authority;
(d) Liens under the Amended and Restated Loan Documents (that will be modified to secure the Purchaser’s obligations under the Amended and Restated TIFIA Loan Documents, the Promissory Notes and related documents on or prior to Closing);

(e) Liens included in the Assumed Liabilities and set forth in Schedule A; and

(f) as to the Owned Real Property and the Leased Real Property, Liens of record as of the date of this Agreement excluding monetary Liens (other than monetary Liens for real property Taxes and assessments not yet delinquent).

“Person” means and includes natural persons, corporations, limited partnerships, limited liability companies, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and all Governmental Authorities.

“Pre-Closing Toll Proceeds” shall have the meaning set forth in Section 3.4.

“Project” shall have the meaning set forth in the first recital hereto.

“Purchaser” shall have the meaning set forth in the preamble hereto.

“Purchaser Material Adverse Effect” means any change, circumstance or event that would hinder or delay the Purchaser’s ability to consummate the transactions contemplated hereby or any change, circumstance or event that would hinder or delay the Purchaser’s ability to use or operate the Transferred Assets.

“Purchaser Plans” shall have the meaning set forth in Section 8.2(b).

“Release” means any release, spill, emission, discharge, leaking, pumping, injection, deposit or disposal of Hazardous Materials into the environment.

“Replacement Letters of Credit” shall have the meaning set forth in Section 7.11.

“Representatives” of a Person means its respective officers, directors, managers, employees, attorneys, investment bankers, accountants and other agents and representatives.

“Retained Assets” shall have the meaning set forth in Section 2.1(b).

“Retained Books and Records” shall have the meaning set forth in Section 2.1(b).

“Revised Statement” shall have the meaning set forth in Section 3.3.

“SANDAG Release” means the waiver and release by the Seller of any and all claims in litigation or otherwise (other than any claims arising after the Closing Date) against the
Purchaser, the County of San Diego, and all cities within the County of San Diego, substantially in the form of Exhibit H hereto.

“San Diego County Regional Transportation Commission” means the public agency organized pursuant to the San Diego County Regional Transportation Commission Act, Chapter 2 of Division 12.7 (Sections 132000 and following) of the Public Utilities Code of the State of California (the “Act”). Pursuant to the provisions of the Act, the Board of Directors of the Commission is composed of the Board of Directors of the San Diego Association of Governments (“SANDAG”). The Commission controls the use of the ½ cent transactions and use tax collected in San Diego County known as TransNet.

“Seller Material Adverse Effect” means any change, circumstance or event that (i) is materially adverse to the business, financial condition or assets of the Seller, as the same shall have existed as of the date hereof, or (ii) would materially hinder or delay the Seller’s ability to consummate the transactions contemplated hereby, excluding any such change, circumstance or event to the extent resulting (a) from (i) the condition of the economy or the securities markets in general, or any outbreak of hostilities, terrorist activities or war; (ii) the announcements, pendency or consummation of the sale of the Transferred Assets or any other action by the Purchaser or its Affiliates contemplated or required hereunder; (iii) any changes in general economic (including changes in commodity prices or foreign exchange rates), political or regulatory conditions in the California highway transportation industry; or (iv) the effect of any changes in Applicable Laws or accounting rules, or (b) from any material breach by the Purchaser of any covenant or agreement herein or from any representation or warranty of the Purchaser having been or having become untrue in any material respect.

“Seller” shall have the meaning set forth in the preamble hereto.

“Seller’s Knowledge” or any other similar Seller’s knowledge qualification means the actual or constructive knowledge of any director or officer of the Seller and RPA Advisers LLC, after due inquiry and investigation.

“Series D Promissory Note” shall have the meaning set forth in Section 3.1.

“Software” shall have the meaning set forth in Section 3.7.

“Subsidiary or subsidiary” means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

“Tax” means all federal, state, provincial, territorial, municipal, local or foreign income, profits, franchise, gross receipts, environmental (including taxes under Code Section
59A), customs, duties, net worth, sales, use, goods and services, withholding, value added, ad
valorem, employment, social security, disability, occupation, pension, real property, personal
property (tangible and intangible), stamp, transfer, conveyance, severance, production, excise
and other taxes, withholdings, duties, levies, impost and other similar charges and assessments
(including any and all fines, penalties and additions attributable to or otherwise imposed on or
with respect to any such taxes, charges, fees, levies or other assessments, and interest thereon)
imposed by or on behalf of any Taxing Authority.

“Tax Returns” means any report, return, declaration, claim for refund, information
report or return or statement required to be supplied to a Taxing Authority in connection with
Taxes, including any schedule or attachment thereto or amendment thereof.

“Taxing Authority” means any Governmental Authority exercising any authority
to impose, regulate, levy, assess or administer the imposition of any Tax.

“TIFIA Lender” means the United States Department of Transportation, acting by
and through the Federal Highway Administrator

“Transaction Documents” means this Agreement, the Assignment Agreement, the
Escrow Agreement, the Transition Services Agreement, the SANDAG Release and all other
Contracts and agreements necessary to effectuate the transactions completed hereby.

“Transfer Taxes” shall have the meaning set forth in Section 7.10.

“Transferred Assets” means the assets of the Seller identified on Schedules 1.1(a),
1.1(b) and 1.1(c), which include the following assets of the Seller as of the Closing Date:

(a) the Assigned Contracts;

(b) all rights of the Seller under each Leased Real Property identified on
Schedule 5.5(a) hereto, and under each Owned Real Property identified on Schedule 5.5(b)
hereto, and under each material patent, patent license, trade name, trademark, service mark or
copyright related to the Transferred Assets identified on Schedule 5.6, together with all
improvements, furniture, fixtures, equipment (subject to clause (c) below) and other
appurtenances thereto and all rights in respect thereof;

(c) the Equipment leased or owned by the Seller to the extent primarily
related to the Transferred Assets, and any rights of the Seller to the warranties and licenses
received from manufacturers and sellers of such Equipment;

(d) to the extent transferable under Applicable Law, all Permits;

(e) copies of all Business Records, but excluding personnel files for
Employees;
(f) assignable rights of the Seller, if any, under the Commercial General Liability policies (policy numbers 3676496-00 and 3676623-00) by Zurich American Insurance Company;

(h) all supplies owned by the Seller to the extent primarily related to the Transferred Assets; and

(i) all claims related to toll violations arising prior to the Closing Date upon which the Seller had not collected within 6 months after the Closing Date.

“Transferred Assets Purchase Price” shall have the meaning set forth in Section 3.1.

“Transition Period” means the period starting on the Closing Date and ending on June 30, 2012 or such earlier date on which the Purchaser notifies Seller in writing that Purchaser or its third-party service provider will terminate the Transition Services Agreement and assume operating responsibility for the Project; provided, that any such notice must be given not less than fifteen (15) days prior to the end of the Transition Period.

“Transition Services Agreement” means the Transition Services Agreement between the Seller and the Purchaser, substantially in the form of Exhibit E hereto.

“TransNet Loan Documents” means [TBD].
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Form of Assignment Agreement
EXHIBIT C

Form of Assignment of Lease
EXHIBIT D

Form of Escrow Agreement
EXHIBIT E

Form of Series D Note
EXHIBIT F

Form of Transition Services Agreement
EXHIBIT G

Form of Seller’s Counsel Opinion
EXHIBIT H

Form of SANDAG Release
EXHIBIT I

Form of Assignment of Accounts Receivable Agreement
SAN DIEGO ASSOCIATION OF GOVERNMENTS

MASTER TRUST AGREEMENT
(Security Agreement)

between

SAN DIEGO ASSOCIATION OF GOVERNMENTS

and

US BANK National Association
as Master Trustee

Dated as of December__, 2011
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This is a MASTER TRUST AGREEMENT dated as of December __, 2011 (this “Master Agreement”) between SAN DIEGO ASSOCIATION OF GOVERNMENTS (“SANDAG”), a California local public agency, and U.S. Bank National Association, a national banking association duly established, existing and authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the United States of America, with a corporate trust office in Los Angeles, California, as master trustee (the “Master Trustee”).

RECITALS:

SANDAG is authorized by California Public Utilities Code § 132350, et seq. (the “Act”) and deems it necessary and desirable that it be able to issue promissory notes, guarantees and other evidences of indebtedness or to evidence or secure other financial obligations (collectively, the “Obligations”) of several series in order to secure the financing or refinancing of the acquisition of, and improvements to, a divided, limited access toll road in San Diego County, California, approximately 9.2 miles (15 kilometers) long, which extends from the interchange with Otay Mesa Road at approximately Sta. 27+100 to San Miguel Ranch Road at approximately Sta. 167+30, known as the South Bay Expressway (the “Project”).

SANDAG desires to provide in this Master Agreement for the payment of the Obligations and the performance of all covenants contained herein.

All acts and things necessary to constitute these presents a valid indenture and agreement according to its terms, have been done and performed, and the execution of this Master Agreement has in all respects been duly authorized, and SANDAG in the exercise of the legal right and power vested in it, to execute this Master Agreement and SANDAG may make, execute, issue and deliver one or more Obligations of various series.

In order to declare the terms and conditions upon which Obligations of each series are authenticated, issued and delivered, and in consideration of the premises, of the purchase and acceptance of Obligations of each series by the holders thereof, and intending to be legally bound hereby, SANDAG covenants and agrees with the Master Trustee, for the equal and proportionate benefit of the respective holders from time to time of Obligations of each series, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions. In addition to the words and terms elsewhere defined in this Master Agreement, the following words and terms as used in this Master Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent:

“Additional First Subordinated Obligations” means any additional parity First Subordinated Obligations issued by SANDAG that are permitted to be issued pursuant to Section 409 of this Master Agreement and that stand on a parity and equality under this Master Agreement with the TransNet Note.
“Additional Second Subordinated Obligations” means any additional parity Second Subordinated Obligations issued by SANDAG that are permitted to be issued pursuant to Section 409 of this Master Agreement and that stand on a parity and equality under this Master Agreement with the Series D Note.

“Additional Senior Obligations” means any additional parity Senior Obligations issued by SANDAG that are permitted to be issued pursuant to Section 409 of this Master Agreement and that stand on a parity and equality under this Master Agreement with the TIFIA Note.

“Affiliate” of a particular Person means, at any time, (a) any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person and (b) any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of securities having ordinary voting power for the election of directors or other members of the governing body of a corporation or other Person, or 10% or more of any partnership or other ownership interests having ordinary voting power for the election of directors or other members of the governing body of a corporation or any other Person.

“Ancillary Obligation” means an Obligation, expressly identified as such in a Supplemental Master Agreement or in an Officer’s Certificate delivered to the Master Trustee, as being entered into in order to evidence or secure financial obligations of SANDAG in an agreement that is ancillary to any direct Indebtedness, such as a reimbursement agreement, liquidity agreement, standby bond purchase agreement, rate maintenance agreement or similar agreement, unless and until and to the extent any such agreement constitutes a direct obligation of SANDAG to repay money borrowed, credit extended or the equivalent thereof, at which time such Obligation shall be deemed a Debt Obligation.

“Annual Budget” means the budget adopted by SANDAG pursuant to Section 408 of this Master Agreement.

“Bondholder,” “holder” or “owner of the Bonds” means the registered owner of any Related Bond.

“Book Value” when used with respect to Property, means the value of such Property, net of accumulated depreciation and amortization, as reflected in the most recent consolidated audited financial statements related to the Project which have been prepared in accordance with generally accepted accounting principles, provided that such aggregate shall be calculated in such a manner that no portion of the value of any such Property is included more than once.

“Business Day” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in the State or the State of New York are authorized or required by law or executive order to close or (b) a day on which the New York Stock Exchange is closed.

“Capital Expenditure Reserve Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.

“Capital Expenditures” means expenditures made or liabilities incurred for the Project for the acquisition of any fixed assets or improvements, replacements, substitutions or additions
thereto that have a useful life of more than one year and an initial, individual cost greater than or equal to $5000.00 which are capitalized in accordance with GAAP.

“Capitalized Lease” means any lease of real or personal property which, in accordance with generally accepted accounting principles, is required to be capitalized on the balance sheet of the lessee.

“Capitalized Rentals” means, as of the date of determination, the amount at which the aggregate Net Rentals due and to become due under a Capitalized Lease under which a Person is a lessee would be reflected as a liability on a balance sheet of such Person.

“Code” means the Internal Revenue Code of 1986, as amended from time to time. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations, including temporary and proposed regulations, relating to such sections which are applicable to the Related Bonds or the use of the proceeds thereof.

“Collateral” means, collectively, all tangible and intangible real and personal property of SANDAG relating to the Project, including all of the following property now owned or at any time hereafter acquired by SANDAG or in which SANDAG now has or at any time in the future may acquire any right, title or interests, is collectively referred:

(a) all Accounts;
(b) all Deposit Accounts;
(c) all Instruments;
(d) all Documents;
(e) all Chattel Paper, including all Electronic Chattel Paper;
(f) all Inventory;
(g) all Equipment;
(h) all Fixtures;
(i) all Goods not covered by the preceding clause of this definition;
(j) all Letters of Credit and Letter-of-Credit Rights;
(k) all Intellectual Property;
(l) all Investment Property;
(m) all Commercial Tort Claims;
(n) all Payment Intangibles, Software and General Intangibles not covered by the preceding clause of this definition;
(o) all other tangible and intangible property of SANDAG, including all books, correspondence, credit files, records, invoices, tapes, cards, computer runs and other papers and documents in the possession or under the control of SANDAG or any computer bureau or service company from time to time acting for SANDAG;

(p) all Principal Project Agreements (as defined in the TIFIA Loan Agreement) to which SANDAG is or shall be a party (including, but not limited to, the Franchise Agreement and the agreements and documents specified in the TIFIA Loan Documents) and, to the extent assignable, all other contracts, agreements, leases and other similar instruments related to the Project (including those in which SANDAG is a third party beneficiary) and all amounts payable to SANDAG under any Principal Project Agreement;

(q) to the extent assignable, all Governmental Approvals required or obtained in connection with the operation of the Project and in connection with any transactions contemplated by the TIFIA Loan Documents;

(r) any present or future right, title or interest of SANDAG under any insurance, indemnity, warranty or guaranty in respect of the Project and any rents, revenues, incomes, profits, insurance proceeds or other rights to compensation in respect of the Project;

(s) all proceeds and products in whatever form of all or any part of the other Collateral, including all rents, profits, income and benefits and all proceeds of insurance and all condemnation awards and all other compensation for any event of loss with respect to all or any part of the other Collateral (together with all rights to recover and proceed with respect to the same), and all accessions to, substitutions for and replacements of all or any part of the other Collateral;

(t) all other personal property and fixtures of SANDAG, whether now owned or hereafter existing or hereafter acquired or arising, or in which SANDAG may have an interest, and wheresoever located, whether or not of a type which may be subject to a security interest under the Uniform Commercial Code, and any replacements, renewals, or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by SANDAG; and

(u) the “Property”, as defined in the [[Assignment] of Toll Road Lease].

All capitalized terms in the above definition of Collateral and not defined in this Agreement shall have the meaning assigned to such terms in the Uniform Commercial Code.

“Commission” means the San Diego County Regional Transportation Commission, which was formed pursuant to the San Diego County Regional Transportation Commission Act, Chapter 2 of Division 12.7 (Section 132000 et seq.) of the California Public Utilities Code.

“Consultant” means a professional consulting, financial advisory, accounting, investment banking or commercial banking firm selected by SANDAG [and the TIFIA Lender while the TIFIA Notes remain Outstanding], having the skill and experience necessary to render the particular report required and having a favorable and nationally recognized reputation for
such skill and experience, which firm does not control SANDAG or any Affiliate thereof and is not controlled by or under common control with SANDAG or an Affiliate thereof.

“Control” means, in relation to any Person, (a) the power to (i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of such Person, (ii) appoint or remove all, or the majority, of the board of directors or other equivalent officers of such Person, or (iii) give directions with respect to the operating and financial policies of such Person which the directors or other equivalent officers of such Person are obliged to comply with, or (b) the holding on more than one-half of the issued and voting capital of such person (excluding any part of that capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); provided that “Controlling” and “Controlled” have corresponding meanings.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for SANDAG or the Master Trustee.

“Current Assets” means cash and cash equivalent deposits, marketable securities, accounts receivable, accrued interest receivable and any other assets of a Person ordinarily considered current assets under generally accepted accounting principles.

“Debt Obligations” means First Subordinated Obligations, Second Subordinated Obligations and/or Senior Obligations, as applicable.

“Depository” means a bank or trust company designated as such by SANDAG to receive moneys under the provisions of this Master Agreement and shall include the Master Trustee.

“Escrow Securities” means, (i) with respect to any Obligation which secures a series of Related Bonds, the securities permitted to be used to refund or advance refund such series of Related Bonds under the Related Bond Indenture, or (ii) with respect to any other Obligation, those securities identified in the Supplemental Master Agreement pursuant to which such Obligations were issued.

“Expense Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.

“Extraordinary Expense Costs” means [as in April agreements].

“Extraordinary Reserve Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.

“First Subordinated Obligations” means the TransNet Note and any Additional First Subordinated Obligations which may be issued under this Master Agreement which shall provide that such First Subordinated Obligations are junior in right of payment and security to the Senior Obligations and senior in right and payment to the Second Subordinated Obligations.

“First Subordinated Obligations Debt Service Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.
“Fiscal Year” means any twelve-month period beginning on July 1 of any calendar year and ending on June 30 of the succeeding calendar year or such other consecutive twelve-month period selected by SANDAG as the fiscal year for the Project and designated from time to time in writing by SANDAG to the Master Trustee; for purposes of making historical calculations or determinations set forth in this Master Agreement on a Fiscal Year basis, or for purposes of combinations or consolidation of accounting information, with respect to those entities whose actual fiscal year is different from that designated above, the actual fiscal year of such entities that ended within the Fiscal Year of the Project shall be used; provided, however, that for purposes of making any calculations or determinations as set forth in this Master Agreement, SANDAG may designate in writing to the Master Trustee as the “Fiscal Year” any twelve-month period. Whenever the Master Agreement refers to a Fiscal Year of a specific entity, such reference shall be to the actual fiscal year adopted by such entity.

“Franchise Agreement” means the Development Franchise Agreement for a Privatized Transportation Project, entered into as of January 6, 1991, between CTV and Caltrans, and assigned by CTV to SANDAG, as expected to be amended and restated in an agreement between SANDAG and Caltrans executed after the execution of this Agreement, as such agreement may be thereafter amended.

“Governing Body” means the board of directors, board of trustees or similar group in which the right to exercise the powers of corporate directors or trustees is vested or an executive committee of such board or any duly authorized committee of that board to which the relevant powers of that board have been lawfully delegated.

“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, without limitation, 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.

“Guaranty” means all obligations of a Person guaranteeing, or in effect guaranteeing, any Indebtedness or other obligation of any Primary Obligor in any manner, whether directly or indirectly, including but not limited to obligations incurred through an agreement, contingent or otherwise, by such Person: (a) to purchase such Indebtedness or obligation or any Property constituting security therefor; (b) to advance or supply funds: (i) for the purchase or payment of such Indebtedness or obligation, or (ii) to maintain working capital or other balance sheet condition; (c) to purchase securities or other Property or services primarily for the purpose of assuring the owner of such Indebtedness or obligation of the ability of the Primary Obligor to make payment of the Indebtedness or obligation; or (d) otherwise to assure the owner of such Indebtedness or obligation against loss in respect thereof.

“Hedging Agreement” means any agreement entered into, or to be entered into, by SANDAG and a Hedging Bank for a Hedging Transaction.
“Hedging Bank” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and their respective successors and assigns.

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

“Hedging Termination Obligations” means the aggregate amount payable to the Hedging Banks by SANDAG upon the early unwind of all or a portion of the Hedging Agreements, net of all amounts payable to SANDAG by such Hedging Banks upon the early unwind of all or a portion of such Hedging Agreements.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap”, “collar” or “floor” transaction, interest rate future, interest rate option or other hedging arrangement.

“Indebtedness” means, for any Person, (a) indebtedness incurred or assumed by such Person for borrowed money or for the acquisition, construction or improvement of Property other than goods that are acquired in the ordinary course of business of such Person; (b) Capitalized Rentals or Capitalized Lease obligations of such Person; and (c) all Guaranties by such Person; provided that Indebtedness shall not include any Hedging Obligation or Ancillary Obligation.

“Instructing Controlling Lender” means the (a) the holder of the Senior Obligations and, if there are no Senior Obligations outstanding, then 51% of the (b) the holder or holders of the First Subordinate Obligations and, if there are no Senior Obligations or First Subordinate Obligations outstanding, then 51% of the then outstanding principal amount of (c) the holder or holders of the Second Subordinate Obligations. In the event that the holder of the Senior Obligations, any holder of a First Subordinate Obligations or any holder of a Second Subordinate Obligation sells or otherwise transfers such Obligation, a Supplemental Master Agreement shall be adopted pursuant to Section 802 hereof to make such amendments as may be needed to revise the definition of the term “Instructing Controlling Lender” to reflect the rights of the transferee and the other holders of Senior Obligations, First Subordinate Obligations and Second Subordinate Obligations.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, 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 Uniform Commercial Code or comparable law.

“Major Maintenance” means all reasonably necessary periodic major overhaul and/or repair (excluding any maintenance or repair of a routine or ordinary course nature) of the Project, equipment and systems that is required to be performed in accordance with the Franchise Agreement or otherwise in respect of the Project.

“Major Maintenance Costs” means all Capital Expenditures relating to Major Maintenance.

“Major Maintenance Reserve Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.

“Master Agreement” means this Master Trust Agreement dated as of December __, 2011, between SANDAG and the Master Trustee, as it may from time to time be further amended or supplemented in accordance with the terms hereof.

“Master Trustee” means US Bank National Association, or any successor trustee under the Master Agreement.

“Material Adverse Effect” means a material adverse change in (a) the Project, (b) the ability of SANDAG to perform or comply with any of its material obligations hereunder or the TIFIA Loan Documents or the Principal Project Agreements to which it is a party, (c) the validity, perfection or priority of the Liens on the Collateral in favor of the Trustee in connection with the Indebtedness hereunder, except as permitted elsewhere hereunder or (d) the TIFIA Lender’s rights or benefits available under this Agreement with respect to the TIFIA Notes.

“Net Cash Flow” means, with respect to any period, an amount equal to (a) all Project Revenues received by SANDAG during such period, minus (b) the sum of the following (without duplication):

(i) all Operations and Maintenance Expenses paid during such period (to the extent not funded from amounts deposited in the Operating and Maintenance Reserve Fund);

(iii) all Required Capital Expenditures paid during such period (to the extent not funded from amounts deposited in the Capital Expenditure Reserve Fund); and

(v) all deposits to the Operating and Maintenance Reserve Fund, and Capital Expenditure Reserve Fund during such period under the terms of this Master Agreement.

“Nationally Recognized Rating Agency” means Standard & Poor’s Rating Group, Moody’s Investors Services, Inc., Fitch Ratings or another nationally recognized statistical rating organization, identified by the Securities and Exchange Commission.

“Net Rentals” means all fixed rents (including as such all payments which the lessee is obligated to make to the lessor on termination of the lease or surrender of the Property other than upon termination of the lease for a default thereunder) payable under a lease or sublease of real
or personal Property excluding any amounts required to be paid by the lessee (whether or not
designated as rents or additional rents) on account of maintenance, repairs, insurance, taxes and
similar charges. Net Rentals for any future period under any so-called “percentage lease” shall
be computed on the basis of the amount reasonably estimated to be payable thereunder for such
period, provided that the amount estimated to be payable under any such percentage lease shall
in all cases recognize any change in the applicable percentage called for by the terms of such
lease.

“Obligations” means the Debt Obligations, any other obligations, including but not
limited to Hedging Obligations, or Ancillary Obligations authorized to be issued by SANDAG
pursuant to this Master Agreement which have been authenticated by the Master Trustee
pursuant to Section 204 of this Master Agreement.

“Obligation holder,” “holder” or “owner of the Obligation” means the registered owner
of any fully registered or book entry Obligation unless alternative provision is made in the
Supplemental Master Indenture pursuant to which such Obligation is issued for establishing
ownership of such Obligation, in which case such alternative provision shall control.

“Officer’s Certificate” means a certificate signed, in the case of a certificate delivered by
or on behalf of SANDAG, by the Executive Director, Chief Deputy Executive Director or any
other authorized officer of SANDAG.

“Operating and Maintenance Reserve Fund” means the fund of that name established
pursuant to Section 501 of this Master Agreement.

“Operations and Maintenance Expenses” means all actual cash maintenance and
operation costs (excluding costs of Capital Expenditures) incurred and paid (or if applicable
forecast to be incurred and paid) in connection with the operation and maintenance of the Project
in any particular calendar or Fiscal Year or period to which said term is applicable, including
payments made pursuant to the Franchise Agreement, payments for taxes, insurance,
consumables, advertising, marketing, payments under real property agreements or other
agreements pursuant to which SANDAG has rights in the Project, payments pursuant to the
agreements for the management, operation or maintenance of the Project, reasonable legal fees
and expenses paid by SANDAG in connection with the management, maintenance or operation
of the Project, fees paid in connection with obtaining, transferring, maintaining or amending any
approvals from any Governmental Authority, costs incurred in connection with the performance
of environmental mitigation work to be carried out by SANDAG, [amounts required for the
acquisition of any Qualified Hedge] or for deposits into any account maintained in accordance
with this Master Agreement for such purposes, and reasonable general and administrative
expenses, but exclusive in all cases of noncash charges, including, but not limited to,
depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other
bookkeeping entries of a similar nature.

“Outstanding” means, in the case of Indebtedness of a Person other than Related Bonds
or Obligations, all such Indebtedness of such Person which has been issued except any such
portion thereof canceled after purchase on the open market or surrendered for cancellation or
because of payment at or prepayment or redemption prior to maturity, any such Indebtedness in
lieu of which other Indebtedness has been duly issued and any such Indebtedness which is no longer deemed outstanding under its terms and with respect to which such Person is no longer liable under the terms of such Indebtedness.

“Outstanding Obligations” or “Obligations Outstanding” means all Obligations which have been duly authenticated and delivered by the Master Trustee under the Master Agreement, except:

(a) Obligations canceled after purchase in the open market or because of payment at or prepayment or redemption prior to maturity;

(b) (i) Obligations for the payment or redemption of which cash or Escrow Securities shall have been theretofore deposited with the Master Trustee (whether upon or prior to the maturity or redemption date of any such Obligations); provided that if such Obligations are to be prepaid or redeemed prior to the maturity thereof, notice of such prepayment or redemption shall have been given or irrevocable arrangements satisfactory to the Master Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Master Trustee shall have been filed with the Master Trustee and (ii) Obligations securing Related Bonds for the payment or redemption of which cash or Escrow Securities shall have been theretofore deposited with the Related Bond Trustee (whether upon or prior to the maturity or redemption date of any such Obligations); provided that if such Related Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Related Bond Trustee shall have been made therefor, or waiver of notice satisfactory in form to the Related Bond Trustee shall have been filed with the Related Bond Trustee;

(c) Obligations in lieu of which others have been authenticated hereunder; and

(d) For the purpose of all consents, approvals, waivers and notices required to be obtained or given under the Master Agreement, Obligations held or owned by SANDAG.

Notwithstanding the foregoing, any Obligation securing Related Bonds shall be deemed outstanding if such Related Bonds are Outstanding Related Bonds.

“Outstanding Related Bonds” or “Related Bonds Outstanding” means all Related Bonds which have been duly authenticated and delivered by the Related Bond Trustee under the Related Bond Indenture and are deemed outstanding under the terms of such Related Bond Indenture or, if such Related Bond Indenture does not specify when Related Bonds are deemed outstanding thereunder, all such Related Bonds which have been so authenticated and delivered, except:

(a) Related Bonds canceled after purchase in the open market or because of payment at or prepayment or redemption prior to maturity;

(b) Related Bonds for the payment or redemption of which cash or Escrow Securities shall have been theretofore deposited with the Related Bond Trustee (whether upon or prior to the maturity or redemption date of any such Bonds) in accordance with the Related Bond Indenture; provided that if such Related Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Related
Bond Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Related Bond Trustee shall have been filed with the Related Bond Trustee;

(c) Related Bonds in lieu of which others have been authenticated under the Related Bond Indenture; and

(d) For the purposes of all covenants, approvals, waivers and notices required to be obtained or given under the Related Bond Indenture, Related Bonds held or owned by SANDAG.

“Permitted Debt” means:

(a) the Debt Obligations; and

(b) any unsecured Indebtedness without limitation.

“Permitted Dispositions” means dispositions of Property permitted by Section 410 of this Master Agreement.

“Permitted Encumbrances” means, as of any particular time, with respect to the Project:

(a) Liens created or imposed under this Master Agreement in connection with the Debt Obligations;

(b) Liens imposed on the Project by law for taxes that are not yet due or are being contested by SANDAG;

(c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens on the Project imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 90 days or are being contested by SANDAG;

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

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

(f) judgment liens on the Project in respect of judgments that do not constitute an Event of Default hereunder;

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

(h) any Lien on the Project existing on the date hereof;
(i) any Lien on the Project existing on any property or asset prior to the acquisition thereof by SANDAG; and

(j) purchase money security interests in real property, improvements thereto or equipment hereafter acquired for the Project by SANDAG, provided that (i) such security interests secure Indebtedness for borrowed money permitted under this Master Agreement, (ii) such security interests are incurred, and the Indebtedness secured thereby is created, within 90 days after such acquisition or construction, (iii) the Indebtedness secured thereby does not exceed the fair market value of such real property, improvements or equipment at the time of such acquisition, and (iv) such security interests do not apply to any other property or assets (other than accessions to such real property, improvements or equipment) of SANDAG.

“Permitted Investments” means (a) [with respect to any Obligation that secures a series of Related Bonds, the obligations or investments in which the Related Bond Trustee may invest funds under the Related Bond Indenture, (b)] with respect to any Obligations for which a Supplemental Master Agreement specifies certain permitted investments, the investments so specified and (c) in all other cases such legal and prudent investments as are designated in writing by SANDAG’s Investment Policy, as the same may be amended from time to time.

“Permitted Reorganizations” means any consolidation, merger or reorganization of SANDAG permitted by Section 407 of this Master Agreement.

“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.

“Primary Obligor” means the Person who is primarily obligated on an obligation which is guaranteed by another Person.

“Project” means the divided, limited access toll road in San Diego County, California, approximately 9.2 miles (15 kilometers) long, which extends from the interchange with Otay Mesa Road at approximately Sta/ 27+100 to San Miguel Ranch Road at approximately Sta. 167+30, known as the South Bay Expressway.

“Project Revenues” means for any period (without duplication), all amount received (or projected to be received) by or on behalf of SANDAG during such period, including any income, Tolls and receipts derived from the ownership or operation of the Project, including proceeds of any business interruption insurance, income received by SANDAG from the sale, lease or use of airspace or any ancillary services by the Project, together with any receipts derived from the sale of any property pertaining to the Project or incidental to the operation of the Project, all as determined in conformity with cash accounting principles, the investment income on amounts in the Accounts, the proceeds of any drawing under a letter of credit or guaranty relating to the Project of which SANDAG or the Trustee is the beneficiary, proceeds of any insurance, condemnation or litigation or arbitration awards relating to the Project, and all other revenue, however generated, by SANDAG relating to the Project.
“Project Revenue Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.

“Property” means any and all rights, titles and interests in and to any and all property of the Project, whether real or personal, tangible (including cash) or intangible, wherever situated and whether now owned or hereafter acquired, including but not limited to Project Revenues.

“Property, Plant and Equipment” means all Property of the Project which is classified as property, plant and equipment under generally accepted accounting principles.

“Qualified Hedge” means, to the extent from time-to-time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider.

“Qualified Hedge Provider” means an entity whose senior long term obligations, other senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, or whose payment obligations under an interest rate exchange agreement are guaranteed by an entity whose senior long term debt obligations, other senior unsecured long term obligations, financial program rating counterparty rating, or claims paying ability, are rated at the time of the execution of the Hedging Agreement at least as high as the second highest Rating Category of any Rating Agency then maintaining a rating for the Qualified Hedge Provider.

“Rating Category” or “Categories” 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.

“Rate Covenant” has the meaning given such term in Section 406(a)(i) of this Master Agreement.

“Related Bonds” means (a) any revenue bonds, notes or similar obligations issued by any state, commonwealth or territory of the United States or any municipal corporation or other political subdivision formed under the laws thereof or any constituted authority, agency or instrumentality of any of the foregoing empowered to issue obligations on behalf thereof, the proceeds of which are loaned or otherwise made available to SANDAG for the Project in consideration, whether in whole or in part, of the execution, authentication and delivery of an Obligation or Obligations to or upon the order of such governmental issuer and (b) any limited obligation revenue bonds or notes issued by SANDAG, or any other Person in consideration, whether in whole or in part, of the execution, authentication and delivery of an Obligation or Obligations to the holder of such bonds or the Related Bond Trustee.

“Related Bond Indenture” means any indenture, bond resolution, loan agreement or similar instrument pursuant to which any series of Related Bonds is issued.

“Related Bond Trustee” means any trustee under any Related Bond Indenture and any successor trustee thereunder or, if no trustee is appointed under a Related Bond Indenture, the Related Issuer.

“Related Issuer” means any issuer of a series of Related Bonds.
“Related Loan Document” means any document or documents (including without limitation any loan agreement, lease, sublease or installment sales contract) pursuant to which any proceeds of any Related Bonds are loaned to, advanced to or made available to or for the benefit of SANDAG for the Project.

“Required Capital Expenditures” means Capital Expenditures certified by SANDAG to the Master Trustee to be required to be made under the Franchise Agreement or other Principal Project Agreement (as defined in the TIFIA Loan Agreement), but excluding any Major Maintenance Costs.

“SANDAG Distribution Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.

“Second Subordinated Obligations” means the Series D Note and any Additional Second Subordinated Obligations which may be issued under this Master Agreement which shall provide that such Second Subordinated Obligations are junior in right of payment and security to the Senior Obligations and the First Subordinated Obligations.

“Second Subordinated Obligations Debt Service Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.

“Senior Debt Service Coverage Ratio” means the ratio of Net Cash Flow to debt service on the Senior Obligations for any applicable twelve (12) month period.

“Senior Obligations” means the TIFIA Notes and any Additional Senior Obligations issued under this Master Agreement which shall provide that such Senior Obligations are senior in right of payment and security to the Subordinate Obligations.

“Senior Obligations Debt Service Fund” means the fund of that name established pursuant to Section 501 of this Master Agreement.

“Series D Note” means the 2011 Note 4 (Series D) (Second Subordinated Obligation) issued under Supplemental Master Agreement No. 3 of even date hereof.

“Series D Payment Account” means the account of that name established pursuant to Section 501 of this Master Agreement.

“State” means the State of California.

“Subordinate Obligations” means the First Subordinate Obligations and the Second Subordinate Obligations.

“Supplemental Master Agreement” means an indenture amending or supplementing this Master Agreement entered into pursuant to Article VIII hereof on or after the date hereof.

“TIFIA Lender” means the United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator, together with any successors and assigns.
“TIFIA Loan Agreement” means the Second Amended and Restated TIFIA Loan Agreement dated ______, 2011, between the TIFIA Lender and SANDAG.

“TIFIA Loan Documents” means the TIFIA Loan Agreement, the TIFIA Notes, this Master Agreement, the Series D Agreement, and the Series D Notes.

“TIFIA Notes” means the Series 2011 Note 1-A, 1-B and 1-C (TIFIA Loans) (Senior Obligation) issued pursuant to Supplemental Master Agreement No. 1 of even date hereof and the TIFIA Loan Agreement.

“TIFIA Note Expense Account” means the account of that name established in the Expense Fund pursuant to Section 501 of this Master Agreement.

“TIFIA Interest Account” means the account of that name established pursuant to Section 501 of this Master Agreement.

“TIFIA Principal Account” means the account of that name established pursuant to Section 501 of this Master Agreement.

“Toll Covenant” has the meaning given such term in Section 406(a)(ii) of this Master Agreement.

[Tolls” means all rates, rents fees, charges, fines or other income derived by SANDAG from vehicular usage of the Project, and all rights to receive the same.]

“Traffic Consultant” means initially [Wilbur Smith Associates] and shall include any replacement traffic consultant firm which shall be selected from a list jointly maintained by the Master Trustee and SANDAG and approved by the TIFIA Lender.

“TransNet Interest Account” means the account of that name established pursuant to Section 501 of this Master Agreement.

“TransNet Loan Agreement” means the TransNet Loan Agreement dated ________________ , 2011, between the Commission and SANDAG.

“TransNet Note” means the Series 2011 Note 2 (TransNet) (First Subordinated Obligation) issued under the Supplemental Master Agreement No. 2 of even date hereof and the TransNet Loan Agreement.

“TransNet Principal Account” means the account of that name established pursuant to Section 501 of this Master Agreement.

“Uniform Commercial Code” means the Uniform Commercial Code, as in effect from time-to-time in the State.
Section 102. Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa. Headings of articles and sections herein and the table of contents hereof are solely for the convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof. Any reference herein to any officer of SANDAG shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

If any Obligations are issued hereunder to secure Related Bonds, which Related Bonds are valued, in accordance with the provisions of a Related Bond Indenture, at other than their principal amount for purposes of the provisions of such Related Bond Indenture relating to redemption, defeasance, computation of Related Bonds Outstanding, application of moneys in payment of the Related Bonds and actions by holders of such Related Bonds, then, for purposes of this Master Agreement, references in this Master Agreement to the principal amount of the Obligations issued to evidence or secure such Related Bonds contained herein shall be deemed to refer to an amount equal, at any time of calculation, to the valuation of such Related Bonds, at such time of calculation, as set forth in such Related Bond Indenture.

All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied, except as otherwise stated herein. If any change in accounting principles from those used in the preparation of the financial statements of SANDAG as of _________, 20__ results from the promulgation of rules, regulations, pronouncements and opinions by or required by the Financial Accounting Standards Board, American Institute of Certified Public Accountants or other authoritative bodies that determine generally accepted accounting principles (or successors thereto or agencies with similar functions) and such change results in a change in the accounting terms used in this Master Agreement, the accounting terms used herein shall be modified to reflect such change in accounting principles so that the criteria for evaluating SANDAG’s financial condition shall be the same after such change as if such change had not been made. Any such modification shall be described in an Officer’s Certificate filed with the Master Trustee, which shall contain a certification to the effect that (i) such modifications are occasioned by such a change in accounting principles and (ii) such modifications will not have a materially adverse effect on the Obligation holders or result in materially different criteria for evaluating SANDAG’s financial condition.

ARTICLE II

THE OBLIGATIONS

Section 201. Series, Designation and Amount of Obligations. No Obligations may be issued under the provisions of this Master Agreement except in accordance with this Article. No Obligations may be issued under this Master Agreement unless such Obligations are executed by SANDAG. Each series of Obligations shall be issued pursuant to a Supplemental Master Agreement, which shall contain the terms of such Obligations. Each series of Obligations shall
be designated so as to differentiate the Obligations of such series from the Obligations of any other series. Unless provided to the contrary in a Supplemental Master Agreement, Obligations shall be issued as fully registered Obligations. Except hereinafter provided in this paragraph or as limited by any Supplemental Master Agreement, the total amount of Obligations, the number of Obligations and the series of Obligations that may be created under this Master Agreement is not limited and shall be as set forth in the Supplemental Master Agreement providing for the issuance thereof; [TBD-ABT to be developed. Also, please put ABT in a separate section.] provided, however that Additional Senior Obligations may not be issued and Additional Obligations on a parity with or subordinate to First Subordinated Obligations and senior to Second Subordinated Obligations may be issued if, subject to the other requirements hereof, an Officer’s Certificate is delivered to the Master Trustee certifying that the Senior [and First Subordinated] Debt Service Coverage Ratio with respect to the then unpaid balance of the Senior [and First Subordinated] Obligations, after giving effect to the incurrence of such proposed Additional Obligations, for the twelve (12) month period subsequent to the issuance of such Additional Obligations, shall not be less than [1.10] and/or such issuance is required to comply with the Franchise Agreement.

Section 202. Payment of Obligations.
The principal of, premium, if any, and interest on the Obligations, and any other amounts due under an Obligation, shall be payable in any currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts, and such amounts shall be payable at the designated corporate trust office of the Master Trustee [or at the office of any Related Bond Trustee named in any such Obligations or in a Related Bond Indenture], or to the registered owner of any such Obligation, as may be provided in any such Obligation. Unless a contrary provision is made in the Supplemental Master Agreement pursuant to which such Obligations are issued or the election referred to in the next sentence is made, payments on the Obligations shall be made to the Person appearing on the registration books of SANDAG (kept in the corporate trust office of the Master Trustee or its agent as Obligation registrar) as the registered owner thereof and shall be paid by check or draft mailed to the registered owner at its address as it appears on such registration books or at such other address as is furnished to the Master Trustee in writing by such holder; provided, however, that any Supplemental Master Agreement creating any Obligation may provide that amounts due under such Obligation may be paid, upon the request of the holder of such Obligation, by wire transfer or by such other means as are then commercially reasonable and acceptable to the holder thereof and the Master Trustee. Upon the reasonable written request of the Master Trustee, SANDAG shall provide information identifying the Obligation or Obligations with respect to which such payment was made, specifying the amount, series designation, number and registered holder. Project Revenues and other moneys deposited with the Master Trustee hereunder shall be invested in Permitted Investments. The Master Trustee shall not be liable or responsible for any loss or decrease in value resulting from any such investments made in accordance with the terms hereof. Supplemental Master Agreements may create such security, including debt service reserve funds and other funds, as is necessary to provide for payment or to hold moneys deposited for payment or as security for a related series of Obligations.

Section 203. Execution. Obligations shall be executed by an authorized officer of SANDAG by the manual or, if permitted by law, facsimile signature of its Executive Director, which shall be attested by the manual or, to the
extent permitted by law, facsimile signature of its Chief Deputy Executive Director or Director of Finance. In case any officer whose signature or facsimile of whose signature shall appear on the Obligations shall cease to be such officer before the delivery of such Obligations, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 204. Authentication. No Obligation shall be valid or obligatory for any purpose or entitled to any security or benefit under this Master Agreement unless and until a certificate of authentication on such Obligation substantially in the form set forth below shall have been duly executed by the Master Trustee, and such executed certificate of the Master Trustee upon any such Obligation shall be conclusive evidence that such Obligation has been authenticated and delivered under this Master Agreement. The Master Trustee’s certificate of authentication on any Obligation shall be deemed to have been executed by it if signed by an authorized officer or signer of the Master Trustee, but it shall not be necessary that the same officer or signer sign the certificate of authentication on all of the Obligations issued hereunder.

The Master Trustee’s authentication certificate shall be in substantially the following form:

Master Trustee’s Authentication Certificate

This Obligation is one of the Obligations described in the within-mentioned Master Agreement.

_____________________________________, as
Master Trustee

Dated:__________________

By_____________________________________,
The Master Trustee

Authorized Officer

Section 205. Form of Obligations. All Obligations issued under this Master Agreement shall be substantially in the form set forth or referred to in the Supplemental Master Agreement pursuant to which such Obligations are issued, and reflect the terms and conditions thereof as established hereby and by any Supplemental Master Agreement. Unless Obligations of a series have been registered under the Securities Act of 1933, as amended, each Obligation of such series shall be endorsed with a legend which shall read substantially as follows: “This [Obligation/Note/Guarantee] has not been registered under the Securities Act of 1933, as amended.”

Section 206. Mutilated, Lost, Stolen or Destroyed Obligations. In the event any temporary or definitive Obligation is mutilated, lost, stolen or destroyed, SANDAG may execute and the Master Trustee may authenticate a new Obligation of like form, date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any
mutilated Obligation, such mutilated Obligation shall first be surrendered to the Master Trustee, and in the case of any lost, stolen or destroyed Obligation, there shall be first furnished to SANDAG and the Master Trustee evidence of such loss, theft or destruction satisfactory to SANDAG and the Master Trustee, together in all such cases with indemnity satisfactory to them. In the event any such lost, stolen or destroyed Obligation shall have matured, instead of issuing a duplicate Obligation SANDAG may pay the same without surrender thereof upon receipt of the aforesaid indemnity. SANDAG and the Master Trustee may charge the holder or owner of such Obligation with their reasonable fees and expenses in this connection.

Section 207. Registration; Negotiability; Cancellation Upon Surrender; Exchange of Obligations. Upon surrender for transfer of any Obligation at the designated corporate trust office of the Master Trustee, SANDAG shall execute and the Master Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Obligation or Obligations of the same series, designation and maturity without coupons for a like aggregate amount.

The execution by SANDAG of any Obligation of any denomination shall constitute full and due authorization of such denomination and the Master Trustee shall thereby be authorized to authenticate and deliver such Obligation.

The Master Trustee shall not be required to transfer or exchange any Obligation during the period of 15 days next preceding any payment date of such Obligation or to transfer or exchange any Obligation after the notice calling such Obligation or portion thereof for redemption has been given as herein provided, or during the period of 15 days next preceding the mailing of such notice of redemption with respect to any Obligation of the same series and maturity.

As to any Obligation, the Person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the amounts due under any such Obligation shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Obligation to the extent of the sum or sums so paid.

Any Obligation surrendered for the purpose of payment or retirement or for replacement pursuant to Section 206 hereof, shall be canceled upon surrender thereof to the Master Trustee. Certification of Obligations canceled by the Master Trustee shall be made to SANDAG. Canceled Obligations may be destroyed by the Master Trustee in accordance with applicable law and regulations and the Master Trustee’s policies and procedures unless instructions to the contrary are received by the Master Trustee from SANDAG.

SANDAG and the Master Trustee may charge each Obligation holder requesting an exchange, registration, change in registration or transfer of an Obligation any tax, fee or other governmental charge required to be paid with respect to such replacement, exchange, registration or transfer.
Section 208. Security for Obligations; Pledge of Project Revenues.

(a) Security. The Obligations are limited obligations of SANDAG secured solely by the Collateral or, in the case of the Second Subordinated Obligations, to the Series D Collateral. The liability of SANDAG under the Obligations and this Master Agreement shall be limited to and payable solely from SANDAG’s interest in the Collateral or the Series D Collateral, as the case may be, and there shall be no other recourse against SANDAG. Neither the general credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the Obligations or the performance of the SANDAG’s obligations under the Obligations or this Master Agreement. The Obligations and this Master Agreement shall not be or be deemed obligations of the State or any political subdivision thereof other than SANDAG and then only to the extent provided in this Agreement.

The Collateral securing all Obligations issued under the terms of this Master Agreement shall be shared (a) first, among the owners of all Senior Obligations on a parity with other Senior Obligations on an equal and ratable basis, (b) second, among the owners of all First Subordinated Obligations on a parity with other First Subordinated Obligations on an equal and ratable basis and (c) third, commencing after the payment in full of all Senior Obligations, and only to the extent of the Series D Collateral, among the owners of all Second Subordinated Obligations on a parity with other Second Subordinated Obligations on an equal and ratable basis.

Any one or more series of Obligations issued hereunder, so long as any Liens created in connection therewith or securing such Obligations constitute Permitted Encumbrances, may be secured by any security so specified and such security need not extend to any other Indebtedness (including any other Obligations or series of Obligations). Consequently, the Supplemental Master Agreement pursuant to which any one or more series of Obligations is issued may provide for such supplements or amendments to the provisions hereof, including without limitation Articles II and VI hereof, as are necessary to provide for such security and to permit realization upon such security solely for the benefit of the Obligations entitled thereto. SANDAG hereby further covenants and agrees that, except for Permitted Encumbrances, it will not pledge, suffer to exist, or grant a security interest in the Collateral which is senior or superior to such pledge.

(b) Pledge of Collateral. In order to secure the prompt payment of all amounts due on all Obligations issued under this Master Agreement and the performance by SANDAG of its obligations under this Master Agreement and the Obligations, SANDAG hereby pledges, mortgages, grants and assigns to the Master Trustee, a security interest in, for the equal and ratable benefit of the holders from time to time of all of the Obligations, all of the Collateral. Without limiting the generality of the foregoing, this security interest shall apply to all rights to receive Collateral, whether in the form of accounts, general intangibles and contract or other rights to receive Collateral whether existing on the date hereof or thereafter acquired, and the proceeds thereof. SANDAG hereby represents that as of the date of the delivery hereof it has granted no security interest in Collateral prior to the security interest granted by this Section. SANDAG hereby further covenants and agrees that, except for Permitted Encumbrances, it will not pledge, suffer to exist, or grant a security interest in the Collateral which is senior or superior to such pledge. This Master Agreement is intended to be a security agreement pursuant to the Uniform Commercial Code.
SANDAG agrees to execute and deliver to the Master Trustee, if and to the extent required by law, such financing statements and continuation statements covering the Collateral from time to time and in such form as may be required to perfect and continue a security interest in the Collateral. SANDAG shall file all of such statements provided to it by the Master Trustee in a timely and appropriate manner as may be required to perfect and continue such security interest in Collateral. SANDAG shall pay all costs of filing such financing statements and continuation statements and any renewals thereof and shall pay all reasonable costs and expenses of any record searches and preparation fees for financing statements and continuation statements that may be required.

Section 209. Issuance of Obligations in Forms Other than Notes. To the extent that any Debt Obligation, any Hedging Obligation or any Ancillary Obligation is not in the form of a promissory note, an Obligation in the form of a promissory note may be issued hereunder and pledged as security for the payment of the amounts due under any such Obligation. Nevertheless, the parties hereto agree that Obligations may be issued hereunder to evidence any type of Indebtedness, including without limitation any Indebtedness in a form other than a promissory note. In addition, any Hedging Obligation or Ancillary Obligation may be authenticated as an Obligation hereunder. Consequently, the Supplemental Master Agreement pursuant to which any Obligation is issued may provide for such supplements or amendments to the provisions hereof, including without limitation Articles II and VI hereof, as are necessary to permit the issuance of such Obligation hereunder and as are not inconsistent with the intent hereof. Any Hedging Obligation or Ancillary Obligation which is authenticated as an Obligation hereunder shall be issued hereunder as either a Senior Obligation, First Subordinated Obligation or Second Subordinated Obligation and shall be equally and ratably secured hereunder with all other Senior Obligations, First Subordinated Obligations or Second Subordinated Obligations, as applicable, issued hereunder, except as otherwise expressly provided herein; provided, however, that any such Hedging Obligation or Ancillary Obligation shall be deemed to be Outstanding hereunder solely for the purpose of receiving payment hereunder and shall not be entitled to exercise any rights hereunder, including but not limited to any rights to direct the exercise of remedies, to vote or to grant consents.

Anything in this Master Agreement to the contrary notwithstanding, SANDAG may issue Hedging Obligations pursuant to this Master Agreement, without designating in such Hedging Obligation or in the Supplemental Master Agreement pursuant to which such Hedging Obligation is issued, and without regard to, a notional or principal amount, to any provider of one or more interest rate swaps, forward or futures contracts, or options, in order to evidence and secure one or more of such swaps, contracts or options issued by or with the same provider during a single Fiscal Year or calendar year, as designated by SANDAG.

ARTICLE III

PREPAYMENT OR REDEMPTION OF OBLIGATIONS

Section 301. Prepayment or Redemption Dates and Prices. Obligations shall be subject to optional and mandatory prepayment or redemption in whole or in part and may be prepaid or
redeemed prior to maturity as provided in the Supplemental Master Agreement [or the Related Loan Document] pertaining to the series of Obligations to be prepaid or redeemed, but not otherwise.

ARTICLE IV

GENERAL COVENANTS

Section 401. Payment of Principal, Premium, if any, and Interest and Other Amounts.

SANDAG unconditionally and irrevocably covenants that it will promptly pay, but only from the Collateral, the principal of, premium, if any, and interest on, and all other amounts due under, every Obligation issued under this Master Agreement and any other payments, including the purchase price of Related Bonds tendered or deemed tendered for purchase pursuant to the terms of a Related Bond Indenture or Related Loan Document required by the terms of such Obligations, at the place, on the dates and in the manner provided herein and in said Obligations according to the true intent and meaning thereof. SANDAG unconditionally and irrevocably agrees to make payments but only from Project Revenues upon each Obligation and be liable therefor solely from Project Revenues at the times and in the amounts (including principal, interest and premium, if any, and all other amounts due thereunder) equal to the amounts to be paid as interest, principal at maturity or by mandatory sinking fund redemption, or premium, if any, upon any Related Bonds from time to time outstanding and upon any other financial obligations evidenced or secured by an Obligation.

Section 402. Limited Obligations; No Recourse.

No covenant or agreement contained in this Master Agreement or the Obligations shall be deemed to be a covenant or agreement of any member, director, commissioner, officer, agent or employee of SANDAG or the Commission in an individual capacity. No recourse shall be had for any claim based on this Master Agreement or the Obligations against any member, director, commissioner, officer, agent or employee, past, present or future, of SANDAG or the Commission or of any successor body as such, either directly or through SANDAG or the Commission or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

Section 403. Performance of Covenants.

SANDAG covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Master Agreement and in each and every Obligation executed, authenticated and delivered hereunder and will perform all covenants and requirements imposed on SANDAG under the terms of any Related Bond Indenture.

Section 404. General Covenants; Right of Contest.

SANDAG hereby covenants to:

(a) Except as otherwise expressly provided herein (i) preserve its separate legal existence, (ii) preserve all its rights and licenses to the extent necessary or desirable in the
operation of the Project, and (iii) be qualified to do business and conduct its affairs in each jurisdiction where its ownership of the Project requires such qualification; provided, however, that nothing contained in this Master Agreement shall be construed to obligate SANDAG to retain, preserve or keep in effect the rights, licenses or qualifications no longer used or useful in the ownership or operation of the Project.

(b) At its sole cost and expense, promptly comply with all present and future laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court and the officers thereof which may be applicable to it or the Project, if the failure to so comply would have a materially adverse affect on the operations or financial affairs of the Project, taken as a whole.

SANDAG shall not be required to remove any Lien on Collateral required to be removed under Section 411, pay or otherwise satisfy and discharge its obligations, Indebtedness (other than any Obligations), demands and claims against Collateral or to comply with any Lien, law, ordinance, rule, order, decree, decision, regulation or requirement referred to in Section 411 respecting Collateral, so long as SANDAG shall contest, in good faith and at its cost and expense, in its own name and behalf, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the obligation, Indebtedness, demand, claim or Lien so contested, and the sale, forfeiture, or loss of the Project or any part thereof, provided, that no such contest shall subject any Related Issuer, any Obligation holder or the Master Trustee to the risk of any liability. While any such matters are pending, SANDAG shall not be required to pay, remove or cause to be discharged the obligation, Indebtedness, demand, claim or Lien being contested unless SANDAG agrees to settle such contest. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of SANDAG engaging in such a contest to settle such contest), and in any event SANDAG will save all Obligation holders and the Master Trustee harmless from and against all losses, judgments, decrees and costs (including attorneys’ fees and expenses in connection therewith) as a result of such contest and will, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be determined to be payable therein, together with all penalties, fines, interests, costs and expenses thereon or incurred in connection therewith.

Section 405. Insurance. SANDAG shall maintain or cause to be maintained at its sole cost and expense payable solely from Project Revenues, insurance (or shall in its discretion self-insure) with respect to the Project and the operation thereof against such casualties, contingencies and risks (including but not limited to public liability and employee dishonesty) and in amounts not less than is customary in the case of entities engaged in the same or similar activities and similarly situated and as is adequate in its judgment to protect the Project and the operation thereof. All insurance policies shall be carried with a responsible insurance company or companies authorized to do business in the State or shall be provided under a self-insurance program; any self-insurance program shall be actuarially sound in the written opinion of an accredited actuary, which opinion shall be filed with the Master Trustee at least annually.
Section 406. Rate and Toll Covenants.

(a) (i) SANDAG shall, subject to the remainder of this Section, fix, charge and collect rates and charges such that Net Cash Flow in each Fiscal Year will at all times produce a Senior Debt Service Coverage Ratio of at least 1.10 (the “Rate Covenant”). (ii) SANDAG further covenants that it will not decrease toll rates existing at the time of the satisfaction of the First Subordinated Obligations until payment in full, or expiration of, the Second Subordinated Obligations (the “Toll Covenant”).

(b) If SANDAG determines that Net Cash Flow may be inadequate to comply with the Rate Covenant for any year, or if audited financial statements show that the Rate Covenant was not satisfied for any year, SANDAG shall, within 30 days thereof, (i) engage the Traffic Consultant to review and analyze the operations of the Project and recommend actions regarding revising the rates, changing the methods of operations or other actions to increase the Net Cash Flow as to satisfy the Rate Covenant and, within sixty (60) days of such engagement, the Traffic Consultant shall deliver a written report to SANDAG containing the results of such study and the recommendations of the Traffic Consultant. and (ii) within 60 days of the delivery of such report, SANDAG shall either implement the Traffic Consultant’s recommendation or undertake an alternative plan that the Traffic Consultant agrees is likely to generate equivalent or greater Net Cash Flow than the Traffic Consultant’s recommended actions and approved by SANDAG’s Board of Directors; provided, that SANDAG shall not be required to take any action that may result in a breach by SANDAG of its obligations hereof.

Section 407. Permitted Reorganizations.

(a) SANDAG agrees that it will not merge into, or consolidate with, one or more entities, or allow one or more of such entities to merge into it, or sell or convey all or substantially all of the Project to any Person, unless:

(i) Any successor corporation or other legal entity (including without limitation any purchaser of all or substantially all the Property of SANDAG or the Project) is a corporation or other legal entity organized and existing under the laws of the United States of America or a state thereof and shall execute and deliver to the Master Trustee an appropriate instrument containing the agreement of such successor corporation or other legal entity to assume the due and punctual performance and observance of all the obligations, covenants and conditions of this Master Agreement and all Obligations to be kept and performed by SANDAG;

(ii) Immediately after such merger or consolidation, or such sale or conveyance, the successor corporation or other legal entity would not be in default in the performance or observance of any covenant or condition of any Related Loan Document or this Master Agreement as shown in on Officer’s Certificate;

(iii) If all amounts due or to become due on all Related Bonds have not been fully paid to the holders thereof or fully provided for, there shall be delivered to the Master Trustee an opinion of nationally recognized municipal bond counsel to the effect that under then existing law the consummation of such merger, consolidation, sale or conveyance would not adversely affect the validity of such Related Bonds or the exemption otherwise available from federal or state income taxation of interest payable on such Related Bonds; and
(b) In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor corporation or other legal entity, such successor corporation or other legal entity shall succeed to and be substituted for its predecessor, with the same effect as if it had been named herein and SANDAG shall thereupon be relieved of any further obligation or liabilities hereunder or upon the Obligations and SANDAG may thereupon or at any time thereafter be dissolved, wound up or liquidated. Any successor corporation or other legal entity thereupon may cause to be signed and may issue in its own name Obligations hereunder and SANDAG shall be released from its obligations hereunder and under any Obligations, if SANDAG shall have conveyed all or substantially all Property owned by it, or all or substantially all of the Project, as applicable (or all such Property shall be deemed conveyed by operation of law) to such successor corporation. All Obligations so issued by such successor corporation hereunder shall in all respects have the same legal rank and benefit under this Master Agreement as Obligations theretofore or thereafter issued in accordance with the terms of this Master Agreement as though all of such Obligations had been issued hereunder by SANDAG without any such consolidation, merger, sale or conveyance having occurred.

(c) In case of any such consolidation, merger, sale or conveyance such changes in phraseology and form (but not in substance) may be made in Obligations thereafter to be issued as may be appropriate.

(d) The Master Trustee may rely upon an opinion of Counsel as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, complies with the provisions of this Section and that it is proper for the Master Trustee under the provisions of Article VIII and of this Section to join in the execution of any instrument required to be executed and delivered by this Section.

(e) Except as may be expressly provided in any Supplemental Master Agreement, the ability of SANDAG to merge into, or consolidate with, one or more corporations or other legal entity, or allow one or more corporations or other legal entities to merge into it, or sell or convey all or substantially all of its Property to any Person is not limited by the provisions of this Master Agreement. Notwithstanding anything to the contrary herein, SANDAG shall not engage in any merger or consolidation or disposition of substantially all of its assets if any Outstanding Related Bonds have been issued until there is delivered to the Master Trustee an opinion of nationally recognized municipal bond counsel to the effect that, under then existing law, such action will not adversely affect the validity of any Related Bond or any exemption from federal or state income taxation of interest payable thereon to which such Related Bond would otherwise be entitled.

Section 408. Financial Statements, Etc.
SANDAG covenants that it will keep or cause to be kept proper books of records and accounts in which full, true and correct entries will be made of all dealings or transactions of or in relation to the Project in accordance with generally accepted accounting principles consistently applied, and shall furnish to the Master Trustee:

(a) Copies of an Annual Budget no later than 30 days prior to the commencement of each Fiscal Year, (and thereafter, any amendments from time to time) containing an operating plan and a budget on a cash flow basis of projected traffic, Project
Revenues, Project O&M Expenses, [Project Renewal and Replacement Expenditures], interest, and other costs and a pro forma balance sheet prepared in accordance with GAAP for the next Fiscal Year.

(b) As soon as practicable after they are available, but in no event more than 180 days after the last day of each Fiscal Year, a financial report of the Project for such Fiscal Year certified by a firm of independent certified public accountants selected by SANDAG, prepared on a combined or consolidated, or combining or consolidating, basis in accordance with generally accepted accounting principles, covering the operations of the Project for such Fiscal Year and containing an audited consolidated statement of financial position of the Project as of the end of such Fiscal Year and an audited consolidated and an unaudited consolidating statement of changes in net assets and statement of cash flows of the Project for such Fiscal Year and an audited consolidated and an unaudited consolidating statement of operations of the Project for such Fiscal Year, showing in each case in comparative form the financial figures for the preceding Fiscal Year.

(c) Not more than 180 days after the last day of each Fiscal Year of SANDAG, an Officer’s Certificate calculating whether SANDAG has complied with the Rate Covenant for the prior Fiscal Year, together and stating that the financial statements referenced in (B) above were prepared in accordance with generally accepted accounting principles (except for required consolidations) and that such financial statements reflect the results of the operations of the Project.

Section 409. Permitted Indebtedness.

SANDAG covenants that, except for Permitted Debt, SANDAG shall not incur additional Indebtedness.

Section 410. Permitted Dispositions.

(a) SANDAG covenants that except for Permitted Dispositions, SANDAG shall not sell, lease, remove, transfer, assign, convey or otherwise dispose of the Project or any portion thereof. Additionally, SANDAG covenants shall not request the Master Trustee to make, nor shall SANDAG accept, any transfers from funds or accounts, except in compliance with Article V hereof.

(b) Permitted Dispositions shall include only the following:

(i) sales or other dispositions of obsolete, worn out or defective equipment; provided that, except in the case of obsolete equipment, such equipment is promptly replaced by SANDAG with suitable substitute equipment of substantially the same character and quality and at least equivalent useful life and utility to the extent that the failure to replace such equipment could reasonably be expected to have a Material Adverse Effect;

(ii) sales or other dispositions of equipment or other property in the ordinary course of the business of SANDAG in accordance with the Transaction Documents; provided that (A) at the time of such sale or disposition and after giving
effect thereto, no Default or Event of Default exists, (B) the cumulative value of the
equipment or other property sold or disposed of in connection with any transaction
permitted pursuant to this clause (ii) shall not exceed amounts contemplated by the
Annual Budget, and (C) the Proceeds (as defined in the Uniform Commercial Code)
received from such sale or disposition are applied to the replacement of such sold or
disposed property with property of the same character and quality and at least equivalent
useful life and utility unless the failure to replace such equipment could not reasonably be
expected to have a Material Adverse Effect;

(iii) sales of land parcels, in an aggregate amount not to exceed
$1,000,000, that SANDAG has reasonably determined (with the approval of the
Instructing Controlling Lender) are no longer necessary for the operation and
maintenance of the Project in accordance with the TIFIA Loan Documents;

(iv) assignments or pledges pursuant to and in accordance with the
TIFIA Loan Documents;

(v) the disposition of Property if such Property is replaced promptly by
other Property of comparable utility or worth;

(vi) the disposition of Property if SANDAG receives fair market value
therefor;

(vii) the disposition of Property constituting the sale, assignment or
other disposition of accounts receivable, provided that the transaction is commercially reasonable
and for consideration deemed fair and adequate in an Officer's Certificate delivered to the Master
Trustee; and

(viii) the disposition of Property in connection with a Permitted
Reorganization.

Section 411. Permitted Encumbrances.
SANDAG shall not create or incur or permit to be created or incurred or to exist any Lien on the
Project, Project Revenues or other Collateral, except for Permitted Encumbrances.

Section 412. Right to Consent, Etc.
SANDAG shall have the right to agree in any Related Bond Indenture, Related Loan Document
or Supplemental Master Agreement pursuant to which an Obligation is issued that, so long as
any Related Bonds remain outstanding under such Related Bond Indenture or such Obligation
remains outstanding, any or all provisions of this Master Agreement which provide for approval,
consent, direction or appointment by the Master Trustee, provide that anything must be
satisfactory or acceptable to the Master Trustee or not unacceptable to the Master Trustee, allow
the Master Trustee to request anything or contain similar provisions granting discretion to the
Master Trustee may also require or allow, as the case may be, the approval, consent,
appointment, satisfaction, acceptance, request or like exercise of discretion by the Related Issuer,
the Related Bond Trustee, the credit enhancer of any Related Bonds, or the holders of some
specified percentage of such Obligations as provided for in such Obligations, or any one thereof,
and that all items required to be delivered or addressed to the Master Trustee hereunder may also be delivered or addressed to the Related Issuer, such Obligation holders, the credit enhancer of any Related Bonds, and the Related Bond Trustee, or any one thereof, unless waived thereby.

Section 413. Operations and Maintenance. SANDAG shall operate and maintain the Project in a reasonable and prudent manner and shall maintain the Project in good repair, working order and condition, ordinary wear and tear excepted, and in accordance with the requirements of the Franchise Agreement. SANDAG 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 rights, licenses, permits, franchises and authorizations material to the conduct of the Project, and comply in all material respects with all applicable laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over the Project (including, without limitation, the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.) and all other federal, state and local laws, rules, regulations, orders, decrees, judgments and administrative decisions 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).

Section 414. Indemnity. SANDAG will pay, but only from the Collateral, and will protect, indemnify and save the Master Trustee (and its directors, officers, employees and agents) harmless from and against, but only from the Collateral, any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys’ fees and expenses of such directors, officers, employees and agents and the Master Trustee), causes of action, suits, claims, demands and judgments of whatsoever kind and nature (including those arising or resulting from any injury to or death of any person or damage to the Project) arising from or in any manner directly or indirectly growing out of or connected with the following:

(a) the use, condition or occupancy of any of the Project, any repairs, construction, alterations, renovation, relocation, remodeling and equipping thereof or thereto or the condition of the Project including adjoining sidewalks, streets or alleys and any equipment or facilities at any time located on such property or used in connection therewith but which are not the result of the negligence of the Master Trustee;

(b) violation of any agreement, warranty, covenant or condition of this Master Agreement, except by the Master Trustee;

(c) violation of any contract, agreement or restriction by SANDAG relating to the Project, which shall have existed at the commencement of this Master Agreement;

(d) violation of any law, ordinance, regulation or court order affecting the Project or the ownership, occupancy or use thereof;

(e) any statement or information concerning SANDAG or its officers and members or the Project, contained in any official statement or other offering document furnished
to the Master Trustee or the purchaser of any Obligations or any Related Bonds, that is untrue or incorrect in any material respect, and any omission from such official statement or other offering document of any statement or information that should be contained therein for the purpose for which the same is to be used or which is necessary to make the statements therein concerning SANDAG, its officers and members and the Project not misleading in any material respect, provided that the official statement or other offering document has been approved by SANDAG and the indemnified party did not have knowledge of the omission or misstatement or did not use the official statement or other offering document with reckless disregard of or gross negligence in regard to the accuracy or completeness of the official statement or other offering document; and

(f) the execution of the Master Agreement by the Master Trustee and any action taken by the Master Trustee in the performance of its duties under this Master Agreement or at the direction of SANDAG.

Such indemnity shall extend to each Person, if any, who “controls” the Master Trustee as that term is defined in Section 15 of the Securities Act of 1933, as amended. The respective obligations of SANDAG under this Section 413 to indemnify and hold harmless the Master Trustee shall survive satisfaction and discharge of this Master Agreement and the replacement or resignation of the Master Trustee for any reason.

In the event of settlement of any litigation commenced or threatened, such indemnity shall be limited to the aggregate amount paid under a settlement effected with the written consent of SANDAG.

The Master Trustee shall promptly notify SANDAG in writing of any claim or action brought against the Master Trustee, its directors, officers, employees and agents, or any controlling person, as the case may be, in respect of which indemnity may be sought against SANDAG, setting forth the particulars of such claim or action, and SANDAG will assume the defense thereof, including the employment of counsel satisfactory in the reasonable discretion of the Master Trustee or such controlling person, as the case may be, and the payment of all expenses. The Master Trustee or any such controlling person, as the case may be, may employ separate counsel in any such action and participate in the defense thereof, and the reasonable fees and expenses of such counsel shall not be payable by SANDAG unless: (i) the employment thereof has been specifically authorized by SANDAG; (ii) SANDAG has failed to assume promptly the defense and employ counsel satisfactory to the Master Trustee; or (iii) the named parties to any such action (including any impleaded parties) include both the Master Trustee or any of its directors, officers, employees or agents and SANDAG, and the Master Trustee or any such director, officer, employee or agent shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to SANDAG (in which case SANDAG shall not have the right to assume the defense of such action on behalf of the Master Trustee or such director, officer, employee or agent), in any of which events such fees and expenses shall be borne by SANDAG.
ARTICLE V

CREATION OF ACCOUNTS; FLOW OF FUNDS

Section 501. Creation of Funds and Accounts; Initial Deposits.

(a) In addition to any other funds and account created by Supplemental Master Agreements, the following funds and accounts are hereby created and amounts deposited therein shall be held in trust by the Master Trustee until applied as hereinafter directed:

(i) “Project Revenue Fund”;

(ii) “Operating and Maintenance Reserve Fund”;

(iii) “Capital Expenditure Reserve Fund”;

(iv) “Expense Fund” and within the Expense Fund, the “TIFIA Note Expense Account”;

(v) “Senior Obligations Debt Service Fund” and within the Senior Obligations Debt Service Fund, a “TIFIA Interest Account” and a “TIFIA Principal Account”;

(vi) “Major Maintenance Reserve Fund”;

(vii) “Extraordinary Reserve Fund”;

(viii) “First Subordinated Obligations Debt Service Fund” and within the First Subordinate Obligations Debt Service Fund, a “TransNet Interest Account” and a “TransNet Principal Account”;

(ix) “Second Subordinated Obligations Debt Service Fund” and within the Second Subordinate Obligations Debt Service Fund, the “Series D-1 Payment Account” and the “Series D-2 Payment Account”;

(x) “SANDAG Distribution Fund”; and

(xi) [Note: Fund for deposit and disbursement of cash at closing of APSA to be added]

(b) On the date hereof, proceeds of _______ shall be deposited as follows:

(i) $_______ shall be deposited in the “Operating and Maintenance Reserve Fund”;

(ii) $_______ shall be deposited in the “Capital Expenditure Reserve Fund”;
(iii) $________ shall be deposited in the “Major Maintenance Reserve Fund”;
(iv) $________ shall be deposited in the “Extraordinary Reserve Fund”; and
(v) $________ shall be deposited in the “[Closing Cash] Fund”.

(c) [Add provisions governing administration and closure of [Closing Cash] Fund]

Section 502. Project Revenue Fund; Agreements With Other Entities.

(a) SANDAG covenants that all Project Revenues will be deposited daily, as far as practicable, with the Master Trustee or in the name of the Master Trustee with a Depository or Depositories, to the credit of the Project Revenue Fund.

(b) To the extent now or hereafter authorized by law, SANDAG may enter into agreements with any commission, authority or other similar legal body operating a toll road, whether or not connected to the Project, (1) with respect to the establishment of combined schedules of Tolls and/or (2) for the collection and application of Tolls charged for trips over all or a portion of both turnpikes combined, which on the basis of the Tolls and any other revenues to be received by any such agreement will result in the receipt by SANDAG of its allocable portion of such Tolls (less fees and expenses associated with such arrangement). To the extent now or hereafter authorized by law, SANDAG also may enter into agreements with other Persons with respect to the collection of Tolls or advances or prepayment of Tolls charged for trips over all or a portion of the Project, which on the basis of the Tolls and any other revenues to be received by any such agreement will result in the receipt by SANDAG of the appropriate Tolls for such trips. No agreement establishing a combined schedule of Tolls shall restrict the ability of SANDAG to implement an increase in its Tolls at least annually.

Amounts received by SANDAG from such other commission, authority or other similar legal body or Person, in accordance with such agreements, shall be deposited in the Project Revenue Fund when they constitute Project Revenues. Amounts received by SANDAG and deposited in the Project Revenue Fund which are payable by SANDAG to such other commission, authority or other similar legal body or Person, in accordance with any such agreements, shall be withdrawn by the Master Trustee from the Project Revenue Fund upon delivery to the Master Trustee of an Officer’s Certificate that such withdrawal is required pursuant to the terms of an agreement entered into pursuant to this Section and shall be paid by the Master Trustee in accordance with directions contained in such certificate. Any agreement entered into pursuant to this Section shall be made available to the Master Trustee upon its request.
Section 503. Operating and Maintenance Reserve Fund. SANDAG shall establish a fund known as the “Operating and Maintenance Reserve Fund” which shall be held as a portion of a separate enterprise fund by SANDAG in the name of SANDAG outside of the Master Agreement until applied as hereinafter directed. The Trustee shall transfer from the Project Revenue Fund on or before the last Business Day of each month, commencing __________, 20__, to the credit of the Operating and Maintenance Reserve Fund an amount equal to (a) the amount shown by the Annual Budget to be necessary to pay Operations and Maintenance Expenses for the ensuing month and (b) an amount certified in an Officer’s Certificate as being reasonably necessary to pay Operations and Maintenance Expenses which are expected for such month, after taking into account the amount on deposit in the Operating and Maintenance Reserve Fund (including the amount described in clause (a)), it being recognized that the Annual Budget may have to be amended accordingly.

Subject to Section 501 (b), moneys may be withdrawn by SANDAG from the Operating and Maintenance Reserve Fund for the payment of Operations and Maintenance Expense. In making payments from the Operating and Maintenance Reserve Fund, SANDAG shall be deemed to be certifying that obligations in the stated amounts have been incurred by SANDAG
and that each item thereof was properly incurred for Operations and Maintenance Expense, and has not been paid previously.

Section 504. Capital Expenditure Reserve Fund. SANDAG shall establish a fund known as the “Capital Expenditure Reserve Fund” which shall be held as a portion of a separate enterprise fund by SANDAG in the name of SANDAG outside of the Master Agreement until applied as hereinafter directed. After making the deposits pursuant to Sections 503, the Master Trustee shall transfer from the Project Revenue Fund on or before the last Business Day of each month, commencing __________, 20__, to the credit of the Capital Expenditure Reserve Fund an amount equal to (a) the amount shown by the Annual Budget to be necessary to pay Capital Expenditures for the ensuing month and (b) an amount certified in an Officer’s Certificate as being reasonably necessary to pay Capital Expenditures which are expected for such month, after taking into account the amount on deposit in the Capital Expenditure Reserve Fund (including the amount described in clause (a)), it being recognized that the Annual Budget may have to be amended accordingly.

Subject to Section 501 (b), moneys may be withdrawn from the Capital Expenditure Reserve Fund for the payment of Required Capital Expenditures. In making payments from the Capital Expenditure Reserve Fund, SANDAG shall be deemed to be certifying that obligations in the stated amounts have been incurred by SANDAG and that each item thereof was properly incurred for Required Capital Expenditures, and has not been paid previously.

Section 505. Expense Fund. After making the deposits pursuant to Sections 503 and 504, the Master Trustee shall transfer from the Project Revenue Fund on or before the last Business Day of each month, commencing __________, 20__, to the credit of the Expense Fund an amount equal to (a) the amount shown by the Annual Budget to be necessary to pay the fees, costs and expenses relating to the TIFIA Note for the ensuing month and (b) an amount certified in an Officer’s Certificate as being reasonably necessary to pay such fees, costs and expenses which are expected for such month, after taking into account the amount on deposit in the Expense Fund (including the amount described in clause (a)), it being recognized that the Annual Budget may have to be amended accordingly.

Moneys may be withdrawn from the Expense Fund for the payment of the fees, costs and expenses relating to the TIFIA Note. In making payments from the Expense Fund, SANDAG shall be deemed to be certifying that obligations in the stated amounts have been incurred by SANDAG and that each item thereof was properly incurred for fees, costs and/or expenses relating to the TIFIA Note, and has not been paid previously.

Section 506. Senior Obligations Debt Service Fund. On or before the last Business Day of each quarter, commencing __________, 20__, after making the deposits pursuant to Sections 503, 504 and 505, the Master Trustee shall withdraw from the Project Revenue Fund and deposit (i) to the TIFIA Interest Account of the Senior Obligations Debt Service Fund, an amount which, together with any other available funds in the TIFIA Interest Account, is necessary to provide in equal quarterly installments, funds for the payment of the interest on the TIFIA Note coming due on the immediately succeeding interest payment date in accordance with the Schedule 508 attached hereto, and then (ii) to the TIFIA Principal Account of the Senior Obligations Debt Service Fund, an amount which, together with any other available funds in the
TIFIA Principal Account, is necessary to provide in equal quarterly installments, funds for the payment of the principal (or sinking fund payment) on the TIFIA Note coming due on the immediately succeeding principal (or sinking fund) payment date in accordance with the Schedule 506 attached hereto. Any payment made in accordance with Schedule 506 shall not be deemed to be a breach of any covenant against prepayment of the TIFIA Notes. The moneys in the Senior Obligations Debt Service Fund shall be held by the Trustee in trust for the benefit of the Senior Obligations, to the extent the foregoing are payable from such fund, and, to said extent and pending application, shall be subject to a lien and charge in favor of the owners of the Senior Obligations until paid out or transferred as hereinafter provided. There shall be withdrawn from the Senior Obligations Debt Service Fund from time to time and set aside or deposited with the Master Trustee sufficient money for paying the interest on and the principal of and premium on the Senior Obligations as the same shall become due, except to the extent such interest, principal or other amounts are payable from a fund or account other than the Senior Obligations Debt Service Fund as provided in any Supplemental Master Agreement.

Section 507. **Major Maintenance Reserve Fund.** SANDAG shall establish a fund known as the “Major Maintenance Reserve Fund” which shall be held as a portion of a separate enterprise fund by SANDAG in the name of SANDAG outside of the Master Agreement until applied as hereinafter directed. After making the deposits pursuant to Sections 503, 504, 505 and 506, the Master Trustee shall transfer from the Project Revenue Fund on or before the last Business Day of each month, commencing __________, 20__, to the credit of the Major Maintenance Reserve Fund an amount equal to (a) the amount shown by the Annual Budget to be necessary to pay Major Maintenance [Costs] for the ensuing month and (b) an amount certified in an Officer’s Certificate as being reasonably necessary to pay Major Maintenance [Costs] which are expected for such month, after taking into account the amount on deposit in the Major Maintenance Reserve Fund (including the amount described in clause (a)), it being recognized that the Annual Budget may have to be amended accordingly.

Subject to Section 501 (b), moneys may be withdrawn from the Major Maintenance Reserve Fund for the payment of Major Maintenance [Costs]. In making payments from the Major Maintenance Reserve Fund, SANDAG shall be deemed to be certifying that obligations in the stated amounts have been incurred by SANDAG and that each item thereof was properly incurred for Major Maintenance [Costs], and has not been paid previously.

Section 508. **Extraordinary Reserve Fund.** SANDAG shall establish a fund known as the “Extraordinary Reserve Fund” which shall be held as a portion of a separate enterprise fund by SANDAG in the name of SANDAG outside of the Master Agreement until applied as hereinafter directed. After making the deposits pursuant to Section 503, 504, 505, 506 and 507, the Master Trustee shall transfer from the Project Revenue Fund on or before the last Business Day of each month, commencing __________, 20__, to the credit of the Extraordinary Reserve Fund an amount equal to (a) the amount shown by the Annual Budget to be necessary to be deposited to the Extraordinary Reserve Fund and (b) an amount certified in an Officer’s Certificate as being reasonably necessary to be deposited to the Extraordinary Reserve Fund for the ensuing month (including the amount described in clause (a)), it being recognized that the Annual Budget may have to be amended accordingly.
Subject to Section 501 (b), moneys may be withdrawn by SANDAG from the Extraordinary Reserve Fund to make expenditures required to comply with the Franchise Agreement or other expenses determined by the SANDAG Board of Directors to be necessary to effectively operate the Project. In making payments from the Extraordinary Reserve Fund, SANDAG shall be deemed to be certifying that obligations in the stated amounts have been incurred by SANDAG and that each item thereof was properly incurred, and has not been paid previously.

Section 509. _First Subordinated Obligations Debt Service Fund._ On or before the last Business Day of each quarter, commencing _______, 20 __, after making the deposits pursuant to Sections 503, 504, 505, 506, 507 and 508, and satisfaction of the requirements of Section 15(n) of the TIFIA Loan Agreement, the Master Trustee shall withdraw from the Project Revenue Fund and deposit to the TransNet Payment Account of the First Subordinated Obligations Debt Service Fund, an amount which, together with any other available funds in the TransNet Payment Account, is necessary to provide in equal quarterly installments, funds for the payment of the TransNet Note in the amount set forth in the Annual Budget for that same Fiscal Year, plus any sums necessary to compensate for any previous shortfalls in payments on the TransNet Note in accordance with Schedule 509 attached hereto. If, through partial or complete forgiveness of the amount due on the TransNet Note, the moneys deposited in the TransNet Payment Account are no longer required for the payment of amounts due on the TransNet Note, deposits to the TransNet Payment Account shall nevertheless continue in accordance with this Section 509 and Schedule 509 (the “Continuing Deposit Obligation”) and all sums so deposited shall be immediately transferred to the SANDAG Distribution Fund. The Continuing Deposit Obligation shall be deemed a First Subordinated Obligation for all purposes under this Agreement. The moneys in the First Subordinated Obligations Debt Service Fund shall be held by the Trustee in trust for the benefit of the First Subordinated Obligations, to the extent the foregoing are payable from such fund, and, to said extent and pending application, shall be subject to a lien and charge in favor of the owners of the First Subordinated Obligations until paid out or transferred as hereinafter provided. There shall be withdrawn from the First Subordinated Obligations Debt Service Fund from time to time and set aside or deposited with the Master Trustee sufficient money for paying the interest on and the principal of and premium on the First Subordinated Obligations as the same shall become due, except to the extent such interest, principal or other amounts are payable from a fund or account other than the First Subordinated Obligations Debt Service Fund as provided in any Supplemental Master Agreement.

Section 510. _Second Subordinated Obligations Debt Service Fund._ After satisfaction in full of all Senior Obligations and the First Subordinated Obligations, on or before the last Business Day of each quarter, after making the deposits pursuant to Sections 503, 504, 505, 506, 507, 508 and 509, the Master Trustee shall withdraw from the Project Revenue Fund and deposit in the Series D Payment Account of the Second Subordinated Obligations Debt Service Fund, an amount which, together with any other available funds in the Series D Payment Account, is necessary to provide in equal quarterly installments, funds for the payment of the principal (or sinking fund payment) on the Series D Note coming due on the immediately succeeding principal (or sinking fund) payment date. The moneys in the Second Subordinated Obligations Debt Service Fund shall be held by the Trustee in trust for the benefit of the Second Subordinated Obligations, to the extent the foregoing are payable from such fund, and, to said
extent and pending application, shall be subject to a lien and charge in favor of the owners of the Second Subordinated Obligations until paid out or transferred as hereinafter provided. There shall be withdrawn from the Second Subordinated Obligations Debt Service Fund from time to time and set aside or deposited with the Master Trustee sufficient money for paying the interest on and the principal of and premium on the Second Subordinated Obligations as the same shall become due, except to the extent such interest, principal or other amounts are payable from a fund or account other than the Second Subordinated Obligations Debt Service Fund as provided in any Supplemental Master Agreement.

Section 511. SANDAG Distribution Fund. Except as otherwise provided in Section 509, after making the deposits pursuant to Sections 503, 504, 505, 506, 507, 508, 509 and, 510, the Trustee shall transfer from the Project Revenue Fund on or before the last Business Day of each year (or more frequently if requested in an Officer’s Certificate) to the credit of the SANDAG Distribution Fund any funds which are identified in an Officer’s Certificate to be in excess of the amount required to be reserved therein for the transfers described in Sections 503 through 510 (if applicable).

Moneys in the SANDAG Distribution Fund may be expended by SANDAG for any purpose related or unrelated to the Project, as permitted or required by the Franchise Agreement, including but not limited to:

(a) To purchase or redeem Obligations;

(b) To fund improvements, extensions and replacements of the Project; or

(c) To further any corporate purpose relating to the Project.

The Trustee is authorized to transfer monies on deposit in the SANDAG Distribution Fund to SANDAG (or any other Person as directed by SANDAG) upon receipt of an Officer’s Certificate from SANDAG directing the Master Trustee to make such transfer.

Section 512. Moneys Set Aside for Principal and Interest Held in Trust. All moneys which the Master Trustee shall have set aside (or deposited with any paying agent) for the purpose of paying any of the Obligations hereby secured, either at the maturity thereof or upon call for redemption, shall be held in trust for the respective holders of such Obligations. Pending distribution to the Obligation Holders of such sums in accordance with the terms of this Agreement of such moneys may be placed by the Master Trustee in Permitted Investments. However, any moneys which shall be so held or deposited by the Master Trustee, and which shall remain unclaimed by the holders of such Obligations for the period of two years after the date on which such Obligations shall have become payable, shall be paid to SANDAG upon its written request or to such officer, board or body as may then be entitled by law to receive the same; thereafter the holders of such Bonds shall look only to SANDAG or to such officer, board or body, as the case may be, for payment and then only to the extent of the amounts so received without any interest thereon, and the Trustee shall have no responsibility with respect to such moneys.

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Section 513. Additional Security. Except as otherwise provided or permitted herein, the Collateral and other property, if any, securing all Obligations issued under the terms of this Master Agreement shall be shared (a) first, among the owners of all Senior Obligations on a parity with other Senior Obligations on an equal and ratable basis, (b) second, among the owners of all First Subordinated Obligations on a parity with other First Subordinated Obligations on an equal and ratable basis and (c) third, after satisfaction in full of all Senior Obligations and First Subordinated Obligations, among the owners of all Second Subordinated Obligations on a parity with other Second Subordinated Obligations on an equal and ratable basis. SANDAG may, however, in its discretion, provide additional security or credit enhancement for specified Obligations with no obligation to provide such additional security or credit enhancement to other Obligations. Moreover, SANDAG may provide in a Supplemental Master Agreement that Obligations issued thereunder are not secured, or are secured only in part or only under certain circumstances, by the Project Revenues and other property, if any, pledged to secure the Obligation issued hereunder.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 601. Events of Default. Each of the following events is hereby declared an “Event of Default”:

(a) failure to pay any installment of interest or principal, or any premium, or any other amount due, on any Obligation when the same shall become due and payable, whether at maturity, upon any date fixed for prepayment or otherwise and the continuance of such failure for 10 days (or any shorter or longer grace period required in the Supplemental Master Agreement pursuant to which such Obligation was issued); or

(b) failure of SANDAG to comply with, observe or perform any other covenants, conditions, agreements or provisions hereof and to remedy such default within 60 days after written notice thereof to SANDAG from the Master Trustee or the holders of at least 25% in aggregate principal amount of the outstanding Instructing Controlling Lender; provided, that if such default cannot with due diligence and dispatch be wholly cured within 60 days but can be wholly cured, the failure of SANDAG to remedy such default within such 60 day period shall not constitute a default hereunder if SANDAG shall immediately upon receipt of such notice commence with due diligence and dispatch the curing of such default and, having so commenced the curing of such default, shall thereafter prosecute and complete the same with due diligence and dispatch; or

(c) any representation or warranty made by SANDAG herein or in any Supplemental Master Agreement or in any statement or certificate furnished to the Master Trustee or the purchaser of any Obligation or Related Bond in connection with the delivery of any Obligation or sale of any Related Bond or furnished by SANDAG pursuant hereto or any Supplemental Master Agreement proves untrue in any material respect as of the date of the issuance or making thereof and shall not be corrected or brought into compliance within 60 days after written notice thereof to SANDAG by the Master Trustee or the holders of at least 25% in aggregate principal amount of the outstanding Instructing Controlling Lender; or
(d) any judgment, writ or warrant of attachment or of any similar process shall be entered or filed against SANDAG or against any property comprising the Project and remain unvacated, unpaid, unbonded, unstayed or uncontested in good faith for a period of 60 days; provided, however, that none of the foregoing shall constitute an Event of Default unless the amount of such judgment, writ, warrant of attachment or similar process, together with the amount of all other such judgments, writs, warrants or similar processes so unvacated, unpaid, unbonded, unstayed or uncontested, exceeds 10% of Current Assets of the Project as shown on or derived from the then latest available audited consolidated financial statements of the Project; or

(e) SANDAG admits insolvency or bankruptcy or its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee, custodian or receiver for SANDAG, or for the major part of its Property; or

(f) a trustee, custodian or receiver is appointed for SANDAG or for the major part of its Property and is not discharged within 60 days after such appointment; or

(g) bankruptcy, dissolution, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against SANDAG (other than bankruptcy proceedings instituted by SANDAG against third parties), and if instituted against SANDAG are allowed against SANDAG or are consented to or are not dismissed, stayed or otherwise nullified within 60 days after such institution; or

(h) the occurrence of an Event of Default (as defined in the TIFIA Loan Agreement) under the TIFIA Loan Agreement.

Section 602. Remedies; Rights of Obligation Holders. Upon the occurrence of any Event of Default hereunder, the Master Trustee shall take such actions as may be directed by the Instructing Controlling Lender, including a suit, action or proceeding at law or in equity to enforce the payment out of Project Revenues and other Collateral of the principal of, premium, if any, and interest on the Outstanding Obligations and any other sums due under the Obligations or hereunder, and may collect such Project Revenues and other Collateral in the manner provided by law.

The Master Trustee shall have the right to decline to comply with any such direction if the Master Trustee shall be advised by Counsel (who may be its own Counsel) that the action so requested may not lawfully be taken.

No holder of any Subordinate Obligation shall have any right as a holder of a Subordinate Obligation to institute any judicial or other action or remedial proceeding (including, without limitation, bankruptcy or insolvency proceedings) against SANDAG or any of SANDAG’s other rights, interests, assets or properties, to collect any moneys due, to enforce payment on its
Subordinate Obligation so long as any Senior Obligations remain Outstanding without the written consent of the holder of the Senior Obligations.

No remedy by the terms of this Master Agreement conferred upon or reserved to the Master Trustee (or to the holders of Obligations) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Master Trustee or to the holders of Obligations hereunder now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder, whether by the Master Trustee or by the holders of Obligations, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 603. Instructing Controlling Lender May Control. Notwithstanding any other provision hereof, the Instructing Controlling Lender shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Master Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Master Agreement or for the appointment of a receiver or any other proceedings hereunder; provided, that indemnity satisfactory to the Master Trustee has been provided to it and that such direction shall not be otherwise than in accordance with the provisions of law and of this Master Agreement and that the Master Trustee shall have the right to decline to comply with any such request if the Master Trustee shall be advised by Counsel (who may be its own Counsel) that the action so directed may not lawfully be taken or the Master Trustee in good faith shall determine that such action would be unjustly prejudicial to the holders of the Obligations not parties to such direction.

Section 604. Application of Moneys. All moneys received by the Master Trustee pursuant to any right given or action taken under the provisions of this Article VI (except moneys held for the payment of Obligations called for prepayment or redemption which have become due and payable) shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees of, expenses, liabilities and advances incurred or made by the Master Trustee, any Related Issuers and any Related Bond Trustees, including those of their attorneys, agents and advisors, be applied as follows:

All such moneys shall be applied:

First: To the payment to the Persons entitled thereto of all installments of interest [(or regularly scheduled payment on any Hedging Obligation that is a Senior Obligation)] then due on the Senior Obligations, in the order of the maturity of the installments of such interest and regularly scheduled payments,
and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

Second: To the payment to the Persons entitled thereto of the unpaid principal and premium, if any, on the Senior Obligations which shall have become due [and termination payments on any Hedging Obligation that is a Senior Obligation] (other than Senior Obligations called for redemption or payment for payment of which moneys are held pursuant to the provisions of this Master Agreement), in the order of the scheduled dates of their payment, and, if the amount available shall not be sufficient to pay in full Senior Obligations due on any particular date, then to the payment ratably, according to the amount of principal and premium and termination payments due on such date, to the Persons entitled thereto without any discrimination or privilege; and

Third: To the payment to the Persons entitled thereto of any other amounts that have become due under any and all Senior Obligations; and

Fourth: To the payment to the Persons entitled thereto of all installments of interest [(or regularly scheduled payment on any Hedging Obligation that is a First Subordinated Obligation)] then due on the First Subordinated Obligations, in the order of the maturity of the installments of such interest and regularly scheduled payments, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

Fifth: To the payment to the Persons entitled thereto of the unpaid principal and premium, if any, on the First Subordinated Obligations that shall have become due [and termination payments on any Hedging Obligation that is a First Subordinated Obligation] (other than First Subordinated Obligations called for redemption or payment for payment of which moneys are held pursuant to the provisions of this Master Agreement), in the order of the scheduled dates of their payment, and, if the amount available shall not be sufficient to pay in full First Subordinated Obligations due on any particular date, then to the payment ratably, according to the amount of principal and premium and termination payments due on such date, to the Persons entitled thereto without any discrimination or privilege; and

Six: To the payment to the Persons entitled thereto of any other amounts that have become due under any and all First Subordinated Obligations; and

Seventh: To the payment to the Persons entitled thereto of all installments of interest [(or regularly scheduled payment on any Hedging Obligation that is a Second Subordinated Obligation)] then due on the Second Subordinated Obligations, in the order of the maturity of the installments of such interest and
regularly scheduled payments, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

**Eighth:** To the payment to the Persons entitled thereto of the unpaid principal and premium, if any, on the Second Subordinated Obligations that shall have become due [and termination payments on any Hedging Obligation that is a Second Subordinated Obligation] (other than Second Subordinated Obligations called for redemption or payment for payment of which moneys are held pursuant to the provisions of this Master Agreement), in the order of the scheduled dates of their payment, and, if the amount available shall not be sufficient to pay in full Second Subordinated Obligations due on any particular date, then to the payment ratably, according to the amount of principal and premium and termination payments due on such date, to the Persons entitled thereto without any discrimination or privilege; and

**Ninth:** To the payment to the Persons entitled thereto of any other amounts that have become due under any and all Second Subordinated Obligations; and

Whenever moneys are to be applied by the Master Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Master Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Master Trustee shall apply such moneys, it shall fix the date upon which such application is to be made and upon such date interest on the amounts to be paid on such date shall cease to accrue. The Master Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the holder of any unpaid Obligation until such Obligation shall be presented to the Master Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Obligations and interest thereon have been paid under the provisions of this Section 604 and all expenses and charges of the Master Trustee have been paid, any balance remaining shall be paid to the Person entitled to receive the same; if no other Person shall be entitled thereto, then the balance shall be paid to SANDAG.

**Section 605. Remedies Vested in Master Trustee.** All rights of action including the right to file proof of claims under this Master Agreement or under any of the Obligations may be enforced by the Master Trustee without the possession of any of the Obligations or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Master Trustee shall be brought in its name as Master Trustee without the necessity of joining as plaintiffs or defendants any holders of the Obligations, and any recovery of judgment shall be for the equal and ratable benefit of the holders of the Outstanding Obligations.
Section 606. Rights and Remedies of Obligation Holders. No holder of any Obligation shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Master Agreement or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default shall have become an Event of Default and the Instructing Controlling Lender shall have made a written request to the Master Trustee and shall have offered it reasonable opportunity to take such action in its capacity as Master Trustee, and shall have offered indemnity to the Master Trustee for its fees and expenses in an amount satisfactory to the Master Trustee in its sole discretion, and unless the Master Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Master Trustee to be conditions precedent to the execution of the powers and trusts of this Master Agreement and to any action or cause of action for the enforcement of this Master Agreement, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more holders of the Obligations shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Master Agreement by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the holders of all Obligations outstanding. Nothing in this Master Agreement contained shall, however, affect or impair the right of Instructing Controlling Lender to enforce the payment of the principal of, premium, if any, and interest on, or any other amounts due under, any Obligation at and after the maturity thereof, or the obligation to pay the principal, premium, if any, and interest on, or any other amounts due under, each of the Obligations issued hereunder to the respective holders thereof at the time and place, from the source and in the manner in said Obligations expressed.

Section 607. Termination of Proceedings. In case the Master Trustee shall have proceeded to enforce any right under this Master Agreement, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Master Trustee, then and in every case SANDAG and the Master Trustee shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder with respect to the Project and the Collateral pledged and assigned hereunder, and all rights, remedies and powers of the Master Trustee shall continue as if no such proceedings had been taken.

Section 608. Rights of Possession and Use of Property. So long as SANDAG is in full compliance with the terms and provisions of this Master Agreement, SANDAG shall be suffered and permitted to possess, use and enjoy the Project and appurtenances thereto free of claims of the Master Trustee.

Section 609. Related Bond Trustee or Bondholders Deemed To Be Obligation Holders. For the purposes of this Master Agreement, unless a Related Bond Trustee elects to the contrary or contrary provision is made in a Related Bond Indenture, each Related Bond Trustee shall be deemed the holder of the Obligation or Obligations pledged to secure the Related Bonds with respect to which such Related Bond Trustee is acting as trustee. If such a
Related Bond Trustee so elects or the Related Bond Indenture so provides, the holders of each series of Related Bonds (or, in lieu thereof, the credit enhancer for such Related Bonds) shall be deemed the holders of the Obligations to the extent of the principal amount of the Obligations to which such Related Bonds relate.

ARTICLE VII

THE MASTER TRUSTEE

Section 701. Acceptance of the Trusts.
The Master Trustee accepts and agrees to execute the trusts imposed upon it by this Master Agreement, but only upon the terms and conditions set forth herein. The Master Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Master Agreement, and no implied covenants or obligations should be read into this Master Agreement against the Master Trustee. If an Event of Default under this Master Agreement shall have occurred and be continuing, the Master Trustee shall exercise such of the rights and powers vested in it by this Master Agreement and shall use the same degree of care as a prudent person would exercise or use in the circumstances in the conduct of his or her own affairs. The Master Trustee agrees to perform such trusts only upon and subject to the following express terms and conditions:

(a) The Master Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through Counsel, agents, receivers, or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of Counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, agent, receiver or employee retained or employed by it in connection herewith. The Master Trustee may act upon the opinion or advice of Counsel, surveyor, engineer or accountant selected by it in the exercise of reasonable care or, if selected or retained by SANDAG, approved by the Master Trustee in the exercise of such care. The Master Trustee shall not be responsible for any loss or damage resulting from any action or nonaction based on its good faith reliance upon such opinion or advice.

(b) The Master Trustee shall not be responsible for any recital herein, or in the Obligations (except with respect to the certificate of the Master Trustee endorsed on the Obligations), or for the investment of moneys as herein provided (provided that no investment shall be made by the Master Trustee except in compliance with the provisions of this Master Agreement applicable to such investment), or for the recording or re-recording, filing or re-filing of this Master Agreement, or any supplement or amendment thereto, or the filing of financing or continuation statements, or for the validity of the execution by SANDAG of this Master Agreement, or by SANDAG of any Supplemental Master Agreements or instruments of further assurance, or for the sufficiency of the security for the Obligations issued hereunder or intended to be secured hereby, or for the value or title of any property herein conveyed or otherwise as to the maintenance of the security hereof the Master Trustee may (but shall be under no duty to) require of SANDAG full information and advice as to the performance of the covenants, conditions and agreements in this Master Agreement and shall use its best efforts, but without
any obligation, to advise SANDAG of any impending default known to the Master Trustee. The Master Trustee shall have no obligation to perform any of the duties of SANDAG hereunder.

(c) The Master Trustee shall not be accountable for the use or application by SANDAG of any of the Obligations or the proceeds thereof or for the use or application of any money paid over by the Master Trustee in accordance with the provisions of this Master Agreement. The Master Trustee may become the owner of Obligations secured hereby with the same rights it would have if it and any of its affiliates were not Master Trustee, and may enter into other business and financial transactions with SANDAG. The Master Trustee may be a Related Bond Trustee.

(d) The Master Trustee shall be protected in acting upon any notice, order, requisition, request, consent, certificate, order, opinion (including an opinion of Counsel), affidavit, letter, telegram or other paper or document in good faith reasonably deemed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Master Trustee pursuant to this Master Agreement upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the owner of any Obligation shall be conclusive and binding upon all future owners of the same Obligation and upon Obligations issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Master Trustee shall be entitled to rely upon an Officer’s Certificate as sufficient evidence of the facts therein contained and, prior to the occurrence of a default of which the Master Trustee has been notified as provided in subsection (g) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Master Trustee may accept an Officer’s Certificate to the effect that a resolution in the form therein set forth has been adopted by SANDAG as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(f) The permissive right of the Master Trustee to do things enumerated in this Master Agreement shall not be construed as a duty and the Master Trustee shall not be answerable for other than its gross negligence or willful misconduct.

(g) The Master Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except the failure of the payments required to be made by Section 202 or Section 401 unless the Master Trustee shall be specifically notified in writing of such default by SANDAG, by any Related Issuer, by any Related Bond Trustee or by the holders of at least 25% in aggregate principal amount of the Instructing Controlling Lender then outstanding and all notices or other instruments required by this Master Agreement to be delivered to the Master Trustee must, in order to be effective, be delivered at the corporate trust office of the Master Trustee, and in the absence of such notice so delivered, the Master Trustee may conclusively assume there is no default except as aforesaid.
(h) The Master Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(i) Notwithstanding anything contained elsewhere in this Master Agreement, the Master Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Obligation, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Master Agreement, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Master Trustee deemed desirable for the purpose of establishing the right of SANDAG to the authentication of any Obligations, the withdrawal of any cash, the release of any property or the taking of any other action by the Master Trustee.

(j) All moneys received by the Master Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law or by this Master Agreement. The Master Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(k) No provision of this Master Agreement shall require the Master Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(l) Whether or not therein expressly so provided, every provision of this Master Agreement relating to the conduct or affecting the liability of or affording protection to the Master Trustee shall be subject to the provisions of this Section 701.

Section 702. Fees, Charges and Expenses of Master Trustee. The Master Trustee shall be entitled to payment and/or reimbursement by SANDAG for reasonable fees and for its services rendered hereunder and all advances, reasonable Counsel fees and expenses and other expenses reasonably and necessarily made or incurred by the Master Trustee in connection with such services. The Master Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Master Trustee and Obligation registrar for the Obligations as hereinabove provided. Upon an Event of Default, but only upon an Event of Default, the Master Trustee shall have a right of payment prior to payment on account of principal of, or premium, if any, or interest on, or any other amounts due under, any Obligation for the foregoing advances, fees, costs and expenses incurred. The respective obligations of SANDAG under this Section 702 to compensate the Master Trustee to pay or reimburse the Master Trustee for expenses, disbursements or advances, shall survive satisfaction and discharge of this Master Agreement and the resignation or removal of the Master Trustee for any reason.

Section 703. Notice to Obligation Holders if Default Occurs. If a default occurs of which the Master Trustee is by subsection (g) of Section 701 hereof required to take notice or if
notice of default be given as in said subsection (g) provided, then the Master Trustee shall give written notice thereof by mail to the last known owners of all Obligations then outstanding shown by the list of Obligation holders required by the terms of this Master Agreement to be kept at the office of the Master Trustee or its agent.

Section 704. Intervention by Master Trustee. In any judicial proceeding to which SANDAG is a party and which in the opinion of the Master Trustee and its counsel has a substantial bearing on the interests of owners of the Obligations, the Master Trustee may intervene on behalf of Obligation holders and shall do so if requested in writing by the owners of at least 25% in aggregate principal amount of the Instructing Controlling Lender then outstanding if indemnification satisfactory to the Master Trustee in its sole discretion is provided to the Master Trustee. The rights and obligations of the Master Trustee under this Section 704 are subject to the approval of a court of competent jurisdiction.

Section 705. Successor Master Trustee. Subject to the approval of SANDAG, which shall not be unreasonably withheld, any corporation or association into which the Master Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Master Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of and of the parties hereto, anything herein to the contrary notwithstanding.

Section 706. Corporate Master Trustee Required; Eligibility. There shall at all times be a Master Trustee hereunder which shall be a commercial bank, trust company or national association organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers, subject to supervision or examination by federal or state authorities, and having (or if such bank, trust company or national association is a member of a bank holding company, its holding company has) a reported combined capital and surplus of at least $75,000,000. If at any time the Master Trustee shall cease to be eligible in accordance with the provisions of this Section 706, it shall resign immediately in the manner provided in Section 707 hereof. No resignation or removal of the Master Trustee and no appointment of a successor Master Trustee shall become effective until the successor Master Trustee has accepted its appointment under Section 710 hereof.

Section 707. Resignation by the Master Trustee. The Master Trustee and any successor Master Trustee may at any time resign from the trusts hereby created by giving thirty days written notice to SANDAG and by registered or certified mail or overnight delivery service to each registered owner of Obligations then outstanding and to each holder of Obligations as shown by the list of Obligation holders required by this Master Agreement to be kept at the office of the Master Trustee or its agent. Such resignation shall take effect at the end of such 30
days or when a successor Master Trustee has been appointed and has assumed the trusts created hereby, whichever is later, or upon the earlier appointment of a successor Master Trustee by the Obligation holders or by SANDAG. Such notice to SANDAG may be served personally or sent by registered or certified mail or overnight delivery service.

Section 708. Removal of the Master Trustee. The Master Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Master Trustee and to SANDAG, and signed by the owners of a majority in aggregate principal amount of the Instructing Controlling Lender then outstanding. So long as no Event of Default or event that with the passage of time or giving of notice or both would become such an Event of Default has occurred and is continuing hereunder, the Master Trustee may be removed with or without cause at any time by an instrument or concurrent instruments in writing signed by SANDAG, delivered to the Master Trustee.

Section 709. Appointment of Successor Master Trustee by the Obligation Holders; Temporary Master Trustee. In case the Master Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the process of dissolution or liquidation, or otherwise becomes incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by [the owners of 51% in aggregate principal amount of] the Instructing Controlling Lender then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys in fact, duly authorized. The foregoing notwithstanding, so long as SANDAG is not in default hereunder, SANDAG shall have the right to approve any such successor trustee and to appoint any such successor trustee in lieu of the owners of 51% of the aggregate principal amount of the Instructing Controlling Lender then Outstanding. Every such successor Master Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing under the law of the jurisdiction in which it was created and by which it exists, having corporate trust powers and subject to examination by federal or state authorities, and having a reported capital and surplus of not less than $75,000,000.

Section 710. Concerning Any Successor Master Trustee. Every successor Master Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to SANDAG an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request and at the expense of SANDAG, or of its successor, execute and deliver an instrument transferring to such successor Master Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Master Trustee shall deliver all securities and moneys held by it as Master Trustee hereunder to its successor. Should any instrument in writing from SANDAG be required by any successor Master Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by SANDAG. The resignation of any Master Trustee and the instrument or instruments removing any Master Trustee and appointing a successor hereunder, together with all other instruments provided for in
this Article VII shall be filed and/or recorded by the successor Master Trustee in each recording office, if any, where the Master Agreement shall have been filed and/or recorded.

Section 711. Master Trustee Protected in Relying Upon Resolutions, Etc. The resolutions, opinions, certificates and other instruments provided for in this Master Agreement may be accepted by the Master Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Master Trustee for the release of property and the withdrawal of cash hereunder.

Section 712. Successor Master Trustee as Trustee of Funds and Obligation Registrar. In the event of a change in the office of Master Trustee, the predecessor Master Trustee which has resigned or been removed shall cease to be trustee of any funds provided hereunder and Obligation registrar, and the successor Master Trustee shall become such Master Trustee and Obligation registrar, and the predecessor Master Trustee shall transfer all records concerning this Master Agreement to the successor Master Trustee.

Section 713. Maintenance of Records. The Master Trustee agrees to maintain such records with respect to any and all moneys or investments held by the Master Trustee pursuant to the provisions hereof as are reasonably requested by SANDAG. The Master Trustee shall be entitled to reasonable compensation for its maintenance of any such records.

Section 714. List of Obligation Holders. The Master Trustee will keep on file at its office or at the office of its agent a list of the names and addresses of the last known holders of all Obligations and the serial numbers of such Obligations held by each of such holders. At reasonable times, upon prior written notice, and under reasonable regulations established by the Master Trustee, said list may be inspected and copied by SANDAG, any Obligation holder or the authorized representative thereof, provided that the ownership of such holder and the authority of any such designated representative shall be evidenced to the satisfaction of the Master Trustee.

Section 715. Master Trustee as Registrar. The Master Trustee is hereby designated and agrees to act as Obligation registrar for and in respect to the Obligations.

ARTICLE VIII

SUPPLEMENTAL MASTER AGREEMENTS

Section 801. Supplemental Master Agreements Not Requiring Consent of Obligation Holders. Subject to the limitations set forth in Section 802 hereof with respect to this Section 801, SANDAG and the Master Trustee may, with the consent of the Instructing Controlling Party, and with reasonable notice to, the
Obligation holders, amend or supplement this Master Agreement, for any one or more of the following purposes:

(a) To cure any ambiguity or defective provision in or omission from this Master Agreement in such manner as is not inconsistent with and does not impair the security of the Master Agreement or adversely affect the holder of any Obligation;

(b) To grant to or confer upon the Master Trustee for the benefit of the Obligation holders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Obligation holders and the Master Trustee, or either of them, to add to the covenants of SANDAG for the benefit of the Obligation holders or to surrender any right or power conferred hereunder upon SANDAG;

(c) To assign and pledge under this Master Agreement any additional revenues, properties or collateral;

(d) To evidence the succession of another entity to the agreements of SANDAG or the Master Trustee, or the successor to any thereof hereunder;

(e) To permit the qualification of this Master Agreement under the Trust Indenture Act of 1939, as then amended, or under any similar federal statute hereafter in effect or to permit the qualification of any Obligations for sale under the securities laws of any state of the United States;

(f) To provide for the refunding or advance refunding of any Obligation;

(g) To provide for the issuance of Obligations;

(h) To provide for the issuance of Obligations with original issue discount, provided such issuance would not materially adversely affect the holders of Outstanding Obligations;

(i) To permit an Obligation to be secured by security which is not extended to all Obligation holders;

(j) To permit the issuance of Obligations that are not in the form of a promissory note;

(k) To modify or eliminate any of the terms of this Master Agreement; provided, however, that such Supplemental Master Agreement shall expressly provide that any such modifications or eliminations shall become effective only when there is no Obligation outstanding of any series created prior to the execution of such Supplemental Master Agreement;

(l) To modify, eliminate or add to the provisions of this Master Agreement if the Master Trustee shall have received (i) written confirmation from each rating agency that such change will not result in a withdrawal or reduction of its credit rating assigned to any series of Obligations or Related Bonds, as the case may be, or a report, opinion or certification of a Consultant to the effect that such change is consistent with then current industry standards, and
(ii) an Officer's Certificate to the effect that, in the judgment of SANDAG, such change is necessary to permit SANDAG to affiliate or merge with, on acceptable terms, one or more corporations or other legal entities and such modification is in the best interests of the holders of the Outstanding Obligations; and

(m) To make any other change that does not materially adversely affect the holders of any of the Obligations and does not materially adversely affect the holders of any Related Bonds, including without limitation any modification, amendment or supplement to this Master Agreement or any indenture supplemental hereto in such a manner as to establish or maintain exemption of interest on any Related Bonds under a Related Bond Indenture from federal income taxation under applicable provisions of the Code.

Any Supplemental Master Agreement providing for the issuance of Obligations shall set forth the date thereof, the date or dates upon which principal of, premium, if any, and interest on, and any other amounts due under, such Obligations shall be payable, the other terms and conditions of such Obligations, the form of such Obligations and the conditions precedent to the delivery of such Obligations which shall include, among other things:

(a) delivery to the Master Trustee of an opinion of Counsel to the effect that all requirements and conditions to the issuance of such Obligations, if any, set forth herein and in the Supplemental Master Agreement have been complied with and satisfied; and

(b) delivery to the Master Trustee of an opinion of Counsel to the effect that neither registration of such Obligations under the Securities Act of 1933, as amended, nor qualification of such Supplemental Master Agreement under the Trust Indenture Act of 1939, as amended, is required, or, if such registration or qualification is required, that SANDAG has complied with all applicable provisions of said acts.

If at any time SANDAG shall request the Master Trustee to enter into any Supplemental Master Agreement pursuant to subsection (l) above, the Master Trustee shall cause notice of the proposed execution of such Supplemental Master Agreement to be given to each rating agency then maintaining a rating on any Obligations or Related Bonds, in the manner provided in Section 1104 hereof at least 15 days prior to the execution of such Supplemental Master Agreement, which notice shall include a copy of the proposed Supplemental Master Agreement.

Section 802. Supplemental Master Agreements Requiring Consent of Obligation Holders. Except as provided in Section 801 hereof, the consent and approval of holders of not less than 51% in aggregate principal amount of the Instructing Controlling Lender which are outstanding hereunder at the time of the execution of such Supplemental Master Agreement or, in case less than all of the several series of Obligations are affected thereby, the holders of not less than 51% in aggregate principal amount of the Instructing Controlling Lender of each series affected thereby which are outstanding hereunder at the time of the execution of such Supplemental Master Agreement, shall be required to the execution by SANDAG and the Master Trustee of such Supplemental Master Agreements as shall be deemed necessary and desirable by SANDAG for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Master Agreement or in any Supplemental Master Agreement not provided for in Section 801, unless such modification, alteration,
amendment, addition or rescission permits, or is construed as permitting, (a) an extension of the stated maturity or reduction in the principal or other amount of or reduction in the rate or extension of the time of paying of interest on or reduction of any premium payable on the redemption of, any Obligation, without the consent of the holder of such Obligation, (b) a reduction in the aforesaid aggregate principal or other amount of Obligations the holders of which are required to consent to any such Supplemental Master Agreement, without the consent of the holders of all the Obligations at the time outstanding which would be adversely affected by the action to be taken, or (c) modification of the rights, duties or immunities of the Master Trustee, without the written consent of the Master Trustee, in which cases the consent of all holders of the Instructing Controlling Lender which are outstanding hereunder at the time of the execution of such Supplemental Master Agreement or, in case less than all of the several series of Obligations are affected thereby, all the holders of the Instructing Controlling Lender of each series affected thereby which are outstanding hereunder at the time of the execution of such Supplemental Master Agreement, shall be required to the execution by SANDAG and the Master Trustee of such Supplemental Master Agreements.

If at any time SANDAG shall request the Master Trustee to enter into any such Supplemental Master Agreement for any of the purposes of this Section 802, the Master Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Master Agreement to be mailed by first class mail postage prepaid to each holder of a Debt Obligation or, in case less than all of the series of Obligations are affected thereby, of a Debt Obligation of the series affected thereby. Such notice shall briefly set forth the nature of the proposed Supplemental Master Agreement and shall state that copies thereof are on file at the corporate trust office of the Master Trustee identified in such notice for inspection by all Obligation holders. The Master Trustee shall not, however, be subject to any liability to any Obligation holder by reason of its failure to mail such notice, and any such failure shall not affect the validity of such Supplemental Master Agreement when consented to and approved as provided in this Section 802. If the holders of not less than 51% in aggregate principal amount of the Instructing Controlling Lender or the holders of not less than 51% in aggregate principal amount of the Instructing Controlling Lender of each series affected thereby, as the case may be, which are outstanding hereunder at the time of the execution of any such Supplemental Master Agreement shall have consented to and approved the execution thereof as herein provided, no holder of any Obligation shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Master Trustee or SANDAG from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Master Agreement as in this Section 802 permitted and provided, this Master Agreement shall be and be deemed to be modified and amended in accordance therewith.

For the purpose of obtaining the foregoing consents, the determination of who is deemed the holder of a Debt Obligation held by a Related Bond Trustee shall be made in the manner provided in Section 611.

Section 803. Execution of Supplemental Master Agreements. The Master Trustee shall not be required to execute any proposed Supplemental Master Agreement pursuant to this Article

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VIII unless it is provided with (i) an opinion of Counsel to the effect that such proposed Supplemental Master Agreement and its execution by the Master Trustee are permitted or authorized under this Article VIII; and (ii) if applicable, an opinion of bond counsel to the effect that such Supplemental Master Agreement will not adversely affect the exemption of interest on any Related Bonds from income tax under the Code.

ARTICLE IX

SATISFACTION OF THE MASTER AGREEMENT

Section 901. Defeasance. If the entire [Indebtedness] on all Obligations (including, for the purposes of this Section 901, any Obligations owned by SANDAG) outstanding is paid or provided for in any one or more of the following ways:

(a) by paying or causing to be paid the principal of (including redemption premium, if any) and interest on, and any other amounts due under, all Obligations outstanding, as and when the same become due and payable;

(b) by depositing with the Master Trustee, in trust, at or before maturity, moneys in an amount sufficient to pay or redeem (when redeemable) all Obligations outstanding (including the payment of premium, if any, and interest payable on, and any other amounts due under, such Obligations to the maturity or redemption date thereof), provided that such moneys, if invested, shall be invested at the direction of SANDAG in Escrow Securities, in an amount, without consideration of any income or increment to accrue thereon, sufficient to pay or redeem (when redeemable) and discharge the [Indebtedness] on all Obligations outstanding at or before their respective maturity dates; it being understood that the investment income on such Escrow Securities may be used at the direction of SANDAG for any other purpose permitted by law;

(c) by delivering to the Master Trustee, for cancellation by it, all Obligations outstanding; or

(d) by depositing with the Master Trustee, in trust, before maturity, Escrow Securities in such amount as a Consultant shall determine will, together with the income or increment to accrue thereon, without consideration of any reinvestment thereof, be fully sufficient to pay or redeem (when redeemable) and discharge the amounts due on all Obligations outstanding at or before their respective maturity or due dates;

and if all other sums payable hereunder shall be paid and, if any such Obligations are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given in accordance with the requirements of this Master Agreement or provisions satisfactory to the Master Trustee shall have been made for the giving of such notice, then and in that case (but subject to the provisions of Section 903 hereof) this Master Agreement and the estate and rights granted hereunder shall cease, determine, and become null and void, and thereupon the Master Trustee shall, upon written request of SANDAG, and upon receipt by the Master Trustee of an Officer’s Certificate and an opinion of Counsel acceptable to the Master Trustee, each stating that in the opinion of the signers all conditions precedent to the satisfaction and discharge of this
Master Agreement have been complied with, forthwith execute proper instruments acknowledging satisfaction of and discharging this Master Agreement and the lien hereof. The satisfaction and discharge of this Master Agreement shall be without prejudice to the rights of the Master Trustee to charge and be reimbursed by SANDAG for any expenditures which it may thereafter incur in connection herewith. The holders thereof shall thereafter be entitled to payment only out of the moneys or Escrow Obligations deposited with the Master Trustee as aforesaid.

Any moneys, funds, securities, or other property remaining on deposit under this Master Agreement (other than said Escrow Securities or other moneys deposited in trust as above provided) shall, upon the full satisfaction of this Master Agreement, forthwith be transferred, paid over and distributed to SANDAG.

SANDAG may at any time surrender to the Master Trustee for cancellation by it any Obligations previously authenticated and delivered which SANDAG may have acquired in any manner whatsoever, and such Obligations, upon such surrender and cancellation, shall be deemed to be paid and retired.

Section 902. Provision for Payment of a Particular Series of Obligations or Portion Thereof. If the entire [Indebtedness] on all Obligations of a particular series or a portion of such a series (including, for the purpose of this Section 902, any such Obligations owned by SANDAG) shall be paid or provided for in one of the following ways:

(a) by paying or causing to be paid the principal of (including redemption premium, if any) and interest on, and any other amounts due under, all Obligations of such series or portion thereof outstanding, as and when the same shall become due and payable;

(b) by depositing with the Master Trustee, in trust, at or before maturity, moneys in an amount sufficient to pay or redeem (when redeemable) all Obligations of such series or portion thereof outstanding (including the payment of premium, if any, and interest payable on, and any other amounts due under, such Obligations to the maturity or redemption date), provided that such moneys, if invested, shall be invested at the direction of SANDAG in Escrow Securities in an amount, without consideration of any income or increment to accrue thereon, sufficient to pay or redeem (when redeemable) and discharge the [Indebtedness] on all Obligations of such series or portion thereof outstanding at or before their respective maturity dates; it being understood that the investment income on such Escrow Securities may be used at the direction of SANDAG for any other purpose permitted by law;

(c) by delivering to the Master Trustee, for cancellation by it, all Obligations of such series or portion thereof outstanding; or

(d) by depositing with the Master Trustee, in trust, Escrow Securities in such amount as a Consultant shall determine will, together with the income or increment to accrue thereon without consideration of any reinvestment thereof, be fully sufficient to pay or redeem (when redeemable) and discharge the [Indebtedness] on all Obligations of such series or portion thereof at or before their respective maturity dates;
and if all other sums payable hereunder are paid with respect to such series of Obligations or portion thereof, and, if any such Obligations of such series or portion thereof are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given in accordance with the requirements of the Master Agreement or provisions satisfactory to the Master Trustee shall have been made for the giving of such notice, then in that case (but subject to the provisions of Section 903 hereof) such Obligations shall cease to be entitled to any lien, benefit or security under the Master Agreement.

Section 903. Satisfaction of Related Bonds. The provisions of Section 901 and Section 902 of this Master Agreement notwithstanding, any Obligation that secures a Related Bond (i) shall be deemed paid and shall cease to be entitled to the lien, benefit and security under the Master Agreement in the circumstances described in subsection (b)(ii) of the definition of “Outstanding Obligations” contained in Article I; and (ii) shall not be deemed paid and shall continue to be entitled to the lien, benefit and security under this Master Agreement unless and until such Related Bond shall cease to be entitled to any lien, benefit or security under the Related Bond Indenture pursuant to the provisions thereof.

ARTICLE X

MANNER OF EVIDENCING OWNERSHIP OF OBLIGATIONS

Section 1001. Proof of Ownership. Any request, direction, consent or other instrument provided by this Master Agreement to be signed and executed by the Obligation holders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Obligation holders in person or by an agent appointed in writing. Proof of the execution of any such request, direction or other instrument or of the writing appointing any such agent and of the ownership of Obligations, if made in the following manner, shall be sufficient for any of the purposes of this Master Agreement and shall be conclusive in favor of the Master Trustee and SANDAG, with regard to any action taken by them, or either of them, under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgements in such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by the affidavit of a witness of such execution; and

(b) The ownership of Obligations shall be proved by the register of such Obligations maintained by the Master Trustee.

Any action taken or suffered by the Master Trustee pursuant to any provision of this Master Agreement, upon the request or with the assent of any Person who at the time is the holder of any Obligation or Obligations, shall be conclusive and binding upon all future holders of the same Obligation or Obligations or any Obligation or Obligations issued in exchange therefor.
ARTICLE XI

MISCELLANEOUS

Section 1101. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Master Agreement or the Obligations is intended or shall be construed to give to any Person other than the parties hereto, and the holders of the Obligations, any legal or equitable right, remedy or claim under or in respect to this Master Agreement or any covenants, conditions and provisions herein contained; this Master Agreement and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the holders of the Obligations as herein provided.

Section 1102. Unclaimed Moneys. Any moneys deposited with the Master Trustee in accordance with the terms and covenants of this Master Agreement, in order to redeem or pay any Obligation in accordance with the provisions of this Master Agreement, and remaining unclaimed by the owners of the Obligation for two years after the date fixed for redemption or of maturity, as the case may be, shall, if SANDAG is not at the time to the knowledge of the Master Trustee in default with respect to any of the terms and conditions of this Master Agreement, or in the Obligations, be repaid by the Master Trustee to SANDAG upon its written request therefor on behalf of SANDAG, subject, however, to any prior escheatment by the Master Trustee in accordance with applicable law; and thereafter the registered owners of the Obligation shall be entitled to look only to SANDAG for payment thereof or upon escheatment of such funds to the State by SANDAG in accordance with applicable law, only to the State. SANDAG hereby covenants and agrees to indemnify and save the Master Trustee harmless from any and all losses, costs, liability and expense suffered or incurred by the Master Trustee by reason of having returned any such moneys to SANDAG as herein provided. Monies held by the Master Trustee under this Section shall be held uninvested and without liability for interest.

Section 1103. Severability. If any provision of this Master Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Master Agreement contained, shall not affect the remaining portions of this Master Agreement, or any part thereof.

Section 1104. Notices. It shall be sufficient service of any notice, complaint, demand or other paper on SANDAG if the same shall be delivered in person or by overnight delivery service or duly mailed by registered or certified mail addressed as follows:
Section 1105. **Counterparts.** This Master Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1106. **Applicable Law.** This Master Agreement shall be governed exclusively by the applicable laws of the State.

Section 1107. **Immunity of Officers, Employees and Agents.** No recourse shall be had for the payment of any amounts due under any of the Obligations or for any claim based thereon or upon any obligation, covenant or agreement in this Master Agreement contained against any past, present or future officer, director, employee, Counsel, member or agent of SANDAG, or of any successor corporation or other legal entity, as such, either directly or through SANDAG or any successor corporation or other legal entity, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, employees, Counsel, members or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Master Agreement and the issuance of such Obligations.

Section 1108. **Holidays.** If the date for making any payment or the date for performance of any act or the exercising of any right, as provided in this Master Agreement, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Master Agreement.

Section 1109. **Notices to Rating Agency.** In the event the Obligations are rated by a Nationally Recognized Rating Agency, the Master Trustee shall notify such Rating Agency and the Instructing Controlling Lender in writing of the occurrence of any of the following events prior to the occurrence thereof: (a) any change in the identity of the Master Trustee; (b) any amendment or modification of or change to this Master Agreement; (c) the issuance or incurrence of Obligations; (d) the payment in full of all Obligations and termination of this Master Agreement. The Master Trustee shall provide any other information that such Rating Agency may reasonably request in order to maintain the rating on the Obligations.
Section 1110. Limits on Indemnification.

TIFIA’s and TIFIA Lender’s obligation to provide indemnification for fees and expenses hereunder shall be subject in all respects to the availability of funds appropriated by the United States government for such purpose.

[SIGNATURE PAGES FOLLOW]
IN WITNESS WHEREOF, and intending to be legally bound hereby, SANDAG has caused these presents to be signed in its name and on its behalf and attested by duly authorized officers of SANDAG, and to evidence its acceptance of the trusts hereby created, the Master Trustee has caused these presents to be signed in its name and on its behalf by its duly authorized officer, all as of the day and year first above written.

SANDAG

(SEAL)

ATTEST:

By: ____________________________ By: ____________________________

Name: __________________________
Title: __________________________

Name: __________________________
Title: __________________________
U.S. Bank National Association, AS MASTER TRUSTEE

By: 

Name: 
Title: 
UNITED STATES
DEPARTMENT OF TRANSPORTATION

SECOND AMENDED AND RESTATED
TIFIA LOAN AGREEMENT

(Amending and Restating the Amended and Restated Construction
and Term Loan Agreement and TIFIA Loan Agreement dated as of
April 28, 2011)

With

SAN DIEGO ASSOCIATION OF GOVERNMENTS

For the

[SOUTH BAY EXPRESSWAY PROJECT]
(TIFIA – [2003-1002])

Dated December 21, 2011
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SECOND AMENDED AND RESTATED TIFIA LOAN AGREEMENT

This SECOND AMENDED AND RESTATED TIFIA LOAN AGREEMENT (this “Agreement”), dated December 21, 2011, by and between the SAN DIEGO ASSOCIATION OF GOVERNMENTS, a California public agency (together with its successors and assigns, the “Borrower”), and the UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States of America, acting by and through the Federal Highway Administrator (together with its successors and assigns, the “TIFIA Lender”), with an address of 1200 New Jersey Avenue, S.E., Washington, DC 20590, amends and restates the Amended and Restated Construction and Term Loan Agreement and TIFIA Loan Agreement, dated as of April 28, 2011 (the “First Amended and Restated Loan Agreement”), among South Bay Expressway, LLC (“SBX LLC”), the TIFIA Lender, certain lenders party thereto and Banco Bilbao Vizcaya Argentaria, S.A., New York Branch, as administrative agent (“Banco Bilbao”).

RECITALS:

WHEREAS, the Congress of the United States of America 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 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 the Public Law 105-206 and Public Law 109-59) (the “Act”), as codified as 23 U.S.C. § 601, et seq.;

WHEREAS, 23 U.S.C. §603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans;

WHEREAS, pursuant to the Development Franchise Agreement for a Privatized Transportation Project dated January 6, 1991, as thereafter amended, between California Transportation Ventures, Inc., a California corporation (“CTV”), and the State of California, Department of Transportation, as assigned by CTV to South Bay Expressway, L.P., predecessor in interest to SBX LLC (“SBX LP”), SBX LLC has developed, constructed and operated a divided, limited access toll road in San Diego County, California, approximately 9.2 miles (15 kilometers) long, which extends from the interchange with Otay Mesa Road at approximately Sta/27+100 to San Miguel Ranch Road at approximately Sta. 167+30, known as the South Bay Expressway;

WHEREAS, to finance the construction of the Project, SBX LP entered into (i) a Construction and Term Loan Agreement (as amended, the “Original Construction and Term Loan Agreement”), dated as of May 22, 2003, by and among SBX LP, certain lenders party thereto, Banco Bilbao, as a lender and the administrative agent, and Depfa Bank PLC (collectively, the “Original Senior Lenders”, and, together with the TIFIA Lender, the “Original Lenders”), and (ii) a TIFIA Loan Agreement (as amended, the “Original TIFIA Loan Agreement”), dated as of May 22, 2003, between SBX LP and the TIFIA Lender;
WHEREAS, the full amount under the Original TIFIA Loan Agreement has been disbursed to SBX LP and the Project achieved substantial completion and opened for business on November 19, 2007;

WHEREAS, on March 22, 2010, SBX LP and CTV filed petitions for reorganization under the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of California (the “Bankruptcy Court”);

WHEREAS, by its order (the “Confirmation Order”) dated April 14, 2011, the Bankruptcy Court confirmed a plan of reorganization pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”), which Plan provided for the reorganization of SBX LP as SBX LLC and the conversion of the debt obligations of SBX LP to the Original Lenders into debt obligations and equity interests in SBX LLC so that the Original Lenders became the sole owners of SBX LLC;

WHEREAS, as contemplated by the Confirmation Order, the Original Lenders and SBX LLC amended and restated the Original Construction and Term Loan Agreement and the Original TIFIA Loan Agreement pursuant to the First Amended and Restated Loan Agreement; and

WHEREAS, pursuant to the Asset Purchase and Sale Agreement, [effective as of the date hereof][dated December __, 2011] (the “Sale Agreement”), the Borrower is purchasing, and SBX LLC is selling, all of SBX LLC’s right, title and interest in and to the Franchise Agreement, the Project and other Transferred Assets (as defined therein), and the Borrower shall assume from SBX LLC and thereafter pay, discharge and perform the Assumed Liabilities (as defined therein), which includes, among other things, certain obligations arising from the First Amended and Restated Loan Agreement, as amended by this Agreement; and

WHEREAS, pursuant to the Sale Agreement and this Agreement the Borrower is assuming the Amended and Restated Note (Tranche A-2), dated April 28, 2011, in the amount of $59,440,500 (the “Existing Tranche A-2 Note”), which Existing Tranche A-2 Note evidences the loan of funds from the TIFIA Lender to SBX LLC pursuant to the First Amended and Restated Loan Agreement (the “Existing Tranche A-2 Loan” and, as assumed by the Borrower, the “Tranche A-2 Loan”), the Amended and Restated Note (Tranche B-2), dated April 28, 2011, in the amount of $30,523,500 (the “Existing Tranche B-2 Note”), which Existing Tranche B-2 Note evidences the loan of funds from the TIFIA Lender to SBX LLC pursuant to the First Amended and Restated Loan Agreement (the “Existing Tranche B-2 Loan” and, as assumed by the Borrower, the “Tranche B-2 Loan”), and the Amended and Restated Note (Tranche C-2), dated April 28, 2011, in the amount of $2,570,400 (the “Existing Tranche C-2 Note”), and, together with the Existing Tranche A-2 Note and the Existing Tranche B-2 Note, the “Existing Notes”, and, as amended and restated pursuant to this Agreement, respectively, the Tranche A-2 Note, the Tranche B-2 Note, the Tranche C-2 Note, and collectively, the “TIFIA Notes”), which Existing Tranche C-2 Note evidences the loan of funds from the TIFIA Lender to SBX LLC pursuant to the First Amended and Restated Loan Agreement (the “Existing Tranche C-2 Loan” and, together with the Tranche A-2 Loan and the Tranche B-2 Loan, the “Existing Loans”), and, as assumed by the Borrower, the “Tranche C-2 Loan”, and, together with the Tranche A-2 Loan and the Tranche B-2 Loan, the “TIFIA Loan”); and
WHEREAS, the TIFIA Lender and the Borrower desire to enter into this Agreement to amend and restate the First Amended and Restated Loan Agreement; and

WHEREAS, the Borrower agrees to repay the TIFIA Loan pursuant to this Agreement and the TIFIA Notes in accordance with the terms and provisions hereof and thereof; and

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 or as otherwise defined in this Agreement. Any term used in this Agreement which is defined by reference to any other agreement shall continue to have the meaning specified in such agreement on the date hereof whether or not such agreement remains in effect.


“Additional First Subordinated Obligations” means any additional parity First Subordinated Obligations issued by the Borrower that are permitted to be issued pursuant to this Agreement and the Master Agreement and that stand on a parity and equality under the Master Agreement with the TransNet Loan.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument entered into by the Borrower after the execution and delivery of this Agreement, providing for the testing, safety, financial services, operation or maintenance of the Project, or otherwise relating to the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (i) is entered into (A) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (B) for necessary Project-related expenditures, (ii) commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower in one contract or a series of related contracts of, no more than $1,000,000 in the aggregate for any such contract or series of related contracts and (iii) is for a term not exceeding two years.

“Administrator” means the Administrator of the FHWA.

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

“Annual Operating Budget” means the Annual Operating Budget of the Borrower submitted and approved by the TIFIA Lender in accordance with Section 20(c)(iii).

“Applicable Default Project Life Cover Ratio” means the following ratio, calculated as of December 31 of the applicable year: _____ to _____.

“Applicable Interest Rate” means as follows:
(a) with respect to the Tranche A-2 Loan, (i) for the period from and including the Effective Date through December 31, 2015, 6.0% per annum; (ii) for the period from and including January 1, 2016 to December 31, 2020, 7.0% per annum, (iii) for the period from and including January 1, 2021 to December 31, 2025, 8.0% per annum, and (iv) for the period from and including January 1, 2026 until the Tranche A-2 Loan Maturity Date, 9.0% per annum;

(b) with respect to the Tranche B-2 Loan, 9.0% per annum; and

(c) with respect to the Tranche C-2 Loan, 10.0% per annum.

“Assignment of Toll Road Lease” means the Assignment and Assumption of Lease entered into by SBX LLC and the Borrower pursuant to which SBX LLC assigns to the Borrower as of the Effective Date all of SBX LLC’s rights, title and interest in, and the Borrower assumes the obligations under, the Toll Road Lease.

“Bankruptcy Court” has the meaning assigned in the recitals hereto.

“Bankruptcy Related Event” means (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 of the Borrower, under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower for a substantial part of the assets of the Borrower, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets of the Borrower, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) 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, or (v) 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, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing; or (c) (i) all or a substantial part of the Collateral shall be sold or otherwise disposed of in a public or private sale of disposition pursuant to a foreclosure of the Liens thereon securing the TIFIA Loan, or (ii) all or a substantial part of the Collateral is transferred in lieu of foreclosure; or (d) the Trustee shall transfer funds on deposit in any of the Accounts or Subaccounts established under the Master Agreement upon the occurrence and during the continuation of an Indenture Event of Default for application to the prepayment or repayment of any principal amount of any Debt Obligations and for other purposes pursuant to Article 601 of the Master Agreement.
“Base Case Financial Model” means a financial model prepared by the Borrower forecasting the revenues and expenditures of the Project for time periods through the final maturity of the TIFIA Loan and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender which shall be provided to the TIFIA Lender as a fully functional Microsoft Excel – based financial model.

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

“Borrower” has the meaning assigned to such term in the introductory paragraph to this Agreement, together with any successors and assigns.

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1st of any calendar year and ending on June 30th of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt with the prior written consent of the TIFIA Lender.

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 24.

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the 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 or San Diego, California.

“Calculation Date” means each Semi-Annual Payment Date occurring after the Effective Date.

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

“Caltrans” means the State of California, Department of Transportation.

“Caltrans Standards” means the manuals, standards and procedures listed or referred to in the Franchise Agreement relating to the construction, maintenance and operation of the Project, together with all Compliance Orders (as defined in the Franchise Agreement), Safety Modifications (as defined in the Franchise Agreement) and other standards or stipulations imposed or required by Caltrans pursuant to the Franchise Agreement.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year which are capitalized in accordance with GAAP.

“Collateral” means, collectively, all tangible and intangible real and personal property of the Borrower relating to the Project, including all of the following property now owned or at any time hereafter acquired by the Borrower or in which the Borrower now has or at any time in the future may acquire any right, title or interests, is collectively referred:
(a) all Accounts;
(b) all Deposit Accounts;
(c) all Instruments;
(d) all Documents;
(e) all Chattel Paper, including all Electronic Chattel Paper;
(f) all Inventory;
(g) all Equipment;
(h) all Fixtures;
(i) all Goods not covered by the preceding clause of this definition;
(j) all Letters of Credit and Letter-of-Credit Rights;
(k) all Intellectual Property;
(l) all Investment Property;
(m) all Commercial Tort Claims;
(n) all Payment Intangibles, Software and General Intangibles not covered by the preceding clause of this definition;
(o) all other tangible and intangible property of the Borrower, including all books, correspondence, credit files, records, invoices, tapes, cards, computer runs and other papers and documents in the possession or under the control of the Borrower or any computer bureau or service company from time to time acting for the Borrower;
(p) all Principal Project Agreements to which the Borrower is or shall be a party (including the agreements and documents specified in the TIFIA Loan Documents) and, to the extent assignable, all other contracts, agreements, leases and other similar instruments related to the Project (including those in which the Borrower is a third party beneficiary) and all amounts payable to the Borrower under any Project Agreement;
(q) to the extent assignable, all Governmental Approvals required or obtained in connection with the operation of the Project and in connection with any transactions contemplated by the TIFIA Loan Documents;
(r) any present or future right, title or interest of the Borrower under any insurance, indemnity, warranty or guaranty in respect of the Project and any rents, revenues, incomes, profits, insurance proceeds or other rights to compensation in respect of the Project;
(s) all proceeds and products in whatever form of all or any part of the other Collateral, including all rents, profits, income and benefits and all proceeds of insurance and all condemnation awards and all other compensation for any event of loss with respect to all or any part of the other Collateral (together with all rights to recover and proceed with respect to the same), and all accessions to, substitutions for and replacements of all or any part of the other Collateral;

(t) all other personal property and fixtures of the Borrower, whether now owned or hereafter existing or hereafter acquired or arising, or in which the Borrower may have an interest, and wheresoever located, whether or not of a type which may be subject to a security interest under the Uniform Commercial Code, and any replacements, renewals, or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by the Borrower; and

(u) the “Property”, as defined in the Toll Road Lease.

All capitalized terms in the above definition of Collateral and not defined in this Agreement or in the Indenture shall have the meaning assigned to such terms in the Uniform Commercial Code.

“Commission” means the San Diego County Regional Transportation Commission, a public agency organized pursuant to the San Diego County Regional Transportation Commission Act, Chapter 2 of Division 12.7 (Sections 132000 and following) of the Public Utilities Code of the State. Pursuant to the provisions of the Act, the Commission controls the use of the ½ cent transactions and use tax collected in San Diego County known as TransNet.

“Commission Loan Agreement” means the Loan Agreement dated as of ______, 2011, by and between the Borrower and the Commission pursuant to which the Commission is making the TransNet Loan.

“Confirmation Order” has the meaning assigned in the recitals hereto.

“Covenant Cross Default” has the meaning set forth in Section 18(a)(v).

“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 2011 as the base period.

“CTV” has the meaning assigned in the recitals hereto.

“Debt Service Payment Commencement Date” means, with respect to the Tranche A-2 Note, ______, 2012, with respect to the Tranche B-2 Note, ________, and with respect to Tranche C-2 Note. _____, as such dates may be adjusted in accordance with Section 9 hereof.

“Discretionary Major Capital Expenditures” means any Capital Expenditures included in the Annual Operating Budget approved by the TIFIA Lender for an expansion or major modification or upgrade of the Project, such as realignments, the addition of lanes, or the construction of frontage roads, bridges or interchanges, including, but not limited to, the Rock
Mountain interchange, 905 connector, and Mount Miguel Road projects, as such terms are defined in the Franchise Agreement.

“Effective Date” means the date of execution of this Agreement, as set forth in the introductory paragraph hereto.

“Event of Default” has the meaning set forth in Section 18.

“Existing Notes” has the meaning assigned to such term in the recitals hereto.

“Existing Tranche A-2 Loan” has the meaning assigned to such term in the recitals hereto.

“Existing Tranche B-2 Loan” has the meaning assigned to such term in the recitals hereto.

“Existing Tranche C-2 Loan” has the meaning assigned to such term in the recitals hereto.

“Existing Tranche A-2 Note” has the meaning assigned to such term in the recitals hereto.

“Existing Tranche B-2 Note” has the meaning assigned to such term in the recitals hereto.

“Existing Tranche C-2 Note” has the meaning assigned to such term in the recitals hereto.

“Extraordinary Reserve Fund” means the fund of that name created pursuant to and designated as such in Section 501 of the Master Agreement.

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

“Final Maturity Date” means, with respect to the Tranche A-2 Loan, December 31, 2027, and with respect to the Tranche B-2 Loan and the Tranche C-2 Loan, October 31, 2042.

“Financial Plan” means the annual financial plan required pursuant to Section 20(a) of this Agreement.

“Financing Documents” means this Agreement, the Master Agreement and any supplement thereto, the Commission Loan Agreement, the Series D Agreement, and the Sale Agreement.

“First Subordinated Obligations” means the TransNet Loan and any Additional First Subordinated Obligations which may be issued under this Agreement and the Master Agreement which shall provide that such First Subordinated Obligations are junior in right of payment and security to the TIFIA Loan and senior in right and payment to the Series D Note.
“Franchise Agreement” means the Development Franchise Agreement for a Privatized Transportation Project, entered into as of January 6, 1991, between CTV and Caltrans, and assigned to the Borrower, as expected to be amended and restated in an agreement between the Borrower and Caltrans executed after the execution of this Agreement, and as further amended, modified and in effect thereafter.

“Franchise Documents” means the Franchise Agreement and the Toll Road Lease.

“GAAP” means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time-to-time in the United States of America.

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

“Government Obligations” means (a) direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the Government, (b) bonds, debentures or notes issued by any of the following Federal Agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by an agency of the United States of America or Person controlled or supervised by and acting as an instrumentality of the United States of America 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.

“Governmental Approval” 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, without limitation, 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.

“Indenture Event of Default” has the meaning assigned to it in the Master Agreement.

“Independent Engineer” means initially ____________ and shall include any replacement engineering firm which shall be selected from a list jointly maintained by the Trustee and the Borrower and approved by the TIFIA Lender.

“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 or similar law now or hereafter in effect.
“Investment Grade Rating” means a rating assigned by a Nationally Recognized Rating Agency which is no lower than BBB minus or Baa3.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, 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 Uniform Commercial Code or comparable law.

“Loan Amortization Schedules” means the Loan Amortization Schedule, attached as Appendix Two to each TIFIA Note, a copy of which is attached hereto as Exhibit A, delivered pursuant to Section 9(_), as amended from time-to-time in accordance with Section 7 and Section 9(_).

“Major Capital Requirement” means an Unexpected Required Repair or Modification requiring (i) expenditures exceeding $5,000,000, (ii) a partial or complete closing of the Project that has resulted or is reasonably expected to result in a loss of Project Revenues exceeding $5,000,000, or (iii) any combination of the circumstances described in the preceding clauses (i) and (ii) exceeding $5,000,000.

“Major Maintenance” means Capital Expenditures less Discretionary Major Capital Expenditures, to the extent included in the approved Annual Operating Budget.

“Master Agreement” means the Master Trust Indenture Agreement between the Borrower and the Trustee, dated as of the Effective Date, as supplemented or amended by any Supplemental Indenture as defined in the Master Agreement, and any trust agreement, trust indenture, bond resolution or similar document or set of documents, entered into in replacement of, in substitution for, in whole or in part, such Master Agreement or any subsequent Loan Agreement and pursuant to which Permitted Debt is issued to finance or refinance the Project, approved in writing by the TIFIA Lender.

“Material Adverse Effect” means a material adverse change in (a) the Project, (b) the ability of the Borrower to perform or comply with any of its material obligations under the Master Agreement or the TIFIA Loan Documents or the Principal Project Agreements to which it is a party, (c) the validity, perfection or priority of the Liens on the Collateral in favor of the Trustee on behalf of the TIFIA Lender or (d) the TIFIA Lender’s rights or benefits available under this Agreement.

“Misrepresentation Cross Default” has the meaning set forth in Section 18(a)(vi).

“Nationally Recognized Rating Agency” means Standard & Poor’s Rating Group, Moody’s Investors Services, Inc., Fitch Ratings or another nationally recognized statistical rating organization, identified by the Securities and Exchange Commission.

“Net Cash Flow”, as set forth in Section 101 of the Master Agreement, means, with respect to any period, an amount equal to (a) all Project Revenues received by the Borrower during such period, minus (b) the sum of the following (without duplication):
(i) all Operations and Maintenance Expenses paid during such period (to the extent not funded from amounts deposited in the Operating and Maintenance Reserve Fund; 

(ii) all Major Maintenance Costs paid during such period (to the extent not funded from amounts deposited in the Major Maintenance Reserve Fund); 

(iii) all Capital Expenditures paid during such period (to the extent not funded from amounts deposited in the Capital Expenditure Reserve Fund); 

(iv) all Extraordinary Expense Costs paid during such period (to the extent not funded from amounts deposited in the Extraordinary Reserve Fund); and 

(v) all deposits to the Operating and Maintenance Reserve Fund, Major Maintenance Reserve Fund, Capital Expenditure Reserve Fund and Extraordinary Reserve Fund during such period under the terms of the Master Agreement.]

“Operations and Maintenance Expenses” as set forth in Section 101 of the Master Agreement, means all actual cash maintenance and operation costs (excluding costs of Capital Expenditures) incurred and paid (or if applicable forecast to be incurred and paid) in connection with the operation and maintenance of the Project in any particular calendar or Fiscal Year or period to which said term is applicable, including payments made pursuant to the Franchise Agreement, payments for taxes, insurance, consumables, advertising, marketing, payments under real property agreements or other agreements pursuant to which the Borrower has rights in the Project, payments pursuant to the agreements for the management, operation or maintenance of the Project, reasonable legal fees and expenses paid by the Borrower in connection with the management, maintenance or operation of the Project, fees paid in connection with obtaining, transferring, maintaining or amending any approvals from any Governmental Authority, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Borrower, or for deposits into any account maintained in accordance with the Master Agreement for such purposes, and reasonable general and administrative expenses, but exclusive in all cases of noncash charges, including, but not limited to, depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Operating and Maintenance Reserve Fund” means the fund of that name created pursuant to and designated as such in Section 501 of the Master Agreement.

“Original Lenders” has the meaning assigned to such term in the recitals hereto.

“Original Senior Lenders” has the meaning assigned to such term in the recitals hereto.

“Other Loan Documents” has the meaning set forth in Section 18(a)(v).

“Other Material Indebtedness” has the meaning set forth in Section 18(a)(iv).

“Outstanding TIFIA Loan Balance” means the aggregate outstanding amount of the TIFIA Loan, as determined in accordance with Section 7.
“Payment Date” means each Semi-Annual Payment Date.

“Payment Default” has the meaning set forth in Section 18(a)(i).

“Payment Period” means any period of six months that ends on a Payment Date, commencing with the six-month period ending on the Debt Service Payment Commencement Date.

“Permitted Debt” means any of the following, which are payable from the Collateral or Project Revenues, as applicable:

(a) the TIFIA Loan;

(b) the TransNet Loan;

(c) the Series D Loan;

(d) debt permitted to be issued under this Agreement and the Master Agreement;

(e) reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Principal Project Agreements or any other agreement executed by the Borrower in connection with the Project that are payable as Project Costs, Project Costs, or Operations and Maintenance Expenses and that do not in the aggregate have face amounts exceeding $1,000,000 (inflated annually by CPI);

(f) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that are payable as Operations and Maintenance Expenses and that do not in the aggregate have annual debt service or lease payment obligations exceeding $500,000 (inflated annually by CPI);

(g) trade accounts payable (other than for borrowed money) so long as such trade accounts payable are payable not later than 90 days after the respective goods are delivered or the respective services are rendered; and

(h) working capital loans that are payable as Operations and Maintenance Expenses, provided that the principal amount of such loans shall not exceed $2,500,000 (inflated annually by CPI) in the aggregate at any time and shall be repaid within three years.

“Permitted Investments” means:

(a) Government Obligations;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the Government;
(c) repurchase agreements 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) money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, and having a rating by S&P of AAAm G or AAA m or if rated by Moody’s having a rating of Aaa; and

(e) collateralized investment agreements or other contractual agreements with corporations, financial institutions or national associations within the United States, provided that the senior long term debt of such corporations, institutions or associations is rated AAA or its equivalent by a Nationally Recognized Rating Agency.

“Permitted Liens” means:

(a) Liens imposed pursuant to or as permitted under the TIFIA Loan Documents;

(b) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 15(p);

(c) Liens imposed pursuant to the Commission Loan Agreement;

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

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

(f) judgment liens in respect of judgments that do not constitute an Event of Default under Section 18(a)(vi);

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

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

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

(j) purchase money security interests in real property, improvements thereto or equipment acquired on or after the Effective Date hereof (or, in the case of improvements, constructed) by the Borrower, provided that (i) such security interests secure indebtedness for borrowed money permitted by Section 15(a), (ii) such security interests are incurred, and the indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (iii) the indebtedness secured thereby does not exceed the fair market value of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets (other than accessions to such real property, improvements or equipment) of the Borrower.

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

“Principal Project Agreements” means each Franchise Document, any contract entered into by or for the account of the Borrower in connection with any Major Capital Requirement, any guarantee given to the Borrower by any Person and any letters of credit issued in favor of the Borrower in respect of any of the obligations of any party (other than the Borrower) to any of the agreements listed above; any other contract entered into by the Borrower relating to the Project designated as a Principal Project Agreement by both the Trustee and the Borrower; and any document that replaces or supplements any of the agreements listed above.

“Project” means the divided, limited access toll road in San Diego County, California, approximately 9.2 miles (15 kilometers) long, which extends from the interchange with Otay Mesa Road at approximately Sta/ 27+100 to San Miguel Ranch Road at approximately Sta. 167+30, known as the South Bay Expressway.

“Project Costs” means (a) the costs paid or incurred (to the extent paid, such costs shall be reimbursed to the Person who paid such costs) 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 financing costs; (b) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) on any indebtedness of the Borrower (other than the TIFIA Loan) incurred for the Project; (c) 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 other than to the extent such amounts constitute direct or indirect costs unallowable to the Borrower and its contractors under 18 C.F.R. Part 31; and (d) the repayment of obligations incurred by the Borrower, the proceeds of which obligations were used to pay items (a) through (c) of this definition.
“Project Enhancements” means any upgrades or improvements taken to restore and maintain for a reasonable period of time the minimum required level of service of the Project as certified by an Independent Engineer and required under the Franchise Agreement.

“Project Life Cover Ratio” or “PLCR” means, as of December 31 of any year, the ratio of (a) (i) the present value of Net Cash Flow for each annual period from such December 31 to the scheduled expiration of the Toll Road Lease, in each case discounted at the Weighted Average Interest Cost, plus (ii) any balances credited to the accounts held by the Trustee as of such December 31 (after giving effect to the disbursements from such accounts held by the Trustee scheduled for the same day), to (b) the aggregate amount of the TIFIA Loan outstanding on such December 31.

“Project Revenues” means, for any period (without duplication), all amounts received (or projected to be received) by or on behalf of the Borrower during such period, including any income, tolls and receipts derived from the ownership or operation of the Project, including proceeds of any business interruption insurance, income received by the Borrower from the sale, lease or use of Airspace or any ancillary services by the Project, together with any receipts derived from the sale of any property pertaining to the Project or incidental to the operation of the Project, all as determined in conformity with cash accounting principles, the investment income on amounts in the Accounts, the proceeds of any drawing under a letter of credit or guaranty relating to the Project of which the Borrower or the Trustee is the beneficiary, proceeds of any insurance, condemnation or litigation or arbitration awards relating to the Project, and all other revenue, however generated, by the Borrower.

“Project Revenues Fund” means the fund of that name created pursuant to and designated as such in Section 501 of the Master Agreement.

“Prudent Industry Practice” means, at a particular time, any of the practices, methods, standards and acts (including the practices, methods and acts engaged in or approved by a significant portion of the publicly-owned toll road industry in the United States) that, at that time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts generally conform to operation and maintenance standards recommended by a publicly-owned toll road’s equipment suppliers and manufacturers, applicable facility design limits and applicable governmental approvals and law. “Prudent Industry Practice” is not intended to be limited to the optimum practice or method to the exclusion of others, but rather to be a spectrum of possible but reasonable practices and methods.

“Rate Covenant” has the meaning set forth in Section 15(l).

“Rating Category” or “Categories” 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.

“Related Documents” means the TIFIA Loan Documents the Principal Project Agreements, the Commission Loan Agreement and the Sales Agreement.
“Sales Agreement” has the meaning set forth in the recitals hereto.

“Secretary” means the United States Secretary of Transportation.

“Secured Parties” means, collectively, the TIFIA Lender and the subordinate Secured Parties. As of the Effective Date, the Trustee, the TIFIA Lender and the Commission are all Secured Parties, and thereafter such term shall include such additional Secured Parties as may be approved in writing by the TIFIA Lender.

“Semi-Annual Payment Date” means the last Business Day of each of June and December in each year, commencing with the first such Business Day occurring on after the Effective Date.

“Senior Obligations” has the meaning ascribed to such term in the Master Agreement.

“Series D Agreement” means the Series D Agreement dated as of ______, 2011, by and between the Borrower and the TIFIA Lender pursuant to which the Borrower is issuing the Series D Note and the TIFIA Lender is making the Series D Loan.

“Series D Loan” means the loan in the amount of $1,500,000 that the TIFIA Lender is making to the Borrower pursuant to the Series D Agreement.

“Series D Note” means the note issued by the Borrower in exchange for the Series D Loan, and, under the Master Agreement, the Series D Note is defined therein as the Second Subordinated Obligation.

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

“State” means the State of California.

“Subordinate Debt Service” means, with respect to any Subordinate Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Subordinate Obligations accruing and payable during such period. In determining the principal amount of Subordinate Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Subordinate Obligations.

“Subordinate Obligations” means the TransNet Loan and the Series D Note and any other Permitted Debt permitted hereunder.

“Supplemental Indenture” means any resolution, indenture, agreement or similar document which supplements or amends the Master Agreement and which sets forth the pricing and other financial and related terms of Permitted Debt.
“TIFIA Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to the sum of TIFIA Scheduled Debt Service for such Calculation Period.

[“TIFIA Debt Service Reserve Fund” means [TBD].]

“TIFIA Default Rate” means an interest rate of 200 basis points above the Applicable Interest Rate.

“TIFIA Interest Payment Date” means the last Business Day of each June and December.

“TIFIA Interest Account” means the account of that same name in the Senior Obligations Debt Service Fund (as defined in the Master Agreement) created pursuant to and designated as such in Section 501 of the Master Agreement.

“TIFIA Lender” means the United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator, together with any successors and assigns.

“TIFIA Lender’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 25 and the Administrator.

“TIFIA Loan” means, collectively, the Tranche A-2 Loan, the Tranche B-2 Loan and the Tranche C-2 Loan.

“TIFIA Loan Documents” means this Agreement, the TIFIA Notes, the Series D Note, the Master Agreement and the Series D Agreement.

“TIFIA Notes” has the meaning assigned to such term in the recitals hereto.

“TIFIA Principal Account” means the account of that same name in the Senior Obligations Debt Service Fund (as defined in the Master Agreement) created pursuant to and designated as such in Section 501 of the Master Agreement.

“TIFIA Scheduled Debt Service” means the dates and the respective Outstanding TIFIA Loan Balance set forth in Exhibit E hereto for each of the Tranche A-2 Loan, the Tranche B-2 Loan and the Tranche C-2 Loan, as such amounts may be increased in accordance with the provisions of Section 9 hereof.

“Toll Road Lease” means the amended lease agreement entered into by the Borrower and Caltrans with respect to the Project, substantially in the form of Exhibit B to the Franchise Agreement.

“Traffic Consultant” means initially [Santek] and shall include any replacement traffic consultant firm which shall be selected from a list [maintained by the Borrower and approved by the TIFIA Lender].
“Tranche” means, with respect to the TIFIA Loan, the Tranche A-2 Loan, the Tranche B-2 Loan or the Tranche C-2 Loan, as applicable.

“Tranche B Capitalized Interest Period” means the period beginning on the Effective Date and ending on the day prior to the Tranche B Debt Service Payment Commencement Date.

“Tranche C Capitalized Interest Period” means the period beginning on the Effective Date and ending on the day prior to the Tranche C Debt Service Payment Commencement Date.

“Tranche A Debt Service Payment Commencement Date” means the first Semi-Annual Payment Date to occur following the Effective Date.

“Tranche A Final Maturity Date” is December 31, 2027.

“Tranche A-2 Loan” has the meaning assigned to such term in the recitals hereto.

“Tranche B Debt Service Payment Commencement Date” means the first Semi-Annual Payment Date to occur following the repayment in full of the Tranche A-2 Loan, but no later than [December 31, 2027].

“Tranche B Final Maturity Date” is October 31, 2042.

“Tranche B-2 Loan” has the meaning assigned to such term in the recitals hereto.

“Tranche C Debt Service Payment Commencement Date” means the first Semi-Annual Payment Date to occur following the repayment in full of the Tranche B-2 Loan, but no later than [June 31, 2037].

“Tranche C Final Maturity Date” is October 31, 2042.

“Tranche C-2 Loan” has the meaning assigned to such term in the recitals hereto.

“TransNet Loan” has the meaning assigned to it under the Commission Loan Agreement.

“Trustee” means US Bank, National Association or any successor thereto designated pursuant to the terms of the Master Agreement.

“Uncontrollable Force” means any cause beyond the control of the Borrower, including but not limited to: (a) a 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, or 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.

“Expected Required Repair or Modification” means any Capital Expenditure or related series of Capital Expenditures required to ensure that the Project is operated in compliance with the requirements of the Franchise Agreement that has not been set forth in the [Annual Operating Budget], as applicable.

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

“USDOT” means the United States Department of Transportation.

[“Weighted Average Interest Cost” means, for each calendar year prior to the scheduled expiration of the Toll Road Lease, a rate calculated as follows: the sum of

(a) the Applicable Interest Rate for Tranche A-2 Loan multiplied by the ratio of (i) the current Tranche A-2 Loans principal amount then outstanding to (ii) the aggregate principal amount of each of the Tranche A-2, Tranche B-2 and Tranche C-2 Loans;

(b) the Applicable Interest Rate for Tranche B-2 Loan multiplied by the ratio of (i) the current Tranche B-2 Loans principal amount then outstanding to (ii) the aggregate principal amount of each of the Tranche A-2, Tranche B-2 and Tranche C-2 Loans; and

(c) the Applicable Interest Rate for Tranche C-2 Loan multiplied by the ratio of (i) the current Tranche C-2 Loans principal amount then outstanding to (ii) the aggregate principal amount of each of the Tranche A-2, Tranche B-2 and Tranche C-2 Loans.]

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.” 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 sections, subsections, and provisions are to the applicable sections, subsections and provisions 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 35 and signed by a duly authorized representative of such party.

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SECTION 3. **TIFIA Loan Amount.** The principal amount of the TIFIA Loan shall be $59,440,500 with respect to the Tranche A-2 Loan, $30,523,500 with respect to the Tranche B-2 Loan and $2,570,400 with respect to the Tranche C-2 Loan (excluding any interest that is capitalized in accordance with the terms hereof).

SECTION 4. **Disbursements.**

All disbursements under the Original TIFIA Loan Agreement, as amended by the First Amended and Restated Loan Agreement and this Agreement, have been made.

SECTION 5. **Term.** The term of the TIFIA Loan shall extend to the applicable Final Maturity Date or to such earlier or later date as all amounts due or to become due to the TIFIA Lender hereunder have been paid.

SECTION 6. **Interest.** The Tranche A-2 Loan, the Tranche B-2 Loan and the Tranche C-2 Loan shall each bear interest at a rate per annum equal to the Applicable Interest Rate. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi-annually; provided, however, in the event of a Payment Default, the Borrower shall pay interest on any overdue amount from its due date to the date of actual payment at the TIFIA Default Rate.

SECTION 7. **Outstanding TIFIA Loan Balance.**

(a) The Outstanding TIFIA Loan Balance for each Tranche of the TIFIA Loan will be (i) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9 hereof, by the amount of interest so capitalized and (ii) decreased upon each payment of the principal amount of the applicable TIFIA Loan, 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. Upon any determination of the Outstanding TIFIA Loan Balance, the TIFIA Lender may, but shall not be obligated to, make applicable revisions to Exhibit E and the Loan Amortization Schedule pursuant to Section 9 and in such event shall provide the Borrower with a copy of such Exhibit E and Loan Amortization Schedule 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.

(b) The TIFIA Lender shall make applicable revisions to Exhibit E and the Loan Amortization Schedule pursuant to Section 9 upon any authorized prepayment of the TIFIA Loan. Upon any such revisions the TIFIA Lender shall provide the Borrower with copies of such Exhibit E and Loan Amortization Schedule as revised, but no failure to provide or delay in providing the Borrower with such copies 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 and any other payments or obligations of any kind required to be paid by the Borrower hereunder, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee, Liens on the Collateral in accordance with the provisions of the Master Agreement. The TIFIA Loan shall be secured by the Liens on the Collateral senior to the Lien on the Collateral of the TransNet Loan and the Lien on the Project Revenues of the Series D Loan.

(b) Except to the extent otherwise provided in clauses (j) and (k) of the definition of Permitted Liens or as may be entitled to priority as a matter of law, the items pledged in paragraph (a) of this Section are and 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 created hereby, and all corporate action on the part of the Borrower to that end has been duly and validly taken.

(c) The Borrower shall not use Project Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 and the Master Agreement and shall not apply any portion of the Project Revenues in contravention of this Agreement or the Master Agreement.

(d) Amounts on deposit in the [TIFIA Debt Service Reserve Account and], the Senior Obligations Debt Service Fund established under the Master Agreement shall be invested in Permitted Investments. Any investments shall mature or be redeemable at the election of the holder on or prior to the related Payment Date in amounts sufficient to make such payment.

(e) All terms used in this Section 8(e), which are not otherwise defined in this Agreement, shall have the meaning assigned to such terms as provided for in the Master Agreement. The Master Agreement provides that all Project Revenues shall, subject to Section _____ of the Master Agreement, be applied substantially in the following order of priority, as more fully described, and in accordance with the requirements specified, in Article __ of the Master Agreement:

[(i) Budgeted Operating and Maintenance Expenses;

(ii) Required Capital Expenditure Reserve deposits;

(iii) Fees, costs and expenses due under this Agreement;

(iv) Interest portion of TIFIA Scheduled Debt Service;

(v) Principal portion of TIFIA Scheduled Debt Service;

(vi) Required Extraordinary Reserve deposits (including any required expenditures to comply with the Franchise Documents);

(vii) Required Major Maintenance Reserve deposits;]
(viii) Repayment of the *TransNet* Loan up to a total of $447.6 million;
(ix) Interest portion of Series D Loan;
(x) Principal portion of Series D Loan; and
(xi) Deposits to SANDAG Distribution Account.]

SECTION 9. **Payment of Principal and Interest.**

(a) **Tranche A-2 Loan.** On each Payment Date occurring on or after the Effective Date, the Borrower shall pay TIFIA Scheduled Debt Service in the amount of principal and interest on the Tranche A-2 Loan equal to the amount set forth on Exhibit E hereto which payments shall be made in accordance with Section 9(d). To the extent that the aggregate amount of TIFIA Scheduled Debt Service on the Tranche A-2 Loan actually paid during any Payment Period in accordance with the provisions hereof shall be less than the aggregate amount of the TIFIA Scheduled Debt Service for such period as set forth on Exhibit E hereto, then the unpaid portion of such TIFIA Scheduled Debt Service shall, in the case of interest, be capitalized and added to the Outstanding TIFIA Loan Balance for the Tranche A-2 Loan as of the Semi-Annual Payment Date occurring at the end of such Payment Period or, in the case of principal of the Tranche A-2 Loan, deferred and added to the Outstanding TIFIA Loan Balance for the Tranche A-2 Loan that is due and payable as of the Semi-Annual Payment Date occurring at the end of the next following Payment Period; provided however that the Outstanding TIFIA Loan Balance for the Tranche A-2 Loan shall be paid no later than the Tranche A Final Maturity Date.

(b) **Tranche B-2 Loan.**

(i) **Capitalized Interest Period.** No payment of the principal of or interest on the Tranche B-2 Loan is required to be made during the Tranche B Capitalized Interest Period. On each January 1 and July 1 occurring during the Tranche B Capitalized Interest Period, interest accrued in the six month period ending immediately prior to such date on the Tranche B-2 Loan shall be capitalized and added to the Outstanding TIFIA Loan Balance for the Tranche B-2 Loan. Within 30 days after the end of the Tranche B Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance for the Tranche B-2 Loan as of the close of business on the last day of the Tranche B Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(ii) **Payment of TIFIA Scheduled Debt Service.** On each Payment Date occurring on or after the Tranche B Debt Service Commencement Date, the Borrower shall pay TIFIA Scheduled Debt Service in the amount of principal and interest on the Tranche B-2 TIFIA Loan equal to the amount set forth on Exhibit E hereto which payments shall be made in accordance with Section 9(d). To the extent that the aggregate amount of TIFIA Scheduled Debt Service on the Tranche B-2 TIFIA Loan actually paid during any Payment Period in accordance with the provisions hereof shall be less than the aggregate amount of the TIFIA Scheduled Debt Service for such period as set forth on Exhibit E hereto, then the unpaid portion of such TIFIA Scheduled Debt Service shall, in the case of interest, be capitalized and added to the Outstanding TIFIA Loan Balance for the Tranche B-2 Loan as of the Semi-Annual Payment Date occurring at the end of such Payment Period or, in the case of principal of the Tranche B-2 Loan, deferred and added to the Outstanding TIFIA Loan Balance for the Tranche B-2 Loan that is due and payable as of the Semi-Annual Payment Date occurring at the end of the next following Payment Period; provided however that the Outstanding TIFIA Loan Balance for the Tranche B-2 Loan shall be paid no later than the Tranche B Final Maturity Date.
Loan Balance for the Tranche B-2 Loan as of the Semi-Annual Payment Date occurring at the end of such Payment Period or, in the case of principal of the Tranche B-2 Loan, deferred and added to the Outstanding TIFIA Loan Balance for the Tranche B-2 Loan that is due and payable as of the Semi-Annual Payment Date occurring at the end of the next following Payment Period; provided however that the Outstanding TIFIA Loan Balance for the Tranche B-2 Loan shall be paid no later than the Tranche B Final Maturity Date.

(c) Tranche C-2 Loan.

(i) Capitalized Interest Period. No payment of the principal of or interest on the Tranche C-2 Loan is required to be made during the Tranche C Capitalized Interest Period. On each January 1 and July 1 occurring during the Tranche C Capitalized Interest Period, interest accrued in the six month period ending immediately prior to such date on the Tranche C-2 Loan shall be capitalized and added to the Outstanding TIFIA Loan Balance for the Tranche C-2 Loan. Within 30 days after the end of the Tranche C Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance for the Tranche C-2 Loan as of the close of business on the last day of the Tranche C Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(ii) Payment of TIFIA Scheduled Debt Service. On each Payment Date occurring on or after the Tranche C Debt Service Commencement Date, the Borrower shall pay TIFIA Scheduled Debt Service in the amount of principal and interest on the Tranche C-2 Loan equal to the amount set forth on Exhibit E hereto which payments shall be made in accordance with Section 9(d). To the extent that the aggregate amount of TIFIA Scheduled Debt Service on the Tranche C-2 Loan actually paid during any Payment Period in accordance with the provisions hereof shall be less than the aggregate amount of the TIFIA Scheduled Debt Service on the Tranche C-2 Loan or such period as set forth on Exhibit E hereto, then the unpaid portion of such TIFIA Scheduled Debt Service on the Tranche C-2 Loan shall, in the case of interest, be capitalized and added to the Outstanding TIFIA Loan Balance of the Tranche C-2 Loan as of the Semi-Annual Payment Date occurring at the end of such Payment Period or, in the case of principal of the Tranche C-2 Loan, deferred and added to the Outstanding TIFIA Loan Balance of the Tranche C-2 Loan that is due and payable as of the Semi-Annual Payment Date occurring at the end of the next following Payment Period; provided however that the Outstanding TIFIA Loan Balance for the Tranche C-2 Loan shall be paid no later than the Tranche C Final Maturity Date.

SECTION 10. Prepayment. The TIFIA Loan is not subject to prepayment prior to the last payment date set forth in Exhibit E hereto without the prior written consent of the TIFIA Lender, which such consent shall be in the sole and absolute discretion of the TIFIA Lender and upon such terms and conditions as required by the TIFIA Lender.

SECTION 11. Compliance with Laws. The Borrower covenants to require its contractors and subcontractors to abide by all applicable federal and State laws. The list of federal laws attached as Exhibit D is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA California Division
Office has oversight responsibility for ensuring compliance with all applicable provisions relating to or as a result of Additional Projects Contracts. The Borrower agrees to cooperate with the FHWA California Division Office in carrying out their duties under any Additional Project Contracts.

SECTION 12. **Conditions Precedent.** 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:

(a) The Borrower (i) shall have duly executed and delivered each of the Master Agreement, this Agreement, each in form and substance satisfactory to the TIFIA Lender, (ii) shall have duly executed and delivered the TIFIA Notes to the TIFIA Lender, in form and substance satisfactory to the TIFIA Lender, (iii) shall have duly executed and delivered the Sale Agreement and shall have satisfied all conditions precedent set forth in the Sale Agreement, including, but not limited to, paying all amounts, making all deposits and duly executing and delivering all documents required pursuant thereto to the extent not covered by this Agreement, (iv) shall have duly executed the Commission Loan Agreement, (v) shall have duly executed and delivered the Series D Loan, and (vi) shall have duly executed and accepted the Assignment of Toll Road Lease and the Toll Road Lease.

(b) Counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions in substantially the forms attached hereto as Exhibit B.

(c) The Borrower shall have provided a certificate as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as Exhibit C.

(d) The Borrower shall have provided evidence to the TIFIA Lender’s satisfaction, not later than 14 days prior to the Effective Date or such other date as deemed acceptable by the TIFIA Lender, of the assignment by a Nationally Recognized Rating Agency of an Investment Grade Rating on the TIFIA Loan.

(e) The Borrower shall have delivered to the TIFIA Lender a certificate designating the Borrower’s Authorized Representative and such person’s position and incumbency and a certificate of the Borrower to the effect that the insurance requirements of Section 15(f) have been satisfied as of the Effective Date.

(f) The Borrower shall have demonstrated to the TIFIA Lender’s satisfaction that it has all necessary Governmental Approval necessary to acquire the Project pursuant to the Sale Agreement.

(g) The Borrower shall have delivered to the TIFIA Lender a certified schedule acceptable to the TIFIA Lender demonstrating that the projected Project Revenues shall be sufficient to meet the Loan Amortization Schedule and meet the requirements of the Rate Covenant contained in Section 15(l) hereof.

(h) The TIFIA Lender shall have delivered its initial TIFIA Lender’s Authorized Representative certificate.
(i) The Borrower shall also 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, but not limited to, the Base Case Financial Model.

(j) The Borrower shall have obtained a Data Universal Number System number with the federal Central Contractor Registry.

(k) The Borrower shall have caused counsel to the Trustee to have rendered to the TIFIA Lender a legal opinion as to the due execution and validity of the documents to be executed by the Trustee, namely, the Master Agreement.

(l) The Borrower shall have caused the Commission to have rendered to the TIFIA Lender a legal opinion (i) as to the due execution and validity of the Financing Documents to which the Commission is a party and (ii) that states that, to its knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Commission, the Borrower or any other party by or before any court, arbitrator or any other governmental authority in connection with the Financing Documents or the Project that are pending.

(m) The Borrower shall have furnished to the TIFIA Lender a date down endorsement of the mortgagee title insurance policy, at Borrower’s cost, in form and substance acceptable to the TIFIA Lender.

SECTION 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that as of the Effective Date:

(a) The Borrower has been duly organized and is validly existing under the Constitution and laws of the State of California, and has full legal right, power and authority to enter into the Related Documents then in existence, to execute the TIFIA Notes, and to carry out and consummate all transactions contemplated by hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) As of the Effective Date, the officers of the Borrower executing the Related Documents to which the Borrower is a party, are duly and properly in office and fully authorized to execute the same.

(c) Each of the TIFIA Loan Documents 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 (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, (B) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law), and (C) by the limitations on legal remedies (i) against public entities in the State and (ii) the exercise of judicial discretion with respect thereto.

(d) 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, in any material respect, conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) by the Borrower of any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower subject to the express terms of this Agreement.

(e) 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 required as of the date hereof is necessary in connection with the execution and delivery by the Borrower of the Related Documents, the consummation of any transaction contemplated by the Related Documents, or the fulfillment of or compliance with the Borrower of the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending, or to the knowledge of the Borrower after reasonable inquiry and investigation, threatened against or affecting the Borrower after reasonable inquiry and investigation, threatened against or affecting the Borrower or the assets, properties or operations of the Borrower which are likely to have a Material Adverse Effect. The Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any other Governmental Authority, which default would be reasonably likely to have a Material Adverse Effect.

(g) The Master Agreement establishes, in favor of the Trustee for the benefit of the TIFIA Lender, the valid and perfected Liens on the Collateral which it purports to create; such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Collateral except as to the extent such other Liens are entitled to priority as a matter of law and the Borrower is not in breach of any covenants set forth in Section 15 of this Agreement and the Master Agreement with respect thereto.

(h) The Borrower is not debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered in substantially the form of Exhibit C.

(i) As of the Effective Date, the representations, warranties and certifications of the Borrower set forth in the Financing Documents, including, but not limited to, the Sale Agreement, and all information provided by the Borrower to the TIFIA Lender when taken as a whole and after giving effect to any updates, remain true and accurate.

(j) The TIFIA Loan has received an Investment Grade Rating from at least one Nationally Recognized Rating Agency, and written evidence of such rating has been provided to the TIFIA Lender prior to the Effective Date, and to the knowledge of the Borrower, no such rating has been reduced, withdrawn or suspended as of the Effective Date.
(k) Upon execution and delivery of this Agreement and the TIFIA Notes, the Borrower is not in default in any material respect under the terms hereof or thereof and no event has occurred or condition exists which, with due notice or lapse of time or both, would constitute an Event of Default.

(l) To the Borrower’s knowledge, after due inquiry, all authorizations, consents, approvals, licenses, permits and reviews required as of the Effective Date for the acquisition by the Borrower of the Project have been obtained or effected and are in full force and effect and there is no basis for the revocation of any such authorization, consent, commitments or approval.

(m) The Commission Loan Agreement and the Principal Project Agreements, which have been executed and delivered as of the Effective Date, are all in full force and effect, the Borrower is not in default under any of such agreements or contracts, and, to the knowledge of the Borrower, no party to any of such agreements or contracts is in default thereunder.

SECTION 14.  **Representations, Warranties, and Covenants of TIFIA Lender.**

(a) The TIFIA Lender represents and warrants that:

(i) 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.

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

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

SECTION 15.  **Borrower Covenants.** The Borrower hereby covenants and agrees that:

(a) **Permitted Indebtedness.** Except as set forth below, the Borrower shall not issue or incur indebtedness of any kind. Notwithstanding anything to the contrary herein or the Master Agreement, the Borrower shall not incur any Additional Senior Obligations (as defined in the Master Agreement).

(i) **Additional First Subordinated Obligations.** The Borrower shall not incur Additional First Subordinated Obligations without the prior written approval of the TIFIA Lender and subject to the provisions herein. The TIFIA Lender may, in its sole discretion, require any or all of the following as conditions of its approval of the Borrower’s issuance of any Additional First Subordinated Obligations, and upon satisfaction of such conditions, the TIFIA Lender’s approval shall not be unreasonably withheld (and for the avoidance of doubt, the TIFIA Lender’s refusal to consent in the
event of the Borrower’s failure to satisfy any one of such conditions shall not be considered an unreasonable withholding of the TIFIA Lender’s consent):

(A) No “event of default” under the Master Agreement or Event of Default under this Agreement has occurred and is continuing;

(B) The TIFIA Lender has received written confirmation from each Rating Agency then maintaining a rating on the Senior Obligations to the effect that the issuance of such Additional First Subordinated Obligations will not in and of itself cause such Rating Agency to reduce or withdraw the then current rating on the TIFIA Loan;

(C) With respect to Additional First Subordinated Obligations issued for the purpose of complying with obligations under [Section ____] the Franchise Agreement, the Borrower shall certify to the TIFIA Lender that (1) the proceeds of such Additional First Subordinated Obligations, together with other funds available to the Borrower, if any, shall be sufficient for the proposed purpose, (2) the issuance of the Additional First Subordinated Obligations, is not expected to have a Material Adverse Effect, and (3) the Net Cash Flow, taking into account the Additional First Subordinated Obligations, is projected to be sufficient to meet or exceed a coverage test equal to [____]x of TIFIA Scheduled Debt Service and scheduled repayment of the First Subordinated Obligations (based on a certified revenue forecast prepared by the Traffic Consultant and delivered prior to or concurrently with the Borrower’s request for approval of such First Subordinated Obligations);

(D) With respect to Additional First Subordinated Obligations issued for the purpose of acquiring, constructing, equipping or completing Project Enhancements, the Borrower shall certify to the TIFIA Lender that (1) the proceeds of such Additional First Subordinated Obligations, together with other funds available to the Borrower, if any, shall be sufficient for the proposed purpose, (2) the issuance of the Additional First Subordinated Obligations is not expected to have a Material Adverse Effect, (3) the Net Cash Flow, taking into account the Additional First Subordinated Obligations is projected to be sufficient to meet or exceed a coverage test equal to [____]x of TIFIA Scheduled Debt Service and scheduled repayment of the First Subordinated Obligations (based on a certified revenue forecast prepared by the Traffic Consultant and delivered prior to or concurrently with the Borrower’s request for approval of such indebtedness), and (4) the issuance of such Additional First Subordinated Obligations shall not adversely affect the Borrower’s ability to repay the Series D Note;

(E) With respect to First Subordinated Obligations to refinance, replace or refund all or part of any then outstanding First Subordinated Obligations, the Borrower shall certify that (1) the net proceeds thereof (after deducting payment of costs of issuance not to exceed 2% of the principal amount of such Additional First Subordinated Obligations) do not exceed the principal amount of the First Subordinated Obligations outstanding and being refinanced or
replaced and (2) the debt service on any Additional First Subordinated Obligations is no greater than prior to such refinancing, replacement or refunding scheduled debt service on the First Subordinated Obligations in any given year.

(b) **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 for the better assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Collateral (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender, pursuant to the Master Agreement, or intended so to be granted pursuant to the Master Agreement, or which the Borrower may become bound to grant and the Collateral is and 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 Liens created by the Master Agreement for the benefit of the TIFIA Lender, other than as permitted by such documents or by this Agreement, and all corporate action on the part of the Borrower to that end shall be duly and validly taken at such 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 Master Agreement and all the rights of the Trustee for the benefit of the TIFIA Lender under the Master Agreement against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(c) **Copies of Documents.** The Borrower shall furnish to the TIFIA Lender a copy of any offering document and cash flow projections prepared in connection with the incurrence of any Permitted Debt, prior to the incurrence of any such Permitted Debt, as well as copies of any continuing disclosure documents, in each case prepared or filed in connection with the applicable rules of the Securities and Exchange Commission, in each case promptly following the preparation or filing thereof.

(d) **Reserved.**

(e) **Operations and Maintenance.** The Borrower shall cause the Project to be maintained and operated (i) in accordance with the Franchise Agreement, [Caltrans Standards and Prudent Industry Practice (except that if a practice is against Prudent Industry Practice but is required by the Franchise Agreement or Caltrans Standards, there shall be no breach of this covenant for as long as the Borrower is in compliance with such requirements of the Franchise Agreement or Caltrans Standards, as applicable),] (ii) in compliance with all other federal, state and local laws, rules, regulations, orders, decrees, judgments and administrative decisions 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). 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 rights, licenses, permits, franchises and authorizations material to the conduct of the Project, and comply in all material respects with all applicable laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over the Project (including, without limitation, the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.).
(f) **Insurance.** The Borrower shall at all times maintain or cause to be maintained insurance on the Project, with responsible insurers, as is customarily maintained in the United States with respect to works and properties of like character, against accident to, loss of or damage to such works or properties in accordance with the requirements of the Master Agreement, as applicable, and cause the TIFIA Lender to be included as an “additional insured” party for each such policy.

(g) **Notice.** 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, setting forth details of such event:

(i) **Events of Default:** any Event of Default or any event which, given notice or the passage of time or both, would constitute an Event of Default;

(ii) **Litigation:** the filing of any actual litigation, suit or action, or the delivery to the Borrower of any written claim, which could reasonably be expected to have a Material Adverse Effect; and

(iii) **Other Adverse Events:** the occurrence of any other event or condition, which could reasonably be expected to result in a Material Adverse Effect.

(h) **Remedied Action.** Within 30 calendar days after the Borrower learns of the occurrence of an event specified in Section 15(i), the Borrower’s Authorized Representative shall provide a statement setting forth the actions the Borrower proposes to take with respect thereto.

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

(j) **Maintain Legal Structure.** The Borrower shall maintain its existence as a government agency of the State.

(k) **Annual Rating.** The Borrower shall, commencing in 2013, no later than the last Business Day of December of each year over the term of the TIFIA Loan, at no cost to the TIFIA Lender, provide to the TIFIA Lender a rating on the TIFIA Loan by a Nationally Recognized Rating Agency.
(l) Rate Covenant.

(i) The Borrower shall fix, charge and collect tolls, fees, and charges such that Net Cash Flow in each Fiscal Year will at all times produce a TIFIA Debt Service Coverage Ratio of at least 1.10x in such Fiscal Year (the “Rate Covenant”).

(ii) The Borrower shall prepare and submit to the Trustee and the TIFIA Lender, on or before the ninetieth (90th) day preceding each Fiscal Year, a report in which the Borrower states its conclusion as to whether Net Cash Flow for the current Fiscal Year and for the immediately succeeding Fiscal Year will be sufficient to comply with the Rate Covenant set forth in subsection (i) above, and such report shall include the numbers, assumptions and other information on which it is based.

(iii) If the conclusion stated in clause (ii) above is that the Rate Covenant will not be met for any year, the Borrower shall, within thirty (30) days of the date of submission of such report, engage a Traffic Consultant to conduct a study to review and analyze the operations of the Project and recommend actions regarding revising the rates, changing the methods of operations or other actions to increase the Net Cash Flow as to satisfy the Rate Covenant. Within sixty (60) days of such engagement, the Traffic Consultant shall deliver a written report to the Borrower, the Trustee and the TIFIA Lender containing the results of such study and the recommendations of the Traffic Consultant.

(iv) The Borrower shall either implement the Traffic Consultant’s recommendation or undertake an alternative plan that the Traffic Consultant confirms is likely to generate equivalent or greater Net Cash Flow than the Traffic Consultant’s recommended actions. The Borrower shall undertake the actions recommended by the Traffic Consultant in such report or implement the alternative plan no later than sixty (60) days after the receipt of the Traffic Consultant’s report, provided that the Borrower shall not be required to take any action that may result in a breach by the Borrower of its obligations under the Master Agreement.

(m) No Prohibited Liens. The Borrower will not create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it and constituting the Collateral, except Permitted Liens, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof.

(n) Copies of Additional Project Contracts. The Borrower shall provide a copy of each Additional Project Contract to the TIFIA Lender promptly after execution thereof.

(o) No Prohibited Sale or Assignment. The Borrower shall not sell or assign its rights in and to any portion or all of the Project or its rights and obligations under this Agreement unless such sale or assignment is not expected to result in a Material Adverse Effect and is upon terms and conditions approved in writing by the TIFIA Lender in its sole discretion.
(p) **Material Obligations.** The Borrower will pay its material obligations with regards to the Project promptly and in accordance with their terms and pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of the Project, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon the Project or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim 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, to the extent required by GAAP on a consistent basis, set aside on its books adequate reserves with respect thereto.

(q) **Fiscal Year.** The Borrower will not at any time adopt any fiscal year other than the State Fiscal Year, except after providing the TIFIA Lender with at least sixty (60) days advance written notice of any proposed changes.

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

(s) **Project Life Cover Ratio.** The Borrower shall not permit the Project Life Cover Ratio to be lower than the Applicable Default Project Life Cover Ratio for December 31 of any year.

(t) **Operations and Maintenance Costs.** The Borrower shall not increase in any year the amount of Operations and Maintenance Expenses by more than 10% over the amount shown for such expenditures in such year in the Base Case Financial Model, without the TIFIA Lender’s prior written consent; provided, that no consent shall be required for (i) reasonably unforeseen expenditures to the extent necessary to pay for compliance with emergency expenses or urgent needs in accordance with Borrower’s Board Policy No. 017, or any successor policy thereto and (ii) reasonably unforeseen expenditures to the extent necessary to be made to cause the Project to be in compliance with applicable mandatory Governmental Authority or the Franchise Documents.

(u) **Execution and Delivery of Agreements after the Effective Date.** The Borrower shall, as soon as reasonably practicable, cause any of the Principal Project Agreements and the Toll Road Lease, not executed as of the Effective Date, to be executed, in form and substance satisfactory to the TIFIA Lender, and shall deliver certified copies thereof to the TIFIA Lender.

(v) **TransNet Payment Restriction.** The Borrower shall not make any payment on the TransNet Loan unless the Borrower certifies to the TIFIA Lender as of the relevant Payment Date that:

(i) all TIFIA Scheduled Debt Service is current;

(ii) no Default or an Event of Default which may exist with due notice or the passage of time or both, has occurred and is continuing, under this Agreement, or an event of default which may exist with
due notice or the passage of time or both under this Agreement, has occurred and is continuing;

(iii) [the Debt Service Reserve Account is fully funded:]}

(iv) the TIFIA Debt Service Coverage Ratio for (A) the most recent Calculation Period ending on or prior to the TransNet Loan Payment Date is equal to at least 1.10 and (B) projected for the Calculation Period ending on the first anniversary of the last day of such most recent Calculation Period is projected to equal at least 1.10; and

(v) the TIFIA Lender has received, no earlier than ten (10) Business Days and no later than three (3) Business Days prior to the proposed TransNet Loan Payment Date, a certificate certifying as to the matters contemplated in clauses (i) through (iv) above and including a computation of the TIFIA Debt Service Coverage Ratio.

(w) TransNet Loan. The Borrower shall at all times be in compliance with the Commission Loan Agreement.

(x) Series D Loan. The Borrower shall at all times be in compliance with the provisions of the Series D Agreement.

(y) Toll Covenant. The Borrower further covenants that it will not decrease toll rates and charges existing at the time of the satisfaction of the TransNet Loan until payment in full, or expiration of, the Series D Loan.

SECTION 16. Indemnification. Except as expressly prohibited by law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent or representative of the TIFIA Lender (each such Person being herein referred to as an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including, without limitation, the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution, delivery and performance of this Agreement or any of the Related Documents, (ii) the TIFIA Loan or the use of the proceeds thereof, or (iii) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to
indemnification hereunder, the Borrower upon notice from such Indemnitee shall defend the
same and such Indemnitee shall cooperate with the Borrower at the expense of the Borrower in
connection therewith. 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, the Borrower
shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability,
for special, indirect, consequential or punitive damages (as opposed to direct or actual damages)
arising out of, in connection with, or as a result of, this Agreement, any of the Related
Documents, the TIFIA Loan and the other transactions contemplated hereby and thereby, or the
use of the proceeds thereof. All amounts due to any Indemnitee under this Section shall be
payable promptly upon demand therefor. The obligations of the Borrower under this
Section shall survive the payment in full or transfer of the TIFIA Notes, the enforcement of any
provision of this Agreement or the Related Documents, any amendments, waivers (other than
amendments or waivers in writing with respect to this Section) 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 17. Sale of TIFIA Loan. 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. Such sale or reoffering shall be on such terms as the TIFIA Lender
shall deem advisable. However, in making such sale or reoffering the TIFIA Lender shall not
change the terms and conditions of the TIFIA Loan without the prior written consent of the
Borrower, which consent shall not be unreasonably withheld. The TIFIA Lender shall provide
(i) at least 60 days prior to any sale or reoffering of the TIFIA Loan, written notice to the
Borrower to the effect that the TIFIA Lender is considering the sale or reoffering of the TIFIA
Loan and (ii) at least 30 days prior to any sale or reoffering of the TIFIA Loan, written notice to
the Borrower confirming 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 shall not (i) obligate the TIFIA
Lender to sell nor (ii) provide the Borrower with any rights or remedies in the event the TIFIA
Lender, for any reason, does not sell the TIFIA Loan.

SECTION 18. Events of Default and Remedies.

(a) An Event of Default shall exist under this Agreement if:

(i) Payment Default. The Borrower shall fail to pay any of the
principal amount of or interest on the TIFIA Loan at the respective Final Maturity Date
thereof (each 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
Notes or any other TIFIA Loan Document (other than in the case of any Payment
Default), and such failure shall not be cured within 30 days after receipt by the Borrower
from the TIFIA Lender of written notice thereof; provided, however, that if such failure is
capable of cure but cannot reasonably be cured within such 30-day period, then no Event
of Default shall be deemed to have occurred or be continuing under this clause (ii) if and
so long as within such 30-day period the Borrower shall commence actions reasonably
designed to cure such failure and shall diligently pursue such actions until such failure is
cured, provided such failure is cured within 180 days;

(iii) Misrepresentation Default. Any of the representations, warranties
or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan
Documents shall prove to have been false or misleading in any material respect when
made;

(iv) Acceleration of Other Material Indebtedness. Any acceleration
shall occur of the maturity of any other indebtedness of the Borrower related to the
Project in an aggregate principal amount equal to or greater than $500,000 (inflated
annually by CPI) (“Other Material Indebtedness”), or Other Material Indebtedness shall
not be paid in full upon the final maturity thereof;

(v) Cross Default. (A) Any of the representations, warranties or
certifications of the Borrower made in or delivered pursuant to the Master Agreement, or
made in or delivered pursuant to the documents (the “Other Loan Documents”) under
which any Other Material Indebtedness shall be created or incurred, shall prove to be
false or misleading in any material respect (each a “Misrepresentation Cross Default”), or
any default shall occur in respect of the performance of any covenant, agreement or
obligation of the Borrower under the Master Agreement or the Other Loan Documents,
and such default shall be continuing after the giving of any applicable notice and the
expiration of any applicable grace period specified in the Master Agreement or the Other
Loan Documents (as the case may be) with respect to such default (each a “Covenant
Cross Default”), if the effect of such Misrepresentation Cross Default or Covenant Cross
Default shall be to permit the immediate acceleration of the maturity of any or all of the
Other Material Indebtedness (as the case may be), and, in the case of any such
Misrepresentation Cross Default or Covenant Cross Default, the Borrower shall have
failed to cure such Misrepresentation Cross Default or Covenant Cross Default or to
obtain an effective written waiver thereof within 30 days after receipt of written notice
thereof from the TIFIA Lender; provided, however, that if such cure or waiver of such
Misrepresentation Cross Default or Covenant Cross Default cannot reasonably be
obtained within such 30-day period, then no Event of Default shall be deemed to have
occurred or be continuing under this clause (vi) if and so long as within such 30-day
period the Borrower shall commence actions reasonably designed to obtain a cure or
waiver of such default and shall diligently pursue such actions until such cure or waiver
is obtained, provided such failure is cured or effectively waived (as the case may be)
within 180 days; or

(B) The Borrower or the Commission shall default in the timely performance
of any covenant, agreement or obligation under any Related Document or such Related
Document shall be terminated prior to its scheduled expiration (unless in any case such default or
termination could not reasonably be expected to have a Material Adverse Effect), and the
Borrower or the Commission shall have failed to cure such default or to obtain an effective
written waiver thereof, or to obtain an effective revocation of such termination (as the case may
be), within 30 days after receipt of written notice thereof from the TIFIA Lender; provided,
however, that if such cure or waiver or revocation (as the case may be) cannot reasonably be
obtained within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause if and so long as within such 30-day period the Borrower or the Commission shall commence actions reasonably designed to obtain a cure or waiver of such default or a revocation of such termination (as the case may be) and shall diligently pursue such actions until such cure or waiver or revocation is obtained, provided such failure is cured or effectively waived, or such effective revocation has been obtained (as the case may be) within 180 days;

(vi) **Judgments.** One or more judgments for the payment of money in an aggregate amount in excess of $1,000,000 (inflated annually by CPI) and not otherwise covered by insurance shall be rendered against the Borrower related to the Project and the same shall remain undischarged for a period of 30 consecutive days during which 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;

(vii) **Failure to Maintain Existence.** The Borrower shall fail to maintain its existence as a public agency in the State.

(viii) **Occurrence of A Bankruptcy Related Event.** A Bankruptcy Related Event shall occur;

(ix) **Project Abandonment.** The Borrower shall abandon the Project;

(x) **Cessation of Operations.** Operation of the Project shall cease for a continuous period of not less than 180 days unless such cessation of operations shall occur by reason of an Uncontrollable Force and the Borrower shall have in force an insurance policy or policies under which the Borrower is entitled to recover substantially all TIFIA Scheduled Debt Service and costs and expenses of the Borrower during such cessation of operations; or

(xi) **Project Life Coverage Ratio.** The PLCR is less than the Applicable Default Project Life Cover Ratio.

(b) If any Event of Default occurs and is continuing, the TIFIA Lender may:
(i) declare the entire unpaid principal amount of the TIFIA Loan (together with all accrued and unpaid interest thereon and any other amount then due under this Agreement, the TIFIA Note or the other TIFIA Loan Documents) to be immediately due and payable, whereupon such amounts shall become and be immediately due and payable, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived by the Borrower; and/or (ii) instruct the Trustee to foreclose on any or all of the Collateral and/or proceed to enforce all remedies available to the Trustee pursuant to the Master Agreement or otherwise as a matter of law. Notwithstanding the foregoing, if an Event of Default referred to in Section 18(a)(viii) shall occur, automatically and without notice the actions described in clauses (i) and (ii) above shall be deemed to have occurred.

(c) 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 Notes or the other TIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower including confession of judgment by the Borrower 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 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 Notes 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 Notes or the other TIFIA Loan Documents.

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

(e) No action taken pursuant to this Section shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Notes or the other TIFIA Loan Documents, all of which shall survive any such action.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the Borrower hereby confesses judgment in favor of the TIFIA Lender, absolutely and unconditionally, whereupon the TIFIA Lender may apply to any court of competent jurisdiction to render such judgment in favor of the TIFIA Lender, where permissible under applicable law.

SECTION 19. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Project Revenues, and any other revenues attributable 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 and calculation of interest and principal amounts outstanding.

(b) So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five 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 19(b) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender’s exercise of its rights under this Section 19(b) at any time when an Event of Default shall have occurred and be continuing.

(c) The Borrower shall maintain and retain all files relating to the Project and the TIFIA Loan until five years after the later of the date on which (1) all rights and duties hereunder and under the TIFIA Notes (including payments) have been fulfilled and necessary audits have been performed and (2) any litigation relating to the Project, the TIFIA Loan or this Agreement is finally resolved. The Borrower shall provide the TIFIA Lender in a timely manner all records and documentation relating to the Project that the TIFIA Lender may reasonably request from time-to-time.

(d) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) all reports or other written materials sent to any Nationally Recognized Rating Agency that has provided, or is being requested to provide, a rating on any Project-related indebtedness of the Borrower, (ii) all notices and other written communications relating to the Master Agreement, the TIFIA Loan Documents, the Project or the financing thereof, and (iii) all reports, notices and other written materials required to be sent to the Bondholders under the Master Agreement, including, without limitation, all such notices relating to any of the Principal Project Agreements.

(e) The TIFIA Lender shall have the right to conduct from time-to-time independent financial and compliance audits of the Borrower in accordance with the Single Audit Act of 1984, as amended, and Office of Management and Budget Circular A 133, “Audits of State and Local Governments,” or as otherwise requested by the TIFIA Lender. Upon reasonable notice, the Borrower shall cooperate fully in conducting audits and shall provide full access to any books, documents, papers or other records which are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for necessary project or programmatic audits pursuant to 23 U.S.C. § 607, 49 CFR 80.19, 31 U.S.C. § 6503(h) and 31 U.S.C. § 7503(b).

SECTION 20. Financial Plan, Statements, and Reports.

(a) The Borrower shall provide to the TIFIA Lender and the FHWA California Division Office annually thereafter not later than sixty (60) days after the beginning of each Borrower Fiscal Year, a Financial Plan. The Financial Plan shall be prepared in accordance with recognized financial reporting standards, such as those in the “Guide for Prospective Financial Information” of the American Institute of Certified Public Accountants, shall meet FHWA’s Major Project Financial Plan Guidance, as amended from time-to-time, and shall be in form and substance satisfactory to the TIFIA Lender.

(i) The Financial Plan shall include: (1) 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; (2) a certificate signed by the Borrower’s Authorized Representative demonstrating that annual projected Project Revenues shall be sufficient
to meet the Loan Amortization Schedule and to meet the Rate Covenant established pursuant to Section 15(l); and (3) an electronic copy of the updated Base Case Financial Model of the operation of the Project for the period from the Effective Date through the last Final Maturity Date, in substantially the form heretofore provided to the TIFIA Lender, based upon assumptions and projections with respect to the revenues, expenses and other financial aspects of the Project which shall reflect the prior experience and current status of the Project, and the expectations of management with respect to the Project, as of the most recent practicable date prior to the delivery of such model.

(ii) Until repayment of the TIFIA Loan in full, the Financial Plan shall:
(1) provide an updated cash flow schedule showing annual cash inflows (Project Revenues, interest and other income) and outflows (operating costs, capital costs, TIFIA Scheduled Debt Service, Subordinate Debt Service, replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls; (2) provide current and estimated amounts of revenues received and the amounts deposited into each fund and account held under the Master Agreement and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts; (3) provide an updated schedule of actual and projected Project Revenues, showing actual and projected coverage ratios for the TIFIA Loan; (4) provide a schedule of current toll rates and any planned changes; (5) a schedule showing the current Project Life Cover Ratio; and (6) provide a written narrative report explaining any variances in costs or Project Revenues or changes in assumptions since the Base Case Financial Model as of the Effective Date and the preceding Financial Plan, as applicable, and describing in reasonable detail any material matters that may affect the future performance of the Borrower’s obligations under this Agreement and the causes thereof to include, but not limited, traffic and revenue reports, operational contracts, and third-party transactions.

(b) Reserved.

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

(i) As soon as available, but no later than sixty (60) days after the end of each semi-annual period of each fiscal year, an unaudited income statement and balance sheet as of the end of such period and the related unaudited statements of operations and changes in capital and of cash flow of the Borrower for the Project for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower as fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments);

(ii) as soon as available, but no later than on or before December 31 or one hundred eighty (180) days after the end of each fiscal year of the Borrower, 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, changes in capital 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, which is reasonably acceptable to the TIFIA Lender;

(iii) No later than thirty (30) days prior to the commencement of each fiscal year of the Borrower, the Borrower shall submit for the review and approval of the TIFIA Lender an operating plan and a budget on a cash flow basis of projected traffic, Project Revenues, Operations and Maintenance Expenses, Major Maintenance, interest and other costs and Capital Expenditures (which items will be categorized to show Major Maintenance costs and Discretionary Major Capital Expenditures to be undertaken in the ordinary course of business), together with a 5-year forward-looking [Capital Improvement Plan], and a pro forma balance sheet prepared in accordance with GAAP for the next Fiscal Year (collectively, an “Annual Operating Budget”), each prepared by the Borrower in good faith and accompanied by a certificate of the Borrower’s Authorized Representative to the effect that such officer has no reason to believe that it is incorrect or misleading in any material respect, based upon information then known by such Authorized Representative.

(iv) No later than ninety (90) days after the end of each financial quarter, a traffic and operating report showing (1) the operating data for the Project for the previous financial quarter, including total Project Revenues received and total Operations and Maintenance Expenses and Capital Expenditures incurred, (2) the variances for such period between the Project Revenues actually received and the budgeted Project Revenues as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more, and (3) the variances for such period between the actual Operations and Maintenance Expenses incurred and the budgeted Operations and Maintenance Expenses as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of 20% or more.

All such financial statements of the Borrower 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 any independent public accountants certifying such statements and disclosed therein).

(d) The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 20(c), a certificate signed by the Borrower’s Authorized Representative stating whether or not, during the annual or semi-annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event which, with notice or lapse 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.

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SECTION 21. **Project Oversight and Monitoring**. The TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project’s operations and to require reporting on the operation and management of the Project and to provide copies of any contracts relating to the operation, maintenance and safety services for the Project as may be required from time-to-time. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation, or other information as shall be requested by the TIFIA Lender. In the event that the TIFIA Lender retains a financial oversight advisor under contract with the TIFIA Lender, which decision shall be within the sole discretion of the TIFIA Lender, to carry out the provisions of this Section, the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

SECTION 22. **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, provided that nothing in this Section shall be construed to relieve the Borrower from any liability it may incur under this Agreement or any of the other TIFIA Loan Document.

SECTION 23. **No Third Party Rights**. The parties hereby agree that this Agreement and the Master Agreement create no third party rights against the United States or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to hold the above Federal parties harmless, to the extent permitted by laws, 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 or otherwise under the Master Agreement. No payment obligations arising under the Master Agreement or any other document shall be payable by the TIFIA Lender, except to the extent of funds appropriated and legally available therefor.

SECTION 24. **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, the Trustee and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

SECTION 25. **TIFIA Lender’s Authorized Representative**.

(a) The TIFIA Lender shall at all times have appointed a 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, the Trustee 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 a Delegation of Authority dated July 24, 2003, the Administrator 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 USDOT. This authority was delegated to the Associate Administrator for Administration who in turn delegated such authority to the Director of the Office of Innovative Program Delivery on June 15, 2009. Pursuant to these delegations the above named officers, any of whom alone may act, serve as the Lender’s Authorized Representative under this Agreement, in addition to the Administrator for the purposes set forth herein.

SECTION 26. Servicer. The TIFIA Lender may from time-to-time designate an 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 Notes. The TIFIA Lender shall give the Borrower written notice of the appointment of any 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.

SECTION 27. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (FFY) 2013 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender an annual loan servicing fee on or before the 15th of November of each such year. The TIFIA Lender shall establish the amount of this annual fee, and the TIFIA Lender shall notify the Borrower of the amount, at least 30 days before payment is due.

(b) In establishing the amount of the fee, the TIFIA Lender will adjust the previous year’s base amount utilizing the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, or its successor(s), published by the Bureau of Labor Statistics, or its successor(s). For the FFY 2013 calculation, the TIFIA Lender will use the FFY 2012 base amount of $12,098 which applies to other TIFIA borrowers, as the previous year’s base amount. The TIFIA Lender will calculate the percentage change in the CPI-U, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year’s base amount using increments of $500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower 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.

(d) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time-to-time on and after the date hereof for any and all fees, costs, charges and expenses incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other
TIFIA Loan Documents and the transactions hereby and thereby contemplated, including without limitation, reasonable attorneys’, engineers’, and planning fees and professional costs, including all such fees, costs and expenses incurred as a result of or in connection with:

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

(ii) any amendment or requested amendment of, or waiver or consent or requested waiver or consent under or with respect to, this Agreement or any of the other TIFIA Loan Documents, or advice in connection with the administration of this Agreement or any of the other TIFIA Loan Documents or the rights of the TIFIA Lender thereunder; and

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

(e) The obligations of the Borrower under this Section shall survive the payment in full or transfer of the TIFIA Notes, 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 28. 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 29. Governing Law. This Agreement shall be governed by the federal laws of the United States 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 30. 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 31. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower’s rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender.

SECTION 32. 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 33. 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 34. **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.

SECTION 35. **Notices; Payment Instructions.** Notices hereunder shall be effective upon receipt and shall be given by certified mail, return receipt requested, or by other delivery service providing evidence of receipt to:

If to the TIFIA Lender
TIFIA Joint Program Office (HITJ)
Federal Highway Administration
Room E64 301
1200 New Jersey Avenue, SE
Washington, DC 20590
Attention: Director
Telephone: 202-366-9644
Facsimile: 202-366-2908
E-mail: TIFIACredit@dot.gov

with copies to:

If to the Borrower:
San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Attn: Executive Director
Phone: 619-699-1900
Fax: 619-699-1995

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 a TIFIA Lender’s Authorized Representative with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Notes in accordance with the payment instructions hereafter provided by a TIFIA Lender’s Authorized Representative, as modified from time-to-time by a TIFIA Lender’s Authorized Representative.

SECTION 36. **Effectiveness.** This Agreement shall be effective on the Effective Date.
SECTION 37. **Termination.** This Agreement shall terminate upon payment in full by the Borrower of the TIFIA Loan, provided, however, that the requirements of Section 15(y), the indemnification requirements of Section 16, the reporting and record keeping requirements of Section 19(b) and (c), the payment requirements of Section 27 shall survive the termination of this Agreement.

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

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: _______________________________
Name:
Title:

UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Federal Highway Administrator

By: _______________________________
Name: Victor M. Mendez
Title: Administrator
Exhibit A-1

FORM OF TRANCHE A-2 NOTE
Exhibit A-2

FORM OF TRANCHE B-2 NOTE
Exhibit A-3

FORM OF TRANCHE C-2 NOTE
Exhibit B

Forms of Opinions of Counsel to the Borrower
Exhibit C

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

The Borrower certifies, to the best of its knowledge and belief, that it and its principals:

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

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

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

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

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the Second Amended and Restated TIFIA Loan Agreement, dated as of _______, 2011, between the TIFIA Lender and the Borrower, as the same may be amended from time-to-time.

Dated: _________________

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By_____________________________
Name:
Title:
EXHIBIT D

COMPLIANCE WITH LAWS

The Borrower agrees to abide by any and all applicable Federal and state laws with respect to the Project. 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. The Borrower shall require that its contractors and subcontractors comply with applicable laws:

(i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 35; 29 C.F.R. § 1630);


(iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 et seq.), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;

(iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);

(v) Restrictions governing the use of Federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. § 20);

(vi) The Clean Air Act, as amended (42 U.S.C. §§ 1857 et seq., as amended by Pub. L. 91-604);


(viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq., as amended by Pub. L. 92-500);

(ix) The environmental mitigation requirements and commitments made by the Borrower that result in TIFIA Lender’s approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. § 4332(2)(C)) and issuance of the Record of Decision for the Project;

(x) The Endangered Species Act, 16 U.S.C. §1531, et seq.;

(xii) The health and safety requirements set forth in 23 C.F.R. § 635.108;

(xiii) The prevailing wage requirements set forth in 42 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. Part 5, 23 C.F.R. §§ 635.117(f), 635.118 and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;

(xiv) The Buy America requirements set forth in Section 165 of the Surface Transportation Assistance Act of 1982 and implementing regulations (23 C.F.R. § 635.410);

(xv) The requirements of 23 U.S.C. §§ 101 et seq. and 23 C.F.R.; and

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

TIFIA SCHEDULED DEBT SERVICE SCHEDULE
SAN DIEGO ASSOCIATION OF GOVERNMENTS
PROMISSORY NOTE IN FAVOR OF
THE SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION
REGARDING DEBT FINANCING THROUGH THE TRANSNET PROGRAM
FOR PURCHASE OF THE STATE ROUTE 125 FRANCHISE & RELATED ASSETS

Note Date: December 21, 2011
Principal Amount: $255,749,000

Rate of Interest: 4.25%
Maturity Date: 2042

PURPOSE OF THE PROMISSORY NOTE AND ANTICIPATED TRANSACTIONS

1. FOR VALUE RECEIVED, the San Diego Association of Governments (SANDAG) acknowledges itself indebted to and promises to pay the San Diego County Regional Transportation Commission (the “Commission”), the Principal Amount specified above, in lawful money of the United States of America or such other valuable consideration approved by the Commission, on or before the Maturity Date specified above, together with interest thereon at the Rate of Interest specified above, from the Note Date specified above until payment in full of said Principal Amount.

2. SANDAG hereby agrees to use the proceeds of this Promissory Note solely for the purchase and purchase costs associated with the State Route (SR) 125 toll road franchise, and such other related assets of South Bay Expressway, LLC (SBX) defined as “Transferred Assets” in that certain Asset Purchase Agreement between SANDAG and SBX dated on or about December 21, 2011 (“Sale Agreement”). Except as otherwise indicated, all capitalized terms not defined in this Agreement shall have the same meaning as set forth in the Sale Agreement.

3. SANDAG shall obtain the funds necessary to purchase the Transferred Assets from the Promissory Note, from the Series D Note (as defined herein), and from assumption of a loan provided by the United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator (together with its successors and assigns, the “TIFIA Lender”). This loan will have a notional value of $92.5 million (ninety-two point five million dollars) and is hereinafter referred to as the “TIFIA Loan”, which is being issued pursuant to the Second Amendment and Restated TIFIA Loan Agreement, dated as of December 21, 2011 (the “TIFIA Loan Agreement) between SANDAG and TIFIA Lender.

4. Pursuant to the terms of the Sale Agreement, SANDAG shall be assigned the rights to the Project Revenues (as defined in the Master Agreement) during the remaining 32 years of the franchise period in accordance with the Development Franchise Agreement and Lease with the California Department of Transportation (Caltrans), as amended,
which will be assigned to SANDAG and amended and restated consistent with terms agreed to by SANDAG and Caltrans (“Franchise Agreement”).

5. The parties receiving payment from SANDAG as sellers of the Transferred Assets under the Sale Agreement are the owners of SBX, which include a consortium of banks and TIFIA Lender. The TIFIA Lender will hold a senior secured interest in the Collateral (as defined in the TIFIA Loan Agreement) pursuant to the TIFIA Loan and a subordinate note in the aggregate amount of $1.5 million (one point five million dollars) known as the “Series D Note,” with rights and responsibilities as proscribed by the Master Agreement (as defined herein).

USE OF TRANSNET SALES TAX REVENUES TO PURCHASE THIS PROMISSORY NOTE

6. The San Diego County Regional Transportation Commission Act, Chapter 2 of Division 12.7 (Section 132000 et seq.) of the California Public Utilities Code as now in effect and as it may from time to time hereafter be amended or supplemented (the “Act”) provides the Commission with authority to place a transactions and use tax on the San Diego County ballot, and such a measure was placed on the ballot and approved by the voters as the San Diego Transportation Improvement Program Ordinance and Expenditure Plan on November 3, 1987 (1987 TransNet Ordinance), and the Commission placed the extension to the 1987 TransNet Ordinance, on the November 2, 2004 countywide ballot and it was approved by at least two-thirds of electors voting on such proposition (2004 TransNet Extension Ordinance). Collectively, the 1987 TransNet Ordinance and the 2004 TransNet Extension Ordinance are referred to herein as the “TransNet Ordinance”.

7. The amounts available for distribution to the Commission on account of the retail transactions and use tax imposed in the County of San Diego pursuant to the Act and the TransNet Ordinance, after deducting amounts payable by the Commission to the State Board of Equalization for costs and expenses for its services in connection with the retail transactions and use taxes collected pursuant to the Act are known as the “Sales Tax Revenues”.

8. The allocation of Sales Tax Revenues is described in the Indenture dated as of March 1, 2008, between U.S. Bank National Association (the “Trustee”) and the Commission, as originally executed and as may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions thereof (the “2008 Commission Indenture”). The 2008 Commission Indenture has been supplemented by the First Supplemental Indenture dated March 1, 2008, the Second Supplemental Indenture dated July 1, 2008, and the Third Supplemental Indenture dated October 1, 2010 (as may be further amended and supplemented).

9. The funds of the Commission used to purchase this Promissory Note shall come from Sales Tax Revenues deposited in the Commission’s TransNet Project Fund (as defined in the 2008 Commission Indenture) by wire transfer from the Commission to the Trustee. Such funds will be transferred by Trustee into the bank account designated by SANDAG for transactions relating to SR 125 (the “SR 125 Enterprise Fund”). The transferred funds shall consist of $3,000,000 from TransNet cash for initial working capital and $252,749,000 in TransNet bond proceeds. The purchase of the Promissory Note shall
constitute Subordinate Debt issued or incurred in accordance with Section 3.05(D) of the 2008 Commission Indenture.

10. Section 7 of the 2004 TransNet Extension Ordinance states that in order to maximize the effective use of funds, the Sales Tax Revenues may be transferred or exchanged by the Commission. Section 7 of the 2004 TransNet Extension Ordinance requires that any agreement between agencies to exchange or loan funds must include detailed fund repayment provisions, including appropriate interest earnings such that the Commission suffers no loss of funds as a result of the exchange or loan. In this manner, an agency receiving proceeds from the Sales Tax Revenues is made responsible for its proportionate share of the ongoing interest and related administrative costs from the date the proceeds are received until the principal amount of the loan is fully repaid, transferred or exchanged.

11. The 2004 TransNet Extension Ordinance further provides in Section 16 that by a two-thirds vote of the Commission, the projects identified in the Expenditure Plan for the 2004 TransNet Extension Ordinance may be amended.

SECURITY FOR THIS PROMISSORY NOTE

12. As security for the payment of the Principal Amount and interest on the Promissory Note, SANDAG hereby pledges a portion of the amounts received from the Project Revenues (as defined in the Master Agreement). The Commission’s lien shall be referred to herein as the “Commission Secured Lien.”

13. Provisions concerning treatment of the Commission Secured Lien, its status as a “First Subordinated Obligation” and the senior lien status of the Commission Secured Lien for payment of the this Promissory Note from an allocation of the Project Revenues are set forth in the Master Trust Agreement dated as of December 21, 2011, between SANDAG and the Trustee (the “Master Agreement”). The Master Agreement requires deposit of the Project Revenues by the Trustee and sets forth the process and seniority of payments to be made by the Trustee to the TIFIA Lender and the Commission. The Trustee shall distribute the Project Revenues in the following order of priority and in the amounts set forth in the Master Agreement:

   a. The TIFIA Loan
   b. The Promissory Note
   c. The Series D Note

14. The obligations arising under this Promissory Note for payment of Sales Tax Revenue shall be a subordinate obligation to the Commission’s obligation to make prior payment of all amounts then required to be paid under the 2008 Commission Indenture from Sales Tax Revenues for principal, premium, interest and reserve fund requirements, if any, for all Bonds Outstanding, and all Parity Obligations outstanding, as the same become due and payable, and at the times and in the amounts as required in the 2008 Commission Indenture and in the instrument or instruments pursuant to which any Parity Obligations were issued or incurred, and all other obligations arising pursuant to the 2008 Commission Indenture. Nothing in this Note is intended to conflict with the terms and conditions of the 2008 Commission Indenture or the tax exempt status of the Bonds.
issued thereunder. All capitalized terms in this section not otherwise defined herein are defined in the 2008 Commission Indenture.

15. Repayment of the Principal Amount and interest at the Rate of Interest shall commence in accordance with the Payment Schedule attached as Exhibit A and shall be completed by the Maturity Date. Repayment of the Note may be accomplished by:

a. Payments utilizing the Estimated Payment Schedule set forth in Attachment A to this Promissory Note, subject to cash flow availability;

b. Early repayment by SANDAG of the remaining balance of the Principal Amount (in accordance with the Master Agreement, but only after the TIFIA Loan has been repaid);

c. By the Commission taking action to forgive or cancel all or a portion of the Principal Amount based on one or more amendments to the TransNet Ordinance to implement an exchange of one or more projects in the TransNet Ordinance Expenditure Plan for the improvements included as part of the Transferred Assets; or

d. Any combination thereof.

In all cases, the SR 125 Enterprise Fund shall be responsible for its proportionate share of any associated debt service costs incurred prior to full repayment of the Principal Amount.

CONDITIONS PRECEDENT TO EFFECTIVENESS OF NOTE

16. The various agreements described herein that pertain to the purchase of the Transferred Assets and the financing of that purchase include the following documents, which shall be known as the “Related Agreements”:

a. Sale Agreement

b. Franchise Agreement

c. Series D Notes

d. TIFIA Loan

e. Master Agreement

17. This Promissory Note shall become effective on the Effective Date if the following conditions precedent occur:

a. The Commission notifies the Master Trustee of its intent to incur a Subordinate Obligation by funding a payment on the Promissory Note in accordance with the terms of the 2008 Commission Indenture; and

b. The Related Agreements are executed and become binding on the parties to the Related Agreements; and
c. The Independent Taxpayer Oversight Committee confirms that the issuance of
the Promissory Note is permissible under the TransNet Ordinance; and

d. The Board of Directors for SANDAG and the Commission approve the issuance
of and payment on the Promissory Note.

COVENANTS OF SANDAG

18. SANDAG shall take any and all actions necessary or reasonably requested by the
Commission to perfect and protect any lien, pledge or security interest or other right or
interest given to SANDAG in connection with the Promissory Note.

19. Upon receipt by SANDAG of the Principal Amount of the Promissory Note from the
Commission, SANDAG shall transfer the Promissory Note proceeds to the SR 125
Enterprise Fund created by SANDAG. SANDAG shall ensure that all receipts and
payments related to the Project are processed through the SR 125 Enterprise Fund.
SANDAG shall provide the Commission with reports regarding the SR 125 Enterprise
Fund.

20. The terms, provisions, covenants and conditions hereof shall be binding upon SANDAG
and its successors and assigns and shall inure to the benefit of Commission and its
successors and assigns.

21. SANDAG acknowledges that the Commission shall not be liable for and claims or
litigation arising from execution of the Promissory Note.

22. SANDAG warrants that all acts, conditions and things required to exist, happen and be
performed precedent to and in the issuance of this Promissory Note have existed,
happened and been performed in regular and due time, form and manner as required by
law, and this Promissory Note, together will all other indebtedness and obligations of
SANDAG does not exceed any limit prescribed by the Constitution or statutes of the
State of California.

23. If any one or more of the provisions of this Promissory Note, or the applicability of any
such provision to a specific situation, shall be held invalid or unenforceable, such
provision shall be modified to the minimum extent necessary to make it or its application
valid and enforceable, and the validity and enforceability of all other provisions of this
Promissory Note and all other applications of any such provision shall not be affected
thereby.

24. This Promissory Note shall terminate on [insert date] or on such earlier or later date as
the parties may agree to in writing.

25. This Promissory Note shall be governed by and interpreted in accordance with the laws
of the State of California. If any action is brought to interpret or enforce any term of this
Promissory Note, the action shall be brought in a state or federal court situated in the
County of San Diego, State of California.
26. For purposes of this Promissory Note, the relationship of SANDAG and the Commission is that of independent entities and not as agents of each other or as joint venturers or partners.

IN WITNESS WHEREOF, the SANDAG has caused this Promissory Note to be executed effective on the Note Date specified above.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

GARY L. GALLEGOS  
Executive Director

APPROVED AS TO FORM:

Office of General Counsel
## PAYMENT SCHEDULE - EXHIBIT A
Principal Amount $255,749

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<th>Year</th>
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<th>Debt Service for Remaining Fees* + Loan Balance</th>
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* Remaining Fees: including Barclays, 10 days of TIFIA debt service and initial Operations & Maintenance costs
SERIES D AGREEMENT

dated as of [________________], 2011

between

SAN DIEGO ASSOCIATION OF GOVERNMENTS, and

THE UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Federal Highway Administrator
This SERIES D AGREEMENT (this “Agreement”), dated as of [__________], 2011 between the SAN DIEGO ASSOCIATION OF GOVERNMENTS, a California public agency (“SANDAG”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Federal Highway Administrator, an agency of the United States of America, with an address at 1200 New Jersey Avenue, S.E., Washington, DC 20590 (“TIFIA”), and pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998, §1501 et. seq. of Public Law 105-178 (as amended by Public Law 105-206 and Public Law 109-59), as codified as 23 U.S.C. §601, et seq. (the “TIFIA Act”).

RECITALS

A. Pursuant to the Development Franchise Agreement for a Privatized Transportation Project dated January 6, 1991 (“DFA”) between California Transportation Ventures, Inc., a California corporation (“CTV”), and the State of California, Department of Transportation, as assigned by CTV’s successor in interest, South Bay Expressway, LLC (“SBX”), to SANDAG, SANDAG has the right to develop, construct and operate a divided, limited access toll road in San Diego County, California approximately 9.2 miles (15 kilometers) long, which extends from the interchange with Otay Mesa Road at approximately Sta. 27+100 to San Miguel Ranch Road at approximately Sta. 167+30, known as South Bay Expressway (the “Project”);

B. SANDAG entered into an Asset Purchase and Sale Agreement dated as of [________________] (“APSA”), by and between SANDAG and SBX, whereby SBX agreed to convey to SANDAG all of its right, title and interest in the DFA, the Project and certain other assets described in the APSA in exchange for certain consideration as described therein including that set forth in this Agreement;

C. TIFIA is entering into this Agreement pursuant to the authority granted to it under 23 United States Code 603;

F. As contemplated by the APSA, subject to and upon the terms and conditions herein set forth, SANDAG and TIFIA desire to enter into this Agreement;

NOW, THEREFORE, it is hereby agreed as follows:

ARTICLE I

INTERPRETATION

Section 1.1 Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1.1 or as otherwise defined in this Agreement. Any term used in this Agreement which is defined by reference to any other agreement shall continue to have the meaning specified in such agreement on the date hereof whether or not such agreement remains in effect.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument entered into by SANDAG after the execution and delivery of this Agreement, providing for the testing, safety, financial services, operation or maintenance of the Project, or otherwise relating to the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (i) is entered into (A) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (B) for necessary Project-related expenditures, (ii) commits SANDAG to spend, or is reasonably expected to involve expenditures by SANDAG in one contract or a series of related contracts of, no more than $1,000,000 in the aggregate for any such contract or series of related contracts, or (iii) is for a term not exceeding two years. [TBD]

“Administrator” means the Administrator of the FHWA.

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

“Annual Operating Budget” means the Annual Operating Budget of SANDAG submitted in accordance with Section 5.3.

“Applicable Interest Rate” means the rate established in Section 2.2.

“Assignment of Toll Road Lease” means the Assignment and Assumption of Lease entered into by SBX LLC and SANDAG pursuant to which SBX LLC assigns to SANDAG as of the Effective Date all of SBX LLC’s rights, title and interest in, and SANDAG assumes the obligations under, the Toll Road Lease.

“Authorized Representative” means any Person who shall be designated as such by a party to this Agreement.

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the 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 or San Diego, California.

“Caltrans” means the State of California, Department of Transportation.

“Caltrans Standards” means the manuals, standards and procedures listed or referred to in the Franchise Agreement relating to the construction, maintenance and operation of the Project, together with all Compliance Orders (as defined in the Franchise Agreement), Safety Modifications (as defined in the Franchise Agreement) and other standards or stipulations imposed or required by Caltrans pursuant to the Franchise Agreement.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year that are capitalized in accordance with GAAP.
“Collateral Accounts or Subaccounts” means the Accounts or Subaccounts (as defined in the Master Agreement) included in the Collateral.

“Commission” means the San Diego County Regional Transportation Commission, a public agency organized pursuant to the San Diego County Regional Transportation Commission Act, Chapter 2 of Division 12.7 (Sections 132000 and following) of the Public Utilities Code of the State. Pursuant to the provisions of the Act, the Commission controls the use of the ½ cent transactions and use tax collected in San Diego County known as TransNet.

“CTV” has the meaning assigned in the recitals hereto.

“Effective Date” means the date of execution of this Agreement, as set forth in the introductory paragraph hereto.

“Event of Default” has the meaning set forth in Section 8.1.

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

“Final Maturity Date” means, with respect to the Note, December 31, 2042.

“Financial Plan” means (i) the [Base Case Financial Plan] and (ii) the annual updates thereto required pursuant to Section 20(a) of this Agreement.

“Financing Documents” means this Agreement, the Master Agreement and any supplement thereto, and the Commission Loan Agreement.

“Franchise Agreement” means the Development Franchise Agreement for a Privatized Transportation Project, entered into as of January 6, 1991, between CTV and Caltrans, and assigned by CTV to SANDAG, as expected to be amended and restated in an agreement between Borrower and Caltrans executed after the execution of this Agreement, and as further amended, modified and in effect thereafter.

“Franchise Documents” means the Franchise Agreement and the Toll Road Lease.

“GAAP” means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time-to-time in the United States of America.

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

“Government Obligations” means (a) direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the Government, (b) bonds, debentures or notes issued by any of the following Federal Agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by an agency of the United States of America or Person controlled or supervised by and acting as an instrumentality of the United States of America 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.

“Governmental Approval” 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, without limitation, 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.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, 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 Uniform Commercial Code or comparable law.

“Master Agreement” means the Master Trust Indenture Agreement between SANDAG and the Trustee, dated as of the Effective Date, as supplemented or amended by any Supplemental Indenture as defined in the Master Agreement, and any trust agreement, trust indenture, bond resolution or similar document or set of documents, entered into in replacement of, in substitution for, in whole or in part, such Master Agreement or any subsequent Loan Agreement and pursuant to which Permitted Debt is issued to finance or refinance the Project, approved in writing by the TIFIA Lender.

“Master Trustee” means US Bank, National Association or any successor thereto designated pursuant to the terms of the Master Agreement.

“Material Adverse Effect” means a material adverse change in (a) the Project, (b) the ability of SANDAG to perform or comply with any of its material obligations under this Agreement, the Master Agreement, the TIFIA Loan Documents, the Principal Project Agreements to which it is a party, (c) the validity, perfection or priority of the Liens on the Series D Collateral in favor of the Master Trustee on behalf of TIFIA, except as permitted by the Master Agreement or (d) TIFIA’s rights or benefits available under this Agreement.

[ “Permitted Debt” means any of the following, which are payable from the Collateral (as defined in the TIFIA Loan Agreement):

(a) the TIFIA Loan;

(b) the *TransNet* Loan;

(c) the Series D Loan;]
(d) reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Principal Project Agreements or any other agreement executed by SANDAG in connection with the Project that are payable as Project Costs, Project Costs, or Project O&M Expenses and that do not in the aggregate have face amounts exceeding $1,000,000 (inflated annually by the Consumer Price Index (CPI));

(e) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that are payable as Project O&M Expenses and that do not in the aggregate have annual debt service or lease payment obligations exceeding $500,000 (inflated annually by CPI);

(f) trade accounts payable (other than for borrowed money) so long as such trade accounts payable are payable not later than 90 days after the respective goods are delivered or the respective services are rendered;

(g) working capital loans that are payable as Project O&M Expenses, provided that the principal amount of such loans shall not exceed $2,500,000 (inflated annually by CPI) in the aggregate at any time and shall be repaid within three years;

(h) any additional indebtedness permitted by the Master Agreement.

“Permitted Investments” means:

(a) Government Obligations;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the Government;

(c) repurchase agreements 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) money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, and having a rating by S&P of AAAm G or AAA m or if rated by Moody’s having a rating of Aaa; and

(e) collateralized investment agreements or other contractual agreements with corporations, financial institutions or national associations within the United States, provided that the senior long term debt of such corporations, institutions or associations is rated AAA or its equivalent by a Nationally Recognized Rating Agency.

“Permitted Liens” means:

(a) Liens imposed pursuant to or as permitted under the TIFIA Loan Documents;
(b) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 15(p);

(c) Liens imposed pursuant to the Commission Loan Agreement;

(d) Liens imposed pursuant to the this Agreement;

(e) Liens permitted under the Master Agreement;

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

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

(h) judgment liens in respect of judgments that do not constitute an Event of Default under Section 18(a)(vi);

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

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

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

(l) purchase money security interests in real property, improvements thereto or equipment acquired on or after the Effective Date hereof (or, in the case of improvements, constructed) by SANDAG, provided that [(i) such security interests secure indebtedness for borrowed money permitted by Section 15(a)], (ii) such security interests are incurred, and the indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (iii) the indebtedness secured thereby does not exceed the fair market value of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets (other than accessions to such real property, improvements or equipment) of SANDAG.
“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.

“Principal Project Agreements” means each Franchise Document, any guarantee given to SANDAG by any Person and any letters of credit issued in favor of SANDAG in respect of any of the obligations of any party (other than SANDAG) to any of the agreements listed above; any other contract entered into by SANDAG relating to the Project designated as a Principal Project Agreement by both the Master Trustee and SANDAG; and any document that replaces or supplements any of the agreements listed above.

“Project” means the divided, limited access toll road in San Diego County, California, approximately 9.2 miles (15 kilometers) long, which extends from the interchange with Otay Mesa Road at approximately Sta/ 27+100 to San Miguel Ranch Road at approximately Sta. 167+30, known as the South Bay Expressway.

“Project Costs” means (a) the costs paid or incurred (to the extent paid, such costs shall be reimbursed to the Person who paid such costs) or to be paid or incurred by SANDAG in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing costs; (b) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) on any indebtedness of SANDAG (other than the TIFIA Loan) incurred for the Project; (c) costs of equipment and supplies and initial working capital and reserves required by SANDAG for the commencement of operation of the Project, including general administrative expenses and overhead of SANDAG other than to the extent such amounts constitute direct or indirect costs unallowable to SANDAG and its contractors under 18 C.F.R. Part 31; and (d) the repayment of obligations incurred by SANDAG, the proceeds of which obligations were used to pay items (a) through (c) of this definition.

“Project O&M Expenses” means (a) all amounts paid or incurred by SANDAG or any other Person on its behalf for the financing, planning, design, engineering, acquisition, installation, reconstruction, operation or maintenance of the Project that (i) are expenses under generally accepted accounting principles then in effect for governmental entities similar to SANDAG and (ii) have not been and are not expected to be paid from the proceeds of Bonds or moneys in any Fund other than the Operating and Maintenance Reserve Fund; (b) the Master Trustee’s Fees and Expenses; (c) the costs incurred in connection with the administration of SANDAG, including but not limited to a share, determined by SANDAG in its reasonable discretion, of the salaries and benefits payable to employees of SANDAG who perform services for SANDAG; and (d) the fees and expenses of any Consultant for services performed to comply with the provisions of the Master Agreement.

“Project Revenues” means, for any period (without duplication), all amounts received (or projected to be received) by or on behalf of SANDAG during such period, including any income, tolls and receipts derived from the ownership or operation of the Project, including proceeds of any business interruption insurance, income received by SANDAG from the sale, lease or use of
Airspace or any ancillary services by the Project, together with any receipts derived from the sale of any property pertaining to the Project or incidental to the operation of the Project, all as determined in conformity with cash accounting principles, the investment income on amounts in the Accounts, the proceeds of any drawing under a letter of credit or guaranty relating to the Project of which SANDAG or the Trustee is the beneficiary, proceeds of any insurance, condemnation or litigation or arbitration awards relating to the Project, and all other revenue, however generated, by SANDAG.

“Prudent Industry Practice” means, at a particular time, any of the practices, methods, standards and acts (including the practices, methods and acts engaged in or approved by a significant portion of the publicly-owned toll road industry in the United States) that, at that time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts generally conform to operation and maintenance standards recommended by a publicly-owned toll road’s equipment suppliers and manufacturers, applicable facility design limits and applicable governmental approvals and law. “Prudent Industry Practice” is not intended to be limited to the optimum practice or method to the exclusion of others, but rather to be a spectrum of possible but reasonable practices and methods.

“Secretary” means the United States Secretary of Transportation.

“Series D Collateral” means the Project Revenues.

“Series D Loan” means, the loan in the amount of $1,500,000 that TIFIA is making to SANDAG pursuant to this Agreement.

“Series D Security Documents” means [TBD].

“State” means the State of California.

“Supplemental Indenture” means any resolution, indenture, agreement or similar document which supplements or amends the Master Agreement and that sets forth the pricing and other financial and related terms of Permitted Debt.

“TIFIA Loan Documents” means this Agreement, the TIFIA Loan Agreement, any notes issued pursuant to the preceding two agreements, any documents securing the payment of such notes and the Master Agreement.

“Toll Covenant” has the meaning set forth in Section 406(a)(ii) of the Master Agreement.

“Toll Road Lease” means the lease agreement entered into by SANDAG and Caltrans with respect to the Project pursuant to an assignment by SBX, substantially in the form of Exhibit B to the Franchise Agreement.

“TransNet Loan” has the meaning assigned to it under the Commission Loan Agreement.

“Uncontrollable Force” means any cause beyond the control of SANDAG, including but not limited to: (a) a 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, or sabotage; or act of God provided that SANDAG 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 SANDAG and SANDAG 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 SANDAG.

“Unexpected Required Repair or Modification” means any Capital Expenditure or related series of Capital Expenditures required to ensure that the Project is operated in compliance with the requirements of the Franchise Agreement that has not been Forecast in the Base Case Model or Updated Model, as applicable.

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

“USDOT” means the United States Department of Transportation.

Section 1.2 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.” 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 sections, subsections, and provisions are to the applicable sections, subsections and provisions 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. Nothing in this Agreement shall be interpreted to apply to SANDAG liability, business, transactions or operations, except to the extent they concern the Project.
ARTICLE II
CREDIT FACILITIES

Section 2.1 Term Loan.

Subject to the terms and conditions set forth herein, TIFIA hereby extends to SANDAG the Series D Note in the principal amount of One Million Five Hundred Thousand Dollars ($1,500,000.00) (the “Note”)

Section 2.2 Interest.

(a) The Note shall bear interest at the rate of fourteen percent (14%) per annum.

(b) Interest on the Note shall be payable as provided in Section 510 of the Master Agreement, to the extent funds are available for such purpose. Any interest on any Note accrued but unpaid or unreserved due to insufficient funds in the Second Subordinated Obligations Debt Service Fund will be added to the principal of the Note.

(f) All interest on the Notes shall be calculated on the basis of a 365- or 366-day year, as appropriate, for the actual number of days elapsed.

Section 2.3 Repayment of Note.

(a) SANDAG shall repay the Note from time to time in accordance with and as provided in Section 510 of the Master Agreement.

(b) Unless prepaid in accordance with Section 2.4 of this Agreement, the Note shall mature on December 31, 2042 (“Maturity Date”). Any remaining unpaid amounts of the Note outstanding at its Maturity Date will be deemed forgiven.

Section 2.4 Voluntary Prepayment.

SANDAG may, upon at least five (5) Business Days’ prior irrevocable notice to TIFIA, which notice shall specify the relevant date of such prepayment and the amount being prepaid, prepay the Note in whole or in part without penalty. Prepayment of the Note in whole shall require payment of all principal and interest due on the Note at its Maturity Date.

Section 2.5 Method and Place of Payment.

(a) All payments (including prepayments) to be made by SANDAG on account of principal of or interest on the Note shall be made prior to 11:00 A.M., New York City time, on the due date thereof in accordance with payment instructions provided by TIFIA, as modified in writing from time to time, in Dollars and in immediately available funds. Any amounts received after such time on any date may, in the discretion of TIFIA, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon.
(b) If any payment to be made by SANDAG under the Note becomes due and payable on a day other than a Business Day, the due date for that payment shall be the next succeeding Business Day or, if such Business Day is not in the same calendar month as the original due date, the preceding Business Day. Any such extension of time shall be reflected in computing interest and fees.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent.

The obligation of TIFIA hereunder is subject to the satisfaction of the following conditions precedent (the date on which all of such conditions are satisfied or effectively waived, the “Effective Date”):

(a) Documents to Be Delivered. The following documents shall have been duly authorized, executed and delivered by the parties thereto, are in full force and effect and originals thereof shall have been delivered to TIFIA and SANDAG:

(A) this Agreement;

(B) the Note;

(C) the Series D Security Documents;

(D) the Master Agreement; and

(E) all relevant documents to be entered into with the Master Trustee with respect to the establishment of the Funds.

(b) Annual Operating Budget. TIFIA shall have received the Annual Operating Budget for the remainder of the current calendar year, accompanied by a certificate of an Authorized Officer of SANDAG to the effect that such officer has no reason to believe that it is incorrect or misleading in any material respect.

(c) Authorization and Authority. SANDAG shall have delivered to TIFIA certified copies of SANDAG’s authorizing resolutions of the board of directors of SANDAG, authorizing the transactions contemplated hereunder.

(d) Funds. The Funds required under Article V of the Master Agreement shall have been established and funded as provided therein.
ARTICLE IV
REPRESENTATIONS AND WARRANTIES

SANDAG hereby represents and warrants to TIFIA as of the Effective Date (except to the extent such representations and warranties relate solely to an earlier date, on which such representations and warranties were true and correct in all material respects on and as of such date):

(a) **Organization, Power and Status.** SANDAG is a California public agency duly formed and validly existing under the laws of the State of California. SANDAG has full power, authority and legal right to conduct its business as now conducted and as proposed to be conducted by it and to execute, deliver and perform its obligations under this Agreement and the Note issued pursuant hereto.

(b) **Authorization, Enforceability, Execution and Delivery.**

(i) SANDAG has all necessary power, authority and legal right to execute, deliver and perform this Agreement and the Note issued pursuant hereto.

(ii) All necessary legal action on the part of SANDAG that is required to authorize the execution, delivery and performance of this Agreement and the Note issued pursuant hereto has been duly and effectively taken.

(iii) Each of this Agreement and the Note issued pursuant hereto has been duly executed and delivered by SANDAG and constitutes a legal, valid and binding obligation of SANDAG, enforceable against SANDAG in accordance with the terms thereof, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, (B) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law), and (C) by the limitations on legal remedies (i) against public entities in the State and (ii) the exercise of judicial discretion with respect thereto.

(iv) The officers of SANDAG executing this Agreement and the Note issued pursuant hereto are duly and properly in office and fully authorized to execute the same.

(c) **No Conflicts; Laws and Contracts.**

(i) None of the execution, delivery or performance of this Agreement or the Note issued pursuant hereto, the consummation of the transactions herein or therein contemplated, nor performance of or compliance with the terms and provisions hereof or thereof, violates, conflicts with, constitutes a default under or results in a breach of any other material Contractual Obligation to which SANDAG is a party or by which it is bound, except for any consents that could not reasonably be expected to have a Material Adverse Effect.
(ii) None of the execution, delivery or performance of this Agreement and the Note results in, or requires, the creation or imposition of any Lien on any of the Series D Collateral (whether pursuant to any Governmental Rule or Contractual Obligation or otherwise), except for Permitted Liens.

(d) **Series D Security Documents.**

(i) Upon the execution and delivery thereof, the Series D Security Documents will be effective to create, in favor of the Master Trustee legally valid and enforceable Liens on and security interests in and to the Series D Collateral.

(ii) On or prior to the Closing Date, all documents that are necessary to be recorded and filed for the perfection of the Lien created under the Series D Security Documents will have been executed and delivered to the Master Trustee, or its designee in proper form for filing, registration or recordation so that, when filed, registered or recorded by the Master Trustee or its designee, the Liens and security interests created by each of the Series D Security Documents will constitute perfected Liens on and security interests in all right, title, estate and interest of SANDAG in and to the Series D Collateral described therein (other than any item of Series D Collateral as to which a lien or security interest cannot be perfected by filing or recording).

(e) **Power to Borrow.** No limitation on SANDAG’s powers to borrow or give security will be exceeded as a result of entering into this Agreement.

**ARTICLE V**

**INFORMATION COVENANTS**

Section 5.1 **Financial Statements.**

SANDAG shall furnish to TIFIA:

(i) As soon as available, but no later than sixty (60) days after the end of each semi-annual period of each fiscal year, the unaudited income statement and balance sheet of the Project as of the end of such period and the related unaudited statements of operations and of cash flow of the Project for such period and for the portion of the Fiscal Year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer or other appropriate Authorized Officer of SANDAG as fairly stating in all material respects the financial condition of the Project as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments);

(ii) as soon as available, but no later than one hundred eighty (180) days after the end of each Fiscal Year, a copy of the audited income statement and balance sheet of the Project as of the end of such Fiscal Year and the related audited statements of operations and of cash flow of the Project for such Fiscal Year setting forth in each case in
comparative form the figures for the previous Fiscal Year, certified by an independent public accounting firm selected by SANDAG; and

all such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein), subject, in the case of unaudited statements, to the year end and audit adjustments.

Section 5.2 Notices under Franchise Agreement.

SANDAG shall promptly deliver to TIFIA (i) notice of any of the following actions taken under the Franchise Agreement and (ii) copies of any of the following notices given or received by it under the Franchise Agreement (capitalized terms used in this Section 5.2 and not otherwise defined herein shall have the meanings as defined in the Franchise Agreement):

(a) notice to Caltrans that SANDAG objects to any notice received from Caltrans terminating Caltrans’ obligations under Sections 3.2(d), 2, 3, 5, and 6 of the Franchise Agreement (or any successor sections thereto) as to any Transportation Facility pursuant to Section 3.2(e) (Exclusive Franchise Rights) of the Franchise Agreement (or any successor section thereto);

(b) reference of any asserted breach by Caltrans of Section 3.2 (Exclusive Franchise Rights) of the Franchise Agreement (or any successor section thereto) to the administrative dispute resolution process under Section 19.2 (Good Faith Resolution) of the Franchise Agreement (or any successor section thereto);

(c) notice to Caltrans of the occurrence of an Event of Default by Caltrans pursuant to Section 17.5 (Developer’s Right to Cure Event of Default) of the Franchise Agreement (or any successor section thereto);

(d) notice to Caltrans of any claim by SANDAG for compensation for losses resulting from the occurrence of any operative event referred to in paragraphs (a) through (c) of Section 17.8 (Operative Events) of the Franchise Agreement (or any successor section thereto);

(e) notice to Caltrans of any adverse actions by governmental entities pursuant to Section 17.9 (Adverse Actions by Other Governmental Entities) of the Franchise Agreement (or any successor section thereto);

(f) extension of the period of performance and the accompanying terms of such extension pursuant to Section 14.1 (Delay by Event of Force Majeure) of the Franchise Agreement;

(g) extension of the Toll Road Lease and the accompanying terms of such extension pursuant to Section 14.1 (Delay by Event of Force Majeure) of the Franchise Agreement (or any successor section thereto);
(h) adjustment to SANDAG’s insurance coverage pursuant to Section 15.8(d) of the Franchise Agreement (or any successor section thereto); or

(i) final resolution of any dispute (whether by agreement, arbitration or litigation) under the Franchise Agreement.

Section 5.3 **Annual Operating Budget.**

(a) No later than 30 days prior to the commencement of each Fiscal Year, SANDAG shall submit for the review and approval of TIFIA an operating plan and a budget on a cash flow basis of projected traffic, Project Revenues, Project O&M Expenses, [Project Renewal and Replacement Expenditures], interest, and other costs and a pro forma balance sheet prepared in accordance with GAAP for the next Fiscal Year (collectively, an “Annual Operating Budget”), each prepared by SANDAG relating to the Project and accompanied by a certificate of an Authorized Officer of SANDAG to the effect that such officer has no reason to believe that it is incorrect or misleading in any material respect, based upon information then known by such Authorized Officer.

Section 5.4 **Participants’ Monitoring Rights.**

TIFIA will have the right to monitor or direct its agents to monitor the Project’s operations at any reasonable time. SANDAG shall cooperate reasonably and in good faith with TIFIA in the conduct of such monitoring by promptly obliging any reasonable request for access or information.

**ARTICLE VI**

**AFFIRMATIVE COVENANTS**

Section 6.1 **Maintenance of Existence and Governmental Approvals.**

(a) SANDAG shall at all times preserve and maintain in full force and effect (i) its legal existence as a local public entity in the State of California and (ii) all material rights, franchises, privileges and consents necessary for the operation and maintenance of the Project.

(b) SANDAG shall at all times obtain and maintain in full force and effect all Governmental Approvals and approvals of any other Person necessary for the ownership, leasing, maintenance and operation of the Project, except where the failure to maintain such Governmental Approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) SANDAG shall at all times maintain a valid leasehold interest in the Toll Road Lease, subject only to Permitted Liens, except to the extent that the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.
Section 6.2 Books and Records.

(a) SANDAG shall maintain appropriate logs, books, records and accounts concerning the Project in which full, true and correct entries in accordance with GAAP are consistently applied and SANDAG shall permit representatives of TIFIA to examine and audit all of SANDAG’s logs, books, records and accounts concerning the Project, to make copies and memoranda thereof, at such times during business hours and at such intervals as TIFIA may reasonably request. Each such examination or audit shall be conducted so as not to interfere with the operation of the Project and shall be subject to SANDAG’s safety and insurance programs, and any such party making an inspection shall comply with the reasonable request of SANDAG to maintain the confidentiality of any information identified by SANDAG in writing to the recipient thereof as confidential and received as a result of such inspection.

(b) SANDAG shall establish and maintain fiscal controls and accounting procedures conforming to GAAP (to the extent applicable) and that are sufficient to assure proper accounting for all Project-related transactions.

Section 6.3 Compliance with Laws.

SANDAG shall ensure that the Project is operated in compliance in all material respects with, and shall make such alterations to the Project as may be required for compliance in all material respects with, all material Governmental Rules, including Environmental Laws, and Governmental Approvals, except that SANDAG may, in good faith and by appropriate proceedings, diligently contest the validity or application of any Governmental Rules.

Section 6.4 Preservation of Security Interests and Title.

(a) SANDAG shall preserve and undertake all actions necessary to maintain the security interests granted under the Series D Security Documents in full force and effect.

(b) SANDAG shall at all times maintain title in fee simple to, or a valid leasehold interest in, or a valid right of way or easement or license over, all real property at the time necessary for the operation, leasing and maintenance of the Project.

Section 6.5 Insurance.

SANDAG shall maintain at its own expense with responsible insurers all insurance required under the Franchise Agreement and such other insurance as is customarily maintained with respect to a project comparable to the Project, against accident to, loss of or damage to the Project, and shall furnish to TIFIA certificates of all such insurance. To the extent such coverage is available on a commercially reasonable basis, the Master Trustee and TIFIA shall be named as additional insureds on all such insurance policies.
Section 6.6 Operation and Maintenance.

SANDAG shall cause the Project to be maintained and operated (i) in accordance with the Franchise Agreement, Caltrans Standards and Prudent Industry Practice (except that if a practice is against Prudent Industry Practice but is required by the Franchise Agreement or Caltrans Standards, there shall be no breach of this covenant for as long as SANDAG is in compliance with such requirements of the Franchise Agreement or Caltrans Standards, as applicable), (ii) in compliance with all applicable Governmental Rules and Governmental Approvals of any Governmental Authority having jurisdiction; provided, however, that SANDAG may contest the validity or application of any such Governmental Rule pursuant to the Permitted Contest Conditions, (iii) in accordance with the terms of all insurance policies required to be maintained pursuant to Section 6.5 so as to prevent any termination of (or any impairment of or reduction in coverage provided by) any such policies, (iv) in accordance with all applicable product warranties so as to permit the full enforcement of (and prevent any impairment of or reduction in coverage provided by) such product warranties, and (v) in a reasonable and prudent manner and in good repair, working order and condition.

Section 6.7 Independent Auditor.

SANDAG shall engage at all times as its accountants a national or regional firm of independent public accountants.

ARTICLE VII
NEGATIVE COVENANTS

Section 7.1 Limitations on Distributions and Payments of Project Costs.

SANDAG shall not request the Master Trustee to make, nor shall SANDAG accept, any transfers from any Fund or Account, except in compliance with Article V of the Master Agreement. SANDAG shall not make, or cause to be made, any Restricted Payments.

Section 7.2 Limitations on Liens.

SANDAG shall not create, incur, assume or permit to exist any Lien upon or with respect to any of the property, assets or revenues, within the Series D Collateral, whether now owned or hereafter acquired, except for Permitted Liens.

Section 7.3 Permitted Indebtedness.

Except for Permitted Debt, SANDAG shall not issue or incur indebtedness of any kind with respect to the Project.
Section 7.4 Retention of Records.

SANDAG shall not change the location of the offices where it keeps its records concerning the Project and all contracts relating thereto unless SANDAG shall have given the Administrative Agent and TIFIA at least thirty (30) days’ prior written notice thereof.

Section 7.5 Abandonment.

SANDAG shall not abandon or suspend the Project or any material part thereof.

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES

Section 8.1 Event of Default.

SANDAG shall be in default hereunder if it fails to comply with the Toll Covenant set forth in Section 406(a)(ii) of the Master Agreement (“Event of Default”).

Section 8.2 Rights and Remedies Following an Event of Default.

(a) If an Event of Default occurs and is continuing, TIFIA may instruct the Master Trustee, as TIFIA’s sole and exclusive remedy in an Event of Default, to bring an action against SANDAG for an order compelling SANDAG to specifically perform its obligations under Section 406(a)(ii) of the Master Agreement. SANDAG hereby stipulates and acknowledges that such relief will be appropriate in an Event of Default.

(b) Except to the extent permitted in accordance with subsection (a) above, TIFIA shall not: (i) enforce any security interest created or evidenced by any Series D Security Document or require the Master Trustee to enforce any such security interest; (ii) sue for or institute any creditor’s process (including an injunction garnishment, execution or levy, or seek the appointment of a receiver whether before or after judgment) in respect of any interest hereunder; (iii) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Project or SANDAG, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Project or SANDAG, or (iv) apply for any order for an injunction or specific performance in respect of the Project or SANDAG.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Entire Agreement; Amendments and Waivers.

(a) This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental
hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof.

(b) None of this Agreement, the Note, or any term hereof or thereof may be amended, supplemented, waived or otherwise modified except in accordance with the provisions of this Section 9.1. TIFIA may, from time to time, (i) enter into with SANDAG written amendments, supplements or modifications hereto for the purpose of adding any provisions to this Agreement or changing in any manner the rights of TIFIA or of SANDAG hereunder or (ii) waive, on such terms and conditions as TIFIA may specify in such instrument, any of the requirements of this Agreement or any Default or Event of Default and its consequences. Any such waiver and any such amendment, supplement or modification shall apply to TIFIA and shall be binding upon SANDAG, TIFIA, the Master Trustee and all future holders of the Note. In the case of any waiver of a Default or Event of Default, SANDAG, TIFIA and the Master Trustee shall be restored to their former position and rights hereunder and under this Agreement and the Note, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

Section 9.2 Notices.

All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or, in the case of notice given by mail, private courier, overnight delivery service or facsimile, when received, addressed as follows in the case of SANDAG and TIFIA, as set forth in the Master Agreement in the case of the Master Trustee, or to such other address as may be hereafter notified in accordance with this Section 9.2 by the respective parties hereto:

SANDAG:

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Phone: (619) 699-1900
Fax: (619) 699-1995
Attention: Executive Director

With a copy to:
San Diego Association of Governments
401 B Street, Suite 800
Phone: (619) 699-1900
Fax: (619) 699-1995
Attention: Office of General Counsel
Section 9.3  **No Waiver; Cumulative Remedies.**

No failure to exercise and no delay in exercising, on the part of the Master Trustee or TIFIA, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 9.4  **Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant thereto or in connection therewith shall survive the execution and delivery of this Agreement and the Note.

Section 9.5  **Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of SANDAG, TIFIA, the Master Trustee, all future holders of the Note and their respective successors and assigns.

Section 9.6  **Sale and Transfer of Note.**

TIFIA may assign the Notes to one or more other Persons with the prior written consent of SANDAG (which will not be unreasonably withheld).

Section 9.7  **Usury.**

Notwithstanding anything to the contrary contained in this Agreement or the Note, the interest and fees paid or agreed to be paid under this Agreement or the Note shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the “Maximum Rate”). If TIFIA shall receive interest or a fee in an amount that exceeds the Maximum Rate, the excessive interest or fee shall be applied to the principal of the Note or, if it exceeds the unpaid principal, refunded to SANDAG.
Section 9.8 Limitation of Recourse.

There shall be no recourse to SANDAG or any all of its assets and properties for the liabilities of SANDAG under this Agreement or the Note, except for those assets and properties which are, or become, part of the Series D Collateral and further, in no event shall any officer, director or employee of SANDAG be personally liable or obligated for such liabilities and obligations of SANDAG. The provisions of this Section 9.8 shall survive the termination of this Agreement.

Section 9.9 Governing Law.

This Agreement shall be governed by and construed and interpreted in accordance with the law of the State of California, unless the application of California law is pre-empted by any federal statute, federal regulation, federal congressional directive or judicial decision constituting a federal rule of decision directly applicable to TIFIA or the TIFIA program under which loans have been extended pursuant to this Agreement, in which case such applicable federal statute, federal regulation, federal congressional directive or judicial decision constituting a federal rule of decision shall be applied to the construction and interpretation of the provisions of this Agreement so affected.

Section 9.10 Submission To Jurisdiction.

SANDAG and TIFIA each hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Agreement and the Note, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of California, the courts of the United States of America for the Southern District of California, and appellate courts from any thereof;

(ii) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that nothing herein shall affect the right to effect service of process in any manner permitted by law or shall limit the right to sue in any other jurisdiction; and

Section 9.11 No Fiduciary or Partnership Relationship.

Nothing in this Agreement, or in the Note, shall be deemed to create a fiduciary relationship or partnership relationship between SANDAG, on the one hand, and TIFIA, on the other hand.
Section 9.12 Master Trustee as Third Party Beneficiary.

The provisions of and rights created by this Agreement shall inure to, and are intended for, the benefit of the Master Trustee, to the extent provided herein, and the Master Trustee shall be deemed a third party beneficiary with respect thereto, entitled to enforce directly and in its own name any rights or Claims it may have under this Agreement.

Section 9.13 Severability.

Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

Section 9.14 Headings.

The table of contents and the headings of Articles, Sections, Exhibits and Schedules have been included herein for convenience only and should not be considered in interpreting this Agreement.

Section 9.15 No Third Party Beneficiaries.

Subject to Section 9.12, the provisions of and rights created by this Agreement are solely for the benefit of the parties hereto, and no other Person shall have any rights under this Agreement or under any Note issued pursuant hereto against any of the parties hereto.

Section 10.17 Counterparts.

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by the parties shall be maintained by SANDAG and TIFIA.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: ________________________________
    Name: ________________________________
    Title: ________________________________

UNITED STATES DEPARTMENT OF TRANSPORTATION

By: ________________________________
    Name: ________________________________
    Title: ________________________________
MEMORANDUM

TO: SANDAG Board of Directors
FROM: Lindborg & Mazor LLP
RE: SBX Franchise Agreement: Executive Summary
DATE: August 16, 2011

On or about August 11, 2011, SANDAG and SBX signed a Letter of Acceptance (“LOA”) which contemplates the transfer of SR125 from SBX to SANDAG. Given that an assumption by SANDAG of the Development Franchise Agreement (“DFA”) under which SBX operates SR 125 will be a centerpiece of that transaction, a more detailed summary of the DFA pursuant to the Board’s request is provided below.

Chronological Background to Execution of DFA:

- In 1989, the legislature passed Assembly Bill 680, codified at Streets and Highways Code (S&HC) § 143. The statute authorized two public demonstration transportation projects to be constructed under a Build-Operate-Transfer (“BOT”) delivery system. Under the BOT model envisaged by the statute, the state, through Caltrans, would enter into a franchise agreement with a private entity which, in turn, would take the following action: (1) build the project using private funds, (2) convey the project to the state upon completion of construction, (3) lease the project back from the state, and (4) operate the project on a tolled basis for the term of the lease with the entire project reverting back to the state at the end of the lease term.

- On December 31, 1990, Caltrans entered into the DFA with SBX’s predecessor-in-interest pursuant to S&HC § 143 for development and operation of SR 125 under the BOT model discussed above. The franchise agreement specifically contemplates a lease term of 35 years.

- During the 2006 legislative session, the legislature passed Senate Bill 463, codified at S&HC § 143.1. This statute applies solely to SR 125 and states that SR 125 shall be subject to tolls for up to 45 years - - but only if: (1) the extension of the DFA is agreed to by SBX and Caltrans prior to February 1, 2010, and (2) SANDAG, the County and City of San Diego and the City of Chula Vista concur with the extension.
Notably, these conditions were not satisfied. The statute further provides that whether or not such extension is agreed to by January 31, 2010, then SANDAG, subject to certain terms and conditions, may operate the facility and collect tolls to pay for projects within the SR 125 corridor at the end of the franchise period.

- In November 2007, SBX and Caltrans executed a Lease for a 35 year term, which essentially incorporates the terms of the DFA into the Lease.

**Summary of the DFA and Potential Impact to SANDAG If it Assumes the DFA:**

**Term and Fees:** The DFA grants SBX the right, and the obligation, to operate SR 125 within Caltrans’ standards until 2042 in exchange for an annual payment of $120. Caltrans is additionally entitled to a percentage of profit above 18.5%, after deduction of all debt repayment, maintenance, operating and required expansion costs (calculated on the basis of annual financial reports which SBX is required to send to Caltrans). Whether the profit level necessary to trigger any additional fees due Caltrans is ever realized will largely be a function of revenue levels and operating standards established by SANDAG after closing the purchase.

**Tolls:** SBX has the right to set tolls for the use of SR 125, with limits imposed on its discretion by the terms of its loan documents. Toll collection may not be done by Caltrans. The right to set the tolling regime would be transferred to SANDAG upon purchase and the operations would be done by employees or contractors selected by SANDAG.

**Expansion:** SBX must expand the capacity of SR 125 if traffic on the roadway reaches an “E” level of service for two consecutive hours per day for 150 days per year over a two-year period. Information regarding if and when this provision would be triggered under SANDAG ownership using various operating assumptions will be discussed further with the Board in future meetings, including estimated costs associated with such improvements.

**Interconnecting Facilities:** Obligates Caltrans, to the extent of available resources, to construct and maintain facilities that connect SR 125 “to and from” other roads. If SANDAG assumes the DFA, this provision would be consistent with the approach SANDAG and Caltrans already take on connecting regional infrastructure.

**Airspace Leases:** SBX has the right to enter into “Airspace [Sub]Leases” for facilities (except for billboards) on, under or over SR 125’s right of way. The rental payment due Caltrans is $1 per year per Airspace Lease. SBX has the right to set the rental amounts of the subleases. This term would provide a potential source of revenue to SANDAG.

**Non-compete Clause:** Prohibits Caltrans from constructing competing transportation facilities or airspace improvements within 6 miles of the centerline of SR 125, without payment
of compensation assuming SBX could prove an economic impact. Under the proposed transaction, SANDAG would have the ability to waive this clause.

**Maintenance and Operation:** Obligates SBX to pay for maintenance and operations costs and permits SBX to enter into maintenance service and traffic management agreements with Caltrans (Caltrans must supervise, at SBX’s cost, any non-Caltrans provider of these services). SBX must also contract with CHP (or other governmental entity) for the provision of police services on SR 125. If SANDAG assumes the DFA, it could work with Caltrans on finding the most cost effective methods for maintaining SR 125.

**Insurance:** SBX must carry $50 million in liability insurance. Revenues from the toll road would pay for any additional insurance costs SANDAG would incur for maintaining insurance required by the DFA.

**Indemnities:** The DFA contains numerous cross-indemnities between SBX and Caltrans addressing a variety of potential claims based on the design, construction and operation of SR 125, the existence of hazardous materials and other situations. In general, these indemnities are even-handed and impose ultimate liability on the party causing, or responsible for, the situation underlying the claim. On April 11, 2011, SANDAG entered into a settlement agreement with Caltrans, among other parties. To the extent that any future claim for indemnity under the DFA between SANDAG and Caltrans is based upon events which occurred before the confirmation of SBX’s bankruptcy plan (April 14, 2011), the indemnity obligations under the DFA may be affected.

**Real Property:** Grants SBX and Caltrans certain rights regarding real property acquired in connection with the project, such as a right of first refusal in favor of Caltrans with respect to the disposition of two parcels of real property and a repurchase right in favor of SBX with respect to other parcels of property held in Caltrans name. SANDAG will be able to work with Caltrans regarding future ownership of the parcels effected by this provision.

**Lenders:** Permits SBX’s lenders, including TIFIA, which will be a lender to SANDAG under the proposed transaction, the right to cure defaults by SBX and enter into a new franchise agreement with Caltrans upon early termination of the DFA.

**Assignment:** Prohibits assignment of the DFA without Caltrans’ consent except to a SBX-related entity or certain governmental agencies, which potentially includes SANDAG, assuming that Caltrans would find that SANDAG is qualified to operate SR 125.
LETTER OF INTENT
FOR THE MODIFICATION OF THE DEVELOPMENT FRANCHISE AGREEMENT, BETWEEN DEPARTMENT AND SBX, RELATED TO THE POTENTIAL PURCHASE BY SANDAG OF SR 125 ASSETS

THIS LETTER OF INTENT ("LOI") is entered into and effective as of ____________ by and between the California Department of Transportation, a public agency of the State of California ("the Department") and San Diego Association of Governments, a legislatively created regional government agency ("SANDAG") and collectively as ("Parties") with reference to the following facts:

RECITALS

A. The Department and South Bay Expressway, LLC ("SBX"), are parties to the certain Development Franchise Agreement for a Privatized Transportation Project ("DFA") entered into December 31, 1990 as amended and conformed, and other related agreements necessary to operate the SR 125 toll road entered into by Department and SBX.

B. SANDAG entered into a Letter of Acceptance with SBX, agreeing to purchase certain SBX assets in August 2011, upon satisfaction of various conditions.

C. SANDAG endeavors to purchase certain assets belonging to SBX relating to the toll road portion of State Route 125 in San Diego County ("SR 125"), including the franchise to operate and maintain the SR 125 toll road. The SANDAG Board of Directors has agreed to purchase such assets from SBX contingent upon satisfactory completion of various conditions ("Potential Transaction"). SANDAG intends to purchase the SBX assets on or about December 21, 2011.

D. The Parties desire to modify the DFA and other related agreements necessary to operate the SR 125 toll road. The Parties agree to negotiate and execute an amendment to the DFA as set forth in this LOI no later than March 30, 2012.

E. This LOI is entered into by the Parties in recognition of SANDAG’s efforts to purchase the SR 125 assets as defined in the DFA and other related agreement and that if the Potential Transaction closes, the following amendments to the Franchise Agreement will be carried out:

NOW, THEREFORE, in order to continue the good faith discussions regarding the Potential Transaction, by the Department and SANDAG, and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and acknowledgement of which are hereby acknowledged, the Department and SANDAG hereby agree to promptly prepare and execute amendments to the DFA and other related agreements to implement the following modifications, among others, to the key business terms of the transaction set forth in the DFA, which modifications will be negotiated and mutually approved and agreed to by the Parties. Unless otherwise defined herein, all capitalized terms are defined in Section II of the DFA.

1. Document transition of ownership of franchise from SBX to SANDAG and authority of SANDAG and Department to enter a new agreement regarding the Toll Road.

2. Make modifications to recognize that the original development and construction phases for the Toll Road are complete and that SANDAG’s responsibilities as franchisee will concern operations and maintenance of the Toll Road and future development and construction of improvements.

3. Remove concept of “Developer” from agreement so that focus is operations and maintenance of Toll Road.
4. Remove references to Developer’s entitlement to reasonable profit and terminology and definitions related to cash flow and expenses. Regarding the Toll Road, the parties intend to maximize its use and reduce congestion on regional transportation infrastructure, while still providing sufficient funding to SANDAG to service debt and operate and maintain toll road.

5. Remove terms and conditions related to original construction of transportation facilities.

6. Maintain franchisee’s option to exercise the right of first refusal before Department can grant any rights to develop commercial airspace improvements on Department Competitive Transportation Facilities.

7. Modify Department obligation to assist Developer in getting funds from SANDAG and others for original development and construction of SR 125.

8. Provisions predating the opening of the Toll Road to operations will be revised.

9. Insurance requirements for the Toll Road will be revised.

10. Remove references to rights of Developer’s “Affiliated Entities”.

11. The dispute resolution provisions will be revised.

12. New provisions regarding maintenance will be negotiated by SANDAG and Department.

13. SANDAG will assume the airspace lease option provisions (still subject to approval by the CTC) even though the lease option agreement was never executed between SBX and Department.

14. Relevant terms of the separate Lease agreement and SR 905/125 Cost Sharing Agreement will be incorporated into Amended and Restated Franchise Agreement as agreed to by SANDAG and Department.

15. SANDAG will assume the current agreements concerning Traffic and Incident Management and enforcement on the Toll Road by the California Highway Patrol as part of the asset purchase transaction with SBX.

16. Department waives its first right of refusal authorized under Section 3(a)(v) of the Settlement Agreement for the Operations Center Parcel located at 1129 La Media Road, San Diego, CA 92154, in agrees to the transfer of the property from SBX to SANDAG.

17. The Parties agree to work together to carry out the tasks, as identified in the Traffic and Incident Management Agreement, based upon an agreed schedule.

18. Department agrees that SANDAG may assume the Franchise Agreement, the Lease, and other assignable agreements referenced in the Franchise Agreement as part of its purchase of SR 125 assets from SBX.

19. The Parties intend that they each will have no more liability under the amended DFA than Caltrans and SBX have under the current DFA.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this LOI which shall be effective concurrently with the date of closing of the Potential Transaction by SANDAG.

CALIFORNIA DEPARTMENT OF TRANSPORTATION    SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: ________________________________    By: ________________________________
Name: Malcolm Dougherty    Name: Gary L. Gallegos
Title: Acting Director    Title: Executive Director
11/21/11

To Whom It May Concern,

I am writing this letter to express concerns over SANDAG’s proposal to purchase SR 125 with Transnet money ($247.5 million from a voter approved 1/2% Transportation and use tax). SANDAG is asserting that they have the right to use this money under a broad interpretation of the Transnet Ordinance. SANDAG has also suggested that they are permitted to conduct a “loan/swap” option that would effectively take money that was designated for important transportation arteries in the South Bay in exchange for funding S.R.125. SANDAG hopes that the net impact of acquiring the 125 toll road will reduce traffic on other surrounding arteries. I believe that this assumption is highly speculative and that the risks outweigh the benefits. The money would be better used for its intended purpose which was to fund high occupancy vehicle lanes for the 805, the 905 and the 54.

The citizens of the South Bay have clearly demonstrated that they would rather use the freeways than to pay the 125 toll. SANDAG is hoping that if they lower the toll that this will increase toll road use. SANDAG also hopes the lower toll will pay or offset the cost of the acquisition. However, there is no statistical evidence that proves these assumptions. In fact, past assumptions on the toll road have been proven wrong.

Interestingly, before Transnet money was allocated, SANDAG saw a real issue with traffic congestion in the South Bay. SANDAG saw the need for these improvements even while assuming that SR125 would be at full capacity! So if SANDAG saw traffic congestion back then, what makes SANDAG think that traffic issues have miraculously improved such that the proposed highway improvements can just be ignored? To suddenly believe that the traffic conditions in the western areas of Chula Vista and Bonita will be alleviated by a toll road 5 miles to the east is speculative at best and reckless at worst.

There are also social equity issues here that need to be addressed as this is the only toll facility located in an area of the County with a high concentration of minorities and lower income households. Other parts of the County will reap the benefits without bearing any of the economic risks and burdens. Why should the South Bay again pay disproportionate burdens when other areas in the County enjoy vast amounts of public infrastructure without recourse to private toll roads? The SR11 toll road for the Otay Mesa East port of entry would create two toll roads for citizens in the South Bay. Why has the South Bay become the hub for privatized highways?

This analysis would not be complete if we did not mention the negative impact on jobs that this purchase would create. The road improvements originally intended for South Bay freeways could provide many jobs. Has this impact been taken into account? I haven’t seen anything which says that this has been considered.
I would like to see a 6 month trial with the lower toll in place so that SANDAG could make decision based on real data instead of computer projections. Traffic patterns on the surrounding areas could also be measured during this time. This would be a good preliminary step.

In summary this proposal cannot be supported for the following reasons:

1. Voters never intended the funds to be used for purchasing the 125.

2. The money is better used for improving other highways, not to mention the fact that this would create badly needed jobs.

3. There is no guarantee that the money will ever be paid back.

4. The South Bay should not have to shoulder all the burdens and risks.

For all the above stated concerns, I am respectfully requesting that this idea not go forward without further study and public input.

Respectfully,

Professor Alejandro Orozco
Southwestern College
Chula Vista, CA
December 1, 2011

Gary Gallegos
SANDAG
401 B Street Ste-800
San Diego, CA 92101

Dear Mr. Gallegos,

South County Economic Development Council (SCEDC) has publically expressed our support for the San Diego Association of Governments’ (SANDAG) purchase of the South Bay Expressway/SR 125 recognizing that opening access to transportation routes to more South County citizens and businesses is part of the infrastructure needed to support our economic vitality. SCEDC remains committed to SANDAG’s purchase of the South Bay Expressway.

As part of our core mission SCEDC is committed to encouraging job creation, retention and investment in the southern portion of San Diego County. These are vital components of a vibrant economy.

It is our understanding that SANDAG will soon consider an operator for the South Bay Expressway. While SCEDC does not support specific companies we do want to express our values for consideration by SANDAG when selecting the operator. Whether the operator is the current company or another one selected to operate South Bay Expressway we respectfully request that SANDAG consider the following in an effort to support our local economy:

- Any company selected retain the 50 jobs associated with the operation of South Bay Expressway IN South County
- In the selection process SANDAG consider the investment back to the community as proposed by the operators. This may include, but is not limited to

1111 Bay Blvd. Suite E • Chula Vista, CA 91911
(619) 424.5143 • Fax (619) 424.5738
www.SouthCountyEDC.com

11/16/11
Charitable contributions, volunteer time, use of the facilities by the community and use of local contractors, vendors and suppliers

SCEDC typically reacts proactively when we learn of a company who might be leaving South County. Due to the nature of this particular transaction SCEDC Board of Directors has determined that it is in the best interest of the region to support SANDAG’s selection process while conveying our core values so they may be considered when making a decision on the operator for South Bay Expressway.

If I may provide additional information please do not hesitate to contact me at 619-424-5143.

Sincerely,

Cindy Gompper-Graves
Chief Executive Officer
Memorandum

To: Jim Ryan, Chair  
TransNet Independent Taxpayer Oversight Committee

From: David S. Demian

Date: December 1, 2011

Re: Review And Analysis Of Draft Promissory Note For TransNet Loan To SANDAG For Acquisition of SR 125 Toll Road

I. QUESTION PRESENTED

Would the draft promissory note (“Note”) made by the San Diego Association of Governments (“SANDAG”) in favor of the San Diego Regional Transportation Commission (“Commission”) as part of the proposed loan transaction (“Loan”) for SANDAG’s acquisition of the SR 125 toll road, a copy of which is attached as Tab 1, create a binding obligation to repay funds to the Commission so as to be consistent with Marks, Finch, Thornton & Baird, LLP’s (“MFTB”) October 31, 2011 opinion memorandum to ITOC (the “October 31, 2011 Memorandum”)?

II. ANSWER

Yes. Once the Note is duly authorized and executed by SANDAG, and all conditions precedent in the Note are satisfied, it will create a binding obligation upon SANDAG to pay to the Commission all principal, interest and other charges accruing under the Note in accordance with its terms. As such, the Note contains, consistent with our opinion as set forth in the October 31, 2011 Memorandum, detailed fund repayment provisions necessary to ensure the Commission suffers “no loss of funds” as a result of the Loan. (See Section II, subpart (C) of the October 31, 2011 Memorandum.)

As detailed in the October 31, 2011 Memorandum, other requirements, in addition to the Note, must be satisfied in order for the Commission to legally make the Loan. In this respect, the Commission must, among other things, determine that SANDAG is a creditworthy borrower and that the interest earnings and the collateral furnished as security for repayment of the Note are adequate to ensure there will be “no loss of funds” as required by Section 7 of the Ordinance, (as defined in the October 31, 2011 Memorandum).

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1 This review of the Note is limited to the four corners of the document and excludes a review and analysis of the documents referenced in the Note.
December 1, 2011

Honorable Jerome Stocks  
San Diego Association of Governments (SANDAG)  
401 B Street, Suite 800  
San Diego, CA 92101

Re: SDCTA Support for SR 125 Purchase, Financing Option B

Dear Chairman Stocks:

The San Diego County Taxpayers Association (SDCTA) recommends approval of the SR 125 South Bay Expressway toll road (SR 125) purchase under Financing Option B as an alternative to the current plan to construct two managed lanes on the I-805 between SR 905 and SR 54.

Under Financing Option B, more drivers will use SR 125 providing congestion relief on local roads and the I-805. The purchase is projected to achieve the Regional Transportation Plan’s planned level of service to and from Eastern Chula Vista nearly two decades ahead of schedule, at a savings of approximately $268 million. Further, it will allow for a reduction in the toll rate.

SDCTA supports SANDAG’s plan to cautiously lower tolls in manner that will ensure that financial obligations assumed in the purchase will be met and commends SANDAG on this opportunistic approach to improving regional mobility in a cost-effective and efficient manner.

Sincerely,

Lani Lutar  
President & CEO

cc: Mr. Gary Gallegos, Executive Director  
Honorable Board of Directors
ASSET PURCHASE AND SALE AGREEMENT
by and between
SOUTH BAY EXPRESSWAY, LLC
and
SAN DIEGO ASSOCIATION OF GOVERNMENTS

Schedules

Schedule 1.1(a)  Assigned Contracts
Schedule 1.1(b)  Equipment
Schedule 2.1(b)(iv)  Excess Property (Retained Assets)
Schedule 5.3(a)  No Violation; Consents
Schedule 5.3(b)  Governmental Consents
Schedule 5.5(a)  Leased Real Property; Leased Real Property Liens
Schedule 5.5(b)  Owned Real Property (Transferred Assets); Owned Real Property Liens
Schedule 5.5(e)  Personal Property Liens
Schedule 5.6  Intellectual Property
Schedule 5.7(a)  Material Contracts
Schedule 5.7(b)  Material Contracts – Exceptions to Validity
Schedule 5.7(c)  Assigned Contracts – Notices of Breach, Exceptions to Validity
Schedule 5.8  Litigation
Schedule 5.9  Compliance with Laws
Schedule 5.10  Taxes
Schedule 5.11  Environmental Matters
Schedule 5.12  Insurance
Schedule 5.14  Material Permits
Schedule 5.15  Franchise Agreement Matters
Schedule 7.12  Existing Letters of Credit
Schedule A  Certain Permitted Liens
Schedules to the Asset Purchase Agreement dated as of [_______________], 2011,
between South Bay Expressway, LLC and SANDAG (the “Agreement”)

Unless the context otherwise requires, all capitalized terms used in these disclosure Schedules shall have the respective meanings assigned to them in this Agreement.

The sections and subsections referenced herein refer to corresponding sections or subsections of the Agreement. Disclosures in any section or subsection of these disclosure Schedules with respect to a particular representation, warranty or covenant contained in the Agreement shall be deemed to be an exception or qualification with respect to all other representations, warranties and covenants contained in the Agreement notwithstanding the omission of a reference or cross-reference thereto. Any descriptions of an agreement or other documentation contained herein are summaries only and are qualified in their entirety by the full content of such agreement or other documentation, copies of which have been made available to the Purchaser.

Certain information in these disclosure Schedules may not be required to be disclosed pursuant to the Agreement. Any such information is included solely for informational purposes, and nothing in these disclosure Schedules is intended to broaden the scope of any representation, warranty or covenant of the Seller contained in the Agreement. It is expressly understood and acknowledged that any exceptions set forth herein shall not constitute a basis for a claim of a breach of any of the representations, warranties or covenants made in the Agreement.

The provision of monetary or other quantitative thresholds for disclosure does not and shall not be deemed to create or imply a standard of materiality hereunder. The inclusion of any information in these disclosure Schedules (or any update thereto) shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms of the Agreement to be disclosed, is material to the Project, has resulted in or would result in a Seller’s or Purchaser’s Material Adverse Effect, or is outside the ordinary course of business. The inclusion of any information in these disclosure Schedules (or any update thereto) shall not constitute an admission of fault, culpability or liability with respect to any claim, action, lawsuit or proceeding or an admission that any breach, failure to perform, violation, default or event of default exists with respect to any contract or agreement.
Schedule 1.1(a)
Assigned Contracts

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¹ The chart lists SBX’s contracts in existence as of October 13, 2011.
² Expires 11/08/2011.
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<td>Transtoll Inc., et. al.</td>
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<td>VM Ware (Fusion Storm)</td>
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## Sched 1.1(b) Installed Hardware

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<td><strong>Traffic Management System</strong></td>
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<td>Transformer, 5KVA, 120V</td>
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<td>500L PMM Module</td>
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<td>PDA</td>
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<td>Reno &amp;E</td>
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<td>Viper-8000-2SC</td>
<td>Cornet Technology, Inc.</td>
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<td>Ethernet Bridge</td>
<td>IP Serial IO Unit</td>
<td>Baxall</td>
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<td><strong>Camera Station</strong></td>
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<td>Composite Cable</td>
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<td>Camera Assembly</td>
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<td>Pelco</td>
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<td>Lens</td>
<td>23X Optic and 10X Digital</td>
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<td>Mounting Bracket</td>
<td>EPP Espir Pedestal Adapter</td>
<td>Pelco</td>
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<td>Wiper</td>
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<td>Encoder</td>
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<td>Camera Control Surge Protection</td>
<td>DOT-DP4P</td>
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<td>Fast Ethernet switch</td>
<td>Viper-8000-2SC</td>
<td>Cornet Technology, Inc.</td>
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<td><strong>Traffic Management System</strong></td>
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<td><strong>Surveillance and Access Control</strong></td>
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<td>M2100 DBU Kit with memory for 20,000 cards</td>
<td>M2100-DBU-20K-KIT</td>
<td>AMAG</td>
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<td>M2000 DCU-Kit for 4 readers, 20mA 4DCU board supports up to 4 readers/doors.</td>
<td>M2000-4DCU-KIT</td>
<td>AMAG</td>
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<tr>
<td>M2100 4DCR-P Kit-for 4 Reader 4DCR-P board only, includes onboard PSU, supports up to 4 readers / doors. requires WIM4 for connection to Wiegand Readers. requires 18Vac transformer</td>
<td>M2100-4DCR-P-KIT</td>
<td>AMAG</td>
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<tr>
<td>2DCR board only, supports up to 2 readers / doors. Requires WIM2 for connection to Wiegand Readers. Refer to MultiNODE enclosure section for suitable enclosure.</td>
<td>M2100 2DCR kit for 2 Readers</td>
<td>AMAG</td>
<td>15</td>
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<td>WIM-4 Wiegand Interface Module for 4 Card Readers used with the 4 door controller (4DCU) to enable Wiegand readers to connect to MultiNODE controllers</td>
<td>WIM4</td>
<td>AMAG</td>
<td>11</td>
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<td>WIM-2 Wiegand Interface Module for 2 Card Readers used with the 2 door controller (2DCR) to enable Wiegand readers to connect to MultiNODE controllers</td>
<td>WIM2</td>
<td>AMAG</td>
<td>15</td>
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<tr>
<td>MultiNODE Input / Output Option Board 8 monitor points &amp; 4 auxiliary outputs per 2 readers UL Listed</td>
<td>MN-I/O</td>
<td>AMAG</td>
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<td>CAMERA, VARIHOME, 1/4&quot;, 480 TVL COLOR, 12VDC/24VAC, 60Hz, w/2.6-6mm DC IRIS LENS, WHITE.</td>
<td>LTC 1461/20</td>
<td>Bosch</td>
<td>65</td>
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<td>PRESSURE DOME KIT, 25X DAY/NIGHT, OUTDOOR, PIPE MT, WHITE, 120VAC, 60Hz.</td>
<td>PRSE1</td>
<td>Bosch</td>
<td>25</td>
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<tr>
<td>CAMERA, 1/3&quot;, 480 TVL COLOR, DSP, HIGH SENSITIVITY, RS-232, 120VAC,</td>
<td>LTC 0610/60</td>
<td>Bosch</td>
<td>7</td>
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<tr>
<td>PIR REQUEST EXIT (GRAY)</td>
<td>TG10Z0513FCS</td>
<td>CBC</td>
<td>1</td>
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<tr>
<td>Housing outdoor pressurized 4&quot; Cylindrical Aluminum design with removable rear plate, lens preset capabilities, and one 40-watt heater. Pressurized to 5 psi. 4-inch diameter and 17-inch length.</td>
<td>EH8104</td>
<td>Pelco</td>
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<td>Item Description</td>
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<td>Sun shroud for EH8104 only.</td>
<td>SS8004</td>
<td>Pelco</td>
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<td>IND ALUM HSNGL W/G WARNED CABLE</td>
<td>SR-2507AL</td>
<td>Sentrol</td>
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<td>Foot Rail Duress Alarm</td>
<td>268</td>
<td>Ademco</td>
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<td>Hand Operated Duress Alarm</td>
<td>269</td>
<td>Ademco</td>
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<td>Proximity Cards, ISO Prox LIA Programmable Dual PVC Cards Sequentially ink-jet numbered</td>
<td>1386-LGSMN/26</td>
<td>AMAG</td>
<td>200</td>
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<tr>
<td>MultiNODE Network Interface Card Option</td>
<td>MN-NIC-3</td>
<td>AMAG</td>
<td>16</td>
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<tr>
<td>MultiNODE CAB4 Enclosure with hinged lockable door, door tamper, AC power monitor and fixing kit.</td>
<td>MN-CAB4</td>
<td>AMAG</td>
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<tr>
<td>MultiNODE CAB4 Enclosure with hinged lockable door, door tamper, AC power monitor and fixing kit.</td>
<td>MN-CAB4+PSU-KIT</td>
<td>AMAG</td>
<td>15</td>
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<td>MultiNODE CAB3 Enclosure with hinged lockable door, door tamper, AC power monitor and fixing kit.</td>
<td>MN-CAB3</td>
<td>AMAG</td>
<td>1</td>
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<tr>
<td>ThinLine II à Switch Plate Proximity Reader Switch plate, Pigtail connection, Indoor / Outdoor 4° read range, 5-16 VDC.</td>
<td>TL-5395-B-N</td>
<td>AMAG</td>
<td>58</td>
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<tr>
<td>Pro Series 60“ Tripod, This 60“ camcorder tripod's 3-way pan head, bubble level, quick release shoe and geared elevator crank help create steady and professional looking video.</td>
<td>V0552</td>
<td>Ambico</td>
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<td>7.5W Loudspeaker 8g</td>
<td>WR-5</td>
<td>Atlas Sound</td>
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<td>30x24x111/2 NEMA 1 Enclosure</td>
<td>AB-30246LM</td>
<td>Austin</td>
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<td>COMPACT FULL FUNCTION KEYBOARD, VARIABLE SPEED JOYSTICK.</td>
<td>LTC 5136/61</td>
<td>Bosch</td>
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<td>Wall Mount Adapter w/ 24 VAC power supply</td>
<td>PRS MAST</td>
<td>Bosch</td>
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<td>Pole Mount Adapter</td>
<td>PRS Corner</td>
<td>Bosch</td>
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<td>Data Converter Unit</td>
<td>LTC8780/60</td>
<td>Bosch</td>
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<td>Rack Mount Kit</td>
<td>LTC9101/00</td>
<td>Bosch</td>
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<td>RG9BU &amp; 2 Conductor 18</td>
<td>TG10Z0513FCS</td>
<td>CBC America</td>
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<tr>
<td>1/3” 5-50mm f1.3 A/I (DC Type)</td>
<td>T6Z5710AIDC</td>
<td>CBC America</td>
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<td>Camera</td>
<td>YCH-02A</td>
<td>CBC America</td>
<td>1</td>
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<td>24VAC power supply, 20VA</td>
<td>C24AC</td>
<td>CBC America</td>
<td>1</td>
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<td>Dell PowerEdge 2850 Server</td>
<td>DELPE2850-SR125</td>
<td>Dell</td>
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<tr>
<td>Dell Rack</td>
<td>DEL4210RK-SR125</td>
<td>Dell</td>
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<td>Intel® Pentium® 4 Processor, 3.00GHz, 512K / 800 Professional (SP4) with Media using NTFS</td>
<td>Precision™ Workstation 370 Minitower</td>
<td>Dell</td>
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<td>DVTTEL Rack Mount Server</td>
<td>DVT-RM-SRVR-DZ30</td>
<td>DVTTEL</td>
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<td>DVTTEL 5 Tb Raid Array</td>
<td>DVT-EX-RAID-5T</td>
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<td>DVTTEL 8 Channel Encoder</td>
<td>DVT-L7508M</td>
<td>DVTTEL</td>
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<td>DVTTEL 8 Channel Encoder with Audio</td>
<td>DVT-L7508MA</td>
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<td>DVTTEL 4 Channel Encoder with Audio</td>
<td>DVT-L7504MA</td>
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<td>Audio Power Amplifier</td>
<td>DVT-NTK-RII</td>
<td>DVTTEL</td>
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<td>200w Power Supply for 7508 up to 8</td>
<td>DVT-PWR-200W</td>
<td>DVTTEL</td>
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<td>Wire Harness</td>
<td>DVT-WH-4U</td>
<td>DVTTEL</td>
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<td>39.6W Power supply</td>
<td>DVT-PWR-4W</td>
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<td>Rack Mount Rails for Dell Rack</td>
<td>DVT-RM-P4-RAIL-01</td>
<td>DVTTEL</td>
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<td>Video Work Station</td>
<td>DVT-SRVR-DZ</td>
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<td>50&quot; Viewable Plasma Screen</td>
<td>TH-50PHD8UY</td>
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<td>10 Degree Tilt Wall Mount Bracket</td>
<td>PM10DWMT</td>
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<td>RGB Terminal Board - DVI</td>
<td>TY-42TM6D</td>
<td>Panasonic</td>
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<td>12VDC or 24VDC - 2 Amp Power Supply / Charger Module</td>
<td>LP-2</td>
<td>ESD</td>
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<tr>
<td>LP-2 (24VDC), w/ 24V 50VA UL Listed Class II Plug-in Transformer</td>
<td>LP-2T24</td>
<td>ESD</td>
<td>16</td>
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<tr>
<td>DTC 520 Printer with Dual Sided, Direct to Card Dye-Sublimation technology, Edge-to-edge printing, user-friendly Softkey Control Pad (85401)</td>
<td>DTC 520</td>
<td>Fargo</td>
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<tr>
<td>Wiegand to RS232 Converter</td>
<td>MACMA1400</td>
<td>MaCaPS</td>
<td>16</td>
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<tr>
<td>Medium duty 90-degree * J* mounts for mounting to a vertical pipe or pole. Manually adjustable swivel head. For enclosures with 2-inch mounting hole pattern.</td>
<td>EM2000</td>
<td>Pelco</td>
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### Sched 1.1(b) Installed Hardware

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<th>Manufacturer/Vendor</th>
<th>Total Installed Quantity</th>
<th>Per Panel/System Quantity</th>
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<td><strong>Nitrogen Recharge Kit</strong></td>
<td>EH8000RKIT</td>
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<td>Pelco</td>
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<td><strong>Desktop Microphone</strong></td>
<td>Audio 15</td>
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<td>Plantronics</td>
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<td><strong>Emergency door release station</strong></td>
<td>491</td>
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<td>SDC</td>
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<td><strong>Media Converters</strong></td>
<td>ET90110ST</td>
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<td>StarTech</td>
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<td><strong>Light</strong></td>
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<td><strong>Integral Flashpoint MCI Video Capture card</strong></td>
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**Surveillance and Access Control Total**

### Central Computer System

- **Enclosure**
  - PowerEdge Rack 4210: 4210 Rack with Doors, Dell 1
  - Dell 1U Rack Console / Flat Panel Monitor: 310-0971, Dell 1
  - Dell 180ES Console Switch: 16-port KVM Switch, Dell 1
  - Cable Kits for Console Switch: Dell 10
  - RapidPower PDUs: Dell 1

- **Blade**
  - Blade Enclosure: Blade Enclosure for PE 1855, Dell 1
  - 36GB 15K Ultra 320 80pin SCSI Hard Drive: (341-2043), Dell N/A
  - 73GB 10K Ultra 320 80pin SCSI Hard Drive: (341-2045), Dell N/A
  - Power Supply Units 2100W Blade Enclosure: (310-6600), Dell N/A

- **Servers**
  - TCS Server: PowerEdge 1855, Dell 1
  - CCS Server: PowerEdge 1855, Dell 1
  - Exchange Server: PowerEdge 1855, Dell 1
  - Domain Controller1: PowerEdge 1855, Dell 1
  - Domain Controller2: PowerEdge 1855, Dell 1
  - ISA Server: PowerEdge 1855, Dell 1
  - Web Server1: PowerEdge 1855, Dell 1
  - Web Server2: PowerEdge 1855, Dell 1
  - FTP Server for CTOC Interface: PowerEdge 1855, Dell 1
  - Host Integration Server: PowerEdge 1855, Dell 1

- **Storage Array and Backup**
  - Drive Array1: CX300, Dell 1
  - Drive Array2: Dell EMC ATA DAE2 enclosure, Dell 1
  - 73GB 15K Fiber Channel 2 Hard Drives: (341-0388), Dell 10
  - 300GB 10K Fiber Channel 2 Hard Drives: (341-2213), Dell 5
  - 250GB (7,200 rpm): SATA Hard Drives: (341-0949), Dell 15
  - 5M Multi-Mode FC Cable LC-LC: (310-1625), Dell 8
  - McData Fiber Switch 8 ports: McData Fiber Switch, Dell 2
  - Rapid Rails for McData Fiber Switch: Rapid Rails, Dell 2
  - Dell PowerVault 132T Tape Library with tapes: 132T Tape Library, Dell 1

### Workstations

- CSR Workstations: Dell Optiplex GX520 workstation, Dell 14
- Toll Supervisor Console: Dell Optiplex GX520 workstation, Dell 1
- Violation Processing Workstations: Dell Optiplex GX520 workstation, Dell 2
- MOMS Workstation: Dell Optiplex GX520 workstation, Dell 1
- Image Processing Workstations: Dell Optiplex GX520 workstation, Dell 7
- Tour of Duty Workstations: 2

### Printers

- HP LaserJet 9050n: HP LaserJet 9050n, HP 2
- HP LaserJet 4250n: HP LaserJet 4250n, HP 5

### Miscellaneous Equipment

- Sirit Service Center Tag Programmer: Tag Programmer, SIRIT 1
- Barcode Reader w/USB: AS-8155, Custom Sensor 2
- Swipe Card Reader: AS-8155, Custom Sensor 1
## Sched 1.1(b) Installed Hardware

<table>
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<th>Item Description</th>
<th>Part Number/Model</th>
<th>Manufacturer/Vendor</th>
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<th>Per Panel/System Quantity</th>
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<td><strong>Central Computer System</strong></td>
<td><strong>Total</strong></td>
<td><strong>Telephone System</strong></td>
<td><strong>IP Peripherals</strong></td>
<td><strong>5212 IP Phone Dual Mode Dark Grey</strong></td>
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<td><strong>Servers Application</strong></td>
<td><strong>Dell Poweredge 850 Server</strong></td>
<td><strong>Dell Poweredge 850 Server</strong></td>
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<td><strong>DNIC Sets</strong></td>
<td><strong>Network</strong></td>
<td><strong>Fiber Optic Cable (4m)</strong></td>
<td>501833-4</td>
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<td><strong>Procurve 2650 HP 48 ports - PoE switch 1 631 2 288</strong></td>
<td><strong>HP / MITEL</strong></td>
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<td><strong>Procurve 6108 HP 6 ports 1GE switch 1 100 341</strong></td>
<td><strong>HP / MITEL</strong></td>
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<td><strong>PBX 3300</strong></td>
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<td><strong>3340 Global Branch Office Solution 5.2</strong></td>
<td>52001748</td>
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**DEFINITIONS**

ACML=ACM Lane  
AVI=Automatic Vehicle Identification - ETC  
CAB=Cabinet, Enclosure, Rack  
CANP=Canopy Mounted Equipment  
COLL=Toll Collector Equipment  
COLC=Color Camera  
COLI=Color Camera Illumination  
GAN=Gantry/Cantilever Mounted  
M=Multi-Lane System  
MLTP=Main-Line Toll Plaza - Manual  
OPER=Operating Supplies  
PC=Lane Controller Main PC Panel  
PWS=Power Supply and Power Distribution Panel  
RAM=Ramp Lane  
RD=Road/Lane Installed  
S=Single Lane System  
TCS=Toll Collection System  
TUNN=ACM Tunnel Equipment  
UPS=UN-Interruptible Power Source  
VES=Video Enforcement System
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### Account Reconciliation & Analysis

**Account Name:** Fixed Assets & Depreciation

**Period End:** 6/30/2011

**South Bay Expressway**

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*Account Name: Fixed Assets & Depreciation*

*Period End: 6/30/2011*

*Account Reconciliation & Analyses*

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<th>Transponder Tags 1631-000</th>
<th>Computer &amp; Equipment 1640-000</th>
<th>Autos &amp; Trucks 1650-000</th>
<th>Software 1690-000</th>
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<td>Air Conditioner Mode</td>
<td>Danthem Air Handling</td>
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<td>Used Sunray 480 Solar Changeable Message Sign</td>
<td>National Signal Inc</td>
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<td>10983-1</td>
<td>7/31/2011</td>
<td>Laptop (replacement desktop for G. Hubiser)</td>
<td>Dell USA LP</td>
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<td>10984-1</td>
<td>8/8/2011</td>
<td>ACC Controller for 2-Wire Dec</td>
<td>John Deere Landscape</td>
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<td>10985-1</td>
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<td>Bill Cash Cassette</td>
<td>BCP Systems</td>
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<td>10986-1</td>
<td>9/12/2011</td>
<td>SAC Camera</td>
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Total Assets: 222,433 183,357 240,105 584,996 166,713 256,403 1,659,007
### Schedule 2.1(b)(iv)

#### Excess Property

<table>
<thead>
<tr>
<th>Description and Location of Property</th>
<th>Address</th>
<th>Caltrans' Number</th>
<th>Recorded Document Number</th>
<th>Right of Way Map</th>
</tr>
</thead>
<tbody>
<tr>
<td>SDG&amp;E residential land parcel - just over 5 acres plus access to parcel from San Miguel Road</td>
<td>Eastern terminus of San Miguel Road in unincorporated San Diego County</td>
<td>32081-3</td>
<td>2009-0692163</td>
<td>52036</td>
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<td></td>
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<td>32081-5</td>
<td>2011-0487206</td>
<td>52037</td>
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<td></td>
<td></td>
<td>32081-1</td>
<td>2009-0692162</td>
<td>52036</td>
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<tr>
<td>Proctor Valley land parcel approx 1.5 acres</td>
<td>Located within the Hayley’s Subdivision</td>
<td>32048-01-01</td>
<td>2008-0108339</td>
<td>52032</td>
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<td>32050-01-01</td>
<td>2008-0108340</td>
<td>52032</td>
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<td></td>
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<td>32054-01-01</td>
<td>2008-0108341</td>
<td>52031 &amp; 52032</td>
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<td></td>
<td>32058-01-01</td>
<td>2008-0108342</td>
<td>52031 &amp; 52032</td>
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<td>32062-01-01</td>
<td>2008-0108343</td>
<td>52030</td>
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<td>32071-01-01</td>
<td>2008-0108344</td>
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<td>32077-01-01</td>
<td>2008-0108345</td>
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<td></td>
<td></td>
<td>32078-01-01</td>
<td>2008-0108346</td>
<td>52030</td>
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<tr>
<td>Dante land parcel (3.94 acres)</td>
<td>6425 Lonestar Road &amp; South side of Lonestar east of La Media</td>
<td>32914-01-01 &amp; 32915-01-01</td>
<td>2008-0108347</td>
<td>52004</td>
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<tr>
<td>McMillin land parcel (3.381 acres)</td>
<td>La Media Road at Lonestar Road</td>
<td>32023-01-01</td>
<td>2009-0692164</td>
<td>52005</td>
</tr>
<tr>
<td>McMillin land parcel (2.7 acres)</td>
<td>La Media Road at Lonestar Road</td>
<td>32023-01-02</td>
<td>awaiting recording</td>
<td>52007</td>
</tr>
<tr>
<td>Pilot land parcel (16.3 acres)</td>
<td>Northeast Corner of Otay Mesa Road and Piper Ranch Road</td>
<td>32009-01</td>
<td>2008-0187317</td>
<td>52003 &amp; 52003-A</td>
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<tr>
<td>Slope by Wal-Mart</td>
<td>East of Olympic Parkway, west of SR 125</td>
<td>32113-1</td>
<td>2009-0661860</td>
<td>52021-mA</td>
</tr>
<tr>
<td>Small parcel just outside of ROW</td>
<td>North of Olympic Parkway, west of SR 125</td>
<td>32026-2</td>
<td>2008-0108338</td>
<td>520022</td>
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<tr>
<td>Triangle parcel</td>
<td>Across SR 125 from the Operation Center</td>
<td>32014-01-01</td>
<td>2009-0692165</td>
<td>52005 &amp; 52006</td>
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<tr>
<td>12.78 acre industrial property (Roll Parcel)</td>
<td>Airway and SR 905</td>
<td>32001-01-01</td>
<td>2011-0487205</td>
<td>34007</td>
</tr>
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</table>
Schedule 5.3(a)

No Violation; Consents

Violations: None

Third Party Consents. The applicable contract counterparty’s consent is required in connection with the assignment of the following material Contracts:

1. California Department of Transportation – Consent to the assignment of the Franchise Development Agreement, the Lease and the related contracts.

2. InTrans’ consent to the assignment of the InTrans License Agreement.
Schedule 5.3(b)

Governmental Consents

1. California Department of Transportation – Consent to the Assignment of the Franchise Development Agreement and the Lease, and the waiver of the right of first refusal with respect to the transfer of the Operations Center parcel to SANDAG.

2. US Army Corps of Engineers – consent to assignment to and assumption by the Purchaser of the permit obligations under the following USACE Permits:

   a. Clean Water Act Section 404 Permit No. 952024200-TCD entered into between SBX and the USACE dated July 30, 2001, and any amendments thereto, and

   b. Streambed Alteration Agreement No. 5-325-99 entered into between SBX and the California Department of Fish and Game on June 5, 2001, and any amendments thereto.
Schedule 5.5(a)
Leased Real Property; Leased Real Property Liens

Leased Real Property:

Property identified in Exhibit A to the Lease Agreement recorded on November 16, 2007 as Instrument No. 07-0724726 in the Official Records of San Diego County, State of California.

Real Property Liens: None
Schedule 5.5(b)

Owned Real Property Necessary for Operation of Project; Owned Real Property Liens

1. Owned Real Property Necessary for Operation of Project

<table>
<thead>
<tr>
<th>Description and Location of Property</th>
<th>Address</th>
<th>Caltrans’ Number</th>
<th>Recorded Document Number</th>
<th>Right of Way Map</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations Center, parking and access road</td>
<td>1129 La Media Road, San Diego, 92154</td>
<td>32014-02-01</td>
<td>2011-0487204</td>
<td>52005</td>
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<tr>
<td>Slope by Wal-Mart</td>
<td>East of Olympic Parkway, west of SR 125</td>
<td>32113-2</td>
<td>2010-0539870</td>
<td>52021 &amp; 52021-A</td>
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</tbody>
</table>

2. Owned Real Property Liens, Rights of First Offer, etc.:

5.5(b)(ii) Grant of right to use Owned Real Property:

(a) Short-term Site Sublicense, granted to Sprint PCS Assets, LLC as of July 31, 2007, as amended; and

(b) Temporary power polls installed on the Operations Center parcel by J Street.

5.5(b)(ii) Right of First Offer: Caltrans’ rights of first offer under the Settlement Agreement among Caltrans, the Seller, the Collateral Agent the TIFIA Lenders and certain creditors of the Seller identified therein, dated as of April 6, 2011.
Schedule 5.5(e)

Personal Property Liens

None.
Schedule 5.6
Intellectual Property

South Bay Expressway, LLC has the following:

REGISTERED INTERNET DOMAIN NAMES
- gosbx.com
- sandiegofastrak.com Custom
  - sbexpress.com
  - sbexpress.net
  - sbexpress.org
  - sbxthe125.com
  - sdfastrak.com
  - southbayexpressway.com
  - southbayexpressway.net
  - southbayexpressway.org
  - sr125.com

REGISTERED TRADEMARKS
- PUT THE FUN BACK IN DRIVING

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<th>Country</th>
<th>Mexico</th>
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<tr>
<td>Registration No.</td>
<td>929,140</td>
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<tr>
<td>Class</td>
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<tr>
<td>Services</td>
<td>Advertising; business management; business administration; office functions</td>
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<tr>
<td>Registered Owner</td>
<td>California Transportation Ventures, Inc</td>
</tr>
<tr>
<td>Effective Date of Registration</td>
<td>January 13, 2006</td>
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<td>Term</td>
<td>10 years</td>
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<td>Renewal Date</td>
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<tr>
<td><strong>Class</strong></td>
<td>37 and 39</td>
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<tr>
<td><strong>Services</strong></td>
<td>Development, construction, repair and maintenance of Highways in Class 37. Transportation services, namely, operation of highways and roads in Class 39</td>
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<tr>
<td><strong>Registered Owner</strong></td>
<td>California Transportation Ventures, Inc</td>
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<td><strong>Effective Date of Registration</strong></td>
<td>July 14, 2009</td>
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<tr>
<td><strong>Term</strong></td>
<td>10 years</td>
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<td><strong>Renewal Date</strong></td>
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**LICENSES**

License of software and software code from Intrans for 20 years from April 28, 2011.

**TRADE NAMES:**

South Bay Expressway
Schedule 5.7(a)

Material Contracts

1. Franchise Development Agreement, as amended;
2. Lease Agreement;
3. SR 125/SR 905 Cost Sharing Agreement with Caltrans;
4. InTrans License Agreement;
5. Short-Term Site Sublicense (Sprint PCS Assets, LLC);
Schedule 5.7(b)

Exceptions to Validity of Material Contracts.

No exceptions.
Schedule 5.7(c)

Notices of Breach of Assigned Contracts; Exceptions to Validity of Assigned Contracts.

No notices or exceptions.
Schedule 5.8

Litigation.

None.
Schedule 5.9

Compliance with Laws, Permits.

No exceptions.
Schedule 5.10

Taxes

No exceptions.
Schedule 5.11

Environmental Matters

South Bay Expressway, LLC failed to promote and pursue a regional aerial disposition study to the satisfaction of the San Diego Regional Water Quality Control Board (San Diego Water Board). Although the San Diego Water Board subsequently rescinded their investigative order regarding this violation on August 28, 2007 as documented in a letter from Sheila K. Vassey, Senior Staff Counsel of the State Water Resources Control Board, dated September 18, 2007, the violation of regulatory compliance itself remains in effect per further discussion with San Diego Water Board.
### Schedule 5.12

**Insurance; Claims**

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<th>Policy Description</th>
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<td>Property Damage</td>
<td>The Insurance Company of the State of Pennsylvania (Chartis)</td>
<td>Policy Number: 7532583</td>
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<td>General Liability</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: GL09263267-03</td>
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<td>Automobile</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: BAP9263265-03</td>
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<td>Workers Compensation</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: WC9263266-03</td>
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<td>Executive Liability - D&amp;O and Employment Practices Liab</td>
<td>Arch Insurance Company</td>
<td>Policy Number: 6465729300</td>
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<td>Excess Directors &amp; Officers Liability</td>
<td>National Union Fire Ins Co of Pittsburgh, PA</td>
<td>Policy Number: 017915240</td>
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<td>Fidelity Bond - Commercial Crime</td>
<td>Federal Insurance Company (Chubb)</td>
<td>Policy Number: 82092348</td>
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<td>DIC - Earthquake</td>
<td>Empire Indemnity Insurance Company (Zurich)</td>
<td>Policy Number: 312569XQ1</td>
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<td>DIC - Earthquake</td>
<td>Hudson Specialty Insurance (OdysseyRe)</td>
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<td>Umbrella Liability</td>
<td>National Union Fire Ins. Co. of Pittsburg, PA (Chartis)</td>
<td>Policy Number: BE012733745</td>
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<td>Excess Umbrella Liability</td>
<td>St. Paul Fire and Marine Insurance Company (Travelers)</td>
<td>Policy Number: Q109003875</td>
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<td>Excess Umbrella Liability</td>
<td>Federal Insurance Company (Chubb)</td>
<td>Policy Number: 93635871</td>
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<td>Excess Umbrella Liability</td>
<td>National Surety Corporation (Fireman's Fund)</td>
<td>Policy Number: SHX000146566920</td>
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<td>Pollution Liability</td>
<td>Chubb Custom Insurance Company</td>
<td>Policy Number: 37312415</td>
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<td><strong>COMPLETED OPERATIONS POLICIES</strong></td>
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<td>Excess Liability Policy</td>
<td>ACE American Insurance Company</td>
<td>Policy Number: XLX G2058127A</td>
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<td>Excess Liability Policy</td>
<td>Allied World Assurance Company</td>
<td>Policy Number: C000839</td>
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<td>Excess Liability Policy - over Toll Rd and Gap Conn</td>
<td>Allied World Assurance Company</td>
<td>Policy Number: C002036/001</td>
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<td>Allied World Assurance Company</td>
<td>Policy Number: C011436/001</td>
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<td>Excess Liability Policy - Toll Rd</td>
<td>Lexington Insurance Company</td>
<td>Policy Number: 5576825</td>
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<td>Excess Liability Policy - Toll Rd</td>
<td>Starr Excess international</td>
<td>Policy Number: 6340186</td>
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<td><strong>General Liability</strong></td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: 3676496</td>
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<td><strong>General Liability</strong></td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: 3676623</td>
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<td>Incurred Deductible Agreement</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: N/A</td>
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<td><strong>PROFESSIONAL LIABILITY POLICIES</strong></td>
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<td>Architects &amp; Engineers Professional Liability</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: EOC 9374179-00</td>
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<td>Policy Number: EOC 3795266</td>
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<td><strong>CONSTRUCTION PERIOD WORKERS COMPENSATION POLICIES</strong></td>
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<tr>
<td>Workers Compensation</td>
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<td>Policy Number: WC 3676495-00</td>
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<td>Workers Compensation</td>
<td>Zurich American Insurance Company</td>
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**Claims:** none
## Schedule 5.14

### Material Permits

#### PART A

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<th>Approval</th>
<th>Date of Approval</th>
<th>Approving or Granting Agency</th>
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<td>Development Franchise Agreement including Amendments I through VI</td>
<td>January 6, 1991</td>
<td>State of California Department of Transportation (Caltrans)</td>
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<tr>
<td>Biological Opinion on State Route 125 Feb. 26, 1999 South, San Diego County, California (1-6-99-F-14)</td>
<td>February 26, 1999</td>
<td>U.S. Fish &amp; Wildlife Service (USFWS)</td>
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<tr>
<td>California Department of Fish and Game Consistency Determination Fish and Game Code Section 2080.1 CESA No. 2080-1999-022-5</td>
<td>June 11, 1999</td>
<td>California Department of Fish &amp; Game (CDFG)</td>
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<tr>
<td>Final Environmental Impact Report/Statement and Section 4(f) Evaluation, Route Location, Adoption, and Construction of State Route 125 Between State Route 905 on Otay Mesa to State Route 54 in Spring Valley in the County of San Diego, State of California</td>
<td>January 2000</td>
<td>Federal Highway Administration (FHWA) and Caltrans</td>
</tr>
<tr>
<td>Environmental Impact Report Resolution for Adoption of Findings, Statement of Overriding Considerations and a Mitigation Monitoring Program (11-SD-125 0.0/11.2) Resolution E-00-12</td>
<td>February 23, 2000</td>
<td>California Transportation Commission</td>
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<tr>
<td>Notice of Determination, Environmental Impact Report, State Clearinghouse No. 89011118</td>
<td>February 24, 2000</td>
<td>California Transportation Commission and Caltrans</td>
</tr>
<tr>
<td>Record of Decision, Route Location, Adoption, and Construction of State Route 125 Between Route 905 on Otay Mesa and Route 54 in Bonita/Spring Valley San Diego County, California [KP 0.0-18.02 (PM 0.0 to 11.2)]</td>
<td>June 9, 2000</td>
<td>FHWA</td>
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<td>Event Description</td>
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<td>Responsible Party</td>
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<td>Freeway Agreement</td>
<td>October 24, 2000</td>
<td>State of California acting by and through its Department of Transportation and the City of Chula Vista</td>
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<tr>
<td>Freeway Agreement</td>
<td>November 27, 2000</td>
<td>State of California acting by and through its Department of Transportation and the City of San Diego</td>
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<tr>
<td>Action on Request for Clean Water Act section 401 Water Quality Certification for Discharge of Dredged and/or Fill Materials, (File No. 99C0133) Order for Technically-conditioned Certification</td>
<td>April 27, 2001</td>
<td>California Regional Water Quality Control Board (RWQCB) San Diego Region</td>
</tr>
<tr>
<td>Request to Reinitiate Section 7 Consultation (1-6-99-F14) (Updated Biological Opinion/Conference Opinion)</td>
<td>June 11, 2001</td>
<td>USFWS</td>
</tr>
<tr>
<td>Department of the Army Permit, Number 952024200-TCD</td>
<td>July 30, 2001</td>
<td>U.S. Army Corps of Engineers (USACE)</td>
</tr>
<tr>
<td>Environmental Assessment, 404(b)(1) Evaluation, Public Interest Review, Permit Application Number: 952024200-TCD</td>
<td>July 30, 2001</td>
<td>USACE</td>
</tr>
<tr>
<td>Record of Decision, Route Location, Adoption, and Construction of State Route 125 Between Route 905 on Otay Mesa and Route 54 in Bonita/Spring Valley San Diego County, California</td>
<td>July 30, 2001</td>
<td>USACE</td>
</tr>
<tr>
<td>Streambed Alteration Agreement No. 5-325-99</td>
<td>June 5, 2001</td>
<td>CDFG</td>
</tr>
<tr>
<td>Freeway Agreement</td>
<td>January 16, 2002</td>
<td>State of California acting by and through its Department of Transportation and the County of San Diego</td>
</tr>
<tr>
<td>Amendment and Progress Update for the State Route 125 South Biological Opinion (1-6-99-F-14), San Diego County, California</td>
<td>May 19, 2003</td>
<td>USFWS</td>
</tr>
<tr>
<td>Event Description</td>
<td>Date</td>
<td>Responsible Body</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>----------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Letter clarification that the 401 certification includes construction of Mt.</td>
<td>May 23, 2002</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Miguel Road interchange</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detailed Vernal Pool Restoration Plan for State Route 125 South (EDAW)</td>
<td>June 2003</td>
<td>RWQCB, USFWS, USACE. All approved.</td>
</tr>
<tr>
<td>Request to Amend Special Condition No. 7 of the Corps Permit No. 952024200-TCD</td>
<td>July 14, 2003</td>
<td>USACE</td>
</tr>
<tr>
<td>in association with SR 125 South, San Diego County, CA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quino Checkerspot Butterfly Habitat Restoration Plan for State Route 125 South</td>
<td>August 2003</td>
<td>USFWS</td>
</tr>
<tr>
<td>(Dudek)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Final Habitat Mitigation and Revegetation Plan for SR 125 South Sweetwater River Crossing Temporary and Permanent Impacts</td>
<td>September 2003</td>
<td>RWQCB, USFWS, CDFG, USACE. All approved.</td>
</tr>
<tr>
<td>Final Habitat Management Plan for Johnson Canyon Open Space Preserve, San Diego County, CA</td>
<td>September 2003</td>
<td>USFWS and CDFG. All approved.</td>
</tr>
<tr>
<td>Habitat Management Plan for Lake Jennings Preserve, Lakeside, CA</td>
<td>September 2003</td>
<td>USFWS and CDFG. All approved.</td>
</tr>
<tr>
<td>Amendment No. 1 to Streambed Alteration Agreement Notification No. 5-325-99</td>
<td>September 17, 2003</td>
<td>CDFG</td>
</tr>
<tr>
<td>SR 125 South, San Diego County, CA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Re-initiations of Formal Consultation and Adoption of Conference Opinion for the Proposed State Route 125 South in San Diego County, CA (1-6-99-F-14R2)</td>
<td>December 23, 2003</td>
<td>USFWS</td>
</tr>
<tr>
<td>Amendment No. 2 to Streambed Alteration Agreement Notification No. 5-325-99</td>
<td>January 16, 2004</td>
<td>CDFG</td>
</tr>
<tr>
<td>SR 125 South, San Diego County, CA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amendment No. 3 to Streambed Alteration Agreement Notification No. 5-325-99</td>
<td>January 26, 2004</td>
<td>CDFG</td>
</tr>
<tr>
<td>SR 125 South, San Diego County, CA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Request to Amend Corps Permit No. 952024200-TCD in association with SR 125 South, San Diego County, CA</td>
<td>January 28, 2004</td>
<td>USACE</td>
</tr>
<tr>
<td>Habitat Management Plan for the Bonita Meadows Otay Tarplant Preservation Areas, SR 125 South, San Diego County, CA</td>
<td>May 2004</td>
<td>Condition of permits issued by USFWS and CDFG. All approved.</td>
</tr>
<tr>
<td>Enrollment Under Order No. 2001-96; NPDES Permit No. CAG919002; General Waste Discharge Requirement for Groundwater Extraction and Similar Waste Discharges</td>
<td>November 16, 2004</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Request for CWA Section 401 Water Quality Certification and Waiver of Waste Discharge Requirements for SR 125 South, San Diego County, CA</td>
<td>July 26, 2005</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Amendment No. 4 to Streambed Alteration Agreement Notification No. 5-325-99 SR 125 South, San Diego County, CA</td>
<td>June 29, 2005</td>
<td>CDFG</td>
</tr>
<tr>
<td>Request to Amend Corps Permit No. 952024200-TCD in association with SR 125 South, San Diego County, CA</td>
<td>August 1, 2005</td>
<td>USACE</td>
</tr>
<tr>
<td>State Route 125 South Otay River Revegetation Plan for Temporary Impacts, San Diego County, CA</td>
<td>November 2005</td>
<td>Condition of permits issued by RWQCB, USFWS, CDFG, and USACE. All approved.</td>
</tr>
<tr>
<td>Notice of Intent to Comply with the General Permit to Discharge Storm Water Associated with Construction Activity; WDID No. 9 37C339098</td>
<td>January 18, 2006</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Consistency Determination of the Biological Opinion No. 1-6-99-F-14 with the CESA</td>
<td>January 27, 2006</td>
<td>CDFG</td>
</tr>
<tr>
<td>Enrollment Under Order No. R9-2002-0020, NPDES Permit No. CAG679001, Discharges of Hydrostatic Test Water and Potable Water to Surface Waters and Storm Drains or Other Conveyance</td>
<td>July 27, 2006</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Request</td>
<td>Date</td>
<td>Agency</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Request to Extend the Expiration Date of the Corps Permit No. 952024200-TCD in association with SR 125 South, San Diego County, CA</td>
<td>October 3, 2006</td>
<td>USACE</td>
</tr>
<tr>
<td>Request to Modify a Temporary Access Route for the Vernal Pool and Quino Habitat Restoration Site on SR 125</td>
<td>October 6, 2006</td>
<td>USFWS</td>
</tr>
<tr>
<td>Request for Amendment to CWA Section 401 Water Quality Certification for SR 125 South, San Diego County, CA (File No. 99C-133)</td>
<td>August 21, 2007</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Request to Terminate Enrollment Under Order No. R9-2002-0020, NPDES Permit No. CAG679001, General Waste Discharge Requirements for Discharges of Hydrostatic Test Water and Potable Water to Surface Waters and Storm Drains or Other Conveyance Systems, San Diego Region</td>
<td>September 13, 2007</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Request to Extend the Expiration Date of the Corps Permit No. 952024200-TCD in association with SR 125 South, San Diego County, CA</td>
<td>November 13, 2007</td>
<td>USACE</td>
</tr>
<tr>
<td>Notice of Termination (NOT) of Coverage Under the Statewide Storm Water General Permit for WDID No. 9 37C339098</td>
<td>February 29, 2008</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Termination of Enrollment Under the General Permit for Groundwater Extraction Discharges Pursuant to Order No. 2001-96; NPDES Permit No. CAG919002</td>
<td>March 20, 2008</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Amended, Final Habitat Mitigation and Revegetation Plan for SR 125 South</td>
<td>April 2008</td>
<td>Condition of permits issued by RWQCB, USFWS, CDFG,</td>
</tr>
<tr>
<td>Description</td>
<td>Date</td>
<td>Agency</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>---------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Sweetwater River Crossing Temporary and Permanent Impacts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amendment to US Army Corps Permit No. 95204200-TCD in association with SR 125 South, San Diego County, CA</td>
<td>June 2, 2008</td>
<td>USACE</td>
</tr>
<tr>
<td>Amendment No. 5 (revised) to Streambed Alteration Agreement Notification No. 5-325-99 SR 125 South, San Diego County, CA</td>
<td>July 16, 2008</td>
<td>CDFG</td>
</tr>
<tr>
<td>Amendment No. 6 to Streambed Alteration Agreement Notification No. 5-325-99 SR 125 South, San Diego County, CA</td>
<td>January 30, 2009</td>
<td>CDFG</td>
</tr>
<tr>
<td>2nd Amendment, Final Habitat Mitigation and Revegetation Plan for SR 125 South Sweetwater River Crossing Temporary and Permanent Impacts</td>
<td>January 2009</td>
<td>CDFG</td>
</tr>
<tr>
<td>Request for CWA Section 401 Water Quality Certification for SR 125 Pedestrian/Equestrian Bridge at Bonita Golf Course, San Diego County, California (File No. 09C-030)</td>
<td>April 27, 2009</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Amendment No. 7 to Streambed Alteration Agreement Notification No. 5-325-99 SR 125 South, San Diego County, CA</td>
<td>April 29, 2009</td>
<td>CDFG</td>
</tr>
<tr>
<td>Second Amendment to the Biological Opinion on SR 125 to include Construction of a Pedestrian/Equestrian Bridge at Bonita Golf Course, San Diego County, California</td>
<td>August 11, 2009</td>
<td>USFWS</td>
</tr>
<tr>
<td>Department of the Army Nationwide Permit Authorization (SPL-2009-00339-VCC) for impacts associated with the Sweetwater Golf Course Bridge Project</td>
<td>August 25, 2009</td>
<td>USACE</td>
</tr>
<tr>
<td>Approvals Relating to Utility and Other Publicly Owned Facilities. All approvals related to location or relocation of existing or future utilities and other facilities owned by public agencies, including construction</td>
<td>May 2003 to December 2010</td>
<td>Sweetwater Water Authority, SDG&amp;E, Otay Water District, County of San Diego, City of San Diego, City of Chula Vista</td>
</tr>
<tr>
<td>Permits</td>
<td>Dates</td>
<td>Approvals</td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
<td>-----------</td>
</tr>
<tr>
<td>Construction Approvals. All approvals required in the normal course of construction, including, but not limited to, encroachment permits, approvals relating to acquisition of Right of Way, approvals relating to use of public roadways for construction vehicles and building and grading permits.</td>
<td>May 2003 to December 2010</td>
<td>Sweetwater Water Authority, SDG&amp;E, Otay Water District, County of San Diego, City of San Diego, City of Chula Vista and Caltrans</td>
</tr>
<tr>
<td>Operations Approvals. All approvals required in the normal course of operations, including, but not limited to, the coordination of the Toll Road with local streets, interoperability agreements with public toll operators and the Police Services Agreement referenced in the Franchise Agreement.</td>
<td>January 2006 to April 28, 2011</td>
<td>Department of California Highway Patrol, Orange County Transportation Authority, Bay Area Transportation Authority, I-15 FasTrak, Transportation Corridor Agencies, City of Chula Vista and Department of Transportation.</td>
</tr>
</tbody>
</table>
PART B:

The following approvals are necessary or may be necessary to construct or operate the Project:

1. Approvals Relating to Implementation of Mitigation. Certain of the Governmental Approvals issued or obtained in connection with the Project require additional future approvals from Governmental Authorities to comply with or to implement the Governmental Approvals. One additional approval includes the approval of mechanisms for long-term management entities for mitigation preserves (Lake Jennings, Bonita Meadows and Johnson Canyon). Pursuant to the settlement agreement with Caltrans, effective date April 28, 2011, the obligations for the three mitigation properties have now been assumed by Caltrans.

2. Approvals Relating to Implementation of Mitigation. Certain of the Governmental Approvals issued or obtained in connection with the Project require additional future approvals from Governmental Authorities to comply with or to implement the Governmental Approvals. Such additional approvals also include approval of wetland revegetation implemented at the Sweetwater and Otay rivers. The Otay River revegetation site was implemented in 2008 and must be maintained and monitored for a 5 year period (till May 2013). At that time a report must be submitted to verify the site has satisfied success criteria specified in the restoration plan and the Resource Agencies must concur. For the Sweetwater River site, there is a 1.23 acre revegetation extent that was implemented in 2008 and the 5 year maintenance/monitoring period extends until May 2013. There is an adjacent 0.08 acre revegetation area that was implemented in January 2010 (as mitigation for the Golf Course bridge betterment) and the 5 year maintenance/monitoring period extends until December 2014. Reports must be submitted to verify both sites have satisfied success criteria specified in the restoration plan and the Resource Agencies must concur. SANDAG is obligated to satisfy these Government Approvals.
Schedule 5.15

Franchise Agreement Matters

Exceptions – None.

5.15(e):

| Approx 3 to 7 acres industrial | Roll parcel excess adjacent to North/South connectors | awaiting mapping |
### Schedule 7.12

#### Existing Letters of Credit

Letters of Credit securing the obligations of South Bay Expressway, LLC have been issued as follows:

<table>
<thead>
<tr>
<th>Issuing Bank</th>
<th>Letter of Credit Number</th>
<th>Beneficiary</th>
<th>Amount</th>
<th>Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banco BilbaoVizcaya Argentaria</td>
<td>SBLC3700189NY</td>
<td>US Army Engineer District, Los Angeles</td>
<td>$201,841</td>
<td>Sweetwater River Restoration</td>
</tr>
<tr>
<td>Banco BilbaoVizcaya Argentaria</td>
<td>SBLC4700398NY</td>
<td>US Army Engineer District, Los Angeles</td>
<td>$828,600</td>
<td>Otay River Restoration</td>
</tr>
<tr>
<td>Banco BilbaoVizcaya Argentaria</td>
<td>SBXCL3700190NY</td>
<td>US Army Engineer District, Los Angeles</td>
<td>$491,704</td>
<td>Vernal Pools at Johnson Canyon Mitigation property *</td>
</tr>
</tbody>
</table>

Obligations for this property are fully assumed by Caltrans pursuant to a settlement agreement dated April 6, 2011.
Schedule A

Certain Permitted Liens

None.
Acquisition of South Bay Expressway

December 2, 2011

South Bay Expressway Acquisition Update

• Financing & Traffic Modeling
• Purchase & Financing Documents
• Transitional Operations Services
• Next Steps
• Recommendation
Project Evaluation Goals for the Region

Purchasing the SR 125 toll road under TransNet Loan / Swap provides regional benefits

• **Improve Mobility:**
  Accelerate congestion relief 20 years earlier than planned for in the RTP and continue scheduled progress on current and planned transportation projects

• **Improve LOS / Lower Costs:**
  Opportunity to provide a higher level of service at a lower cost

• **Lower Tolls:**
  Purchase could provide SANDAG with the opportunity to lower SR 125 toll rates

• **Location:**
  SR 125 is positioned to accommodate future growth in South County

• **Flexibility:**
  SANDAG would have the authority to decide how SR 125 operates, including Managed Lanes

• **Eliminate Non-Compete Clause:**
  Part of Caltrans Franchise Agreement

---

**TransNet Loan / Swap**

**Projected Financial Obligations and Toll Revenues**

Swap is key to achieving project goals
**TransNet Loan / Swap**

SR 125 traffic flow changes (ADT) from 45% toll reduction

<table>
<thead>
<tr>
<th>Year</th>
<th>Baseline</th>
<th>Toll Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>24,000</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>24,500</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>25,500</td>
<td></td>
</tr>
</tbody>
</table>

**TransNet Loan / Swap**

I-805 traffic flow changes (ADT) from 45% toll reduction

<table>
<thead>
<tr>
<th>Year</th>
<th>Baseline</th>
<th>Toll Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>230,000</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>225,000</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>220,000</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>220,000</td>
<td></td>
</tr>
</tbody>
</table>
Due Diligence Process

- Review of thousands of pages of documents, including contracts, settlement agreements, and consultants’ reports
- Multiple drafts of, and negotiating sessions concerning, transaction documents
- Coordination with SANDAG staff:
  - Gary Gallegos
  - Renée Wasmund
  - Marney Cox
  - Lauren Warrem
  - Samuel Johnson

Topics

- Asset Purchase Agreement (APA)
- Financing Documents:
  - Master Trust Agreement (MTA)
  - TIFIA Loan Agreement
  - TransNet Loan Agreement
  - Series D Agreement

- Proposed amendments to Franchise Agreement (DFA)
Asset Purchase Agreement

The document fundamentally incorporating the rights and obligations of the parties to this transaction.

ASSET PURCHASE AGREEMENT

Key Elements

- Acquired Assets
- Purchase Price and Components
- Liabilities and Escrow Fund
- Employees and Transition Period
- Release
- Closing
Acquired Assets

Assigned Contracts – Schedule 1.1(a)

Includes the DFA

Leased Real Property – Schedule 5.5(a)

Leased Real Property:

Property identified in Exhibit A to the Lease Agreement recorded on November 16, 2007 as Instrument No. 07-0724726 in the Official Records of San Diego County, State of California.

Real Property Liens: None
Acquired Assets

Owned Real Property – Schedule 5.5(b)

1. Owned Real Property Necessary for Operation of Project, Owned Real Property Liens

<table>
<thead>
<tr>
<th>Description and Location of Property</th>
<th>Recorded Document Number</th>
<th>Right of Way Map</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations Center, parking area near I-15</td>
<td>0-0487204</td>
<td>52005</td>
</tr>
</tbody>
</table>

Includes Deed to Operations Center

2. Owned Real Property Liens, Rights of First Offer, etc.

5.5(b)(ii) Grant of right to use Owned Real Property:

(a) Short-term Site Sublicense, granted to Sprint PCS Assets, LLC as of July 31, 2007, as amended; and

(b) Temporary power poles installed on the Operations Center parcel by J Street.

5.5(b)(ii) Right of First Offer: Caltrans’ rights of first offer under the Settlement Agreement among Caltrans, the Seller, the Collateral Agent the TFHA Lenders and certain creditors of the Seller identified therein, dated as of April 6, 2011.

Acquired Assets

Equipment – Schedule 1.1(b)

Includes tolling and Traffic Monitoring Equipment and Software
Acquired Assets

Material Permits – Schedule 5.14

<table>
<thead>
<tr>
<th>Asset</th>
<th>Asset Management Authority</th>
<th>Date of Asset Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Franchise Agreement ( frac1{n^2}, excluding assignment)</td>
<td>January 6, 1991</td>
<td>State of California, Department of Transportation (Caltrans)</td>
</tr>
<tr>
<td>Biological Opinion on State Route 125, south of Valley View Road, San Diego County,</td>
<td>February 26, 1999</td>
<td>U.S. Fish &amp; Wildlife Service (USFWS)</td>
</tr>
<tr>
<td>California Department of Fish and Game Consistency Determination for Home Code Service 20811</td>
<td>June 11, 1999</td>
<td>California Department of Fish and Game (DFG)</td>
</tr>
<tr>
<td>Final Environmental Impact Report: Determination and Final Mitigation Measures for the Construction of State Route 125 Between State Route 67 and Old Highway 96 in San Diego, California</td>
<td>January 2000</td>
<td>Federal Highway Administration (FHWA) and California</td>
</tr>
<tr>
<td>Environmental Impact Report Rebuttal for Approval of Findings, Statement of Overriding Considerations, and 96-03-125 10(11.23) Rebuttal 12426-12</td>
<td>February 25, 2000</td>
<td>California Transportation Commission</td>
</tr>
<tr>
<td>Notice of Determination, Environmental Impact Report, State Coastal Zone No. 108814-14</td>
<td>February 28, 2000</td>
<td>California Transportation Commission and Caltrans</td>
</tr>
<tr>
<td>Record of Decision, Reuse, Locomotion, Adoption, and Construction of State Route 125 at Falls and Route 94 in Sherwood/Springs Valley, San Diego County, California (SR 125:0-15.492, SR 94:0-11.23)</td>
<td>June 8, 2000</td>
<td>FHWA</td>
</tr>
<tr>
<td>Insurance Agreement</td>
<td>October 24, 2000</td>
<td>State of California acting by and through its Department of Transportation</td>
</tr>
</tbody>
</table>

Asset Purchase Agreement

Other Acquired Assets

- All necessary business records
- Any of SBX’s assignable rights under existing commercial general liability policies issued by Zurich
- All supplies owned by SBX to the extent related to the transferred assets
- All A/R related to toll violations arising prior to closing upon which SBX has not collected within six months after closing
Asset Purchase Agreement

Purchase Price and Components

$341,500,000
  • $239,965,600 cash at closing (paid to private banks)
  • $7,500,000 escrow fund
    – Both funded by TransNet loan
  • Assumption of existing TIFIA loan ($92,534,400)
  • Series D ($1,445,850)

Asset Purchase Agreement

Escrow Fund

SANDAG to assume only those liabilities that relate to the transferred assets as they may arise post-closing

$7,500,000
  • Secures post-closing liabilities of SBX
    – Includes $1,500,000 for tolling software malfunction during first six months
  • 18-month term
    – Reduces by $2,500,000 every six months
  • Funds are set aside in case of dispute
Asset Purchase Agreement

Transition Period

• APA provides for a six-month period for a seamless transition of the assets to SANDAG (subject to a separate transition agreement)

• APA creates a vehicle by which SANDAG may bring on any of SBX’s employees via a third party contractor such as the one SANDAG uses for Interstate 15

• APA provides that SBX’s liabilities with respect to employees remain with SBX

Asset Purchase Agreement

Release

• SBX releases SANDAG from all claims and litigation

• Scope of Release includes County and all cities
Asset Purchase Agreement

Closing

• To take place at SANDAG’s office after satisfaction of conditions, which include:
  – Board approval;
  – Key documents, including:
    • The Assignment of Lease with Caltrans
    • Caltrans’ consent to the assignment of the DFA
    • Grant deeds
    • The SANDAG Release

Target Date: December 21, 2011

– If closing does not occur on or before December 31, 2011, either party may walk away from this transaction.

Asset Purchase Agreement

Open Issues

• Finalizing APA and its schedules, exhibits, and other subsidiary agreements
Master Trust Agreement

Primary Elements

- Flow of Funds
- Rate Covenant
- Toll Covenant
- Non-Recourse Provision

Open Issues

- Ability to Issue Variable Rate Debt
- Objective Additional Debt Test
TIFIA Loan Agreement

Primary Elements

• Assumption of Existing Loans
• Existing Security
• Amortization Schedule
• Payment Default

TIFIA Loan Agreement

Open Issues

• Limitations on Representations
• Additional Junior Debt Test
• Limitation on Indemnity Obligations
• Express Non-Recourse Provision
• Expenses
**TransNet Loan Agreement**

**Primary Elements**

- Two Payment Schedules
  - Cash and Bond Proceeds
- Security
  - Real Property and Toll Revenues
- Amortization Schedule – Applies Even if Swap Occurs
- Reimbursement of SANDAG Expenses
- Maturity Date

---

**TransNet Loan Agreement Terms**

- SANDAG would borrow the Principal Amount of $255,749,000 from the San Diego County Regional Transportation Commission
- $252,749,000 from TransNet bond proceeds and $3,000,000 from TransNet cash on hand to cover initial operating and maintenance costs for the toll road
- Proceeds of the Promissory Note would only be used for costs associated with the SR 125 toll road franchise
**TransNet Ordinance Requirements**

- Loans and exchanges permitted to “maximize the effective use of funds”

- TransNet revenues must be made whole and detailed fund repayment provisions required
  - Detailed fund repayment schedule in Exhibit A
  - The interest rate SANDAG will be charged is 4.25% based on recent TransNet borrowing history

- The percentage of funds allocated for each purpose as provided in Section 4 must be maintained over the duration of the measure
  - Staff has confirmed that the loan will not result in exceeding the 42 and four-tenths percent allocated for major highway and transit congestion relief projects

---

**Repayment of TransNet Loan**

- Potential methods of repayment are included in Section 15 of the Note
  - SANDAG could repay the Note in accordance with the payment schedule
  - SANDAG could also prepay the Note without penalty
  - Repayment in whole or in part could be made by the Commission taking action to forgive or cancel all or a portion of the principal amount based on one or more amendments to the TransNet Ordinance to implement an exchange of one or more projects for the SR 125 transferred assets

- Following the proposed swap, the payment schedule for the Note would be revised and brought to the ITOC and the Board for review
Series D Agreement

Primary Elements

• Payments due ONLY After Full TIFIA Payment and Full TransNet Satisfaction
• Toll Covenant
• Security
• Unpaid Amounts Forgiven – December 31, 2042

The Development Franchise Agreement

and its Proposed Amendments

Signed 1990

2007

31 years

Runs until 2042
Franchise Agreement

Obligations

• Once the DFA is assigned to SANDAG, it will be required to operate SR 125 until 2042 in exchange for an annual payment of $120

• Caltrans profit sharing provision for profits in excess of 18.5%

• Caltrans maintenance and operations standards will apply

Franchise Agreement

Obligations

• Contains numerous cross-indemnities

• SANDAG will be required to maintain insurance in an amount of at least $50 million

• Grants lenders “step-in” rights in the event of default
Franchise Agreement Rights

- Set the tolls and operate toll road
- Expand the roadway
- Enter into “airspace” leases with third parties within the toll road right-of-way
- Request that Caltrans provide certain maintenance services on a reimbursement basis

Caltrans Term Sheet

- Caltrans prefers to wait to modify the DFA after the sale closes
- Current DFA and lease will be assigned
- Many provisions are in the DFA to address SBX’s private sector status
  - Some of these provisions will be modified, but not removed due to the possibility that SANDAG may want to sell the toll road back to a private sector owner at some point
Caltrans Term Sheet

• Main themes of change include:
  – Removal of outdated provisions regarding the development and construction phase of the toll road
  – Changes to provisions concerning competing facilities
  – Modifications to applicable provisions in recognition of SANDAG being a public agency versus a private sector entity like SBX

Caltrans Term Sheet

• Goal is to maintain the status quo with regard to liability, while discussing appropriate changes to the indemnification provisions in the DFA

• Amended and restated DFA to be completed within 90 days of purchase
Next Steps

December 16 Board meeting (purchase)

• Final purchase and financial documents
• Requests for approval:
  – Execution of closing documents
  – Adopt CEQA Findings
  – Schedule 1st and 2nd reading of TransNet Ordinance
  – Budget Amendment FY12

Item 2

Acquisition of South Bay Expressway Assets: Review of Draft Documents, Modeling Results, Toll Alternatives, and Authorization for Day One Operations Service Provider

Recommendation:
The Board of Directors is asked to discuss the draft purchase and financing related documents, including proposed amendments to the Development Franchise Agreement with Caltrans, review modeling results and toll alternatives, and authorize the Executive Director to execute an agreement with SBX to provide transitional operations services for six months following the closing on terms deemed favorable to SANDAG.