BOARD OF DIRECTORS AGENDA

Friday, December 16, 2011
9 a.m. to 12 noon
SANDAG Board Room
401 B Street, 7th Floor
San Diego

AGENDA HIGHLIGHTS

- ELECTION OF 2012 SANDAG BOARD OFFICERS
- APPROVAL OF PROPOSED AMENDMENTS TO COMPREHENSIVE FARE ORDINANCE
- ACQUISITION OF SOUTH BAY EXPRESSWAY ASSETS: FINAL CLOSING DOCUMENTS

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(619) 699-1900  •  Fax (619) 699-1905  •  www.sandag.org

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Mayor, La Mesa
Mary Teresa Sessom
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Gary L. Gallegos
Executive Director, SANDAG
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BOARD OF DIRECTORS
Friday, December 16, 2011

ITEM #

1. APPROVAL OF MEETING MINUTES

   +A. NOVEMBER 4, 2011, BOARD BUSINESS MEETING MINUTES
   +B. NOVEMBER 18, 2011, BOARD BUSINESS MEETING MINUTES

2. 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.

3. ACTIONS FROM POLICY ADVISORY COMMITTEES

   This item summarizes the actions taken by the Borders Committee on November 18, the Executive and Regional Planning Committees on December 2, and the Public Safety Committee on December 9, 2011.

CONSENT (4 through 5)

4. REPORT SUMMARIZING DELEGATED ACTIONS TAKEN BY EXECUTIVE DIRECTOR (Lauren Warrem)*

   In accordance with SANDAG Board Policy Nos. 003 (Investment Policy), 017 (Delegation of Authority), and 024 (Procurement and Contracting-Construction), this report summarizes certain delegated actions taken by the Executive Director since the last Board of Directors meeting.

5. REPORTS ON MEETINGS AND EVENTS ATTENDED ON BEHALF OF SANDAG (Kim Kawada)

   Board members will provide brief reports orally or in writing on external meetings and events attended on behalf of SANDAG since the last Board of Directors meeting.
CHAIR’S REPORT (6 through 7)

6. ELECTION OF 2012 SANDAG BOARD OFFICERS
   (National City Mayor Ron Morrison, Nominating Committee Chair) APPROVE

The Nominating Committee recommends the attached slate of candidates for SANDAG Chair, First Vice Chair, and Second Vice Chair for calendar year 2012. Additional nominations for any officer position may be made by Board members at the December meeting. The Board of Directors is asked to elect SANDAG Board Officers for the upcoming year.

7. UPDATE ON 2012 ANNUAL BOARD RETREAT (Colleen Windsor) INFORMATION

An update will be provided on the SANDAG Board of Directors Annual Retreat, which is scheduled to start on Wednesday, February 1, and conclude on Friday morning, February 3, 2012.

REPORTS (8 through 9)

8. APPROVAL OF PROPOSED AMENDMENTS TO COMPREHENSIVE FARE ORDINANCE (First Vice Chair Jack Dale, Transportation Committee Chair; Brian Lane) APPROVE

The Board of Directors is asked to approve amendments to the Regional Comprehensive Fare Ordinance. The proposed changes affect services operated by both Metropolitan Transit System and North County Transit District.

9. ACQUISITION OF SOUTH BAY EXPRESSWAY ASSETS: FINAL CLOSING DOCUMENTS (First Vice Chair Jack Dale; Marney Cox)* APPROVE

At its December 2, 2011, meeting, the Board of Directors reviewed the initial draft documents associated with the acquisition of the State Route 125 (SR 125) toll road and was provided modeling information and tolling alternatives available within various financial constraints. The Board of Directors is asked to: (1) adopt Resolution Nos. 2012-14 through 2012-16 relating to findings and actions required by the California Environmental Quality Act and the Addendum to Final Environmental Impact Report, March 2003 MOBILITY 2030, The Transportation Plan for the San Diego Region (Attachments 9 and 10); (2) approve the acquisition and financing method for SR 125 asset purchase from South Bay Expressway; (3) adopt Resolution No. 2012-13, which will authorize the Executive Director to execute all of the documents necessary to acquire the SR 125 assets, including the Letter of Intent concerning amendments to the Development Franchise Agreement with Caltrans in substantially the same form as attached (Attachment 7), and to finance the purchase on behalf of SANDAG; (4) adopt RTC Resolution No. 2012-01, authorizing the Executive Director to issue a loan to SANDAG in the form of the TransNet Promissory Note in substantially the same form as attached on behalf of the San Diego County Regional Transportation Commission (Attachment 8); (5) direct staff to return with a proposed amendment to the TransNet Extension Ordinance to swap the funds allocated for two reversible high-occupancy vehicle lanes on Interstate 805 between SR 905 and SR 54 for the acquisition of SR 125; and (6) approve an amendment to the FY 2012 Budget related to SR 125 functions (Attachment 12).
10. 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.

11. UPCOMING MEETINGS

The next Board Policy meeting is scheduled for Friday, January 13, 2012, at 10 a.m. The next Board Business meeting is scheduled for Friday, January 27, 2012, at 9 a.m.

12. ADJOURNMENT

+ next to an agenda item indicates an attachment
* next to an agenda item indicates a San Diego County Regional Transportation Commission item
BOARD OF DIRECTORS DISCUSSION AND ACTIONS

NOVEMBER 4, 2011

Chair Jerome Stocks (Encinitas) called the meeting of the SANDAG Board of Directors to order at 9:04 a.m. The attendance sheet for the meeting is attached.

1. PUBLIC COMMENTS/COMMUNICATIONS/MEMBER COMMENTS

   Mike Bullock, Chair of the Transportation Committee of the San Diego Chapter of the Sierra Club, provided comments related to greenhouse gas levels and climate change.

REPORTS (2)

2. HEARING OF NECESSITY: PARTIAL ACQUISITION OF EASEMENTS ON VARIOUS PROPERTIES LOCATED IN THE CITY OF SAN DIEGO (ADOPT/APPROVE)

   John Kirk, Deputy General Counsel, introduced the item, and noted the legal findings required for the adoption of a Resolution of Necessity.

   John Haggerty, Division Director of Rail Implementation, provided the staff report describing the actions needed for several temporary easements and one permanent easement for the Sorrento to Miramar Double Track, Phase 1, and how this project meets the required findings.

   Two property owners have not yet settled on this matter but negotiations are ongoing.

   Bruce Beech, Best Best & Krieger, provided information on the issues related to the two unresolved property matters.

   Chair Stocks opened the Hearing of Necessary at 9:28 a.m.

   Mike Bullock, Chair of the Transportation Committee of the San Diego Chapter of the Sierra Club, thanked the Board for transit projects contained in the 2050 Regional Transportation Plan, and expressed his appreciation for this project that will move transit forward.

   Kerry Joannides, Creekside Properties LLC, objected to approval of the Resolution of Necessity.

   Chairman Stocks closed the Hearing of Necessity at 9:31 a.m.
Action: Upon a motion by Council President Tony Young (City of San Diego) and second by Mayor Ron Morrison (National City), the Board of Directors adopted Resolution of Necessity No. 2012-11 (in substantially the same form as Attachment 1 to the agenda report) by a two-thirds vote, pertaining to acquisition of temporary and permanent easements on portions of assessor parcel numbers owned by CLL Roselle LLC (340-080-40), Caryon Properties, LLC (341-321-37 & 38, 343-010-19), The Silverstone Company, LP (343-130-09), Edward G. Wong and Ellen G. Wong, Sorrento Creek Corporation (343-130-20, 343-130-01), Creekside Property Holdings, LLC (343-130-17), and Helf Sorrento, LLC (343-130-16), located in the City of San Diego; and (3) authorize staff to proceed with the condemnation proceedings necessary to acquire the partial interests in the subject parcels. Yes – 18 (weighted vote, 92%). No – 0 (weighted vote, 0%). Abstain – 0 (weighted vote, 0%). Absent – Chula Vista (weighted vote 8%).

3. CONTINUED PUBLIC COMMENTS

There were no public comments.

4. UPCOMING MEETINGS

The next Board Business meeting is scheduled for Friday, November 18, 2011, at 9 a.m. (third Friday of the month due to the Thanksgiving holiday schedule). The next Board Policy meeting is scheduled for Friday, December 2, 2011, at 10 a.m. (first Friday of the month due to the Christmas holiday schedule).

5. ADJOURNMENT

The meeting was adjourned at 9:33 a.m.

DGunn/M/DGU

Attachment: Attendance Sheet
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<tr>
<th>JURISDICTION/ORGANIZATION</th>
<th>NAME</th>
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<tr>
<td>City of Carlsbad</td>
<td>Matt Hall (Member)</td>
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<td>City of Escondido</td>
<td>Sam Abed (Primary)</td>
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<td>Allen Lawson (Member)</td>
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<td></td>
<td>Edwin Romero (Member)</td>
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First Vice Chair Jack Dale (Santee) called the meeting of the SANDAG Board of Directors to order at 9:06 a.m. The attendance sheet for the meeting is attached.

1. **APPROVAL OF MEETING MINUTES (APPROVE)**

   **Action:** Upon a motion by Mayor Matt Hall (Carlsbad), and a second by Mayor Mark Lewis (El Cajon), the Board of Directors approved the minutes from the October 14 and October 28, 2011, meetings.

2. **PUBLIC COMMENTS/COMMUNICATIONS/MEMBER COMMENTS**

   Lorraine Leighton, member of the public, expressed support for a train station at Camp Pendleton and supported the Board’s purchase of State Route 125.

3. **ACTIONS FROM POLICY ADVISORY COMMITTEES (APPROVE)**

   This item summarized the actions taken by the Borders Committee on October 28, and the Executive, Transportation, and Regional Planning Committees on November 4, 2011.

   **Action:** Upon a motion by Mayor Mary Sessom (Lemon Grove) and second by Mayor Cheryl Cox (Chula Vista), the Board of Directors approved the actions taken by the Policy Advisory Committees at the meetings noted above. Yes - 16 (weighted vote, 100%). No - 0 (weighted vote, 0%). Abstain - 0 (weighted vote, 0%). Absent - Coronado, County of San Diego, and National City.

   Mayor Jim Desmond (San Marcos) asked that Consent Item No. 5 be pulled from Consent.

**CONSENT ITEMS (4 through 11)**

4. **RECOMMENDATIONS FROM THE 2011 BINATIONAL SEMINAR (APPROVE)**

   The Borders Committee recommended that the Board of Directors approve the recommendations from the 2011 Binational Seminar “Enhancing Transit and Non-Motorized Mobility on the Border.”
6. **TransNet ENVIRONMENTAL MITIGATION PROGRAM: ANNUAL STATUS REPORT (INFORMATION)**

This report provided the Board of Directors with background information about the TransNet Environmental Mitigation Program and program accomplishments for FY 2011.

7. **QUARTERLY INVESTMENT REPORT FOR PERIOD ENDING SEPTEMBER 30, 2011 (INFORMATION)**

The SANDAG Investment Policy requires that the Board of Directors be provided a quarterly report of investments held by SANDAG. This report included all money under the direction or care of SANDAG as of September 30, 2011.

8. **QUARTERLY PROGRESS REPORT ON TRANSPORTATION PROJECTS - JULY THROUGH SEPTEMBER 2011 (INFORMATION)**

This quarterly report summarized the current status of major highway, transit, arterial, traffic management, and transportation demand management projects in the SANDAG five-year Regional Transportation Improvement Program for the period July to September 2011.

9. **REPORT SUMMARIZING DELEGATED ACTIONS TAKEN BY EXECUTIVE DIRECTOR (INFORMATION)**

In accordance with SANDAG Board Policy Nos. 003 (Investment Policy), 017 (Delegation of Authority), and 024 (Procurement and Contracting-Construction), this report summarized certain delegated actions taken by the Executive Director since the last Board of Directors meeting.

10. **REPORTS ON MEETINGS AND EVENTS ATTENDED ON BEHALF OF SANDAG (INFORMATION)**

Board members provided brief reports orally or in writing on external meetings and events attended on behalf of SANDAG since the last Board of Directors meeting.

11. **ANNUAL UPDATE ON THE ACTIVITIES OF CRIMINAL JUSTICE RESEARCH AND CLEARINGHOUSE (INFORMATION)**

As part of the SANDAG Criminal Justice Clearinghouse, regional crime and arrest statistics as well as statistics related to drug use among the offender population are tracked on a regular basis. SANDAG has maintained these statistics since the late 1980s and remains the only regional source for up-to-date historical information. These data provide timely information for policymakers and practitioners interested in how crime and law enforcement’s response varies over time and across jurisdictions. This report provided an overview and update of the activities and accomplishments of the Criminal Justice Research Unit and the Clearinghouse.

**Action:** Upon a motion by Mayor Sessom, and a second by Mayor Don Higginson (Poway), the Board of Directors approved Consent Items Nos. 4, 6, 7, 8, 9, 10 and 11. Yes - 17. No - 0. Abstain - 0. Absent – Coronado and National City.
5. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM UPDATE FOR FEDERAL TRANSIT ADMINISTRATION AND FEDERAL HIGHWAY ADMINISTRATION PROJECTS (INFORMATION)

SANDAG participates in both the Federal Transit Administration and Federal Highway Administration Disadvantaged Business Enterprise (DBE) programs. The current DBE goals for each program are established over a triennial period (FY 2010 to FY 2012). This report summarized the current and anticipated participation of DBEs during this period.

Mayor Desmond asked if SANDAG tracks local participation on contracts. Gary L. Gallegos, Executive Director, responded that we do not currently track that information, but are working to provide information to the Executive Committee on options for tracking additional contractor information besides federal DBE requirements.

Action: This item was presented for information only.

CHAIR’S REPORT (12)

12. REPORT FROM NOMINATING COMMITTEE ON SLATE OF BOARD OFFICERS FOR 2012 (INFORMATION)

In September, Chair Stocks appointed a six-person Nominating Committee for 2012 Board officers.

Mayor Ron Morrison (National City), Nominating Committee Chair, reported that after consideration of the applications, the Nominating Committee recommended the following slate of nominees for SANDAG Chair, First Vice Chair, and Second Vice Chair positions for 2012: Encinitas Deputy Mayor Jerome Stocks (Chair); Santee Councilmember Jack Dale (First Vice Chair); and Imperial Beach Mayor Jim Janney (Second Vice Chair). In accordance with SANDAG Bylaws, the election of officers is scheduled for the December Board of Directors meeting. Additional nominations from the floor also may be made at the December meeting.

Action: This item was presented for information only.

REPORTS (13 through 16)

13. TransNet ENVIRONMENTAL MITIGATION PROGRAM IMPLEMENTATION RECOMMENDATIONS (APPROVE)

The Regional Planning and Transportation Committees recommended that the Board of Directors: (1) approve minor updates to the five-year TransNet Environmental Mitigation Program (EMP) funding strategy pursuant to the executed TransNet EMP Memorandum of Agreement, including the allocation of FY 2012 funding for coordination, management, and monitoring activities as outlined in the report; and (2) approve the award of FY 2011 land management grants as outlined in the report.
**Action**: Upon a motion by Mayor Sessom and second by Mayor Lesa Heebner (Solana Beach), the Board of Directors: (1) approved minor updates to the five-year TransNet EMP funding strategy pursuant to the executed TransNet EMP Memorandum of Agreement, including the allocation of FY 2012 funding for coordination, management, and monitoring activities as outlined in the agenda report; and (2) approved the award of FY 2011 land management grants as outlined in the agenda report. Yes – 18 (weighted vote, 100%). No – 0 (weighted vote, 0%). Abstain – 0 (weighted vote, 0%). Absent - Coronado.

14. **2012 STATE TRANSPORTATION IMPROVEMENT PROGRAM (APPROVE)**

Mayor Hall, Transportation Committee Vice Chair, introduced this item.

The California Transportation Commission (CTC) has released its fund estimate for the 2012 State Transportation Improvement Program (STIP). The Transportation Committee recommended that the Board of Directors approve the programming and submission of the 2012 STIP to the CTC, in substantially the same form as included in the agenda report.

Sookyung Kim, Financial Programming Manager, noted that this item went before the Independent Taxpayer Oversight Committee (ITOC), and the ITOC recommended approval of the recommended action.

**Action**: Upon a motion by Mayor Sessom and second by Second Vice Chair Jim Janney (Imperial Beach), the Board of Directors approved the programming and submission of the 2012 STIP to the CTC. Yes – 18 (weighted vote, 100%). No – 0 (weighted vote, 0%). Abstain – 0 (weighted vote, 0%). Absent - Coronado.

15. **2011 TransNet PLAN OF FINANCE (APPROVE)**

Mayor Hall introduced this item.

Kim Kawada, TransNet and Legislative Affairs Program Director, provided an overview report. She noted that the TransNet Plan of Finance is updated each fiscal year, or more frequently as circumstances arise. The 2011 Plan of Finance continues to advance the TransNet Early Action Program.

José A. Nuncio, Manager of Financial Programming and Project Control, provided background information including trends on the Caltrans Construction Index (CCI), the average number of bidders, and a comparison of TransNet revenues and the CCI.


Mayor Hall stated that the Transportation Committee recommended that the Board of Directors: (1) approve the 2011 TransNet Plan of Finance update; and (2) approve amendments to the FY 2012 SANDAG Budget for the Blue and Orange Line Trolley Improvement Project and the Mid-Coast Corridor Transit Project capital budgets, in substantially the same form as attached to the agenda report. These actions will support the
pending issuance of $250 million to $300 million in long-term fixed rate debt, the timing of which is subject to the Board’s decision on the financing of the State Route 125 toll road.

**Action:** Upon a motion by Councilmember Carrie Downey (Coronado) and second by Mayor Desmond, the Board of Directors approved: (1) the 2011 TransNet Plan of Finance update; and (2) amendments to the FY 2012 SANDAG Budget for the Blue and Orange Line Trolley Improvement Project and the Mid-Coast Corridor Transit Project capital budgets, in substantially the same form as attached to the agenda report. Yes – 19 (weighted vote, 100%). No – 0 (weighted vote, 0%). Abstain – 0 (weighted vote, 0%). Absent - None.

16. **ACQUISITION OF SOUTH BAY EXPRESSWAY ASSETS: RESULTS OF DUE DILIGENCE REVIEW AND FINANCING OPTIONS (APPROVE)**

Samuel Johnson, Principal Technology Program Analyst, provided the staff report. At its July 29, 2011, meeting, the Board of Directors accepted the counteroffer of the owners of the State Route 125 toll road, subject to various contingencies, including completion of a due diligence review. At its August 26, 2011, meeting, the Board discussed financing options. This report presented the results of the due diligence review, further discussed the financing options related to the acquisition, including various toll reduction scenarios, and summarized next steps with the goal of completing the acquisition by December 21, 2011. The Board of Directors was asked to consider an amendment to the FY 2012 Budget for additional funds to cover the next phase of the acquisition so that SANDAG will be prepared to operate the toll road once the acquisition has been completed.

Marney Cox, Chief Economist, introduced the following persons, who were available to answer questions on this item:

Steve Howard, Barclays
Tony Hughes, Barclays
Bob Rich, Public Financial Management
Dana Hook, HNTB

Mr. Cox provided information on the financing options, including a review of Option B (TransNet loan/swap option), managing toll reductions, information about California Environmental Quality Act (CEQA) requirements, and the ITOC legal opinion on the TransNet loan/swap option. Mr. Cox indicated that several meetings with private lenders had occurred over the past several weeks. Discussions in those meetings included components of the Asset Purchase Agreement, a South Bay Expressway staffing offer, escrow account, Series D1 note, collection of accounts due, long-term maintenance issues, and an option to purchase land. Staff also met with federal Department of Transportation (TIFIA) representatives to review the financial and legal documents, discuss the transaction schedule, and review options on additional debt, payment provisions, expenses, and security/indemnity. He proceeded to review next steps for the two upcoming Board meetings on December 2 and December 16.

There were two requests to speak on this item.

Supervisor Greg Cox, County of San Diego, thanked the Board for its consideration of this purchase. He commended SANDAG staff on their due diligence effort, and encouraged the Board to proceed with this transaction.
Sean Karafin, San Diego County Taxpayers Association, expressed appreciation for the information staff has provided to them. He expressed concern about the ridership projections that are the basis for the proposed purchase of the State Route 125 toll road. He submitted a letter from the President of the Association, Lani Lutar, so that their concerns would be included in the record.

Action: Upon a motion by Council President Tony Young (City of San Diego) and second by Mayor Sam Abed (Escondido), the Board of Directors: (1) approved an amendment to the FY 2012 Budget in the amount of $160,000 to cover the next phase of the acquisition of the State Route 125 toll road; and (2) directed staff to report back on the level of tolls relative to traffic volumes, develop a choice of options of toll reductions and timing, and propose a mechanism to measure actual data versus assumptions. Yes – 19 (weighted vote, 100%). No – 0 (weighted vote, 0%). Abstain – 0 (weighted vote, 0%). Absent - None.

17. CONTINUED PUBLIC COMMENTS

There were no other public comments.

18. UPCOMING MEETINGS

There are three December Board Business meetings scheduled for December 2, 9, and 16, 2011, all starting at 9 a.m. Please note these meetings will be held on the first, second, and third Fridays of the month, respectively, due to the holiday schedule.

20. ADJOURNMENT

The meeting was adjourned at 10:49 a.m.

DGunn/M/DGU

Attachment: Attendance Sheet
# ATTENDANCE
## SANDEAG BOARD OF DIRECTORS MEETING
### NOVEMBER 18, 2011

<table>
<thead>
<tr>
<th>JURISDICTION/ ORGANIZATION</th>
<th>NAME</th>
<th>ATTENDING</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Carlsbad</td>
<td>Matt Hall (Member)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Chula Vista</td>
<td>Cheryl Cox (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Coronado</td>
<td>Carrie Downey (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Del Mar</td>
<td>Carl Hilliard (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of El Cajon</td>
<td>Mark Lewis (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Encinitas</td>
<td>Kristin Gaspar (1st Alt.)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Escondido</td>
<td>Sam Abed (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Imperial Beach</td>
<td>Jim Janney, 2nd Vice Chair (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of La Mesa</td>
<td>Art Madrid (Member)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Lemon Grove</td>
<td>Mary Sessom (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of National City</td>
<td>Ron Morrison (Member)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Oceanside</td>
<td>Jack Feller (1st Alt.)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Poway</td>
<td>Don Higginson (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of San Diego - A</td>
<td>Lorie Zapf (1st Alt.)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of San Diego - B</td>
<td>Tony Young (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of San Marcos</td>
<td>Jim Desmond (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Santee</td>
<td>Jack Dale (1st Vice Chair)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Solana Beach</td>
<td>Lesa Heebner (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>City of Vista</td>
<td>Judy Ritter (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>County of San Diego - A</td>
<td>Bill Horn (Primary, Seat A)</td>
<td>No</td>
</tr>
<tr>
<td>County of San Diego - B</td>
<td>Ron Roberts (Primary, Seat B)</td>
<td>Yes</td>
</tr>
<tr>
<td>Caltrans</td>
<td>Laurie Berman (1st Alt.)</td>
<td>Yes</td>
</tr>
<tr>
<td>MTS</td>
<td>Harry Mathis (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>NCTD</td>
<td>Chris Orlando (Primary)</td>
<td>Yes</td>
</tr>
<tr>
<td>Imperial County</td>
<td>Sup. John Renison (Primary)</td>
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<tr>
<td>US Dept. of Defense</td>
<td>CAPT Clifford Maurer (Member)</td>
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<td>SD Unified Port District</td>
<td>Dan Malcolm (Alternate)</td>
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</tr>
<tr>
<td>SD County Water Authority</td>
<td>Mark Muir (Primary)</td>
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<tr>
<td>Baja California/Mexico</td>
<td>Remedios Gómez-Arnau (Member)</td>
<td>No</td>
</tr>
<tr>
<td>Southern California Tribal Chairmen’s Association</td>
<td>Allen Lawson (Member)</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Edwin Romero (Member)</td>
<td>No</td>
</tr>
</tbody>
</table>
ACTIONS FROM POLICY ADVISORY COMMITTEES

The following actions were taken by the Policy Advisory Committees since the last Board of Directors meeting.

EXECUTIVE COMMITTEE MEETING (December 2, 2011)

The Executive Committee took the following actions or recommended the following approvals:

• Approved the agendas for the December 9 and 16, 2011, Board of Directors meetings, as amended.

REGIONAL PLANNING COMMITTEE MEETING (December 2, 2011)

The Executive Committee took the following actions or recommended the following approvals:

• Approved project schedule amendments for two TransNet Smart Growth Incentive Program projects in accordance with the program’s established Use-It-or-Lose-It Policy: (1) City of National City 8th Street Corridor Smart Growth Revitalization; and (2) City of Chula Vista Third Avenue Streetscape Implementation.

• Approved the allocation of funds from the California Coastal Commission (CCC) Beach Sand Mitigation Fund for the Cities of Oceanside, Solana Beach, and Imperial Beach, and directed SANDAG staff to submit the proposal to the CCC Executive Director for review and approval.

• Recommended that the Board of Directors accept $5.2 million of additional funding from the City of Imperial Beach, which will enable the amount of sand placed on beaches in the city to increase from 106,000 cubic yards to 416,000 cubic yards as part of the Regional Beach Sand Project.

TRANSPORTATION COMMITTEE MEETING (December 9, 2011)

• This meeting was cancelled.

PUBLIC SAFETY COMMITTEE MEETING (December 9, 2011)

• No actions were taken at this meeting.

GARY L. GALLEGOS
Executive Director
REPORT SUMMARIZING DELEGATED ACTIONS TAKEN BY EXECUTIVE DIRECTOR

File Number 8000100

Introduction

Board Policy Nos. 003, 017, and 024 require the Executive Director to report certain actions to the Board of Directors on a monthly basis.

Discussion

Board Policy No. 003

Board Policy No. 003, “Investment Policy,” states a monthly report of all investment transactions shall be submitted to the Board. Attachment 1 contains the reportable investment transactions for October 2011.

Board Policy No. 017

Board Policy No. 017, “Delegation of Authority,” requires the Executive Director to report to the Board certain actions taken at the next regular meeting.

Section 4.1 of the policy authorizes the Executive Director to enter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to $100,000 per transaction, so long as the overall budget remains in balance. Attachment 2 contains the reportable actions since the report made at the last meeting.

Board Policy No. 024

Board Policy No. 024, “Procurement and Contracting-Construction,” requires the Executive Director to report to the Board the granting of (1) Relief from Maintenance and Responsibility over $25,000, and (2) Acceptance of Work for construction contracts over $25,000. There are no delegated action items to report since the report made at the last meeting.

GARY L. GALLEGOS
Executive Director

Attachments: 1. Reportable Investment Transactions for October 2011
2. Budget Transfers and Amendments

Key Staff Contact: Lauren Warrem, (619) 699-6931, lwa@sandag.org
## MONTHLY ACTIVITY FOR INVESTMENT SECURITIES TRANSACTIONS FOR OCTOBER 1 THROUGH OCTOBER 31, 2011

<table>
<thead>
<tr>
<th>Transaction Date</th>
<th>Maturity Date</th>
<th>Security Description</th>
<th>Par Value</th>
<th>Original Cost</th>
<th>Yield to Maturity on Cost</th>
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</thead>
<tbody>
<tr>
<td><strong>BOUGHT</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10/07/2011</td>
<td>10/18/2013</td>
<td>FREDDI MAC (CALLABLE) GLOBAL NOTES</td>
<td>$ 5,000,000.00</td>
<td>$ 4,992,250.00</td>
<td>0.58%</td>
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<tr>
<td>10/07/2011</td>
<td>10/18/2013</td>
<td>FREDDI MAC (CALLABLE) GLOBAL NOTES</td>
<td>$ 4,000,000.00</td>
<td>$ 3,993,200.00</td>
<td>0.59%</td>
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<tr>
<td>10/17/2011</td>
<td>08/20/2014</td>
<td>FEDERAL HOME LN MTG CORP</td>
<td>$ 3,000,000.00</td>
<td>$ 3,020,010.00</td>
<td>0.76%</td>
</tr>
<tr>
<td>10/20/2011</td>
<td>10/15/2013</td>
<td>FREDDI MAC GLOBAL NOTES</td>
<td>$ 925,000.00</td>
<td>$ 924,685.50</td>
<td>0.52%</td>
</tr>
<tr>
<td>10/27/2011</td>
<td>03/31/2014</td>
<td>US TREASURY NOTES</td>
<td>$ 4,830,000.00</td>
<td>$ 4,987,918.36</td>
<td>0.39%</td>
</tr>
<tr>
<td><strong>TOTAL BOUGHT</strong></td>
<td></td>
<td></td>
<td>$ 17,755,000.00</td>
<td>$ 17,918,063.86</td>
<td>0.56%</td>
</tr>
<tr>
<td><strong>MATURED</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10/31/2011</td>
<td>10/31/2011</td>
<td>US TREASURY NOTES</td>
<td>$ 10,000,000.00</td>
<td>$ 10,062,500.00</td>
<td>0.30%</td>
</tr>
<tr>
<td><strong>TOTAL MATURED</strong></td>
<td></td>
<td></td>
<td>$ 10,000,000.00</td>
<td>$ 10,062,500.00</td>
<td>0.30%</td>
</tr>
<tr>
<td><strong>SOLD</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10/07/2011</td>
<td>04/15/2013</td>
<td>FEDERAL HOME LN MTG CORP NOTES</td>
<td>$ 5,000,000.00</td>
<td>$ 4,993,000.00</td>
<td>1.67% *</td>
</tr>
<tr>
<td>10/07/2011</td>
<td>02/26/2013</td>
<td>FEDERAL NATL MTG ASSN NOTES</td>
<td>$ 2,000,000.00</td>
<td>$ 2,010,200.00</td>
<td>0.45% *</td>
</tr>
<tr>
<td>10/07/2011</td>
<td>02/26/2013</td>
<td>FEDERAL NATL MTG ASSN NOTES</td>
<td>$ 2,000,000.00</td>
<td>$ 2,010,560.00</td>
<td>0.43% *</td>
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<td>10/20/2011</td>
<td>10/28/2013</td>
<td>FEDERAL HOME LN MTG CORP NOTES</td>
<td>$ 925,000.00</td>
<td>$ 920,856.00</td>
<td>1.02% *</td>
</tr>
<tr>
<td>10/27/2011</td>
<td>01/31/2013</td>
<td>US TREASURY NOTES</td>
<td>$ 5,000,000.00</td>
<td>$ 4,991,406.25</td>
<td>0.72% *</td>
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<tr>
<td><strong>TOTAL SOLD</strong></td>
<td></td>
<td></td>
<td>$ 14,925,000.00</td>
<td>$ 14,926,022.25</td>
<td>0.98%</td>
</tr>
</tbody>
</table>

*These security sales were made as part of ongoing active management of the portfolio by identifying opportunities to enhance the portfolio's total return. In October, maturities with less relative value were sold, and new securities that are more likely to enhance the portfolio's total return were purchased at an overall gain.
## BUDGET TRANSFERS AND AMENDMENTS

in '000s

<table>
<thead>
<tr>
<th>PROJECT NUMBER</th>
<th>PROJECT NAME</th>
<th>CURRENT BUDGET</th>
<th>NEW BUDGET</th>
<th>CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>7500000</td>
<td>Service Bureau - Main Project FY 2012</td>
<td>$62.9</td>
<td>$13.0</td>
<td>($49.9)</td>
</tr>
<tr>
<td></td>
<td>Transferred funds from the Main Service Bureau project (7500000) to establish new projects and increase budgets for additional services. Offset by a transfer back into project 7500000 for a reduced scope on the existing project 7510200.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7510200</td>
<td>Transportation Modeling for Commercial and Imperial Corridor</td>
<td>$8.5</td>
<td>$5.6</td>
<td>($2.9)</td>
</tr>
<tr>
<td></td>
<td>Amendment to reduce Service Bureau project 7510200 due to reduced scope of work for transportation modeling services for Commercial and Imperial Corridor Master Plan.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7510300</td>
<td>Survey of Older Americans</td>
<td>$0.0</td>
<td>$15.6</td>
<td>$15.6</td>
</tr>
<tr>
<td></td>
<td>Establish new Service Bureau project 7510300 to conduct a mail-out survey and prepare a report on needs of older Americans in San Diego County. This project includes $5,500 of professional services that does not impact project 7500000.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7510400</td>
<td>Series 12 County GP Update Model</td>
<td>$0.0</td>
<td>$42.7</td>
<td>$42.7</td>
</tr>
<tr>
<td></td>
<td>Establish new Service Bureau project 7510400 for transportation modeling services for Series 12 County General Plan Update Model.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
REPORTS ON MEETINGS AND EVENTS ATTENDED ON BEHALF OF SANDAG

Since the last Board of Directors meeting, Board members participated in the following meetings and events on behalf of SANDAG. Key topics of discussion also are summarized.

November 16, 2011: Full Access and Coordinated Transportation (FACT) Board of Directors Meeting
Encinitas, CA

- Solana Beach Councilmember David Roberts participated as the SANDAG representative to the FACT Board of Directors. The FACT Board approved the Rancho Bernardo service implementation plan and authorized implementation and a review in three months. The Nominating Committee slate of officers for 2012 was accepted. Floyd Willis was nominated for the 2010 Norine Sigafoose Partner of the Year Award. SANDAG Executive Director Gary Gallegos is scheduled to provide the keynote address for the FACT Annual Meeting on December 14, 2011. The Board agreed to move its next offsite meeting to February 8, 2012, from 8:30 a.m. to 1:00 p.m. at the El Camino Country Club in Oceanside.

November 16, 2011: Los Angeles-San Diego-San Luis Obispo (LOSSAN) Corridor Board of Directors meeting
Orange, CA

- Solana Beach Deputy Mayor Joe Kellejian attended this meeting as the SANDAG representative and Chair of the LOSSAN Board of Directors. He participated in continuing discussions regarding potential local authority for intercity service, evaluation of an express intercity trip between San Diego and Los Angeles, and review of the Rail2Rail program.

November 30, 2011: California Association of Councils of Governments (CALCOG) Winter Meeting
Oakland, CA

- National City Mayor Ron Morrison attended this meeting as the SANDAG representative to CALCOG. Discussions included the organization of CALCOG work products, and priorities of readdressing agency advocacy efforts.
INTRODUCTION

Consistent with SANDAG Bylaws, in September 2012, the SANDAG Chair appointed the following Nominating Committee for SANDAG Board Officers: National City Mayor Ron Morrison (South County), Nominating Committee Chair; San Diego Mayor Jerry Sanders; San Diego County Supervisor Bill Horn; Lemon Grove Mayor Mary Sessom (East County); Poway Mayor Don Higginson (North County Inland); and Carlsbad Mayor Matt Hall (North County Coastal).

At the November 18, 2011, Board of Directors meeting, the Nominating Committee recommended a slate of Board officers for 2012 for approval by the Board on December 16, 2011. In accordance with SANDAG Bylaws, Board members may make additional nominations for any officer position during the December 16 Board meeting.

DISCUSSION

ANNUAL NOMINATION AND ELECTION PROCESS

The SANDAG Bylaws set forth the annual nomination and election process for SANDAG Board Officers. The process calls for an application form for the Chair, First Vice Chair, and Second Vice Chair positions to be made available on the SANDAG Web site in or around July. To be considered for one of the officer positions, prospective applicants must provide information about their current status and term of office, SANDAG experience, and other public agency experience. Applicants also must answer the following questions:

- Why do you want to serve as a SANDAG Board Officer?
- What is your vision for SANDAG next year and in five years?
- Describe how you believe that you are in touch with your constituents and give examples of why you have represented them well in the past.
- For First and Second Vice Chair positions only. Is your interest to serve only as a Vice Chair, or do you see yourself wanting to serve as Chair in the future?
The applications received included Encinitas Deputy Mayor Jerome Stocks for Chair, Santee Council member Jack Dale for First Vice Chair, and Imperial Beach Mayor Jim Janney for Second Vice Chair. Nominating Committee members reviewed the applications and supported maintaining the current Board leadership for the upcoming year.

GARY L. GALLEGOS
Executive Director

Key Staff Contact: Kim Kawada, (619) 699-6994, kka@sandag.org
APPROVAL OF PROPOSED AMENDMENTS TO COMPREHENSIVE FARE ORDINANCE

Introduction

The Board of Directors is asked to approve an amended Regional Comprehensive Fare Ordinance that implements permanent fare decreases requested by the North County Transit District (NCTD), as well as adds language that clarifies, simplifies, and better codifies the fare rules for the region.

The proposed changes in the language of the Fare Ordinance have been coordinated with the staffs of both NCTD and Metropolitan Transit System (MTS). The proposed fare changes being discussed were posted in English and Spanish on all MTS and NCTD services in advance of the public meetings. In addition, advertisements were placed in English and Spanish language newspapers.

At its December 9, 2011, meeting, the Board of Directors held the first reading of the amended Regional Comprehensive Fare Ordinance, received a summary of the public meetings, found that the proposed fare changes would not cause a disparate impact under the Title VI of the federal Civil Rights Act, and approved Resolution No. 2012-12, which made a finding that the proposed changes qualify for an exemption under the California Environmental Quality Act.

Approval of the proposed amendments to the Regional Comprehensive Fare Ordinance is scheduled for Board action on December 16, 2011.

Discussion

Overview of Proposed Fare Changes

In September 2010, the NCTD Board of Directors approved promotional fare decreases on the COASTER, BREEZE, and LIFT services for January 2011 implementation. Per Section 9.2 of the Regional Comprehensive Fare Ordinance MTS and NCTD have the ability to set temporary, promotional, and experimental fares. Temporary, promotional, and experimental fares are defined as fares implemented for no more than twelve months for seasonal events or for marketing purposes. These fare reductions were one of part of an overall strategy by NCTD to enhance ridership and revenue. The original fares and the current promotional fares are described below:
• BREEZE – The One-Way Regular Cash Fare was reduced from $2.00 to $1.75, and a reduction of Senior/Disabled/Medicare (SDM) fares from $1.00 to $0.75;  

• COASTER – The One-Way Regular Cash Fare was reduced from a range of $5.00-$6.50 to a range of $4.00-$5.50, and SDM fares were reduced from a range of $2.50-$3.25 to $2.00-$2.75;  

• COASTER – The number of COASTER zones was reduced from four zones to three zones;  

• COASTER – The Regular COASTER Monthly Pass prices were reduced from a range of $144.00-$182.00 to a range of $120.00-$165.00, and SDM passes were reduced from $45.50 to $41.25;  

• COASTER – The discount for Single Ride and Round Trip tickets was changed to a $0.50 discount on Single Ride tickets for those with Regular, Youth, or SDM monthly passes on Compass Cards, and a $1.00 discount on Round Trip tickets for those with Regular, Youth, or SDM monthly passes on Compass Cards.  

In September 2011, the NCTD Board of Directors requested that SANDAG make these fare changes permanent. NCTD also has requested the new Rail2Rail agreement with Amtrak be added into the Regional Comprehensive Fare Ordinance where monthly pass holders would have the ability to ride Amtrak trains within the same zones as permitted by the COASTER monthly pass as follows:  

• COASTER - Establishment of supplement for Rail2Rail COASTER monthly pass upgrade ($59.00 for one-zone pass and $84.00 for three-zone pass) for Adult, SDM and Youth monthly passes  

Additional Modifications  

Two additional modifications are proposed to the Regional Comprehensive Fare Ordinance:  

• RegionPlus Day Pass – Reduce from $14.00 to $12.00, which would bring the day pass used on the COASTER fare in line with the reductions in COASTER Cash and Monthly Pass fares  

• Revision of eligibility to purchase discounted passes for persons with disabilities to make them consistent with Federal Transit Administration (FTA) regulations and guidance.  

The proposed changes to the Regional Comprehensive Fare Ordinance are included in Attachment 1.  

Public Participation  

SANDAG invited public participation in the proposed amendment process via two public meetings, provision of a phone comment line, and provision of a dedicated e-mail address. Notice of the proposed changes as well as the availability of these resources was published in one Spanish language and two English language newspapers, included in a Rider Alert in both English and Spanish language available on all affected MTS and NCTD transit vehicles, and included on the SANDAG website and Facebook page.  

In accordance with Board Policy Nos. 004 (Rules of Procedure for Board of Directors, Policy Advisory Committees and Other Legislative Bodies) and 025 (Public Participation/Involvement Policy), the two public meetings were held to provide the public the chance to review the proposed changes, ask  

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1 This change also impacts the Americans with Disabilities Act (ADA) Paratransit fare, which would decrease to $3.50 based on a rate of double the local fixed-route fare (Section 11 of the Fare Ordinance).
questions, and offer comments. Transportation Committee Chair Jack Dale appointed Mayor Matt Hall, Vice Chair of the Transportation Committee, as the Public Meeting Officer for the first meeting, which was held on November 17, 2011, in the Board Room of NCTD. Chair Dale appointed SANDAG Principal Regional Planner Dave Schumacher as the Public Meeting Officer for the second meeting, which was held on November 18, 2011, at SANDAG offices. The Meeting Records from both of those meetings are included as Attachments 2 and 3, respectively. The comments received were generally supportive of the proposed amendments.

Three comments regarding the proposed changes were received via telephone. Those comments are reflected in Attachment 4. No e-mail comments were received.

Next Steps

The Fare Ordinance changes are scheduled to go into effect on January 20, 2012, after the minimum 30-day waiting period mandated by SANDAG Board Policy No. 004.

GARY L. GALLEGOS
Executive Director

Attachments: 1. Proposed Changes to Regional Comprehensive Fare Ordinance
              2. Meeting Record of Public Hearing for Input on Fare Changes and Revisions to Regional Comprehensive Fare Ordinance (November 17, 2011)
              3. Meeting Record of Public Hearing for Input on Fare Changes and Revisions to Regional Comprehensive Fare Ordinance (November 18, 2011)
              4. Public Comments on Proposed Fare Changes Received via Phone

Key Staff Contact: Brian Lane, (619) 699-7331, bla@sandag.org
SAN DIEGO ASSOCIATION OF GOVERNMENTS

PROPOSED CHANGES TO THE
REGIONAL COMPREHENSIVE FARE ORDINANCE

An Ordinance Establishing a Regional
Fare Pricing Schedule & Revenue Allocation Formula

The San Diego Association of Governments (SANDAG) ordains as follows:

SECTION 1: FINDINGS

This Ordinance is adopted to implement a Comprehensive Fare Ordinance setting forth a fare structure for all public transit service providers in San Diego County.

SECTION 2: REGIONAL TRANSIT SERVICE DEFINITIONS

2.1 ACCESS: the complementary ADA service operated by MTS in Zone 1.

2.2 ADA: Americans with Disabilities Act, as defined in Title 49, Part 37, of the United States Code.

2.3 ADA Complementary Paratransit Service: Specialized curb-to-curb transportation services provided to persons who qualify as eligible for such services under the guidelines of the ADA.

2.4 BREEZE: NCTD fixed-route bus service brand name.

2.5 Bus: Rubber-tired transit vehicles operated by MTS and NCTD.

2.6 Bus Rapid Transit: A form of premium rapid transit service operated wholly or partly on exclusive bus lanes, guideways, or managed lanes.

2.7 Cash Fare: Term used to describe fares purchased with United States currency.

2.8 Child: Any person five years of age or under.

2.9 COASTER: The brand name of the commuter rail service operated by NCTD in the coastal corridor from Oceanside to San Diego.

2.10 College Student: Any person currently enrolled as a student in a participating accredited San Diego area post-secondary school with a valid picture identification issued by the school.

2.11 Companion: In relation to the ADA complementary paratransit service, a companion is someone who accompanies an ADA passenger on board a Paratransit vehicle, but is not a personal care attendant as specified in the passenger’s ADA certification application.
2.12 **Compass Card**: The Compass Card is an electronic fare medium based on contactless smart card technology. The Compass Card may hold either transit products or cash for use on regional transit services. Transit products may include, but are not limited to, Monthly Passes, student semester passes, Multi-Day Passes, and stored value.

The Compass Card utilizes wireless technology to interface with validator devices on buses, rail platforms, and ticket vending machines (TVMS). Passengers must tap their Compass Card on a validator in order to utilize transportation services.

2.13 **Day Pass**: A fare medium that allows a passenger to ride one Service Day.

2.14 **Discount**: A reduction in the price of a fare or fare product as a result of the passenger holding a special identification card, or an existing fare product.

2.15 **LIFT**: The complementary ADA service operated by NCTD.

2.16 **Limited Use Compass Card**: A Compass Card printed on a disposable material. Limited Use Compass Cards have a limited lifetime and may not accept all fare products available for loading onto a plastic Compass Card.

2.17 **Medicare Recipient**: Any person to whom the Federal Government has issued a Medicare identification card, regardless of age.

2.18 **MetroLink**: The Commuter rail service operated by the Southern California Regional Rail Authority.

2.19 **Monthly Pass**: This term refers to either the Calendar Month Pass or the 30-Day Pass.

2.20 **MTS**: The Metropolitan Transit System which operates services in all areas of San Diego County outside the jurisdiction of NCTD. MTS operates MTS Bus, Rural Bus, MTS Express, MTS Premium Express, MTS Trolley service, and ADA Access Service.

2.21 **MTS Suburban Paratransit**: The complementary ADA service operated by MTS in suburban areas (ADA Zones 2, 3, and 4).

2.22 **NCTD**: North County Transit District operating services in Northern San Diego County. NCTD services include the BREEZE, COASTER, SPRINTER, and LIFT.

2.23 **OCTA**: Orange County Transportation Authority.

2.24 **Person with Disability**: Any person with a permanent or temporary mental or physical disability as defined by the ADA ([Title 49, Part 37 of the Code of Federal Regulations](https://www.fhwa.dot.gov/medicaid/info/ada.htm)). In order to qualify for a disabled fare a passenger for regular (non-ADA paratransit) transit must be in possession of a transit identification card or a valid Compass Card with a picture identifying the person as a person with a qualifying disability. In order to qualify for ADA Paratransit service the person with a disability must be ADA certified.

2.25 **Personal Care Attendant**: In relation to the ADA complementary paratransit service, a personal care attendant is a person who is designated by the ADA eligible passenger to aid in their mobility who is not charged a fare to ride on the ADA complementary paratransit
vehicle when accompanying the ADA eligible passenger. The person may be a friend, family member, or paid employee. The need for and use of a personal care attendant must be indicated at the time of eligibility certification.

2.26 **Platform Validator:** A validator located in a standalone device on a rail platform. Platform validators must be tapped before boarding a rail vehicle unless a new Compass Card product is loaded and validated at a TVM.

2.27 **Regional Fare System:** The Regional Fare System is governed by SANDAG Board Policy Nos. 018 and 029, this Ordinance, MTS and NCTD transit operations ordinances and policies, and any other fare agreements, including agreements entered into by SANDAG with transit operators.

2.28 **Regular Fare:** Applies to all persons age six and older except persons eligible for S/D/M or Youth fares.

2.29 **S/D/M:** Acronym that stands for Senior, Disabled, and Medicare passengers.

2.30 **Senior:** Any person who meets the age requirement for transit fares provided in the TransNet Ordinance Section 4, Paragraph (c)(3) is eligible to pay the discounted Senior Cash Fare or purchase a Senior pass.

2.31 **Service Day:** 4:00 a.m. until 3:59 a.m. on the subsequent day.

2.32 **Sorrento Valley COASTER Connection (SVCC):** A peak-period only Community Shuttle service operated by MTS between the Sorrento Valley COASTER Station, and nearby employment centers.

2.33 **SPRINTER:** The brand name of the Oceanside to Escondido rail service operated by NCTD with Diesel Multiple Units (DMUs) in a light rail mode.

2.34 **Station:** A light rail, bus rapid transit, or commuter rail passenger stop.

2.35 **Stored Value:** Cash value that can be debited to purchase fare products or pay a Cash Fare on a Compass Card.

2.36 **Supplement:** A charge paid on a one time basis to permit the use of a fare product for a transit ride that requires a more expensive fare. Payment of a supplement does not change the original fare product.

2.37 **Sworn Peace Officers:** San Diego County, state, and federal sworn peace officers.

2.38 **Tap:** The act of touching a Compass Card on a validator.

2.39 **Transit Service Types:**

2.39.1 Local - Fixed-route bus service on local or arterial roads serving neighborhood destinations and feeding transit centers. Includes BREEZE and MTS Bus. Also includes routes operating extensively on arterials with transit priority features and limited stops (Rapid Services).
2.39.2 Corridor - A frequent transit service with limited stops including, but not limited to, major transit centers, residential centers, and activity centers that has more than six stops outside Centre City. Corridor services include MTS Trolley and express buses generally traveling less than 50 percent of the one-way trip miles on freeways. Corridor services travel at least 12 miles per hour, with an average passenger trip length of approximately 10 miles or under.

2.39.3 Premium Express - Includes bus service with stops only at major transit centers, residential centers, and activity centers; generally traveling 50 percent or more of the one-way trip miles on freeways; averaging at least 20 miles per hour, with an average passenger trip length of over 10 miles; and using commuter coaches. The future will include BRT operating at least 10 one-way route miles on a network of managed lanes or routes with transit priority measures.

2.39.4 Commuter Rail - The commuter rail service operated in the coastal corridor from Oceanside to San Diego by NCTD under the brand COASTER.

2.39.5 Rural - A rural bus service providing limited daily or weekly service linking rural areas to a multimodal transit center or major shopping center and designated by the MTS or NCTD Board of Directors as having a special one or two zone fare. Service is generally provided in rural areas with one-way vehicle trip lengths ranging from 15 to 80 miles.

2.40 Transfer: The action of a passenger leaving one bus, train, or other transit vehicle and within a brief time, without a stopover, boarding a subsequent bus, train, or other transit vehicle to complete his or her trip.

2.41 Transfer Slip: A document that may be issued by a driver to enable a passenger to board another transit vehicle free of charge or for a reduced amount. Transfer slips are not issued for travel entirely within San Diego County solely on the fixed-route system. Transfer slips may be issued for transfers between ADA services and fixed-route services and between fixed-route services and other systems outside San Diego County.

2.42 TransNet: The TransNet Ordinance is a SANDAG ordinance passed by voters in 2004 that provides for a half cent transactions and use tax collected in San Diego County and used for transportation-related projects.

2.43 Trolley: Light rail transit service operated by MTS.

2.44 TVM: Ticket Vending Machine used for the sale of single and multi-trip fare products.

2.45 Upgrade: An additional fare required to enhance the value of a transit pass to travel on a transit service with a higher fare. Upon payment of an upgrade, the original fare instrument is converted to the new, more expensive product and the original product is no longer available.

2.46 Validator: A device for tapping a Compass Card in order to validate the fare product. Validators may be standalone devices, located on bus fareboxes, or part of a TVM. Validators located in TVMs may not be used as platform validators.
2.47 **Youth:** A person as defined in the TransNet Ordinance Section 4(C)(3).

2.48 **Zone:** For ADA purposes a zone is defined as:

- **Zone 1** Central San Diego
- **Zone 2** Mid-County: Poway, Rancho Bernardo, Rancho Peñasquitos, Carmel Mountain Ranch, and Sabre Springs
- **Zone 3** East County: La Mesa, El Cajon, Santee, Lakeside, Lemon Grove, Spring Valley, and parts of Alpine
- **Zone 4** South Bay: Chula Vista, Coronado, National City, Imperial Beach, Palm City, Nestor, Otay Mesa, and San Ysidro
- **Zone 5** NCTD Service area

For the COASTER, the fare zones are set forth in Table 3. The fares zones applicable to Rural Fares are set forth in Section 3.4 of this Ordinance.

**SECTION 3: SINGLE TRIP, SINGLE DAY, AND MULTI-DAY FARES**

3.1 **Fare Product Limitations**

3.1.1 SPRINT/BREEZE fare products may only be used on the SPRINT, and BREEZE.

3.1.2 Regional fare products may not be used on COASTER, ADA, Premium Express, and Rural bus services without paying an Upgrade or Supplement.

3.1.3 Premium fare products may be used on Local, Corridor, Premium, and single zone Rural services. Regional fare products may be used with the Supplements indicated in Table 1.

3.1.4 COASTER and RegionPlus fare products may be used on all transit services operated by MTS and NCTD but require Supplements for two zone rural services. Discounts are available to holders of Premium and Regional fare products using the COASTER as shown in Table 1.

3.1.5 Sorrento Valley COASTER Connection fare products are only valid on the Sorrento Valley COASTER Connection.

3.2 **Fares and Pass Products**

Tables 1 and 2 list transit fares available to the general public. The tables show the fare for each type of service by passenger category, and which passes are accepted on specific services. The notes below the tables show the amount of any Supplement or Discount that may be required or available.
The following tables show the proposed fares and the existing fares. Those items that are changing are shown in strike-out/underline in both tables.

### Table 1
**Proposed Fare Ordinance**
Pass Prices, Acceptance, and Required Supplements or Discounts

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sorrento Valley</td>
<td>$5.00</td>
<td>n/a</td>
<td>$40.00</td>
<td>n/a</td>
<td>$10.00</td>
<td>$20.00</td>
<td>No</td>
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<td>No</td>
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<td>No</td>
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<td>SPRINTER/BREEZE</td>
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<td>$59.00</td>
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<td>n/a</td>
<td>n/a</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>$3</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Regional</td>
<td>n/a</td>
<td>$72.00</td>
<td>$43.00</td>
<td>$18.00</td>
<td>$36.00</td>
<td>Yes</td>
<td>Yes</td>
<td>$5</td>
<td>$3</td>
<td>$5</td>
<td>$4</td>
</tr>
<tr>
<td>Premium</td>
<td>n/a</td>
<td>$100.00</td>
<td>$60.00</td>
<td>$25.00</td>
<td>$50.00</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>$2, $3</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>COASTER 1 Zone</td>
<td>$12.00</td>
<td>n/a</td>
<td>$120.00</td>
<td>n/a</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>$4</td>
<td>Yes</td>
<td>$2</td>
</tr>
<tr>
<td>COASTER 2 Zone</td>
<td>n/a</td>
<td>$160.00</td>
<td>n/a</td>
<td>$41.25</td>
<td>$82.50</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>$4</td>
</tr>
<tr>
<td>COASTER 3 Zone</td>
<td>n/a</td>
<td>$165.00</td>
<td>n/a</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Note
1. Monthly only
2. RegionPlus Pass Accepted

### Table 2
**Existing Fare Ordinance**
Pass Prices, Acceptance, and Required Supplements or Discounts

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Sorrento Valley</td>
<td>$5.00</td>
<td>n/a</td>
<td>$40.00</td>
<td>n/a</td>
<td>$10.00</td>
<td>$20.00</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>BREEZE/SPRINTER SPRINTER/BREEZE</td>
<td>$2.25</td>
<td>$59.00</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>$3</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Regional</td>
<td>n/a</td>
<td>$72.00</td>
<td>$43.00</td>
<td>$18.00</td>
<td>$36.00</td>
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<td>Yes</td>
<td>$5</td>
<td>$3</td>
<td>$4</td>
<td>$5</td>
</tr>
<tr>
<td>Premium</td>
<td>n/a</td>
<td>$100.00</td>
<td>$60.00</td>
<td>$25.00</td>
<td>$50.00</td>
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<td>Yes</td>
<td>Yes</td>
<td>$2, $3</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>COASTER 1 Zone</td>
<td>$14.00</td>
<td>n/a</td>
<td>$144.00</td>
<td>n/a</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>$2</td>
<td>No</td>
</tr>
<tr>
<td>COASTER 2 Zone</td>
<td>n/a</td>
<td>$164.00</td>
<td>n/a</td>
<td>$46.50</td>
<td>$91.00</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>$2</td>
</tr>
<tr>
<td>COASTER 3 Zone</td>
<td>n/a</td>
<td>$170.00</td>
<td>n/a</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>$2</td>
</tr>
<tr>
<td>COASTER 4 Zone</td>
<td>n/a</td>
<td>$182.00</td>
<td>n/a</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>$2</td>
</tr>
</tbody>
</table>

1. Monthly only
2. RegionPlus Pass Accepted
Table 2
(Proposed Fare Ordinance)
Single Boarding Fares by Service, Acceptance, Required Supplements, and Discounts

<table>
<thead>
<tr>
<th>Service</th>
<th>Single Boarding Fare</th>
<th>Passes Accepted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Regular</td>
<td>Senior Disabled &amp; Medicare</td>
</tr>
<tr>
<td>Sorrento Valley Coaster Connection</td>
<td>$1.00</td>
<td>$0.50</td>
</tr>
<tr>
<td>MTS Bus</td>
<td>$2.25</td>
<td>$1.10</td>
</tr>
<tr>
<td>MTS Trolley</td>
<td>$2.50</td>
<td>$1.25</td>
</tr>
<tr>
<td>MTS Express</td>
<td>$2.50</td>
<td>$1.25</td>
</tr>
<tr>
<td>MTS Premium</td>
<td>$5.00</td>
<td>$2.50</td>
</tr>
<tr>
<td>Rural Bus 1 Zone</td>
<td>$5.00</td>
<td>$2.50</td>
</tr>
<tr>
<td>Rural Bus 2 Zones</td>
<td>$10.00</td>
<td>$5.00</td>
</tr>
<tr>
<td>BREEZE</td>
<td>$1.75</td>
<td>$0.75</td>
</tr>
<tr>
<td>SPRINTER</td>
<td>$2.00</td>
<td>$1.00</td>
</tr>
<tr>
<td>COASTER 1 Zone</td>
<td>$4.00</td>
<td>$2.00</td>
</tr>
<tr>
<td>COASTER 2 Zone</td>
<td>$5.00</td>
<td>$2.50</td>
</tr>
<tr>
<td>COASTER 3 Zone</td>
<td>$5.50</td>
<td>$2.75</td>
</tr>
</tbody>
</table>

(Existing Fare Ordinance)
Single Boarding Fares by Service, Acceptance, Required Supplements, and Discounts

<table>
<thead>
<tr>
<th>Service</th>
<th>Single Boarding Fare</th>
<th>Passes Accepted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Regular</td>
<td>Senior Disabled &amp; Medicare</td>
</tr>
<tr>
<td>Sorrento Valley Coaster Connection</td>
<td>$1.00</td>
<td>$0.50</td>
</tr>
<tr>
<td>MTS Bus</td>
<td>$2.25</td>
<td>$1.10</td>
</tr>
<tr>
<td>MTS Trolley</td>
<td>$2.50</td>
<td>$1.25</td>
</tr>
<tr>
<td>MTS Express</td>
<td>$2.50</td>
<td>$1.25</td>
</tr>
<tr>
<td>MTS Premium</td>
<td>$5.00</td>
<td>$2.50</td>
</tr>
<tr>
<td>Rural Bus 1 Zones</td>
<td>$5.00</td>
<td>$2.50</td>
</tr>
<tr>
<td>Rural 2 Zones</td>
<td>$10.00</td>
<td>$5.00</td>
</tr>
<tr>
<td>BREEZE</td>
<td>$2.00</td>
<td>$1.00</td>
</tr>
<tr>
<td>SPRINTER</td>
<td>$2.00</td>
<td>$1.00</td>
</tr>
<tr>
<td>COASTER 1 Zone</td>
<td>$5.00</td>
<td>$2.50</td>
</tr>
<tr>
<td>COASTER 2 Zone</td>
<td>$5.50</td>
<td>$2.75</td>
</tr>
<tr>
<td>COASTER 3 Zone</td>
<td>$6.00</td>
<td>$3.00</td>
</tr>
<tr>
<td>COASTER 4 Zone</td>
<td>$6.50</td>
<td>$3.25</td>
</tr>
</tbody>
</table>
Special Notes for Tables 1 and 2.

*1 $2.00 Discount for Regular and Youth; $1.00 Discount for Senior/Disabled/Medicare. Calendar Monthly Only

*2 RegionPlus Day Pass Accepted

*3 $0.50 Discount on Single Ride Tickets for Regular, Youth, and Senior/Disabled/Medicare Passes on Compass Pass; $1.00 Discount on Round Trip Tickets for Regular, Youth, & Senior/Disabled/Medicare Passes on Compass Pass.

*2 4 $4.00 Supplement for Regular and Youth; $2.00 Supplement for Senior/Disabled/Medicare.

*3 5 $8.00 Supplement for Regular and Youth; $4.00 Supplement for Senior/Disabled/Medicare.

*4 6 $2.00 Supplement for Regular and Youth; $1.00 Supplement for Senior/Disabled/Medicare.
3.3 COASTER Zones

The COASTER Fares are based on three zones. The number of zones between stations is shown in Table 3. Passengers must purchase a single trip or round trip ticket or pass based on the number of zones between their origin and destination.

Table 3
COASTER Stations and Zones

<table>
<thead>
<tr>
<th>To</th>
<th>From</th>
<th>Oceanside</th>
<th>Carlsbad Village</th>
<th>Carlsbad Poinsettia</th>
<th>Encinitas</th>
<th>Solana Beach</th>
<th>Sorrento Valley</th>
<th>Old Town</th>
<th>Santa Fe Depot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oceanside</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Carlsbad Village</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Carlsbad Poinsettia</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Encinitas</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Solana Beach</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Sorrento Valley</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Old Town</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Santa Fe Depot</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

One-way and round trip tickets and passes are valid only for travel between the number of zones or the stations listed on the ticket or pass.

3.4 Rural Bus Service Zones

Zone 1 of the rural areas is west of the line that runs due south from a point 14 miles east of I-15 on the San Diego – Orange County line through the mid point of Palomar Mountain State Park and then to Ramona (Ramona Station), Alpine (Tavern Road and Alpine Boulevard), and Tecate border crossing (Tecate Road and Thing Road). Zone 2 of the rural area is east of this line.

3.5 Senior/Disabled/Medicare

The single trip Cash Fare for persons eligible for S/D/M fares shall be 50 percent of the single trip regular fare, rounded down to the nearest $0.05.

3.6 Children

NCTD and MTS may each determine how many children five years old and under may ride free on all bus, light rail, and commuter rail services when traveling with a paying passenger.

3.7 NCTD Reduced Fare Identification Card on BREEZE and SPRINTER

Passengers holding a valid NCTD issued Paratransit Reduced Fare Identification Card may ride BREEZE, or SPRINTER services without payment of any fare. A personal care attendant also may ride free accompanying the passenger with a Reduced Fare Identification Card if the requirement for a personal care attendant is noted on the NCTD Paratransit Reduced Fare Identification Card.
3.8 Regional Day Pass

3.8.1 All Day Passes shall be valid for travel on the specified services from the time of issue for the number of consecutive days indicated on the Day Pass or Compass Card product. The Day Pass is valid for travel until the end of the Service Day. The prices for all 1-Day, 14-Day, Monthly, and 30-Day Passes are shown in Table 1.

3.8.2 Regional Day Passes also will be available for two, three, and four days from the Transit Store, North County Customer Service Centers, and select TVMs at the prices shown in Table 4.

<table>
<thead>
<tr>
<th>Day Pass</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Day Regular</td>
<td>$9.00</td>
</tr>
<tr>
<td>3 Day Regular</td>
<td>$12.00</td>
</tr>
<tr>
<td>4 Day Regular</td>
<td>$15.00</td>
</tr>
</tbody>
</table>

3.8.3 The price of 14-Day Passes shall be 60 percent of the cost of Monthly Passes rounded to the nearest dollar.

3.9 RegionPlus Day Pass

A RegionPlus Day Pass is valid on all services except for LIFT, ACCESS, and MTS Suburban Paratransit. Upgrade required for travel on Rural Zone 2. The price of a RegionPlus Day Pass is $12.00.

3.10 Classroom Day Tripper

Classroom Day Trippers are valid for travel between 9 a.m. and 3 p.m. and after 6 p.m., Monday to Friday and may be issued to school and youth groups (up to 18 years of age) on an advance sales basis only. Each group shall consist of a minimum of 15 people. One chaperone per every five students may ride at the Regional Classroom Day Tripper price.

<table>
<thead>
<tr>
<th>Valid on</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>MTS Bus, SPRINT, BREEZE, Premium Express</td>
<td>$1.50</td>
</tr>
<tr>
<td>COASTER only</td>
<td>$3.00</td>
</tr>
<tr>
<td>COASTER plus any of the following: MTS Bus, MTS Trolley, Premium Express, SPRINT, BREEZE</td>
<td>$4.50</td>
</tr>
</tbody>
</table>

A maximum of 135 students and adults per group are permitted to ride a single scheduled COASTER train. Advance confirmation of the availability of space is required at the time of purchase for all COASTER Classroom Day Trippers.

3.11 SPRINT, BREEZE Social Services Agency Day Pass

The SPRINT, BREEZE Social Service Agency Day Pass is a one-day NCTD Day Pass, sold in packs of ten priced at $45.00, which is validated by social service agencies by identifying the day, month, and year. It is sold only to qualified social service agencies who agree to dispense the Day Pass according to NCTD requirements. The Social Service Agency Day Pass
has a unique serial number code, and the customer may not return or exchange a Social Service Agency Day Pass. Valid for unlimited travel on SPRINTER/BREEZE for day punched.

3.12 Juror Day Pass

Any state or federal court in San Diego County may purchase Juror Passes after signing an agreement with SANDAG. Juror Passes are not valid for use on any special service with a higher fare (e.g., Stadium Bus Service) or ADA complementary paratransit service.

A Regional Juror Day Pass is valid for travel on all NCTD and MTS services except, Premium, COASTER, or Rural services. A RegionPlus Juror Day Pass is valid for travel on all NCTD and MTS services except 2-Zone Designated Rural services.

The price for Regional Juror Day Passes sold to the courts shall be based on the price of the Regional Day Pass and included in the agreement with the court. The price for RegionPlus Juror Day Passes sold to the courts shall be based on the price of the RegionPlus Day Pass and included in the agreement with the court.

3.13 Advance Purchase Group Day Pass Sales

Groups wishing to purchase a minimum of 100 Regional Day Passes shall be entitled to obtain passes at the rates shown in Table 5 when the passes are purchased at least 21 days in advance. Groups purchasing 1,000 or more Day Passes shall be entitled to discounts as shown in Table 6. Additional discounts require the approval of the SANDAG Transportation Committee or SANDAG Board of Directors.

<table>
<thead>
<tr>
<th>Days</th>
<th>Regional</th>
</tr>
</thead>
<tbody>
<tr>
<td>One Day</td>
<td>$4.50</td>
</tr>
<tr>
<td>Two Day</td>
<td>$8.00</td>
</tr>
<tr>
<td>Three Day</td>
<td>$11.00</td>
</tr>
<tr>
<td>Four Day</td>
<td>$14.00</td>
</tr>
<tr>
<td>Five Day</td>
<td>$16.00</td>
</tr>
<tr>
<td>Six Day</td>
<td>$18.00</td>
</tr>
<tr>
<td>Seven Day</td>
<td>$20.00</td>
</tr>
</tbody>
</table>

Table 5
Prices for Advance Purchase Group Day Passes

<table>
<thead>
<tr>
<th>Passes Purchased</th>
<th>Discount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000-1,999</td>
<td>5%</td>
</tr>
<tr>
<td>2,000-2,999</td>
<td>10%</td>
</tr>
<tr>
<td>3,000 - 3,999</td>
<td>15%</td>
</tr>
<tr>
<td>4,000 or more</td>
<td>20%</td>
</tr>
</tbody>
</table>

Table 6
Additional Discount for Bulk Purchase of Advance Purchase Group Day Passes
3.14 Monthly Passes

All Calendar Month Passes shall be valid until the end of the Service Day on the last day of the calendar month. All 30-Day Passes shall be valid for 30 consecutive days commencing on the first day the pass is validated.

3.15 Upgrades

Effective January 1, 2010, a Regional Day Pass residing on a Compass Card may be upgraded to a RegionPlus Day Pass upon payment of the difference between the original price paid and the new pass price. This upgrade is only available on Compass Cards with a sufficient stored value balance and occurs automatically when a Compass Card with a valid Regional Day Pass is tapped prior to boarding a service requiring a RegionPlus Day Pass. An upgrade does not extend the period of validity of the pass and is not available for paper Day Passes.

SECTION 4: MULTI RIDE TICKETS AND TOKENS

4.1 Round Trip Tickets

Any transit operator may, at its option sell round trip tickets at two times the price of a single trip ticket for any fare category or service. Outbound and return trips must be taken on the same service day and are valid round trip from the point of origin to the destination.

4.2 Multi-Trip Ticket Packs

Any transit operator may, at their option, bundle multiple single trip tickets for any service they operate, and sell the tickets for the full face value of the tickets or with a discount of up to ten percent.

4.3 Tokens

If tokens are made available, they shall be sold for $2.25 each, in multiples of 20 ($45.00) or 40 ($90.00), and shall entitle the person holding the universal token to up to a $2.25 cash fare value trip on any MTS bus or Trolley service except ADA paratransit services. Some services may require a cash upgrade in conjunction with the Regional Universal Token.

Tokens will not be accepted for payment of any COASTER, SPRINTER, Access, LIFT, or Premium Express single trip fare. Multiple tokens may be used to pay fares or purchase passes with a value of more than one local bus trip, but change will not be given.

SECTION 5: STORED VALUE COMPASS CARDS

5.1 Card Acquisition and Registration

SANDAG, the administrator of the Compass Card Program, may require a nonrefundable fee for passengers wishing to acquire a Compass Card. The fee shall not exceed $5.00.

Compass Card users may elect to register their card. If registered, users will be entitled to one free replacement if the card is lost or stolen. Additionally, registered users of the Compass Card are entitled to balance protection. Registered users will be reimbursed the value of their cash or transit product at the time the card is reported lost or stolen.
Reimbursement will be provided on a new Compass Card. An unregistered user shall have no right to reimbursement or refund of a Compass Card balance even if the card is lost or stolen. Registered Compass Cards are not transferable.

Compass Card users may opt not to participate in the registration program, but shall be required to pay the above-mentioned fee and will not receive the benefits of registration. Whether or not a user pays a fee or participates in the registration program, the Compass Card shall be the property of SANDAG and may be revoked and/or confiscated by SANDAG, MTS, or NCTD.

5.2 Validating a Compass Card

Compass Card users who have a transit fare product or stored value loaded on their card must validate their card each time they board a bus or train. Passengers who fail to tap and validate their Compass Card as required may be deemed to not be in possession of a valid fare consistent with the ordinances and policies of MTS and NCTD.

5.3 Inspection and Use of Compass Cards

Users of the Compass Card must produce the Compass Card for inspection by authorized SANDAG, MTS, or NCTD personnel or their designated agents. The Compass Card is intended as a fare payment device on MTS, NCTD or any transportation service that is part of the San Diego Regional Fare System. Any nonauthorized use of the card is strictly forbidden.

5.4 Refunds of Stored Value and Transit Products

Refunds will not be issued for transit pass products loaded onto a Compass Card. Refunds of stored value remaining on voluntarily surrendered cards and confiscated cards will be available for registered Compass Cards only. Registered Compass Card holders seeking a refund must complete an application form available from the Transit Store or NCTD Customer Service, and follow the submission instructions on the application. Refunds will only be issued up to the maximum value of any receipts that show cash being loaded onto the subject Compass Card. All refunds are subject to a processing and waiting period of up to 90 days. SANDAG may refuse any improper request for refund, or may make a partial refund. SANDAG and the transit operators may deduct a processing fee of not more than ten percent on any refund. Refunds will be issued as a credit on the same card as the original purchase if made by credit card. Original payments made by cash, check, or debit card will be refunded by check.

5.5 Photographs of Cardholders

A photograph of a registered card holder may be printed onto a Compass Card if requested by the registered user. NCTD, MTS, and SANDAG may charge up to a $8.00 fee for placement of a photograph on the Compass Card. Compass Cards bearing a photograph may only be used by the person whose photograph appears on the card.
5.6 Stored Value

The stored value feature of a Compass Card may be loaded with cash value. A Compass Card with stored value may not be used to purchase an additional or replacement Compass Card. A Compass Card with stored value may not be used to purchase fare products or stored value to be loaded onto a different Compass Card.

5.7 Default Fare for Stored Value

All card holders boarding any bus or rail vehicle and paying their fare with stored value on a Compass Card will have the applicable Day Pass cost deducted from the Compass Card when a farebox or platform validator is tapped. Passengers boarding a bus must advise the driver before tapping if they wish to pay a single trip fare or purchase a product other than the default Day Pass. Passengers boarding a service at any station or stop equipped with platform validators and TVMs must use the TVM if the passenger prefers to purchase a paper single trip ticket or a product other than the default Day Pass for the service they will be boarding.

SECTION 6: POST SECONDARY MONTHLY, QUARTER, AND SEMESTER PASS

6.1 Post Secondary Calendar Month and Semester Regional Passes

MTS and NCTD shall each have the exclusive right to sign agreements with educational institutions within their own district boundaries. MTS and NCTD may establish their own policies, terms, or eligibility rules regarding the sale of the passes in the sales agreements; however, the prices to the education institutions must conform to this Ordinance.

6.2 Discounted Calendar Monthly Post Secondary Regional Pass

The price of a Calendar Month Pass for post secondary institutions shall be 80 percent of the price of a Regional 30-Day Pass. The discounted pass shall be valid for unlimited travel during a calendar month period until the end of the Service Day on the 30th day. All Regional Pass discounts, supplements, and upgrade rules apply to the Monthly Post Secondary Pass.

6.3 Discounted Post Secondary Regional Quarter/Semester Pass

The price of the quarter/semester pass for post secondary educational institutions shall be based on 65 percent of the price of a Local & Corridor Monthly Pass, divided by 31 and multiplied by the number of days in the quarter or semester. The period of validity of a Post Secondary Regional Quarter/Semester Pass shall not be less than 90 days.

The discounted pass shall be valid for unlimited travel during a semester until the end of the Service Day. All Regional Pass discounts, supplements, and upgrade rules apply to the Post Secondary Regional Quarter/Semester Pass.

6.4 SPRINTER/BREEZE Only Post Secondary Pass

The SPRINTER/BREEZE Monthly Pass may be sold to post secondary educational institutions with a discount of $10.00 per month.
6.5 Ecopass Group Sales Pass Program

This program is for businesses or groups who purchase Regional and Premium passes and who are willing to purchase sufficient passes to provide a full year of transportation for 25 employees or members at a discounted rate and execute a participation agreement.

The pass price discount would be based on the pre-purchase of a specified number of passes for a 12-month period. Only one three-month trial program is permitted per employer or group interested in testing the program. Advance payment is required for both the trial program and permanent program annual passes. Participants may purchase additional monthly passes as provided in the participation agreement at a discounted rate.

The price of the employer or group sales pass program shall be set according to the number of annual regular adult passes purchased as defined in the participation agreement. All passes purchased in excess of limits in the participation agreement will be sold at retail rates.

SECTION 7: TRANSFERS WITH OTHER TRANSIT OPERATORS

7.1 MetroLink Trip Tickets and Monthly Passes

MetroLink Trip Tickets and Monthly Passes are valid as full boarding fare on NCTD buses and the SPRINTER on all routes directly serving the Oceanside Transit Center. MetroLink tickets and passes are not valid for transferring between NCTD routes or between NCTD and MTS. MetroLink tickets are not valid for transfers to the COASTER. The rules governing the acceptance of the MetroLink tickets and passes are as follows:

7.1.1 MetroLink Monthly Pass: This pass must have the correct current month, year, and list Oceanside as a valid city in order to be valid.

7.1.2 MetroLink Ten-Ride Ticket: This ticket has a validation printing area for each of ten (10) rides on METROLINK. In order to be valid to board an NCTD bus at Oceanside, the current date must appear in one of the boxes numbered 1 - 10.

7.1.3 MetroLink Round Trip Ticket: This ticket must be imprinted with the current date and is valid until the time shown on that date on the BREEZE or the SPRINTER at Oceanside Transit Center.

7.1.4 MetroLink One-Way Ticket: This ticket must be imprinted with the current date and is valid until the time shown on that date, to board the BREEZE or the SPRINTER departing the Oceanside Transit Center.

7.2 NCTD and Orange County Transit Authority (OCTA) Transfers

The following transfer agreement is in effect with OCTA between its Route 1 and Route 191 and BREEZE Route 395:

7.2.1 BREEZE Route 395 to OCTA Route 1 or Route 191: The passenger will pay the appropriate NCTD single Cash Fare (or Day Pass fare) and be issued an interagency transfer onboard the 395. This transfer or Day Pass will be accepted by OCTA drivers...
as full fare for one boarding. In addition, NCTD BREEZE Passes and Regional Passes will be accepted by OCTA as full fare for one boarding on its system.

7.2.2 OCTA Route 1 or Route 191 to BREEZE Route 395: An OCTA passenger may transfer from an OCTA bus to NCTD Route 395 by displaying a valid OCTA Day Pass, or a valid OCTA Monthly Pass. No further fare supplement will be required. The OCTA Day Pass or Monthly Pass is good for one boarding only on NCTD service. Therefore, the OCTA Day Pass or OCTA Monthly Pass is valid only on Route 395 in San Clemente, as this is the only route that connects with OCTA. Passengers continuing on other routes in Oceanside will need to pay a single Cash Fare or purchase an NCTD Day Pass.

7.3 Rail 2 Rail

The Rail 2 Rail program is subject to renewal with the National Railroad Passenger Corporation (Amtrak). When an agreement is in effect: persons holding valid Amtrak tickets may ride any COASTER train between Oceanside, Solana Beach, and Santa Fe Depot within the origin and destination listed on their Amtrak ticket or pass; or, for an upgrade fee ($59 for a one-zone pass, and $84 for a three-zone pass) payable to Amtrak, persons holding a valid COASTER Pass may ride the Amtrak between Oceanside, Solana Beach, and Santa Fe Depot within the zones listed on their Compass Pass. Passengers can determine if an agreement is in place by contacting NCTD.

SECTION 8: PARTICIPATION IN THE REGIONAL FARE SYSTEM

The requirements for participation in the Regional Fare System by transportation providers shall be as follows:

8.1 Transit operators participating in the Regional Fare System must operate fixed-route transit service with fixed, published schedules.

8.2 Transit Operators must serve an area not currently served by an existing publicly subsidized fixed-route bus operator.

8.3 New transit operators will be incorporated into the Compass Card system to the extent feasible and practical as determined by SANDAG.

8.4 Any transit provider selling or receiving SANDAG fare media shall have a secure handling procedure for all fare media. All tickets, passes, and transfers shall be handled as cash-value media, with appropriate security provided for acceptance, inspection, storage, distribution, and disposal.

SECTION 9: SPECIAL FARES

9.1 Sworn Peace Officers

MTS and NCTD transit operators will allow all San Diego County, state, and federal sworn peace officers, in uniform or in civilian clothes, to ride on scheduled bus and train routes without charge. Officers must show identification when requested by MTS or NCTD. This privilege does not apply to special events for off-duty officers.
9.2 Temporary, Promotional, and Experimental Fares

MTS and NCTD shall have the ability to set temporary, promotional, and experimental fares. Temporary, promotional, and experimental fares are defined as fares implemented for no more than twelve months for seasonal events or for marketing purposes. These fares, because of their short term/temporary nature, are not included in this Ordinance.

SECTION 10: S/D/M AND YOUTH COMPASS CARDS ELIGIBILITY AND REQUIREMENTS

10.1 Eligibility

In order to be eligible to purchase discounted S/D/M Passes, passengers must present an S/D/M or person with disabilities Compass Card with integral photo identification or one of the valid identification cards listed in Sections 10.2 through 10.3.

10.2 Seniors

Seniors must provide a valid Medicare card, state-issued driver’s license, government-issued photo identification, or an S/D/M Compass Card with integral photo identification when paying a Cash Fare, purchasing a Senior Pass, or boarding a transit vehicle with a Senior Pass.

10.3 Persons with Disabilities and Medicare

10.3.1 Cash Fares

All persons with a valid MTS identification card, Medicare Card, NCTD disabled identification card, State of California Department of Motor Vehicles (DMV) disabled identification card, or DMV placard identification card shall be permitted to pay the S/D/M single cash fare.

10.3.2 Compass Cards

In order to receive a reduced fare Compass Card, a person with a disability must present for approval their completed application form and show a government issued photo identification card and original versions of at least one of the following (photocopies will not be accepted) at the time of submitting the application:

10.3.2.1 State of California Department of Motor Vehicles disabled identification card, (the white receipt from the DMV)
10.3.2.2 State of California Department of Motor Vehicles placard identification card
10.3.2.3 ADA Paratransit Identification Card
10.3.2.4 Certification on the application form by a Doctor or a qualified health care professional or a statement from a physician or rehabilitation center (on original letterhead or prescription notepad with an original signature. In addition to the nature of the disability, the statement should identify whether it is permanent or temporary in nature.
10.3.2.5 Individualized Education Program from school for disabled students
10.3.2.6 Current year Supplemental Security Income (S.S.I.) or Social Security Administration (S.S.A.), or Social Security Disability Insurance (S.S.D.I.). award letter
10.3.2.7 Letter from the Epilepsy Foundation
10.4 Youth

Youth must provide on request valid school, college, or government-issued photo identification to establish eligibility for a Youth discount when boarding a transit vehicle with a Youth pass.

SECTION 11: ADA Paratransit

11.1 Fares

The Cash Fare for ADA Paratransit per ride for ADA Certified passengers for one complete trip, origin to destination regardless of any need to transfer between ADA transit operators or zones shall be double the local fixed-route fare of the typical fixed-route service linking the origin and destination based on a determination by MTS or NCTD. Such determination must be made by calculating the regular fixed-route fare, including transfers for a trip of similar length, at a similar time of day, on the transit operators fixed-route system.

All ADA prepaid fare media will only be good on the system for which it was created. ADA prepaid fare media may not be loaded onto a Compass Card.

11.2 ADA Transfers

There is no charge to transfer from any ADA service to any Local, Corridor, or Regional bus or rail service.

A transfer slip or proof of fare payment will be issued by the driver of an MTS ADA Paratransit service to allow ADA passengers to transfer to regular transit services. Passengers transferring from LIFT to SPRINTER or BREEZE will not require any transfer slip or proof of payment.

Passengers transferring from any fixed-route service must pay a Supplement if the fare paid on the fixed-route service is less than the fare on the ADA Paratransit service they are boarding. The Supplement required will be the applicable ADA Paratransit Fare less the amount of any fare paid on the fixed-route service. Passengers transferring from fixed-route to ADA will only receive a transfer credit if the fare paid on the fixed-route service is a fare for which a paper transfer or proof of payment is issued. This includes single and return trip rail tickets, or Regional or RegionPlus day passes. If a single trip Cash Fare is deposited into a fixed-route farebox without a proof of payment, the ADA passenger will be required to pay the full fare when boarding a subsequent ADA vehicle as receipts are not issued for single trip Cash Fares deposited into the farebox.

One personal care attendant may ride free with each ADA passenger riding an ADA Paratransit or transit vehicle if requirement is identified on ADA certification.
SECTION 12: REGIONAL TICKET AND PASS ADMINISTRATION

12.1 Policy Manual

SANDAG shall prepare and maintain a Policy and Procedures Manual that identifies the roles, responsibilities, and procedures that will be used to manage the printing, sales, revenue allocation, and revenue collection for all pre-paid transit fare media. The Policy and Procedures Manual shall be reviewed and updated not less than once each year. The Manual shall cover the administration of printing, sales, boarding counts, revenue collection, and revenue allocation for fare products, including tickets, passes, and tokens. The Manual does not apply to ADA transit operators.

12.2 SANDAG Responsibilities

SANDAG manages transit fares for the San Diego region. Pursuant to Board Policy No. 009 SANDAG complies with state and federal laws and regulations, including the Americans with Disabilities Act of 1990 (ADA), Title VI of the Civil Rights Act of 1964 (Title VI), and other federal and state discrimination laws. SANDAG’s Third-Party Complaint Procedures are available at www.sandag.org/legal and should be utilized in the event a person believes this Ordinance is being applied in a discriminatory manner. SANDAG is forbidden from operating transit services by state law. The transit operators are responsible for transit operations. Persons who believe they have been subjected to discrimination by a transit operator should contact the transit operator directly for assistance.

SANDAG shall:

12.2.1 Ensure that each transit operator submits monthly counts by category for all fare products subject to regional revenue distribution.

12.2.2 Distribute monthly the proportion of revenues from all regional fare media in accordance with Exhibit 1.

12.2.3 Prepare a yearly summary of passes, tokens, and ticket riders (by transit operator).

12.2.4 Fund and administer the design and printing of all regional passes, tokens, and tickets. The design of which shall be subject to approval by the transit operators.

12.2.5 Fund the regional prepaid fare program encompassing the distribution and sales reconciliation of all fare products subject to regional revenue distribution.

12.2.6 Prepare monthly summaries of TransNet local transportation sales tax subsidies for S/D/M and Youth Passes, or any other local jurisdiction subsidy by the end of the month.

12.2.7 Prepare monthly summaries of regional fare products that include all ticket revenue distribution, including subsidies, and shall submit a copy of these data, SANDAG summary counts, and allocation percentages to each transit operator.

12.2.8 Keep a separate fund for all pass and ticket sales revenue received.

12.2.9 Distribute monthly, within ten working days from the first of the month, to each transit operator its portion of regional fare products in accordance with Exhibit 1.
12.2.10 Bill local jurisdictions monthly for any subsidy payments that may result from a reduced price Monthly Pass program established by that jurisdiction and apportion such revenue to the appropriate transit operators.

12.3 Vendor Commissions

SANDAG may at its discretion enter into commercial agreements for the sale of transit fare products by third-parties and such agreement may allow the vendor to earn a commission on the sale of products. The commission paid to any vendor may not exceed an aggregate of five percent of total product sales.

SECTION 13: TRANSIT OPERATOR RESPONSIBILITIES

13.1 Each transit operator shall determine pass riders by category and a daily record shall be maintained and kept on file for a one-year period. Such records shall be made available to SANDAG at its request.

13.2 Each transit operator shall prepare a monthly summary of pass riders by category and route, where applicable, using the formula in Exhibit 1.

13.3 Each transit operator shall permit SANDAG to be the decision-maker in case of questions regarding pass counts, and SANDAG shall justify its decision to the transit operator(s) in writing.
SECTION 14: EFFECTIVE DATE OF ORDINANCE OR AMENDMENTS

This Ordinance shall go into effect on January 20, 2012. Notwithstanding Board Policy No. 004, all amendments shall go into effect not less than fifteen days after the second reading and approval of the Board of Directors unless approved in accordance with Board Policy No. 004 as an urgency measure.

PASSED AND ADOPTED this 16th of December 2011.

CHAIRPERSON

ATTEST: SECRETARY

Member Agencies: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

ADVISORY MEMBERS: California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, San Diego Unified Port District, San Diego County Water Authority, Southern California Tribal Chairmen’s Association, and Mexico.

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

I, Clerk of the Board of SANDAG, do hereby certify that the foregoing is a true copy of an Ordinance adopted by the SANDAG Board of Directors on December 16, 2012, at the time and by the vote stated above, which said Ordinance is on file in the office of SANDAG.

DATED: _____________________________, 2012

_______________________________
Clerk of the Board
Exhibit 1

REVENUE SHARING AGREEMENTS
PROCEDURE DESCRIPTION

This formula shall be applied to all Regional Monthly Passes sold. The Premium Express passes are not part of the formula except that five percent of the total revenue from the Premium Express Passes is retained for the region and combined with the Regional Monthly Pass revenue. (The five percent rate represents the transfer rate on the Premium Express routes that accept the Premium Express passes. MTS keeps all the remaining Premium Express Pass revenue.) The base pass revenue is then allocated to each transit operator that accepts the Regional Monthly Pass based on the revenue the transit operator’s percentage of Regional Monthly Pass boardings for all adult passes.

PASS REVENUE ALLOCATION PROCEDURES

Step 1

1a. The total number of Regional Monthly Adult passes sold x current price + five percent of Premium Express Adult Monthly pass revenue = Monthly Pass base revenue.

1b. The total number of Regional Monthly Pass riders on all routes operated by transit operator “x” / the total number of Regional Monthly Pass riders on all routes operated by all transit operators = proportion of Regional Monthly Pass base revenue allocated to transit operator “x.”

1c. 1a x 1b = Current Price of Regional Monthly Pass base pass revenue allocated to transit operator “x.”

Step 2

2a. All Premium Express Monthly Pass revenue (minus the five percent included in the current Regional Monthly Pass base) is allocated to MTS.

Step 3

3. Any interest accrued by SANDAG as a result of the holding of Regional Monthly Pass revenues before allocation to the transit operators shall be paid to the operators.
I. Applicability

This fare revenue allocation formula is applicable only to Regional Day Passes used by passengers that cross the boundary between the MTS and NCTD service areas. Regional Day Passes are passes that may be used on regular MTS and NCTD bus services (not Rural or Premium services), the SPRINTEN and the Trolley. When conducting the revenue allocation formula calculations SANDAG shall treat multiple day Regional Day Passes in the same manner as a single day Regional Day Pass. Each transit operator shall retain 100 percent of revenue earned from the sale of day passes used exclusively on services within their own service area.

II. Regional Day Passes

1. At least once every year SANDAG shall conduct a survey of Regional Day Pass use on bus routes that cross the transit service area boundary between MTS and NCTD. The survey shall be conducted during the school year. Each transit operator shall retain 100 percent of the revenue earned from the sale of Regional Day Passes within their service area onboard buses and at ticket vending machines unless the following conditions occur as determined by the SANDAG survey:

   a. The number of Regional Day Passes purchased in the NCTD service area and used on MTS services exceeds by more than ten percent the number of Regional Day Passes sold in the MTS service area and used on NCTD services; or

   b. The number of Regional Day Passes purchased in the MTS service area and used on NCTD services exceeds by more than ten percent the number of Regional Day Passes sold in the NCTD service area and used on MTS services; and

   c. If the ten percent margin is exceeded and there is a difference of more than 25 passes per weekday between the number of passes sold on each system, the revenue from the number of passes in the imbalance shall be shared equally between the two transit operators. The number of day passes used annually shall be calculated by SANDAG based on the ratio of Regional Day Passes to other fares and applied to the annual ridership of the services that cross the boundary between the MTS and NCTD transit service areas. If the ten percent margin is exceeded and there is a difference of less than 25 passes, then no revenue sharing shall be required.

   d. Any interest accrued by SANDAG as a result of the holding of Regional Day Pass revenues before allocation to the transit operators shall be paid to the operators.
PROCEDURE DESCRIPTION FOR REGIONAL PREMIUM DAY PASS

The total number of Premium Day Passes issued by MTS and NCTD shall be collected and verified.

Each boarding on a MTS bus or NCTD bus with a Premium Day Pass shall be recorded and the total number of boardings shall be reported to SANDAG.

A monthly survey of Trolley riders and a quarterly survey of SPRINTeR riders shall be conducted using the statistical procedures developed by SANDAG. From this survey the monthly or quarterly number of Premium Day Pass passengers shall be determined.

The NCTD percentage share of Day Pass revenue shall be calculated by dividing the number of NCTD Premium Day Pass boardings by the total (MTS + NCTD) number of boardings each reporting period. The MTS percentage share of Day Pass revenue shall be calculated by dividing the number of MTS Premium Day Pass boardings by the total (MTS + NCTD) number of boardings each reporting period.

The total revenue from the distribution of all Premium Day Passes shall be determined by adding the revenue received from one day Premium Day Passes. The revenue allocation for MTS shall be the total revenue times the percentage of Premium Day Pass Boardings on MTS. The revenue allocation for NCTD shall be the total revenue times the percentage of Premium Day Pass Boardings on NCTD.

Any interest accrued by SANDAG as a result of the holding of Premium Day Pass revenues before allocation to the transit operators shall be paid to the operators.
SENIOR/DISABLED/MEDICARE AND YOUTH
PASS REVENUE ALLOCATION FORMULA

1. The total number of pass riders (by category) on all routes operated by transit operator “x,”
divided by the total number of pass riders (by category) on all routes operated by all transit
operators equals the proportion of pass revenue (by category) allocated to transit operator
“x.”

2. Any interest accrued by SANDAG as a result of the holding of Senior/Disabled/Medicare and
Youth Pass revenues before allocation to the transit operators shall be paid to the operators.
JUROR PASS REVENUE SHARING

Revenues from the sale of Juror Passes shall be shared as provided in the Memorandum of Understanding for the Juror Pass Program among the courts, the transit operators, SANDAG, and sponsors.

Any interest accrued by SANDAG as a result of the holding of Juror Pass revenues before allocation to the transit operators shall be paid to the operators.
TOKEN PROGRAM

TOKEN REVENUE ALLOCATION

1. The monthly token boardings for all participating transit operators will be calculated by the actual tokens sold.

2. All tokens received will be reported to SANDAG monthly.

3. All token sales revenue will be remitted to SANDAG.

4. Transit operators shall sort tokens from other currency and deliver them in a sealed envelope to SANDAG on a monthly basis for reimbursement. The envelope should be marked on the outside with the transit operator name and the number of tokens enclosed. SANDAG will reimburse the transit operator for each token submitted based on the calculated value of each token at the time of sale using a first in-first out methodology. SANDAG will reimburse transit operators following submittal of tokens in the monthly distribution report.

5. Any interest accrued by SANDAG as a result of the holding of Token revenues before allocation to the transit operators shall be paid to the operators.
COASTER REVENUE SHARING AGREEMENT

Five percent of net COASTER Revenue, including single tickets, round trip tickets, and Monthly Passes shall be allocated by NCTD to MTS.

NCTD shall advise SANDAG of the total COASTER net revenue and pay five percent to SANDAG. Direct payments to participating agencies (i.e., Trolley for special event coordination) shall be deducted from the five percent net revenue submitted to SANDAG. Based on the data provided by NCTD, SANDAG shall forward the five percent share to MTS once each year in the year end distribution (June).

MTS shall have the responsibility for allocating the revenue to the transit operators within the MTS organization. SANDAG will direct the funds based on the MTS allocation. SANDAG will conduct a survey at least every three years of COASTER transfers patterns. MTS may elect to the use the survey of transfer patterns to determine how the COASTER revenue is allocated among transit operators.

Any interest accrued by SANDAG as a result of the holding of COASTER revenues before allocation to the transit operators shall be paid to the operators.
Meeting Record of Public Meeting for Input on Fare Changes and Revisions to Regional Comprehensive Fare Ordinance

NOVEMBER 17, 2011
NCTD Board Room 6 to 8 p.m.

Transportation Committee Vice Chair Matt Hall served as the public meeting officer as appointed by Transportation Committee Chair Jack Dale.

The meeting was noticed via the following:

- 75,000 Rider Alerts posted on all MTS and NCTD transit vehicles beginning November 2, 2011.
- Newspaper Notices published as follows:
  - El Latino Friday, November 4 (Spanish)
  - North County Times, Friday, November 4 (English)
  - San Diego Union-Tribune, Sunday, November 6 (English)
- SANDAG Web site and Facebook page beginning November 1, 2011

The Agenda for the meeting was included in the Rider Alert, which is attached as Exhibit 1. The format for the meeting was an open house, allowing for members of the public to drop in at any time during the two-hour timeframe. SANDAG staff made available for review copies of the proposed changes to the Fare Ordinance, the existing Fare Ordinance, the Title VI report, the pertinent previous NCTD agenda items calling for the fare changes, and comment cards. Members of the public were given the chance to review the proposed documents and ask questions of SANDAG staff. Comments were invited during the entire duration of the meeting. Those members wishing to comment had the choice of using the provided comment cards or dictating their comments to staff (SANDAG staff had a digital recorder available for those wishing to verbally provide comments).

1. PUBLIC COMMENTS

No verbal comments were provided during the meeting. The following written comments were received, original copies of which are available for viewing at the office of the Clerk of the SANDAG Board of Directors:

- Mystie Bollaert suggested that a regional SDM Pass good for all services be made available at a price that is low enough for low-income riders. A copy of the complete comment form provided by Ms. Bollaert is attached as Exhibit 2.
- Glenn Leider commented that reinstating the “Transfer From Transit” discount was a good thing. A copy of the complete comment form provided by Mr. Leider is attached as Exhibit 3.
2. ADJOURNMENT

The meeting was adjourned at 8 p.m.

Exhibits: 1. NOTICE! Public Meetings for input on fare changes and revisions to Regional Comprehensive Fare Ordinance (Meeting Agenda)
   2. Public Comment (Mystie Bollaert)
   3. Public Comment (Glenn Leider)
NOTICE!

Public Meetings for input on fare changes and revisions to Regional Comprehensive Fare Ordinance

Two public meetings will be held by the San Diego Association of Governments (SANDAG) to receive comment on a proposal to amend transit fares affecting the Metropolitan Transit System (MTS) and North County Transit District (NCTD) service areas and proposed changes to the Regional Comprehensive Fare Ordinance. Unless otherwise specified all changes are proposed to become effective on January 20, 2012.

NCTD implemented promotional fares on January 20, 2011 for a one-year period. It is proposed to make these changes permanent. Additionally, it is proposed to reduce the RegionPlus Day Pass from $14 to $12 and add language to the Regional Comprehensive Fare Ordinance.

Promotional Fares to Become Permanent

- BREEZE – Change in One-Way Regular Cash Fare from $2 to $1.75 ($1 to $0.75 for Senior/Disabled/Medicare);
- LIFT - Reduce the LIFT fare from $4.00 to $3.50;
- COASTER – Change in One-Way Regular Cash Fare from a range of $5 to $6.50 to a range of $4 to $5.50 ($2.50-$3.25 to $2-$2.75 for Senior/Disabled/Medicare);
- COASTER – Change in COASTER zones from four zones to three zones; from two zones to one zone within the NCTD service area and no change within the MTS service area).
- COASTER – Change Regular Monthly Pass Fares from a range of $144 to $182 to a range of $120 to $165 ($45.50 to $41.25 for Senior/Disabled/Medicare);
- COASTER – Change Discount for Single Ride and Round Trip tickets to a $0.50 discount on Single Ride tickets for those with Regular, Youth, or Senior/Disabled/Medicare Compass Passes and a $1.00 discount on Round Trip tickets for those with Regular, Youth, or Senior/Disabled/Medicare Compass Passes.

The following new change is proposed:

- RegionPlus Day Pass – Reduce from $14 to $12

Additionally, the following wording changes are proposed to the Regional Comprehensive Fare Ordinance:

- COASTER - Establishment of supplement for Rail 2 Rail COASTER monthly pass upgrade ($59 for one-zone pass and $84 for three-zone pass) for Adult, Senior/Disabled/Medicare, and Youth monthly passes;
- Revision of eligibility to purchase discounted passes for persons with disabilities. Make language consistent with Federal Transit Administration (FTA) regulations and MTS and NCTD current practice.

Public Hearings will be held:

Thursday November 17, 2011
NCTD Board Room
810 Mission Avenue, Oceanside
6 – 8 p.m.

Friday November 18, 2011
SANDAG 8th Floor Conference Room
401 B. Street, San Diego
12 noon – 2 p.m.

The public meetings will be conducted in an open house format where participants can attend at any time during the meeting, ask questions of staff, complete comment cards, or make their public comments to the officiant and participants. The public meetings will be officiated by one or more SANDAG Board member(s), or their designee(s), and a transcription will be produced and provided to the SANDAG Board of Directors and the general public in advance of any decision.

In compliance with the Americans with Disabilities Act (ADA), SANDAG will accommodate persons who require assistance in order to participate in the Public Meetings listed above. If such assistance is required, please contact SANDAG at (619) 699-1900 at least 72 hours in advance of the meeting. To request the materials in an alternate format and/or additional language(s), please call (619) 699-1900, (619) 699-1904 (TTY), or fax (619) 699-1905.

If you are unable to attend one of the public hearings you may e-mail comments to fares@sandag.org, or provide your comments by phone, (619) 595-5388, fax (619) 699-1905, or to submit comments in writing, send to Regional Fare Changes, SANDAG, 401 B Street, Suite 800, San Diego, CA 92101. Comments must be received by Monday, November 21, 2011.
¡AVISO!
Reunión Pública para recibir retroalimentación
Sobre los cambios de tarifas y las revisiones a la Ordenanza (Reglamento) Regional Integral de Tarifas

La Asociación de Gobiernos de San Diego (SANDAG, por sus siglas en inglés) llevará a cabo dos reuniones públicas para recibir comentarios sobre la propuesta para modificar las tarifas del transporte público que afectaría las áreas de servicio del Metropolitan Transit System (MTS) y el North County Transit District (NCTD) y sobre los cambios propuestos a la Ordenanza (Reglamento) Regional Integral de Tarifas. A menos que se especifique otra cosa, todos los cambios propuestos entrarían en vigor el 20 de enero de 2012.

Por un periodo de un año a partir del 20 de enero de 2011, NCTD implementó tarifas promocionales. Se propone que esos cambios sean permanentes. Adicionalmente, se propone reducir el Pase Diario RegionPlus de $14 a $12 y agregarlo al texto de la Ordenanza (Reglamento) Regional Integral de Tarifas.

Tarifas Promocionales que se Volverán Permanentes

• BREEZE – Cambio en la tarifa en efectivo del Pase Regular en Un Solo Sentido (One-Way) de $2 a $1.75 ($1 a $0.75 para Adulto Mayor/Discapacitado/Medicare);
• LIFT – Reducir la tarifa de LIFT de $4.00 a $3.50;
• COASTER – Cambio en la tarifa en efectivo del Pase Regular en Un Solo Sentido (One-Way) de un rango de $5 a $6.50 a un rango de $4 a $5.50 ($2.50-$3.25 a $2-$2.75 para Adulto Mayor/Discapacitado/Medicare);
• COASTER – Cambios en zonificación del COASTER de cuatro a tres zonas; y de dos a una zona dentro del área de servicio de NCTD, y sin cambios dentro del área de servicio de MTS).
• COASTER – Cambios a la tarifa del Pase Mensual Regular de un rango de $144 a $182 a un rango de $120 a $165 ($45.50 a $41.25 para Adulto Mayor/Discapacitado/Medicare);
• COASTER – Cambiar Descuento de boletos Sencillos y de Viaje Redondo a un descuento de $0.50 en boletos de Viaje Sencillo para aquellos que cuenten con Pases Compass Regular, Juvenil, o para Personas Mayores/Discapacitadas/Medicare y un descuento de $1.00 en boletos de Viaje Redondo para aquellos que cuenten con Pases Compass Regular, Juvenil, o para Personas Mayores/Discapacitadas/Medicare.

(Continúa al reverso)

Se proponen los siguientes nuevos cambios:

• Pase de Un Día RegionPlus – Se reduce de $14 a $12
Adicionalmente, se proponen los siguientes cambios en el texto de la Ordenanza (Reglamento) Regional Integral de Tarifas:

• COASTER – Establecimiento de un aumento de Tren a Tren (Rail 2 Rail) al pase mensual del COASTER ($59 para el pase de Una Zona, y $84 para el pase de Tres Zonas) para los pases mensuales de Adultos, Adulto Mayor/Discapacitado/Medicare, y Jóvenes;
• Revisión de elegibilidad para comprar pases con descuento para personas con discapacidades. Hacer que el lenguaje sea consistente con las regulaciones de Federal Transit Administration (FTA) y las prácticas actuales de MTS y NCTD.

Las Audiencias Públicas se llevarán a cabo:

Jueves 17 de noviembre de 2011
NCTD Board Room
810 Mission Avenue, Oceanside
6 – 8 p.m.

Viernes 18 de noviembre de 2011
SANDAG 8th Floor Conference Room
401 B. Street, San Diego
12 noon – 2 p.m.

Las reuniones públicas se llevarán a cabo en un formato de Evento de Puertas Abiertas, donde los participantes pueden asistir en cualquier momento de la reunión, hacer preguntas al personal, usar tarjetas para comentarios, o hacer sus comentarios públicos a los presentadores y el público asistente. Las reuniones públicas serán conducidas por uno o más miembros de la Mesa Directiva de SANDAG, o su(s) designado(s), y se preparará una transcripción que será presentada a la Mesa Directiva de SANDAG y al público en general por adelantado a cualquier discusión.

En cumplimiento con la ley Americans with Disabilities Act (ADA), SANDAG asistirá a las personas que requieran ayuda para participar en las reuniones enlistadas arriba. Si tal asistencia es requerida, por favor contacte a SANDAG al (619) 699-1900 con al menos 72 horas de anticipación a la reunión. Para solicitar este documento o reportes asociados en un formato alternativo y/o idioma(s) adicional(es), por favor llame al (619) 699-1900, (619) 699-1904 (TTY), o fax (619) 699-1905.

Si usted no puede asistir a ninguna de las audiencias públicas, puede enviar sus comentarios por correo electrónico a fares@sandag.org, hacer sus comentarios por teléfono llamando al (619) 595-5388, por fax al (619) 699-1905, o para mandar sus comentarios por escrito, dirigirlos a Regional Fare Changes, SANDAG, 401 B Street, Suite 800, San Diego, CA 92101. Los comentarios deberán entregarse antes del lunes 21 de noviembre de 2011.
Public Meetings for input on fare changes and revisions to Regional Comprehensive Fare Ordinance

Thursday, November 17, 2011, 6 – 8 p.m.
NCTD Board Room
810 Mission Avenue, Oceanside

Friday November 18, 2011, 12 noon – 2 p.m.
SANDAG 8th Floor Conference Room
401 B. Street, San Diego

Please make your comments below. You also may e-mail comments to fares@sandag.org, or provide your comments by phone, (619) 595-5388, fax (619) 699-1905, or to submit comments in writing, send to Regional Fare Changes, SANDAG, 401 B Street, Suite 800, San Diego, CA 92101. Comments must be received by Monday, November 21, 2011.

Name: Mystie Bollaert
Address: 5410 Sunny Creek Rd. #101
City/State/ZIP: Carlsbad, Ca. 92010
Phone/E-mail: (760) 602-7974

Comment: I have Fetal Alcohol Syndrome/Service Dog to take care of me when I have a seizure and prevent law enforcement from thinking that I am on something illegal when a seizure occurs. I am not eligible for Regional Center transit support or any other organization to help me with a county-wide pass, including extras that may not allow the county-wide pass to have in its regulations for use on transit. I'm on Social Security Disability Income (the lowest rung of Social Security) very close to SSI. I make monthly payments and I know that my Coaster pass does not include new regulations on different types of transportation. Can you envision a pass for every type of transportation that you will drum up without adding more money?
Reunión Pública para recibir retroalimentación
Sobre los cambios de tarifas y las revisiones
a la Ordenanza (Reglamento) Regional Integral de Tarifas

| Jueves 17 de noviembre de 2011  
6 – 8 p.m.  
NCTD Board Room  
810 Mission Avenue, Oceanside | Viernes 18 de noviembre de 2011  
del medio día – 2 p.m.  
SANDAG 8th Floor Conference  
401 B Street, San Diego |

Favor de escribir sus comentarios en las líneas a continuación. También puede enviar sus comentarios por correo electrónico a fares@sandag.org, o proveer sus comentarios por teléfono al (619) 595-5388, por fax al (619) 699-1905 o entregar sus comentarios por escrito enviándolos por correo a Regional fare Changes, SANDAG, 401 B Street, Suite 800, San Diego, CA 92101. La fecha límite para recibir comentarios es el lunes 21 de noviembre del 2011.

Nombre  

Dirección  

Ciudad/Estado/Código Postal  

Teléfono/Correo electrónico  

Commentario: that most of us Disabled/Seniors will not be able to pay for on ONE PASS unless your group takes a look at every type of check that many of us receive? Can you then set a price that EVERYONE will be able to afford on one COUNTY-WIDE pass without leaving some of us ineligible for Disabled Services. Some types that help those out with payment to transit agencies? I am one of those who will be left out if a mega-use pass comes to fruition. Please help those of us out who will not receive a fair deal over others who get to take advantage of being able to use such mega-use passes.
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Name: Glenn Leider

Address: 2627 Kremeyer Cir #6
City/State/ZIP: Carlsbad CA 92008

Phone/E-mail: 760/659-9004, Glenn.Leider@yahoo.com

Comment: Thanks for bringing back a discount for riding Coaster. Since January 2011 the net cost for Coaster rides has actually been HIGHER due to lack of a discount from transit.
NOTICE!

Public Meetings for input on fare changes and revisions to Regional Comprehensive Fare Ordinance

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(Continued on reverse)

The following new change is proposed:
- RegionPlus Day Pass – Reduce from $14 to $12

Additionally, the following wording changes are proposed to the Regional Comprehensive Fare Ordinance:
- COASTER - Establishment of supplement for Rail 2 Rail COASTER monthly pass upgrade ($59 for one-zone pass and $84 for three-zone pass) for Adult, Senior/Disabled/Medicare, and Youth monthly passes;
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**¡AVISO!**
Reunión Pública para recibir retroalimentación
Sobre los cambios de tarifas y las revisiones a la
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La Asociación de Gobiernos de San Diego (SANDAG, por sus siglas en inglés) llevará a cabo dos reuniones públicas para recibir comentarios sobre la propuesta para modificar las tarifas del transporte público que afectarían las áreas de servicio del Metropolitan Transit System (MTS) y el North County Transit District (NCTD) y sobre los cambios propuestos a la Ordenanza (Reglamento) Regional Integral de Tarifas. A menos que se especifique otra cosa, todos los cambios propuestos entrarían en vigor el 20 de enero de 2012.

Por un periodo de un año a partir del 20 de enero de 2011, NCTD implementó tarifas promocionales. Se propone que esos cambios sean permanentes. Adicionalmente, se propone reducir el Pase Diario RegionPlus de $14 a $12 y agregarlo al texto de la Ordenanza (Reglamento) Regional Integral de Tarifas.

**Tarifas Promocionales que se Volverán Permanentes**

- **BREEZE** – Cambio en la tarifa en efectivo del Pase Regular en Un Solo Sentido (One-Way) de $2 a $1.75 ($1 a $0.75 para Adulto Mayor/Discapacitado/Medicare);
- **LIFT** – Reducir la tarifa de LIFT de $4.00 a $3.50;
- **COASTER** – Cambio en la tarifa en efectivo del Pase Regular en Un Solo Sentido (One-Way) de un rango de $5 a $6.50 a un rango de $4 a $5.50 ($2.50-$3.25 a $2-$2.75 para Adulto Mayor/Discapacitado/Medicare);
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(Continúa al reverso)

Se proponen los siguientes nuevos cambios:

- **Pase de Un Día RegionPlus** – Se reduce de $14 a $12

Adicionalmente, se proponen los siguientes cambios en el texto de la Ordenanza (Reglamento) Regional Integral de Tarifas:

- **COASTER** – Establecimiento de un aumento de Tren a Tren (Rail 2 Rail) al pase mensual del COASTER ($59 para el pase de Una Zona, y $84 para el pase de Tres Zonas) para los pases mensuales de Adultos, Adulto Mayor/Discapacitado/Medicare, y Jóvenes;
- **Revisión de elegibilidad para comprar pases con descuento para personas con discapacidades. Hacer que el lenguaje sea consistente con las regulaciones de Federal Transit Administration (FTA) y las prácticas actuales de MTS y NCTD.**

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(Continúa al reverso)
Meeting Record of Public Meeting for Input on Fare Changes and Revisions to Regional Comprehensive Fare Ordinance

NOVEMBER 18, 2011

SANDAG Conference Room 8A 12 noon to 2 p.m.

SANDAG Principal Regional Planner Dave Schumacher served as the public meeting officer as appointed by Transportation Committee Chair Jack Dale.

The meeting was noticed via the following:

- 75,000 Rider Alerts posted on all MTS and NCTD transit vehicles beginning November 2, 2011.
- Newspaper Notices published as follows:
  - El Latino Friday, November 4 (in Spanish)
  - North County Times, Friday, November 4 (English)
  - San Diego Union-Tribune, Sunday, November 6 (English)
- SANDAG Web site and Facebook page beginning November 1, 2011

The Agenda for the meeting was included in the Rider Alert, which is attached as Exhibit 1. The format for the meeting was an open house, allowing for members of the public to drop in at any time during the two-hour timeframe. SANDAG staff made available for review copies of the proposed changes to the Fare Ordinance, the existing Fare Ordinance, the Title VI report, the pertinent previous NCTD agenda items calling for the fare changes, and comment cards. Members of the public were given the chance to review the proposed documents and ask questions of SANDAG staff. Comments were invited during the entire duration of the meeting. Those members wishing to comment had the choice of using the provided comment cards or dictating their comments to staff (SANDAG staff had a digital recorder available for those wishing to verbally provide comments).

1. PUBLIC COMMENTS

No verbal comments were provided during the meeting. The following written comments were received, original copies of which are available for viewing at the office of the Clerk of the SANDAG Board of Directors:

- John G. Wotzka commented that he wanted a higher price for the SDM card, as most seniors have a large pension. A copy of the complete comment form provided by Mr. Wotzka is attached as Exhibit 2.
Reginald Tisdale was pleased with the NCTD fare reductions. He commented on the need for an SDM Day Pass that could be sold on all transit vehicles. He also wanted pictures on SDM cards to be mandatory, but free for the first issuance. A copy of the complete comment form provided by Mr. Tisdale is attached as Exhibit 3.

2. **ADJOURNMENT**

The meeting was adjourned at 2 p.m.

Exhibits: 1. NOTICE! Public Meetings for input on fare changes and revisions to Regional Comprehensive Fare Ordinance (Meeting Agenda)
   2. Public Comment (John G. Wotzka)
   3. Public Comment (Reginald Tisdale)
Public Meetings for input on fare changes and revisions to
Regional Comprehensive Fare Ordinance

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Please make your comments below. You also may e-mail comments to fares@sandag.org, or provide your comments by phone, (619) 595-5388, fax (619) 699-1905, or to submit comments in writing, send to Regional Fare Changes, SANDAG, 401 B Street, Suite 800, San Diego, CA 92101. Comments must be received by Monday, November 21, 2011.

Name: John G Wetzka
Address: 725 4th Ave, #363
City/State/ZIP: San Diego, CA 92101
Phone/E-mail: (619) 446-7690

Comment: An increase in Senior fares would bring the cost of public transportation to a normal level, flow without making it unduly hard on working people and students that can't even get to work and school to make a living or get educated. Most Seniors are making less than $20k a year on pensions and making the working people live like 3rd world slaves to support their golden years.
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SANDAG 8th Floor Conference Room
401 B. Street, San Diego

Please make your comments below. You also may e-mail comments to fares@sandag.org, or provide your comments by phone, (619) 595-5388, fax (619) 699-1905, or to submit comments in writing, send to Regional Fare Changes, SANDAG, 401 B Street, Suite 800, San Diego, CA 92101. Comments must be received by Monday, November 21, 2011.

Name: Regina Tisdale

Address: 4251-A Renton St

City/State/ZIP: San Diego, CA 92104

Phone/E-mail: TISDALE @ PEOPLE PC.COM

Comment:

Senior Discount Card is needed. If the senior has no card it takes $1.10 per bus to get to a location that has the discount card. Some time the senior must take two buses to get to the transit store.

Fare reduction for NCTD is very good. More routes are needed.

I-15 needs an all day bus for shoppers.
Reunión Pública para recibir retroalimentación
Sobre los cambios de tarifas y las revisiones
da la Ordenanza (Reglamento) Regional Integral de Tarifas

| Jueves 17 de noviembre de 2011  
   6 – 8 p.m.  
   NCTD Board Room  
   810 Mission Avenue, Oceanside | Viernes 18 de noviembre de 2011  
   del medio día – 2 p.m.  
   SANDAG 8th Floor Conference  
   401 B Street, San Diego |

Favor de escribir sus comentarios en las líneas a continuación. También puede enviar sus comentarios por correo electrónico a fares@sandag.org, o proveer sus comentarios por teléfono al (619) 595-5388, por fax al (619) 699-1905 o entregar sus comentarios por escrito enviándolos por correo a Regional fare Changes, SANDAG, 401 B Street, Suite 800, San Diego, CA 92101. La fecha límite para recibir comentarios es el lunes 21 de noviembre del 2011.

Nombre: **New Senior (SDM) Card with Picture should be FREE. Once**

Dirección: **The card is given, it is registered and farang**

Ciudad/Estado/Código Postal:

Teléfono/Correo electrónico:

Commentario: **Out the $6.00 ID card can be done, this would help stop the purchase of multiple SDM cards by people who then give it to others, people also sell SDM cards. Farang out the $6.00 card will stop fraud.**
<table>
<thead>
<tr>
<th>Date</th>
<th>Comment</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/4/2011</td>
<td>Resident would like more information on what is meant by &quot;revision of eligibility&quot; in regards to whom the fare change will affect.</td>
<td>Carolyn Cox</td>
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<td>11/16/2011</td>
<td>Rider suggests that eligibility for SDM should not change, as long as you have a Doctor's note.</td>
<td>Dean</td>
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<tr>
<td>11/21/2011</td>
<td>Rider was pleased with the COASTER fare reductions, but wished there was a better discount for SDM riders.</td>
<td>Helen Bourne</td>
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ACQUISITION OF SOUTH BAY EXPRESSWAY ASSETS:
FINAL CLOSING DOCUMENTS

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 (purchase price has since been reduced to $341.5 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 discusses the documents that will be utilized for the purchase and financing of the SR 125 assets and the proposed amendments to the Development Franchise Agreement with Caltrans. The report then provides information regarding the proposed approach to financing the purchase, which includes a loan from TransNet and a future amendment to the TransNet Extension Ordinance. The amendment to the TransNet Extension Ordinance would allow the Board to lower tolls over time to as much as 40 percent to 50 percent of the current rates. Based on this proposed set of actions related to the acquisition, financing, and toll reduction, various findings required by the California Environmental Quality Act (CEQA) are needed as explained further in this report. In order to complete the purchase by December 21, 2011, approval of the actions in the staff recommendation above must be obtained from the Board on December 16, 2011. Assuming SANDAG will begin

Recommendation

The Board of Directors is asked to: (1) adopt Resolution Nos. 2012-14 through 2012-16 relating to findings and actions required by the California Environmental Quality Act and the Addendum to Final Environmental Impact Report, March 2003 MOBILITY 2030, The Transportation Plan for the San Diego Region (Attachments 9 and 10); (2) approve the acquisition and financing method for the State Route 125 (SR 125) asset purchase from SBX; (3) adopt Resolution No. 2012-13, which will authorize the Executive Director to execute all of the documents necessary to acquire the SR 125 assets, including the Letter of Intent concerning amendments to the Development Franchise Agreement with Caltrans in substantially the same form as attached (Attachment 7), and to finance the purchase on behalf of SANDAG; (4) adopt RTC Resolution No. 2012-01, authorizing the Executive Director to issue a loan to SANDAG in the form of the TransNet Promissory Note in substantially the same form as attached on behalf of the San Diego County Regional Transportation Commission (Attachment 8); (5) direct staff to return with a proposed amendment to the TransNet Extension Ordinance to swap the funds allocated for two reversible high-occupancy vehicle lanes on Interstate 805 between SR 905 and SR 54 for the acquisition of SR 125; and (6) approve an amendment to the FY 2012 Budget related to SR 125 functions (Attachment 12).
operating the toll road on December 22, 2011, various budgetary actions also must be taken to support the work effort. Staff will review information regarding the Plan of Finance and provide the Board of Directors with a proposed amendment to the FY 2012 Budget.

Discussion

Documentation Related to the Purchase and Loans

At the December 2, 2011, Board of Directors meeting, the SANDAG legal team presented the Board with the Asset Purchase and Sale Agreement (the “APA”). The APA (Attachment 1) is the document that fundamentally incorporates the rights and obligations of the parties to this transaction. 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 (Transportation Infrastructure Finance and Innovation Act [TIFIA] loan) in the amount of $92,534,400 pursuant to the terms of the Amended and Restated TIFIA Loan Documents.

1. The Asset Purchase and Sale Agreement

In the last few weeks, the parties have reached agreement on the last remaining issues, which in large measure, concerned permitted uses of the Escrow Fund by SANDAG. Specifically, SBX relented on the issue of environmental liabilities and agreed that SANDAG would be able to use the Escrow Fund for “all Environmental Liabilities and Obligations relating to the Transferred Assets or any part thereof existing on or prior to the Closing Date.” (APA Section 2.2(l)). On the other hand, the parties agreed that misrepresentations and breaches of warranty would not be included in the scope of “Excluded Liabilities,” but in return, SANDAG now has the ability to draw up to $100,000 from the Escrow Fund in the first 6 months after the Closing Date in the event that a malfunction in the tolling system causes SANDAG to suffer consequential damages by losing toll revenue. As explained on December 2, SANDAG also obtained SBX’s agreement to permit SANDAG to draw up to a total of $1,500,000 from the Escrow Fund in the same time period to pay for any actual damages incurred as a result of a malfunction with the tolling system (as defined in Section 3.7 of the APA, which sets forth an objective standard for identifying a malfunction). (APA Section 3.6(d).) The APA also mandates certain required actions for the parties to take in the event of a dispute relative to the use of the Escrow Fund. Specifically, the escrow agent will be required to set aside an amount of money equal to SANDAG’s base claim plus $100,000, which amount will be set aside to cover SANDAG’s attorneys’ fees and costs associated with the resolution of the dispute. In that California law requires attorneys’ fees provisions to be reciprocal, SBX will be permitted to recover up to $100,000 in attorneys’ fees and costs from SANDAG if SBX is to prevail in any such dispute but, unlike SBX, the APA does not require that SANDAG set this money aside for SBX’s protection.

As explained during the December 2, 2011, meeting, SANDAG also succeeded in securing a unilateral release of SANDAG, the County of San Diego, and all cities within San Diego County as part of the APA, which as a practical matter, requires SBX to separately secure any release and dismissal of the pending litigation with the County of San Diego. Finally, the parties reached a compromise relative to the definition of “Seller’s Knowledge,” which indirectly includes Mr. Kip Horton, who is both the
Chairman of the SBX Board and a principal of RPA Advisers, LLC given that the definition includes “the actual or constructive knowledge of any director or officer of the Seller, after due inquiry and investigation.”

The Schedules to the APA were provided to the Board on December 2, 2011, and also are attached hereto (Attachment 1). During the December 16 Board meeting, the legal team will review the few substantive revisions to the Schedules made since the last Board meeting, and also will explain the purpose of each exhibit to the APA, attached thereto as Exhibits A through I. In addition, various documents relating to the transfer of real property covered by the APA are provided to the Board with this report (Attachment 2) and include the assignment of the SR 125 lease from SBX to SANDAG, the leasehold deed of trust, and the grant deeds relating to a slope needed for maintenance access to the toll road as well as the property on which the SR 125 Operations Center sits.

2. The Loan Documents

As previously authorized by and discussed with 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 of approximately $92,534,400, and issue a “Series D Note” to TIFIA in the principal amount of $1,445,850. Each of these aspects has separate agreements, and there is a fourth agreement (Master Trust Agreement) that 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 3) 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 that the Board 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) improvements under the TransNet Extension 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 (including the widening of SR 125 between 2040 and 2050 as planned in the 2050 Regional Transportation Plan [2050 RTP]). After the TransNet loan has been fully “satisfied” as described immediately above, the next account to receive funds is dedicated to Series D.

On December 2, the Board was informed of the remaining issues under negotiation concerning the MTA. Those two issues included whether SANDAG would be permitted to issue additional variable rate debt junior to the TIFIA loan, but senior to the Series D obligations, and the terms of an
objective test for TIFIA to use in determining whether SANDAG could take on additional debt. Due to the low likelihood that SANDAG would be able to issue additional variable rate debt (fixed rate would still be an option) backed by toll revenues, the SANDAG negotiation team dropped its pursuit of a provision allowing additional variable rate debt; however, SANDAG was able to obtain TIFIA’s agreement that a series of objective tests will be employed in determining whether SANDAG may take on additional debt in the future related to capital improvements to SR 125 or the refinancing of the TransNet Promissory Note. On December 16, Barclays and the legal team will be prepared to answer any questions the Board may have regarding the amortization schedules attached to the MTA. Additionally, a second “Rate Covenant” protecting the TransNet Loan and a covenant related to the Project Life Cover Ratio (“PLCR”), which was discussed with the Board on December 2, have been added to the MTA. The TransNet Rate Covenant requires that the Board set toll rates and authorize project expenditures in a fashion that guarantees that the project revenue available for TransNet Loan debt service is equal to the scheduled payment due TransNet in any given year. The PLCR Covenant prohibits the Master Trustee from disbursing payments to TransNet from funds in the TransNet account if the PLCR fall below 1.50. Once the PLCR reaches 1.50 or above, payments to TransNet resume.

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 4). The loan is divided into three separate notes, each of which has different principal amounts, interest rates and/or payment commencement and due dates. The loans are secured by first liens on SR 125 Collateral, which includes project revenues and property. If SANDAG does not meet the amortization schedules, SANDAG is not in default under the TIFIA loan agreement. Rather, SANDAG can only default on its payment obligations if: (1) it does not pay a note by its stated maturity date, or (2) SANDAG fails to operate SR 125 in a manner which yields a PLCR of 1.25 or higher. The PLCR will be calculated annually from the Present Value of Net Cash Flow, plus the Fund Balances in Year of Calculation divided by the TIFIA Loan Balance.

There were a few remaining issues being negotiated with TIFIA as of December 2. These issues have been resolved as follows: (1) an express non-recourse provision has been inserted in the agreement; (2) the agreement has been clarified to state that the non-recourse provisions apply to SANDAG’s indemnity obligations; (3) limitations have been placed on certain of SANDAG’s representations; (4) as noted under the discussion of the MTA, TIFIA and SANDAG have agreed on the circumstances under which additional debt may be issued; and (5) TIFIA has agreed to pay its own expenses. The legal team also plans to review and finalize Exhibits A through E to the TIFIA Loan Agreement by December 16. These exhibits include the scheduled debt service for each of the three notes and various standard assurances that are required by TIFIA.

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 on December 16.
TransNet Promissory Note

The TransNet loan documentation is in the form of a Promissory Note and is provided as Attachment 5 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 Extension 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 5), in the order of distribution described above for the cascade of project funds under the MTA. The only substantive changes to the Promissory Note since December 2, are a change to the language concerning the security for the loan so that it is conformed to the definition of “Collateral” in the TIFIA Loan Agreement, and modifications to the Payment Schedule to incorporate adjustments to the model and amortization schedules by Barclays.

Series D Agreement

The Series D Agreement (Attachment 6) 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, which prohibits the Board from decreasing toll rates once the TransNet loan has been fully satisfied. 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. Amendments to the Development Franchise Agreement

Once the Development Franchise Agreement with Caltrans (“DFA”) is assigned to SANDAG, 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 has confirmed that it will be able to obtain insurance at premium amounts lower than those paid by SBX.

As explained on December 2, Caltrans has agreed 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 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. No substantive changes to the Letter of Intent have been made since December 2.

Resolution No. 2012-13 and RTC Resolution No. 2012-01, which are included as Attachment 8 to this report, would authorize the Executive Director or his designee to execute all of the documents described above in substantially the same form as attached and permit him to take such other actions as may be necessary to consummate the purchase.

**Proposed Financing and Toll Reductions**

At the August 26, 2011, Board of Directors meeting, SANDAG staff identified three separate potentially viable approaches to financing the SR 125 toll road purchase: toll revenue bonds, a loan from TransNet, and exchanging an existing TransNet project for the SR 125 toll road purchase, or some combination of these three approaches. The Board’s discussion focused on an option utilizing the combination of a TransNet loan and project exchange or swap (Option B), because it would provide SANDAG the opportunity to meet the financial obligations of the toll road and achieve more transportation related benefits, such as improved mobility, lower program costs, and lower tolls, while at the same time, continuing to make the scheduled progress on current and planned transportation projects.

In order to carry out a 40 percent to 50 percent toll reduction on SR 125, the amount of debt payments SANDAG is making on the toll road would need to be reduced. This fundamental concept is where the concept of the “swap” was derived. In other words, without the swap, a toll reduction of 40 percent to 50 percent would not be 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 socioeconomic 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 SR 125 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 Performance Monitoring System (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, and 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.\footnote{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.}

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, 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
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 SR 125 toll road 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
other highways to the SR 125 toll road 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 (2010) and future year projections use the same networks as the 2050 RTP. Included in the baseline, for example, is the addition of four lanes (2 high-occupancy vehicle (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 level of service (LOS) improvement from LOS F to LOS E shown in Table 1 below, which provides 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 Traffic and Revenue

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<thead>
<tr>
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<th>SR 125</th>
<th>I-805</th>
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<tbody>
<tr>
<td></td>
<td>2010</td>
<td>2035</td>
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<tr>
<td>Total Daily Toll Transactions</td>
<td>23,100</td>
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<td>Potential Annual Revenues ($1,000)</td>
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<td>Average Daily Traffic (midpoint)</td>
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<tr>
<td>Level of Service</td>
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<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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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 40 percent to 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. 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 TransNet loan/swap option, daily transactions on SR 125 are projected to increase by 38 percent (from 42,000 ADT to 58,100 ADT) compared to the baseline, while annual toll revenues would decrease by 14 percent (from $39.7 million to $34.1 million). Also, under this option the LOS 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 2050 RTP. It is the attractiveness of SR 125 at the lower toll rates that is responsible for the LOS E on I-805. This shift in traffic patterns

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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 the SBX traffic consultant during 2010. The Stantec estimated growth relies on a roughly equal growth in tolls and traffic over the study period.

3 The TransNet project swap reduces the debt outstanding on SR 125 from $349.7 million to $157.7 million; this smaller debt allows tolls to be lowered (estimates range between 40 percent to 50 percent), 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.
would take advantage of the available capacity on SR 125 avoiding more the costly improvements to achieve the same LOS.

Table 2: TransNet Loan/Swap Traffic and Revenue

<table>
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<tr>
<th></th>
<th>SR 125</th>
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<tr>
<td>Total Daily Toll Transactions</td>
<td>23,100</td>
<td>58,100</td>
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<tr>
<td>Potential Annual Revenues ($1,000)</td>
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<td>Average Daily Traffic (midpoint)</td>
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<td>Level of Service</td>
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<td>C</td>
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<tr>
<td>Current &amp; Forecasted Average Toll Rate per Transaction</td>
<td>$2.50</td>
<td>$3.10</td>
</tr>
</tbody>
</table>

The graph illustrates the financial obligations of the toll road (bars) and the revenue generating capability of the road with no toll reduction (gold line). The distance between the bars (expenses) and the line (revenues) represented by the shaded portion is the SANDAG Board’s toll reduction capacity, estimated to be between 40 to 50 percent.

The model simulation demonstrated that tolls could be reduced by 40 percent to 50 percent, and meet the transportation mobility goals on I-805 and financial obligations. 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 could be lowered if there is no additional traffic attracted to the toll road after the toll rate has been lowered (i.e., if traffic levels remained the same).

In the interim, prior to the TransNet Extension Ordinance amendment, staff will conduct market research and return with tolling options for Board consideration. In addition, during the November 18 meeting the Board directed staff to return with a procedure that would monitor levels of traffic and toll revenues over time. 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 a 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 LOS improvement is achieved.

**CEQA**

Resolution Nos. 2012-14 through 2012-16 (Attachments 9 and 10) set forth the findings related to the various aspects of discretionary actions the Board is being asked to take on December 16. The first action, which is the acquisition of the SR 125 assets is categorically exempt from CEQA by operation of the Class 1 Categorical Exemption for Existing Facilities contained in CEQA Guidelines Section 15301. The Class 1 Categorical Exemption consists of “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.”

The second action relates to the proposed toll reductions on SR 125. As explained on December 2, SANDAG may accomplish some level of toll reductions by taking advantage of expected lowered costs, such as property taxes and lower management expenses, and by utilizing the statutory exemption contained in Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273, which states in relevant part that CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fare and other charges by public agencies which the public agency finds are for the purpose of (among other things): (1) meeting operating expenses, including employee wage rates and fringe benefits; (2) purchasing or leasing supplies, equipment, or materials; or (3) meeting financial reserve needs and requirements.

In order to ultimately achieve a full 40 percent to 50 percent toll reduction, however, the TransNet swap will need to transpire. The proposed swap will require an amendment to the TransNet Extension Ordinance, which would be scheduled for first and second readings between January and March 2012 if the Board approves staff’s recommendation on this item. The amendment would modify the Expenditure Plan in the TransNet Extension 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 Extension Ordinance is the same EIR that was used for the 2003 Regional Transportation Plan (2003 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 would 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. The addendum is provided as Attachment 10 to this report for the Board’s consideration.

**TransNet Plan of Finance – Early Action Program Needs and SR 125 Acquisition**

At the December 2, 2011, meeting, Board members requested additional information about the current cash flow needs of the TransNet Early Action Program (EAP) and an analysis of potential effects of the SR 125 toll road acquisition. This analysis was conducted as part of the 2011 Plan of Finance, which was approved by the Board of Directors on November 18, 2011.

The 2011 Plan of Finance assumed the need to make an outlay of approximately $250 million of TransNet funds as part of the December 2011 closing of the SR 125 transaction. Currently, there is approximately $450 million in TransNet cash and bond proceeds and available commercial paper capacity to meet this obligation and keep ongoing TransNet EAP projects on schedule. The monthly TransNet “burn rate” (monthly TransNet-only expenses) is projected to range from $25 million to $50 million per month. As discussed by the Board in November, SANDAG would need to return to the bond market during spring 2012 to issue $250 million to $300 million in long-term fixed rate debt to meet ongoing cash flow needs of the TransNet EAP.

Attachment 11 includes two charts, which show that TransNet revenues (cash and bond proceeds) along with planned borrowing will provide sufficient funding to keep the TransNet EAP on track. Attachment 11 includes: (1) a full listing of the TransNet EAP budgets approved as part of the 2011 Plan of Finance; (2) monthly TransNet-only revenues and expenses for FY 2012; and (3) projected TransNet EAP – total revenues and expenses from FY 2013 to FY 2018.

Incurring additional debt is not anticipated to impact the region’s ability to make progress on the EAP projects or complete the remaining projects in the TransNet program. The analysis conducted as part of the 2011 Plan of Finance demonstrates the financial feasibility to deliver the EAP projects, to meet overall needs for the Major Corridors program through 2048, and to fund the acquisition cost of SR 125 through a TransNet loan/swap option, while maintaining positive annual fund balances and adequate debt service coverage associated with strong bond ratings.

**Proposed FY 2012 Budget Amendment**

The proposed FY 2012 Budget amendment is provided as Attachment 12 to this report. The proposed amendment would add a new work element for SR 125 Facility Operations (OWP 33121) to the Overall Work Program and increase the FY 2012 Budget by approximately $13.2 million. The objective of the work element is to maintain and operate the SR 125 toll facility, collecting project revenue to pay for operations, maintenance, and debt incurred in the acquisition of the DFA. Major expenses include direct costs (e.g., credit card processing and bank fees, irrigation and landscaping, insurance); materials and equipment (e.g., transponders and electricity); contracted services (e.g., customer service center operations, California Highway Patrol enforcement, environmental monitoring); debt service (TIFIA and TransNet payments); set asides for future maintenance needs; and staff costs to oversee, monitor, and market the toll facility.
Next Steps

If the Board approves the staff recommendation, the time between December 16 and December 21, 2011 will be spent putting the finishing touches on the documents discussed in this report. In addition staff will prepare a proposed amendment to the TransNet Extension Ordinance and schedule first and second readings.

GARY L. GALLEGOS
Executive Director

Attachments: 1. Asset Purchase and Sale Agreement
2. Real Property Transfer Documents
3. Master Trust Agreement
4. Second Amended and Restated TIFIA Loan Agreement
5. TransNet Promissory Note
6. Series D Agreement
7. Letter of Intent re: Proposed Amendments to DFA
8. Resolution Nos. 2012-13 and RTC 2012-01 (acquisition and financing authorizations)
9. Resolution Nos. 2012-14 and 2012-15, including CEQA findings
10. Addendum to Final Environmental Impact Report, March 2003 MOBILITY 2030, The Transportation Plan for the San Diego Region, and Resolution No. 2012-16, including CEQA findings
11. Summary of 2011 Plan of Finance and TransNet EAP Revenues and Expenses
12. Proposed FY 2012 Budget Amendment

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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## Exhibits

- Exhibit A – Definitions
- Exhibit B – Form of Assignment Agreement
- Exhibit C – Form of Assignment of Lease
- Exhibit D – Form of Escrow Agreement
- Exhibit E – Form of Promissory Note
- Exhibit F – Form of Transition Services Agreement
- Exhibit G-1 – Form of Seller’s Counsel Opinion
- Exhibit G-2 – Form of Purchaser’s Counsel Opinion
- Exhibit H – Form of SANDAG Release
- Exhibit I – Form of Toll Violation Proceeds Assignment

## 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
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- Schedule 5.15 Franchise Agreement Matters
- Schedule 7.12 Existing Letters of Credit
- Schedule A Certain Permitted Liens
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) (x) 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 p.m. of the day immediately preceding the Closing Date 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); and

(n) 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\textsuperscript{1}] (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\textsuperscript{2}], 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 thereunder 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 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

\textsuperscript{1} The amount represents the cash portion of the Purchase Price, less the Escrow Funds ($7,500,000). Such amount is subject to adjustment for any changes in the TIFIA Loan Amount.

\textsuperscript{2} Subject to adjustment for repaid principal and accrued and unpaid interest through the Closing Date.
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 a toll violation proceeds assignment (“Toll Violation Proceeds Assignment”) substantially in the form attached hereto as Exhibit I; it being understood that (i) the Pre-Closing Toll Proceeds retained by the Seller include any and all amounts collected by the California Department of Motor Vehicles (the “DMV”) during such six-month period (even if such amounts are remitted by the DMV to the operator of the Project after the end of such six-month period), and (ii) to the extent any proceeds of the Pre-Closing Toll Proceeds collected by the DMV during such six-month period are remitted to the successor operator of the Project after the end of the Transition Period, the Purchaser shall, or shall cause such successor operator to, forward such proceeds to the Seller; provided, however, that Purchaser will be reasonably able to distinguish between Pre-Closing Toll Proceeds and those collected on account of post-closing toll violations.

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.
(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 written settlement agreement between the parties or a judgment or court order issued by a court of competent jurisdiction in accordance with Section 12.4(a) hereof or a final arbitration award. 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 (the “Base Claim”) plus (ii) $100,000 (the “Stipulated Sum”), up to which amount shall be available to pay the Purchaser’s costs and expenses, including the Purchaser’s attorneys’ fees and disbursements, to which the Purchaser would be entitled pursuant to Section 3.6(g) if it is the prevailing party in any proceeding relating to such dispute (collectively, 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 finally adjudicated, even if such time period extends beyond eighteen (18) months after the Closing Date. Upon the resolution of the dispute, the Purchaser and Seller shall jointly instruct the Escrow Agent to disburse the Base Claim in accordance with the written settlement agreement or the order finally resolving the adjudication, as applicable, plus, if the Purchaser is the prevailing party, the amount to which the Purchaser is entitled pursuant to Section 3.6(g) of the Stipulated Sum. The remaining portion of the Disputed Claim Escrow Amount, if any, will be applied as follows: (1) if the dispute is finally resolved within eighteen (18) months following the Closing Date, such amount shall be disbursed to the Seller if at such date such funds are in excess of the amounts required to be retained in the Escrow Account pursuant to Section 3.6(d) or (e); otherwise, they shall remain in the Escrow Account, and (2) if the dispute is finally resolved after eighteen (18) months following the Closing Date, then such amount shall be disbursed to the Seller.

(c) 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.
(d) On the date which is six (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 (b) and (c) of this Section 3.6 that remain pending at such time.

(e) On the date which is twelve (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 (b) and (c) of this Section 3.6 that remain pending at such time.

(f) On the date which is eighteen (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 (b) and (c) of this Section 3.6 that remain pending at such.

(g) In the event of a dispute over a claim made by the Purchaser against the Escrow Funds, the prevailing party in any proceeding for resolution of such dispute shall be entitled to recover from the losing party reasonable costs and expenses incurred by the prevailing party with respect thereto, including attorneys’ fees and disbursements, in an amount not to exceed $100,000. If the Purchaser is the prevailing party, such amounts incurred by the Purchaser (not exceeding $100,000) shall be reimbursed to the Purchaser from the Stipulated Sum as provided in Section 3.6(b). If the Seller is the prevailing party, the Purchaser shall reimburse the Seller for such amounts incurred by the Seller (not exceeding $100,000) from its own separate funds.

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, 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 a modification of the software in order to comply with PCI current standards or AB 1268 (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 daily rate of identification, recording and processing during the term of the Transition Period equal to 96.5% for any given date (calculated by the percentage of vehicles for which the software accurately records a
payment (whether the method of payment is FasTrak, cash or credit), or for which a toll
violation is registered and able to be processed. Violations that are rejected during review
for reasons not related to the software shall be removed from the count and not calculated
as part of the percentage. The Purchaser shall work with Seller to review existing reports
as part of the Transition Services and determine the suitability or modifications needed to
accurately perform the calculation), or as necessary to modify the Software during the
Transition Period to address the PCI and AB 1268 requirements, the Purchaser shall be
entitled to receive Escrow Funds up to a maximum limit of $1,500,000 (the
“IT Malfunction Reimbursement Amount”) to reimburse the Purchaser for the costs and
expenses of addressing such IT Malfunction, including up to $100,000, which shall be
available to reimburse the Purchaser for loss of toll revenues directly attributable to an 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 modifications necessary to comply with
PCI and AB 1268 standards and requirements, or, other than as provided above with
respect to loss of toll revenues, for any indirect or consequential damages 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; provided that 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 IT Malfunction
Reimbursement Amount.

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 Contracts with independent contractors or consultants (or similar arrangements), which are not cancellable without a material penalty or without more than thirty (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. Seller hereby represents and warrants that it has fully complied with all obligations under that certain Settlement Agreement, dated as of April 6, 2011, by and among the Seller, Caltrans, CTV, and certain creditors to Seller and their agents (the “Settlement Agreement”).

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) 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

(j) 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;

(j) The Reimbursement Agreement entered into on or about October 20, 2011, in furtherance of Section 3(a)(iv) of the Settlement Agreement applies only to Transportation Facility II, as that term is more fully defined in the Franchise Agreement; and

(k) 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, other than documents reflecting attorney-client communications or attorney work product as it pertains to the Seller’s records relating to the Chapter 11 Cases and/or the ORC Litigation. The Purchaser 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, in order to facilitate the Purchaser’s collection of tolls, the Seller shall, upon the Purchaser’s request, execute any and all documents necessary to permit the Purchaser to utilize the Seller’s existing merchant accounts with, inter alia, Wells Fargo, American Express and Paypal. Without further limiting the generality of the foregoing, 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,
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 end of the Transition Period. Other than as provided in the Transition Services Agreement, the 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 end of the Transition Period, and Seller shall pay all such amounts to all entitled employees on or prior to the end of the Transition Period.

(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-1;

(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;

(o) First Amendment to the Lease Agreement, duly executed by the Seller and Caltrans; and

(p) 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 order of the wire transfer referred to in Section 3.2;

(b) evidence of order 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 Agreement, 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) an opinion of Purchaser’s counsel, dated as of the date of Closing, substantially in the form of Exhibit G-2;

(k) 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;

(l) 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;

(m) 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

(n) 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 by the other Party as contained in this Agreement, or any covenant required to be performed by the other Party 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. 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 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):

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If to the Seller:

South Bay Expressway, LLC
c/o RPA Advisers, LLC
45 Eisenhower Drive
Paramus, NJ 07652
Phone: (201) 527-6660
Fax: (201) 527-6620
Attention: Kip Horton

With a copy to:

Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
Phone: 212-506-5000
Fax: 212-506-5151
Attention: Lorraine S. McGowen

If to the Purchaser:

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 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: Kip Horton
Title: Chairman

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.

“Base Claim” shall have the meaning set forth in Section 3.6(c).

“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.

“Chapter 11 Cases” means the chapter 11 bankruptcy cases filed by the Seller and CTV in the United States Bankruptcy Court for the Southern District of California on March 22, 2010.

“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.

“DMV” shall have the meaning set forth in Section 3.5.

“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 or about December 5, 2007, issued by Chicago Title Company as Policy No. 10-17-92.

“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.
“IT Malfunction Reimbursement Amount” 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.


“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.

“ORC Litigation” means various arbitration, litigation, and adversary proceedings in various state and federal courts and before various arbitration and mediation bodies, including, but not limited to a JAMS (San Diego Office) Proceeding related to Toll Road Contract Disputes (case No. 1240017226), Gap/Connector Litigation in the Superior Court in San Diego County (Case No. GIC 869386 (Consolidated)), ORC Mechanics' Lien Litigation/Lien Validity and Priority Adversary Proceeding (now pending on appeal in the United States District Court for the Southern District of California, No. 11cv03 BEN (BLM)), Stop Notice Litigation in the Superior Court in San Diego County (Case No. 37-2008-00096773-CU-MC-CTL), Inverse Condemnation Litigation in the Superior Court in San Diego County (Case No. 37-2008-00087644-CU-EI-CLT), New York Litigation in the Supreme Court of New York, in the County of New York.

“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 3.5.

“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, after due inquiry and investigation.

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

“Settlement Agreement” shall have the meaning set forth in Section 5.8.

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

“Stipulated Sum” shall have the meaning set forth in Section 3.6(c).

“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, imports 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.

“Toll Violations Proceeds Assignment” shall have the meaning set forth in Section 3.5.

“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;

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

(h) all claims related to toll violations arising prior to the Closing Date which have not been collected by or on behalf of the Seller 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]. [DEFINITION TO BE PROVIDED]
EXHIBIT B

Form of Assignment Agreement
BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

This Bill of Sale, Assignment and Assumption Agreement (the “Assignment Agreement”) dated as of December [__], 2011 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”).

PRELIMINARY STATEMENT

Pursuant to that certain Asset Purchase and Sale Agreement dated as of December [__], 2011 (the “Asset Purchase Agreement”) between the Seller and the Purchaser, the Seller has agreed to sell, transfer and assign to the Purchaser, and the Purchaser has agreed to purchase and accept from the Seller, the Transferred Assets, on the terms of, and subject to the conditions set forth in the Asset Purchase Agreement. Capitalized terms used but not defined herein shall have the meanings set forth in the Asset Purchase Agreement.

NOW THEREFORE, for good and valuable consideration paid by the Purchaser to the Seller, the receipt and sufficiency of which the Seller acknowledges:

1. Transfer of Assets. The Seller hereby sells, transfers, assigns, conveys and delivers to the Purchaser, and the Purchaser hereby purchases, acquires and accepts from the Seller, all of the Seller’s right, title and interest in and to the Transferred Assets, free and clear of all Liens (other than Permitted Liens). The sale, conveyance, assignment, transfer and delivery contemplated herein shall be effective at the Closing. Notwithstanding the foregoing or any provision of this Assignment Agreement to the contrary, the Seller retains and does not transfer, and the Purchaser does not purchase or acquire, any of the Retained Assets.

2. Benefit of and Conflict with Asset Purchase Agreement. This Assignment Agreement is executed pursuant to the Asset Purchase Agreement and is entitled to the benefits thereof, and the Transferred Assets are hereby sold, conveyed, assigned, transferred and delivered to the Purchaser subject to the terms and conditions contained in the Asset Purchase Agreement. The Seller and the Purchaser acknowledge and agree that this Assignment Agreement is intended only to document the sale and assignment of the Transferred Assets from the Seller to the Purchaser and that the Asset Purchase Agreement is the exclusive source of the agreement and understanding between the Seller and the Purchaser respecting the Transferred Assets. If there is any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement shall govern.

3. Further Assurances. The Seller shall, from time to time after the date hereof, execute and deliver such further instruments of transfer and assignment and take such further actions as the Purchaser may reasonably request, in each case to more effectively consummate
the transactions contemplated by the Asset Purchase Agreement and to vest in the Purchaser good and marketable title in and to the Transferred Assets, free and clear of any and all Liens (other than Permitted Liens).

4. **Assignment.** This Assignment Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Assignment Agreement shall create or be deemed to create any third-party beneficiary rights in any Person or entity not a party to this Assignment Agreement.

5. **Governing Law.** This Assignment Agreement 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).

6. **Counterparts.** This Assignment Agreement may be executed and delivered in two or more counterparts (including by facsimile or other electronic transmission), all of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank; Signature Page Follows.]
IN WITNESS WHEREOF, each of the Seller and the Purchaser has caused this Assignment 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: Kip Horton
Title: Chairman

San Diego Association of Governments

By: ________________________
Name:
Title:
EXHIBIT C

Form of Assignment of Lease
ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this “Assignment”) dated as of December __, 2011 (the “Effective Date”) is made and entered into by and between South Bay Expressway, LLC, a Delaware limited liability company (“Assignor”) and San Diego Association of Governments, a California local public agency (“Assignee”).

RECITALS:

A. The State of California, Department of Transportation (the “Department”), entered into a Development Franchise Agreement for a Privatized Transportation Project dated as of December 31, 1990 (as amended, the “DFA”) with California Transportation Ventures, Inc., a California corporation (“CTV”). CTV assigned its rights under the DFA and related documents to South Bay Expressway, L.P., a California limited partnership and predecessor in interest to Assignor, including 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, known as South Bay Expressway (the “Project”).

B. Assignor, successor-in-interest to South Bay Expressway, L.P., a California limited partnership, as lessee, and the Department, as lessor, entered into that certain Lease dated as of November 16, 2007, as amended by that certain First Amendment to Lease of even date herewith (collectively, the “Lease”), for premises consisting of certain real property and improvements located thereon in the County of San Diego, State of California, and more particularly described on Exhibit A hereto (the “Premises”).

C. Assignor and Assignee have entered into an Asset Purchase Agreement, dated as of December [___], 2011 (the “APA”), pursuant to which Assignor intends to transfer, convey, sell and assign to Assignee, and Assignee intends to purchase, acquire and assume, all of the assets, properties and rights to manage, operate, maintain and collect tolls on the Project, and certain liabilities relating thereto, on the terms and subject to the conditions set forth in the APA (such acquisition and other transactions contemplated by the APA being referred to herein collectively as the “Transactions”).
D. In order to consummate the Transactions on the Effective Date, Assignor desires to assign all of its right, title and interest in, to and under the Lease to Assignee, and Assignee desires to accept the assignment thereof and assume Assignor’s obligations thereunder from and after the Effective Date.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereby agree as follows:

1. Assignment. Effective as of the Effective Date, Assignor hereby assigns, transfers and sets over to Assignee all of its right, title and interest to the Lease and the Premises.

2. Assumption. Assignee hereby acknowledges that it has read and has knowledge of all the terms and conditions of the Lease and the DFA. Effective as of the Effective Date, Assignee hereby accepts the foregoing assignment and assumes and agrees to keep, perform and be bound by all of the terms, covenants and conditions contained in the Lease and the DFA, as if Assignee were an original party to such agreements.

3. No Amendment. This Assignment shall not change, modify or amend the Lease in any manner.

4. Binding Effect; Entire Agreement. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The agreements contained herein constitute the entire understanding between the parties with respect to the subject matter hereof, and supersede all prior agreements, written or oral, inconsistent herewith. This Assignment may be amended only in writing, signed by all parties hereto.

5. Conflict; Severability. In the event of any conflict between the provisions of this Assignment and the provisions of the APA, the provisions of the APA shall control. If any provisions of this Assignment shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Assignment and all such other provisions shall remain in full force and effect.

6. Notices. All notices, other communications and approvals required or permitted by this Assignment or the Lease shall be in writing and shall be delivered, sent by certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

   if to Assignor: South Bay Expressway, LLC
c/o RPA Advisers, LLC
45 Eisenhower Drive
Paramus, NJ 07652
Attention: Kip Horton

   if to Assignee: San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Attention: Executive Director
7. **Governing Law.** The terms and provisions of this Assignment shall be construed in accordance with and governed by the law of the State of California.

8. **Authority.** The persons executing this Assignment on behalf of the parties hereto represent that they are duly authorized to execute and deliver this Assignment pursuant to their respective by-laws, operating agreements, resolutions or other legally sufficient authority. Further, each party and each person executing this Assignment on their behalf represents to the other parties that (i) it has been validly formed or incorporated; (ii) it is duly qualified to do business and in good standing in the state of California; and (iii) this Assignment is being executed on its behalf and for its benefit.

9. **Counterparts.** This Assignment may be executed simultaneously in two or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same Assignment. The delivery of an executed copy of this Assignment by facsimile or electronic transmission shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Assignment had been delivered.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

ASSIGNOR:

SOUTH BAY EXPRESSWAY, LLC,
a Delaware limited liability company

By: ______________________________________
Name: 
Title: 

ASSIGNEE:

SAN DIEGO ASSOCIATION OF GOVERNMENTS,
a California local public agency

By: ______________________________________
Name: 
Title: 
State of California  
County of ___________

On ______________________ before me, personally appeared __________________ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________  (Seal)

State of California  
County of ___________

On ______________________ before me, personally appeared __________________ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________  (Seal)
EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

(Attached)
EXHIBIT D

Form of Escrow Agreement
ESCROW AGREEMENT

This Escrow Agreement (this “Escrow Agreement”) is made as of December [__], 2011, by and among South Bay Expressway, LLC, a Delaware limited liability company (the “Seller”), the San Diego Association of Governments, a California public agency (the “Purchaser”), and [______________________] (the “Escrow Agent”).

WHEREAS, the Purchaser and the Seller entered into that certain Asset Purchase and Sale Agreement, dated as of December [__], 2011 (the “Asset Purchase Agreement”), providing for the sale of certain assets of the Seller to the Purchaser; and

WHEREAS, in the Asset Purchase Agreement, the Purchaser and the Seller have agreed that a portion of the Purchase Price payable to Seller under the Asset Purchase Agreement will be put in escrow for the purposes and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual terms and conditions hereof, the parties hereby agree as follows:

1. Capitalized Terms. Capitalized terms in this Escrow Agreement which are not otherwise defined herein shall have the same meanings as are provided for such terms in the Asset Purchase Agreement.

2. Escrow Money. Simultaneously with the Closing, the Purchaser, pursuant to Section 3.1(c) of the Asset Purchase Agreement, will deposit with the Escrow Agent the sum of $7,500,000, which funds, together with any interest earned thereon (the “Escrow Funds”) constitute a portion of the Purchase Price pursuant to the Asset Purchase Agreement.

3. Escrow Account. The Escrow Funds shall be held in escrow by the Escrow Agent pursuant and subject to the terms and conditions of this Escrow Agreement. Upon receipt of the Escrow Funds, at the direction of the Seller and the Purchaser, the Escrow Agent shall place the Escrow Funds into any of the following investments:

   (a) Readily marketable direct obligations of the United States of America;

   (b) Fully insured certificates of deposits issued by a commercial bank operating in the United States;

   (c) Commercial paper or bonds of a domestic issuer if at the time of purchase such paper or bonds are rated in one of the two highest rating categories of Standard and Poor’s Corporation (“S&P”) or Moody’s Investor Services, Inc. (“Moody’s”); or

   (d) Any money market mutual fund rated AAA or higher by S&P or Moody’s, bills or other comparable financial instruments selected in writing by the Seller and the Purchaser with a maturity date not in excess of one hundred eighty (180) days.

The Escrow Funds shall at all times be held in a separate trust account and shall only be disbursed and delivered pursuant to the terms and conditions of this Escrow Agreement. The
Escrow Agent will provide monthly statements to the Purchaser and the Seller that will show accrued interest along with any deposits and withdrawals from the Escrow Funds. The Escrow Agent will report the accrued interest on the Escrow Funds to the Purchaser, the Seller and the Internal Revenue Service on Form 1099 INT as required by Applicable Law.

Subject to Section 9, the Escrow Agent shall have no liability whatsoever for any loss, fee, tax or other charge incurred in connection with any investment, reinvestment or liquidation of an investment hereunder.

When the Escrow Agent is instructed to deliver securities against payment, or to effect payment against delivery, delivery and receipt of payment may not be completed simultaneously, and each of the Purchaser and the Seller agrees that the Escrow Agent shall incur no liability for any credit risk involved, and that the Escrow Agent may deliver and receive securities, and arrange for payments to be made and received, in accordance with customs prevailing from time to time among brokers or dealers in such securities.

4. Disbursements. Disbursements of the Escrow Funds shall only be made pursuant to jointly executed written instructions to the Escrow Agent from the Purchaser and the Seller or pursuant to a written settlement agreement between the Purchaser and the Seller or a judgment or court order issued by a court of competent jurisdiction pursuant to Section 12.4(b) of the Asset Purchase Agreement or pursuant to a final arbitration award if the Purchaser and Seller should agree to submit their dispute to arbitration. The Seller and the Purchaser shall provide written instructions to the escrow agent pursuant to Section 3.6 of the Asset Purchase Agreement.

5. Compensation of Escrow Agent. The fees for the services of the Escrow Agent under this Escrow Agreement are set forth in Schedule A attached hereto and incorporated herein by reference. The fees for the services of the Escrow Agent under this Escrow Agreement and reimbursement of the Escrow Agent for out-of-pocket expenses shall be paid equally by the Seller and the Purchaser. Fees that are due at the time of any proposed release of any portion of the Escrow Funds must be paid before any portion of the Escrow Funds is released to anyone.

6. Non-Waiver. Nothing contained in this Escrow Agreement shall be deemed or construed to release or waive any of the rights or obligations of the Purchaser or the Seller under the Asset Purchase Agreement, and all rights and remedies of the Purchaser and the Seller under this Escrow Agreement are cumulative of all other rights which any of the Parties may have under the Asset Purchase Agreement, by law or otherwise.

7. Tax Reporting of Earnings from Escrow Funds. For Tax reporting purposes, all earnings from the Escrow Funds, including any income earned from the investment of the Escrow Funds or any portion thereof, in any Tax year shall be reported as allocated to the Seller. The Seller shall report any such income on its income Tax Returns and be liable for the payment of, and shall pay when due, all Taxes upon such income. The Escrow Agent shall pay from the Escrow Funds to the Seller within thirty (30) days following each calendar year an amount equal to the net earnings on investment of the Escrow Funds in such calendar year multiplied by forty-five percent (45%). Upon execution of this Escrow Agreement, the Seller will provide Escrow Agent with a Form W-9 including its taxpayer identification number. This Section 6 shall survive notwithstanding any termination of this Escrow Agreement or the resignation or removal of Escrow Agent.
8. **Good Faith Dispute Re Escrow Funds.** If, at any time, there shall exist a good faith dispute between the Purchaser and the Seller with respect to the holding or disposition of all or any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, the Escrow Agent shall retain Escrow Funds in an amount equal to (i) the disputed amount (the “Base Claim”) plus (ii) $100,000 (the “Stipulated Sum”), up to which amount shall be available to pay the Purchaser’s costs and expenses, including the Purchaser’s attorneys’ fees and disbursements, to which the Purchaser would be entitled pursuant to Section 3.6(g) of the Asset Purchase Agreement if it is the prevailing party in any proceeding relating to such dispute (collectively, 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 finally adjudicated, even if such time period extends beyond eighteen (18) months after the Closing Date. Upon the resolution of the dispute, the Escrow Agent shall disburse the Base Claim in accordance with the written settlement agreement or the order finally resolving the adjudication, as applicable, plus, if the Purchaser is the prevailing party, the amount to which the Purchaser is entitled pursuant to Section 3.6(g) of the Asset Purchase Agreement of the Stipulated Sum. The Escrow Agent shall apply the remaining portion of the Disputed Claim Escrow Amount, if any, as follows: (1) if the dispute is finally resolved within eighteen (18) months following the Closing Date, such amount shall be disbursed to the Seller if at such date such funds are in excess of the amounts required to be retained in the Escrow Account pursuant to Section 3.6(d) or (e) of the Asset Purchase Agreement; otherwise, they shall remain in the Escrow Account, and (2) if the dispute is finally resolved after eighteen (18) months following the Closing Date, then such amount shall be disbursed to the Seller.

9. **Suspension of Performance; Disbursement Into Court.** If, at any time, (i) the Escrow Agent is unable to determine, to Escrow Agent’s sole satisfaction, the proper disposition of all or any portion of the Escrow Funds or Escrow Agent’s proper actions with respect to its obligations hereunder, or (ii) the Purchaser and the Seller have not, within thirty (30) days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 10 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

(a) suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Escrow Agreement with respect to the disputed or uncertain portion of the Escrow Funds until such dispute or uncertainty shall be resolved pursuant to a written settlement agreement between the Purchaser and Seller or a judgment or court order issued by a court of competent jurisdiction or a final arbitration award in accordance with Section 3.6 and Section 12.4(a) of the Asset Purchase Agreement or until a successor Escrow Agent shall have been appointed (as the case may be).

(b) petition (by means of an interpleader action or any other appropriate method) 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 instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, only the disputed or uncertain portion of the Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys’ fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.
Escrow Agent shall have no liability to the Purchaser, the Seller or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

10. **Resignation of Escrow Agent.** Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving ten (10) Business Days prior written notice to the Purchaser and the Seller specifying a date when such resignation shall take effect. Upon any such notice of resignation, the Purchaser and Seller jointly shall appoint a successor Escrow Agent hereunder prior to the effective date of such resignation. The retiring Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all of the Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction and payment to the retiring Escrow Agent of all fees and expenses (including court costs and attorneys’ fees) payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. Upon delivery of the Escrow Funds and records pertaining thereto to successor Escrow Agent, Escrow Agent shall have no further duties, responsibilities or obligations hereunder. After any retiring Escrow Agent’s resignation, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent’s corporate trust line of business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

11. **Liability of Escrow Agent.** The Escrow Agent undertakes to perform only such duties, responsibilities and obligations as are expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent’s gross negligence or willful misconduct was the primary cause of any loss to the Purchaser and/or the Seller. Escrow Agent’s sole responsibility shall be for the safekeeping and disbursement of the Escrow Funds in accordance with the terms of this Escrow Agreement. Escrow Agent shall have no implied duties, responsibilities or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may conclusively rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which the Escrow Funds are deposited, this Escrow Agreement or the Asset Purchase Agreement, or to appear in, prosecute or defend any such legal action or proceeding. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its
duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the opinion or instruction of such counsel. The Purchaser and the Seller, severally on an equal basis, shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel; provided, however, that the Escrow Agent shall not have the right to be indemnified hereunder for any liability (including related attorney’s fees) finally determined by a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of the Escrow Agent.

The Escrow Agent shall comply with orders issued or process entered by any court or arbitrator with respect to the Escrow Funds, without determination by the Escrow Agent of such court’s jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court or arbitral order, or in case any order, judgment or decree shall be made or entered by any court or arbitrator affecting such property or any part thereof, then and in any such event, the Escrow Agent shall rely upon and comply with any such order, writ, judgment, award or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment, award or decree, it shall not be liable to either of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment, award or decree may be subsequently reversed, modified, annulled, set aside or vacated.

The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility). The Escrow Agent shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

The Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

12. Indemnification of Escrow Agent. From and at all times after the date of this Escrow Agreement, the Purchaser and the Seller shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Escrow Agent and each director, officer, employee, attorney, agent and affiliate of the Escrow Agent (collectively, the “Indemnified Parties”) against any and all actions, claims (whether or not valid), losses, damages, liabilities, costs and expenses of any kind or nature whatsoever (including without limitation reasonable attorneys’ fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation the Purchaser and the Seller, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance of this Escrow Agreement or any
transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability (including related attorney’s fees) finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted primarily from the gross negligence or willful misconduct of such Indemnified Party. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by the Purchaser and the Seller severally on an equal basis. The obligations of the Purchaser and the Seller under this Section 12 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent. As between each other, the Purchaser and the Seller agree that the foregoing indemnities shall be provided on a fifty percent (50%) each basis.

The parties agree that neither the payment by the Purchaser and the Seller of any claim by the Escrow Agent for indemnification hereunder nor the disbursement of any amounts to the Escrow Agent from the Escrow Funds in respect of a claim by the Escrow Agent for indemnification shall impair, limit, modify, or affect, as between the Purchaser and the Seller, the respective rights and obligations of the Purchaser and the Seller under the Asset Purchase Agreement.

13. **Identifying Information.** The Purchaser and the Seller acknowledge that a portion of the identifying information set forth on Schedule A is being requested by the Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the “Act”), and the Purchaser and the Seller agree to provide any additional information requested by the Escrow Agent in connection with the Act or any similar legislation or regulation to which Escrow Agent is subject, in a timely manner. The Purchaser represents that all identifying information set forth on Schedule A with respect to the Purchaser is true and complete on the date hereof and will be true and complete at the time of any disbursement of the Escrow Funds. The Seller represents that all identifying information set forth on Schedule A with respect to the Seller is true and complete on the date hereof and will be true and complete at the time of any disbursement of the Escrow Funds.

14. **Notices.** Unless otherwise provided herein, all notices, requests, consents, approvals, demands and other communications to be given hereunder (collectively, “Notices”) will be in writing and will be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, (c) actual receipt or (d) the expiration of four Business Days after the day when mailed by registered or certified mail (postage prepaid, return receipt requested), addressed to the respective Parties listed below at the following addresses (or such other address for a Party hereto as will be specified by like notice):

If to the Seller:

South Bay Expressway, LLC  
c/o RPA Advisers, LLC  
45 Eisenhower Drive  
Paramus, NJ 07652  
Phone: (201) 527-6660  
Fax: (201) 527-6620  
Attention: Kip Horton
Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or banking holiday, such time shall be extended to the next day on which the Escrow Agent is open for business.

15. **Entire Agreement; Amendments.** This Escrow Agreement, together with the Asset Purchase Agreement, sets forth the entire understanding of the parties and supersedes all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof. No terms, conditions or agreements other than those contained herein, and no amendments or modifications hereto shall be valid unless made in writing and signed by the parties hereto.

16. **Binding Effect.** This Escrow Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

17. **Waiver; Remedies.** Waiver by any party hereto of any breach of or exercise of any rights under this Escrow Agreement shall not be deemed to be a waiver of similar or other breaches or rights or a future breach of the same duty. The failure of a party to take any action by reason of any such breach or to exercise any such right shall not deprive any party of the right to
take any action at any time while such breach or condition giving rise to such right continues. The parties shall have all remedies permitted to them by this Escrow Agreement or law, and all such remedies shall be cumulative.

18. **Termination.** Upon the first to occur of: the disbursement of all Escrow Funds pursuant to Section 4, the disbursement of all Escrow Funds pursuant to joint written directions of Purchaser and the Seller, or the disbursement of all Escrow Funds into court pursuant to Section 10 hereof, this Escrow Agreement shall terminate and the Escrow Agent shall have no further obligation or liability whatsoever with respect to this Escrow Agreement.

(a) **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). 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. 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. 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 13.

19. **Counterparts.** This Escrow Agreement may be executed by facsimile transmission, in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

20. **Representations and Warranties.** Each of the Escrow Agent, the Seller and the Purchaser hereby represents and warrants, with respect to itself; (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by such Person do not and will not violate any applicable law or regulation.
IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the day and year first written above.

South Bay Expressway, LLC

By: __________________________________________
Name: Kip Horton
Title: Chairman

San Diego Association of Governments

By: __________________________________________
Name: 
Title: 

[Escrow Agent]

By: __________________________________________
Name: 
Title: 
SCHEDULE A

1. Escrow Amount.

   Escrow Amount: $[____]

   Escrow Amount wiring instructions: [______________]

2. Taxpayer Identification Number.

   Purchaser: n/a

   Seller: [______________]

3. Representatives.

   The following person is hereby designated and appointed as the Representative of the Purchaser under the Escrow Agreement:

   ____________________________
   Name                        Specimen signature

   The following person is hereby designated and appointed as the Representative of the Seller under the Escrow Agreement:

   ____________________________
   Name                        Specimen signature
EXHIBIT E

Form of Series D Note
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”).

RE bâtals

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 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 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 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 SANDAG and the Commission pursuant to which the Commission is making the TransNet Loan.

“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, as such agreement may be thereafter amended.

“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, instrumentalties 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 Agreement (Security 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, and 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.

“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 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);

(ii) all 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, Capital Expenditure Reserve Fund and TIFIA Note Expense Account during such period under the terms of the Master Agreement.

“Permitted Debt” means any of the following, which are payable from the Collateral:

(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, or Project O&M Expenses and that do not in the aggregate have face amounts exceeding $1,000,000 (inflated annually by 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 and the TIFIA Loan 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) of the TIFIA Loan Agreement;

(c) Liens imposed pursuant to the Commission Loan Agreement;

(d) Liens imposed pursuant to this Agreement;
(e) Liens imposed 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) of the TIFIA Loan Agreement;

(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) of the TIFIA Loan 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 (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; 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 or Traffic Consultant (as defined in the Master Agreement) 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 $1,445,850 that TIFIA is making to SANDAG pursuant to this 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.

“State” means the State of California.

“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 Loan Agreement” means the Second Amended and Restated TIFIA Loan Agreement dated ______, 2011, between the TIFIA Lender and SANDAG.

“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.

“TIFIA Loan” has the meaning assigned to it under the TIFIA Loan 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 from 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 and signed by a duly authorized representative of such party. Nothing in this Agreement shall be interpreted to apply to SANDAG’s assets, operations, businesses or liabilities other than 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 Loan in the principal amount of One Million Four Hundred Forty-five Thousand Eight Hundred Fifty Dollars ($1,445,850.00). Subject to Section 2.3(b) hereof, the term of the Series D Note shall extend to the Final Maturity Date or to such earlier date as all amounts due or to become due under the Series D Loan have been paid.

Section 2.2 Interest.

(a) The Series D Note shall bear interest at the rate of fourteen percent (14%) per annum.

(b) Interest on the Series D 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 the Series D 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 Series D Note.

(f) All interest on the Series D Note shall be calculated on the basis of a 365- or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi-annually.

Section 2.3 Repayment of Series D 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 the Final Maturity Date. Any remaining amounts unpaid on the Note as of the Final 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 part without penalty. Prepayment of the Note in whole shall be made at a price equal to the accreted value of the Series D Note at the Final Maturity Date.
Section 2.5  Method and Place of Payment.

(a) All payments (including prepayments) to be made by SANDAG on account of principal 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.

Section 2.6  Outstanding Balance

(a) The outstanding balance of the Series D Loan will be (i) increased on each occasion on which interest on the Series D Loan is capitalized pursuant to the provisions of Section 2.8 hereof, by the amount of interest so capitalized and (ii) decreased upon each payment of the principal amount of the Series D Loan, by the amount of principal so paid. TIFIA may in its discretion at any time and from time-to-time, or when so requested by SANDAG, advise SANDAG by written notice of the amount of the outstanding balance of the Series D Loan 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 balance of the Series D Loan, TIFIA may, but shall not be obligated to, make applicable revisions to Exhibit _ and the loan amortization schedule pursuant to Section 2.8 and in such event shall provide SANDAG with a copy of such Exhibit _ and loan amortization schedule as revised, but no failure to provide or delay in providing SANDAG with such copy shall affect any of the obligations of SANDAG under this Agreement.

(b) TIFIA shall make applicable revisions to Exhibit _ and the loan amortization schedule pursuant to Section 2.8 upon any authorized prepayment of the Series D Loan. Upon any such revisions TIFIA shall provide SANDAG with copies of such Exhibit _ and loan amortization schedule as revised, but no failure to provide or delay in providing SANDAG with such copies shall affect any of the obligations of SANDAG under this Agreement.

Section 2.7  Security and Priority; Flow of Funds

(a) As security for the Series D Loan and any other payments or obligations of any kind required to be paid by SANDAG hereunder, SANDAG shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Master Trustee, Liens on the Series D Collateral in accordance with the provisions of the Master Agreement. The Series D Loan shall be secured by the Liens on the Series D Collateral junior to the Liens on the Series D Collateral of the TIFIA Loan and the TransNet Loan.
(b) SANDAG shall not use Project Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 2.7 and the Master Agreement and shall not apply any portion of the Project Revenues in contravention of this Agreement or the Master Agreement.

(c) Amounts on deposit in the Series D Payment Account 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.

(d) All terms used in this Section 2.7(d), 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 502 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 V of the Master Agreement:

(i) Budgeted Operating and Maintenance Expenses;
(ii) Required Capital Expenditure Reserve deposits;
(iii) Fees, costs and expenses due under the TIFIA Loan Agreement;
(iv) Interest portion of TIFIA Scheduled Debt Service;
(v) Principal portion of TIFIA Scheduled Debt Service;
(vi) Required Extraordinary Reserve deposits;
(vii) Required Major Maintenance Reserve deposits;
(viii) Repayment of the SANDAG Reimbursement Obligation and satisfaction of TransNet Loan;
(ix) Repayment of Series D Loan; and
(x) Deposits to SANDAG Distribution Account.

Section 2.8 Payment of Principal and Interest.

(a) Capitalized Interest Period. No payment of the principal of or interest on the Series D Loan is required to be made until the TIFIA Loan is fully repaid and the TransNet Loan is fully satisfied (as described in Section 509 of the Master Agreement). On each January 1 and July 1 occurring during each year until payment of the Series D Loan is required to be made, interest accrued in the six month period ending immediately prior to such date on the Series D Loan shall be capitalized and added to the outstanding balance of the Series D Loan (the “Capitalized Interest Period”). Within 30 days after the end of the Capitalized Interest Period, TIFIA shall give written notice to SANDAG stating the outstanding balance of the Series D Loan as of the close of
business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of SANDAG hereunder.

(b) Payment of Series D Loan. On each January 1 and July 1 occurring on or after the end of the Capitalized Interest Period and before the Final Maturity Date, SANDAG shall pay the Series D Loan to the extent of available moneys in the Series D Payment Account established under and funded in accordance with the Master Agreement.

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:

(i) this Agreement;

(ii) the Series D Note;

(iii) the Master Agreement and the TIFIA Loan Agreement.

(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 T I F I A 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 Series D 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 Series D 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 Series D 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 Master Agreement 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 Master Agreement 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 the Master Agreement 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 AnnualOperatingBudget.

(a) No later than 30 days prior to the commencement of each Fiscal Year, SANDAG shall submit to 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.

(b) 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 Project O&M 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 Project O&M Expenses incurred and the budgeted Project O&M 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.

Section 5.4 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 MaintenanceofExistenceandGovernmentalApprovals.

(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 BooksandRecords.

(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 CompliancewithLaws.

SANDAG covenants to require its contractors and subcontractors to abide by all applicable federal and State laws. The list of federal laws attached as Exhibit _ 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 6.4 PreservationofSecurityInterestsandTitle.

(a) SANDAG shall preserve and undertake all actions necessary to maintain the security interests granted under the Master Agreement 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 6.8 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 Limitation on Distributions and Payment 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 Trust Indenture Agreement. SANDAG shall not make, or cause to be made, any Restricted Payments.
Section 7.2  Limitation 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 the Master Agreement 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
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 hereto or in connection herewith 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 sell the Series D Loan to another entity or reoffer the Series D Loan into the capital markets only in accordance with the provisions of this Section. Such sale or reoffering shall be on such terms as TIFIA shall deem advisable. However, in making such sale or reoffering TIFIA shall not change the terms and conditions of the Series D Loan without the prior written consent of SANDAG, which consent shall not be unreasonably withheld. TIFIA shall provide (i) at least 60 days prior to any sale or reoffering of the Series D Loan, written notice to SANDAG to the effect that TIFIA is considering the sale or reoffering of the Series D Loan and (ii) at least 30 days prior to any sale or reoffering of the Series D Loan, written notice to SANDAG confirming TIFIA’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 TIFIA to sell nor (ii) provide SANDAG with any rights or remedies in the event TIFIA, for any reason, does not sell the Series D Loan.

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 LimitationofRecourse.

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 GoverningLaw.

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 SubmissionToJurisdiction.

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; and
(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.

Section 9.11 No Fiduciary or Partnership Relationship.

Nothing in this Agreement, or in the Note, shall be deemed to create a fiduciary 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 9.16 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.

[SIGNATURE PAGE FOLLOWS]
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:
EXHIBIT F

Form of Transition Services Agreement
TRANSITION SERVICES AGREEMENT

SOUTH BAY EXPRESSWAY, LLC

and

SAN DIEGO ASSOCIATION OF GOVERNMENTS

SANDAG Contract No. 5001944

Dated as of [___________], 2011
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TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this "Agreement") is made and entered into and effective as of the [_______] day of December, 2011¹, 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”. Capitalized terms used in this Agreement shall have the meanings set forth in this Agreement, or if not defined herein, the Asset Purchase Agreement (as defined below).

RECITALS

WHEREAS, pursuant to the Asset Purchase Agreement, entered into by and between the Seller and the Purchaser, dated as of [December ___], 2011 (the "Asset Purchase Agreement"), the Seller has agreed to sell, convey, assign, transfer and deliver to the Purchaser the Transferred Assets, and the Purchaser has agreed to purchase, acquire and accept all of the Seller’s right, title and interest in such assets and to assume certain of the Seller’s liabilities in connection with such assets.

WHEREAS, the Purchaser desires to, among other things, observe the operational techniques utilized by the Seller and to obtain training from the Seller to facilitate a smooth transition of the Transferred Assets from the Seller to the Purchaser.

WHEREAS, during the Transition Period, the Seller intends to wind down its business while, among other things, attempting to collect Pre-Closing Toll Proceeds (collectively, “Seller’s Wind Down”).

WHEREAS, in connection with the Asset Purchase Agreement, the Seller and the Purchaser have agreed to enter into this Agreement, which ensures that Seller’s Wind Down occurs at no cost to SANDAG and sets forth the terms and conditions upon which certain services shall be provided by the Seller to the Purchaser at Seller’s actual cost in order to ensure a smooth transition of the Transferred Assets during the Transition Period.

WHEREAS, the Transferred Assets covered by the Asset Purchase Agreement include the leasehold interest in the 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 “Toll Road”) and the operations building located at 1129 La Media Road,

¹ This Agreement will be dated the date of the Closing under the APA.
San Diego, CA 92154 (hereinafter the Toll Road and operations building are referred to as the “Facility”), and the Seller’s Employees will work at the Facility during the Transition Period.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

SERVICES

Section 1.1 Provision of Services. Upon the terms and subject to the conditions set forth in this Agreement, the Seller will provide, or cause to be provided, to the Purchaser all services described in Exhibit A (the “Services”).

Section 1.2 Seller’s Wind Down. The Seller, alone, shall be responsible for Seller’s Wind Down during the Transition Period, which the Seller shall accomplish at no cost to the Purchaser. During the Transition Period, in addition to providing the Services, the Seller’s Employees will be engaged in activities relating to collection of the Pre-Closing Toll Violations (consistent with the past practices of the Seller in connection with enforcing toll violations) and activities related to the winding down of the Seller’s business and the sale of the Retained Assets (the “Wind Down Activities”). This work is not included in the Services. Seller will not charge Purchaser for any costs or Employee overtime compensation related to the Wind Down Activities (but such activities will not result in a deduction of charges for base salaries) and the Wind Down Activities shall not interfere with the performance of the Services. Notwithstanding any other provision of this Agreement, Purchaser shall have no liability for the Wind Down Activities.

Section 1.3 Term of Agreement and Services. The Services (or any portion thereof) shall be provided for the period from the date hereof and until June 30, 2012; provided that the Agreement may be terminated prior to such date as provided in Section 7.1. The period from the date hereof to the earlier date of the expiration or early termination of this Agreement is referred to as the “Term.”
Section 1.4  Standard of Service; Employees. The Seller shall: (i) use reasonable efforts, skill, and judgment in providing the Services; (ii) provide personnel in sufficient number, and with relevant skills, training and background necessary to, perform the Services in a manner consistent with the past business practices of the Seller (the “Employees”); and (iii) provide such Services in substantially the same scope and with substantially the same quality, service levels and standards that such Services were enjoyed by the Seller with respect to the Project prior to the date of this Agreement; provided, however, that the Parties acknowledge that there may be reasonable changes to the Services in the ordinary course of business, and changes requested by, or reasonably necessary to implement changes introduced by, the Purchaser, and agree that the Seller does not guaranty or warrant as to the outcome of such modified Services, including with respect to the success or completion of any particular Service. In no event will the Seller be obligated to maintain the employment of or hire any specific employee or skilled persons or acquire additional facilities, equipment or software; provided, however, that during the Term, the Seller shall not terminate any Employee without first consulting with the Purchaser in accordance with Section 1.10. In the event any Employee with the relevant skill, training and background necessary to perform any of the Services hereunder terminates his or her employment with the Seller, the Seller shall use reasonable efforts to replace such person with another Employee of the Seller that has such relevant skill, training and background, if necessary for the Seller to perform any of the Services hereunder as required hereunder. For the avoidance of doubt, if no such Employee is reasonably available to the Seller, the Seller shall have the right (but not the obligation) to subcontract for the affected Services and shall have no obligation to hire additional employees. The Employees performing the Services shall not include (a) the current Chief Executive Officer and Chief Financial Officer of the Seller, or (b) any person who has been debarred by any regulatory authority, or is subject to a pending debarment, and the Seller shall notify the Purchaser in writing immediately upon becoming aware that any person who is performing Services hereunder as an Employee has been debarred or is subject to a pending debarment or a threat thereof. All Services shall be performed at the Purchaser’s premises (unless directed otherwise by the Purchaser). The Purchaser shall not, except as expressly permitted by the Seller, assign to any Employee any responsibilities or duties other than the Services.

Section 1.5  Performance of Services. While performing the Services, the Employees shall be overseen by the Purchaser’s management and executive officers, but otherwise will remain subject to the Seller's direction and control. Purchaser’s PM (as identified herein) will interface with Seller’s PMs. The Employees shall be advised by the Purchaser of all applicable office rules, regulations and safety procedures that apply to persons who are not Purchaser employees, but who utilize facilities owned or controlled by the Purchaser. Such rules, regulations and safety procedures that apply to the Employees while working at the Facility include but are not limited to those set forth in the Office Space User Agreement attached hereto as Exhibit B. To the extent the Services performed by the Employees shall be based on information furnished by the Purchaser, the Employees shall be entitled to rely upon such information. The Purchaser will specify the end result of the work performed by the Employees, but not the means by which the work will be performed. The Purchaser shall have the right to specify the Services to be performed by the Seller and its Employees, however, the Purchaser will not provide detailed direction on how work will be performed at the Facility during the
Transition Period. The Employees will not be integrated into the Purchaser’s organizational structure.

Section 1.6 Right to Suspend Services. Notwithstanding any provision to the contrary contained herein or in any Exhibit, the Seller shall not be required to provide all or any part of any particular Service to the extent that providing such Service would require the Seller to violate any applicable law, governmental rule or regulation; provided, that promptly upon learning of such applicable law, governmental rule or regulation, the Seller shall deliver reasonable written notice thereof to the Purchaser.

Section 1.7 Means of Provision of Services. The Purchaser shall make available to the Employees the Transferred Assets (including the benefit of and the rights under the Assigned Contracts) that the Purchaser deems necessary to perform the Services, but shall be under no obligation to furnish any other assets in connection with the Services. The Seller shall ensure equal employment opportunity for all persons. The Seller and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, national origin, ancestry, age, medical condition, physical or mental disability, Vietnam-era veteran or special disabled veteran status, marital status, or citizenship, within the limits imposed by law. These principles are to be applied by the Seller in all employment practices, including recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations. Failure by the Seller to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement. The Seller is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subcontractors that are included in this Agreement.

Section 1.8 Employee Compensation. The Employees shall remain on the Seller’s payroll and remain employees of the Seller at all times during the Transition Period (to the extent such employment has not been terminated during the Transition Period). The Seller shall pay or withhold (as appropriate) the Employees’ salaries and employees’ benefits and allowances for vacation, sick leave, holidays (in each case, consistent with the Seller’s past practices), and Seller’s portion of the Employees’ insurance and retirement benefit, all payroll taxes, Workers’ Compensation, and Employer’s Liability Insurance and all other insurance premiums measured by payroll costs, and other contributions and benefits imposed by any applicable law or regulation. The Seller shall maintain and make available to the Purchaser any health, safety, and other records required to be maintained under any applicable law or regulation. The Seller shall be an independent contractor in connection with the performance of Services hereunder for any and all purposes (including federal or state tax purposes), and the Employees shall not be deemed to be employees or agents of the Purchaser. None of the Employees shall be eligible to participate in any employee benefit plan sponsored by the Purchaser. Requests for leave, reasonable accommodation and access to other benefits provided by the Seller policies, plans or by applicable federal, state or local law will be coordinated through the Seller.
Section 1.9 Incremental Insurance Expense Reimbursement. The Purchaser shall reimburse the Seller an amount equal to any incremental insurance expenses, if any, incurred by the Seller in connection with the Seller’s employment of the Employees during the Term, including the actual cost to the Seller for workers compensation insurance maintained by the Seller with respect to the Employees.

Section 1.10 Termination of Employees; Removal of Employees. Subject to Section 8.1 of the Asset Purchase Agreement, the Seller shall be solely responsible for determining whether any Employee’s employment with the Seller shall be terminated prior to the end of the Term, provided that the Seller shall give the Purchaser thirty (30) days advance written notice of its intention to terminate an Employee, or if the termination is for cause, such amount of advance notice as is practicable under the circumstances, and the opportunity to consult with the Seller about the termination and a possible replacement for such Employee. At the Purchaser’s reasonable written request, the Seller shall immediately remove one or more of the Employees from provision of the Services.

Section 1.11 Compliance with Law. In receiving and performing the Services, each Party shall comply in all material respects with all laws, regulations and orders applicable to it in the conduct of the activities contemplated hereby, including all applicable federal, state and local health and safety laws, regulations, ordinances, directives and rules applicable to employees working on the applicable Party’s premises and all applicable federal, state and local labor and employment laws.

Section 1.12 Project Managers.

(a) The Seller, on the one hand, and the Purchaser, on the other hand, shall each appoint a project manager or project managers (each, a “PM”) to coordinate all matters relating to the provision/receipt of Services provided pursuant to this Agreement. The PMs shall be the principal points of contact between the Parties for all matters relating to the provision/receipt of Services (including communications with regard to issues surrounding the performance of either Party hereunder); provided, however, that any disagreement between the Parties relating to the other Party's compliance with the terms of this Agreement shall be submitted to Kip Horton, Chairman of the Seller’s Board of Managers, and Gary Gallegos, the Executive Director of the Purchaser, for resolution. The Purchaser PM shall be responsible for the general oversight and coordination of the provision/receipt of Services and shall have the appropriate decision-making authority for the Purchaser. The Seller’s PM shall be responsible for providing direction to Seller’s Employees regarding how, when and where such Employees shall carry out the Services and shall have appropriate decision-making authority for Seller. A PM may also delegate specific aspects of the PM's responsibilities to one or more persons upon written notice to the other PM. A PM and his or her delegatees may be replaced at any time and for any or no reason by the Party that initially appointed such PM and such replacement shall be effective upon delivery of written notice of such replacement to the other Party.
(b) Each month during the Term (or at such other frequency as the Parties may agree in writing) the Parties shall cause their respective PMs to meet (in person or by telephone conference) for the purposes of discussing the current status of any Services.

Section 1.13 Insurance. The Seller shall use commercially reasonable efforts to cover the Employees under the insurance coverage for the liability and negligence of, and injuries to, its Employees. At all times during the Term, subject to Section 1.9, the Seller shall maintain responsibility for and shall continue to provide workers’ compensation and unemployment compensation coverage for Employees. Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).
- Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).
- Workers’ Compensation insurance as required by the State of California and Employers’ Liability insurance.

The Seller agrees that all general liability coverages required under this Section 1.13 are PRIMARY insurance and that any insurance of the Purchaser shall be excess and noncontributory. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

San Diego Association Of Governments (SANDAG), its directors, officers, agents and employees are to be covered as additional insureds with respect to all policies for which such coverage is available, and such coverage shall include liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Seller; and with respect to liability arising out of work or operations performed by or on behalf of the Seller including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Seller’s insurance, or as a separate owner’s policy.

For any claims related to the Services, the Seller’s insurance coverage shall be primary insurance as respects Purchaser, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Purchaser, its officers, officials, employees or volunteers shall be excess of the Seller’s insurance and shall not contribute with it.
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to Purchaser.

The Seller shall maintain limits no less than the following coverages:

1. General Liability: (Including operations, products and completed operations, as applicable.) $1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

3. Workers’ Compensation: As required by the State of California

4. Employers’ Liability: $1,000,000 each accident, $1,000,000 policy limit bodily injury by disease, $1,000,000 each employee bodily injury by disease.

The Seller shall use commercially reasonable efforts to assert claims in accordance with the insurance policies; provided, that it will not be required to commence any enforcement action unless the Purchaser pre-approves such action and agrees to pay for the costs of such action.

Section 1.14 Disentanglement. Upon termination of the Agreement, the Purchaser shall accomplish a complete transition of the Services from the Seller and any subcontractors, to the Purchaser, or to any replacement provider designated by the Purchaser, without any interruption of or adverse impact on the Services or any other services provided by third parties (“Disentanglement”). Prior to the expiration of the Transition Period, the Seller shall cooperate with Purchaser and any new service provider and otherwise promptly take all steps reasonably requested by the Purchaser to assist the Purchaser in effecting a complete Disentanglement. The Seller shall provide all information regarding the Services or as otherwise needed for Disentanglement, including data conversion, files, interface specifications, training staff assuming responsibility, and related professional services. The Seller shall provide for the prompt and orderly conclusion of all work, as the Purchaser may direct, in a manner consistent with the standard of Services described in Section 1.4, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to the Purchaser or the Purchaser’s designee by the end of the Transition Period. All services related to Disentanglement shall be deemed a part of the Services and shall
be performed by the Seller at no additional cost to the Purchaser beyond what the Purchaser would pay for the Services absent the performance of the Disentanglement services.

ARTICLE II
PAYMENTS; TAX MATTERS

Section 2.1 Compensation and Other Payments.

(a) In consideration for the Services, the Purchaser shall pay the Seller all actual costs and out-of-pocket expenses incurred by the Seller in connection with providing each Service including salaries, wages, the cost of employee benefits, payroll taxes, insurance premiums, and overhead costs consistent with the budget attached as Exhibit C (as it may be revised from time to time during the Term by mutual consent of the seller and the purchaser, the “Estimated Budget”). The Seller shall not increase the compensation rates or benefit packages for any Employees above the rates in the Estimated Budget throughout the Term of the Agreement. For the avoidance of doubt, notwithstanding the foregoing sentence, payment for the Services hereunder shall be based on actual costs and out-of-pocket expenses in accordance with this Section 2.1, which costs and expenses shall be consistent with the amounts set forth in any such budget. Any costs or expenses that exceed the amounts set forth in the Estimated Budget shall be preapproved by Purchaser before the cost or expense is incurred by Seller, except in the event of an emergency or when such additional services are specifically requested by Purchaser’s PM.

(b) The staffing for the Services (including with respect to the level of personnel and the number of personnel hours dedicated to the Services) shall be substantially consistent with the staffing for such Services utilized by the Seller prior to the date of this Agreement. The Seller acknowledges that additional customer service and support staffing may be needed when reductions in toll rates occur and, if requested by the Purchaser, will endeavor to procure additional support staff for such additional customer services, pursuant to the terms of Section 1.4.

(c) During the Term, the Employees providing the Services shall be entitled to use the Toll Road free of tolls.

Section 2.2 Billing and Payment Terms.

(a) On the last business day of each month during the Term, the Purchaser shall prepay the monthly costs and out-of-pocket expenses of the Seller projected to be incurred by the Seller in accordance with the Estimated Budget (such amount, the "Prepaid
Any Prepaid Amount, or a portion thereof, not prepaid within five (5) business days of such date shall accumulate interest at the Interest Rate.

(b) The Seller shall provide to the Purchaser monthly invoices for the Services provided during each month. The Seller shall maintain records sufficient to support the charged amounts in accordance with the Seller's standard practices and Purchaser’s billing requirements. Purchaser requires that all invoices amounts be detailed sufficiently to allow SANDAG to audit the charges. If the invoice for the relevant month exceeds the Prepaid Amount, the Purchaser shall pay such excess (the "Excess Costs") in accordance with clause (c) below. If the amount of such invoice is less than the relevant Prepaid Amount (the “Surplus”), such Surplus shall be credited to the next Prepaid Amount due from the Purchaser to the Seller, or, if no Prepaid Amount is due under this Agreement, shall be paid by the Seller to the Purchaser within five (5) business days of submitting such monthly invoice.

(c) The Purchaser shall pay the Seller the Excess Costs, if any, within thirty (30) days of receipt of the relevant monthly invoice. Unless subject to a pending good faith dispute by the Purchaser, amounts not paid within such thirty (30) day period shall accumulate interest at the rate of ten percent (10%) per annum or the maximum lawful rate, whichever is less (the “Interest Rate”). Upon the termination of any Service, the Seller shall, not later than thirty (30) days following the effective date of such termination, invoice the Purchaser for amounts payable by the Purchaser in respect of such terminated Service since the last invoice provided by the Seller.

(d) In the event that the Purchaser does not pay any sum due in accordance with this Article II, the Seller shall, effective five (5) business days (in the case of any unpaid Prepaid Amount) or thirty (30) days (in the case of any Excess Costs) following the delivery of written notice to the Purchaser of such payment default, have no further obligation pursuant to this Agreement to provide Services to the Purchaser until such unpaid balance plus all accrued interest at the Interest Rate shall have been paid; provided, however, that the Seller shall not be relieved of any of its obligations to provide Services pursuant to this Agreement if, following the delivery of such written notice but prior to thirty (30) days following such delivery, the Purchaser delivers written notice to the Seller in good faith setting forth in detail the reasons that such charges are not due and payable. If the Seller determines in good faith and provides notice to the Purchaser that such amounts are still due and payable and the Purchaser still has not paid such amounts within ten (10) days after receipt of such notice, the Seller and the Purchaser shall submit the dispute to Kip Horton, Chairman of the Seller's Board of Managers, and Gary Gallegos, the Executive Director of the Purchaser, to resolve, and the Seller shall continue to perform Services. If such dispute is not resolved by the Parties and any agreed amounts paid within thirty (30) days after submission to such chief executive officers, the Seller shall have no further obligation to provide Services to the Purchaser until such unpaid balance plus all accrued interest at the Interest Rate shall have been paid or the Parties agree (or a court of competent jurisdiction determines) otherwise.
(e) The Purchaser shall notify the Seller in writing of any amounts billed to it that are in dispute. Upon receipt of such notice, the Seller will research the items in question in a reasonably prompt manner and cooperate to resolve any differences with the Purchaser. In the event that the Parties mutually agree that any amount that was paid by the Purchaser was not properly owed, the Seller will refund that amount to the Purchaser within thirty (30) days of such agreement (or, at the Purchaser's option, the Seller shall deduct the dollar amount from the next invoice submitted to the Purchaser).

(f) Transportation, travel and subsistence costs to be reimbursed shall be the actual costs incurred, but shall not exceed the rates stipulated in the Caltrans Travel and Expense Guide for Non-Represented Employees (see www.dot.ca.gov/hq/asc/travel/ch12.htm).

Section 2.3 Service Taxes. The Purchaser shall be responsible for all sales, service, value added, use, excise, occupation, and other similar taxes and duties (together in each case with all interest, penalties, fines and additions thereto), with the exception of any federal, state or local income, employment, social security and other similar taxes assessed on the Seller (which will remain the responsibility of the Seller but will be subject to reimbursement by the Purchaser pursuant to Section 2.1(a)), that are assessed on either Party in relation to the Services as a whole, or any particular Service, received by the Purchaser pursuant to the terms of this Agreement (collectively, “Service Taxes”). The Seller shall include all Service Taxes in its invoices delivered pursuant to Section 2.2. The Seller shall timely remit to the appropriate taxing authority all Service Taxes and shall promptly deliver evidence of such remittance to the Purchaser.

ARTICLE III

CONFIDENTIALITY

Section 3.1 Confidential Information. The Seller and its Employees may have access to databases and records storage areas that contain confidential information from law enforcement, records that could be used in an investigation or litigation, records containing bank and credit card account numbers, records specifically marked “trade secret” or “confidential,” or personnel or identity information (collectively, “Sensitive Security Information”). The Seller shall take measures to protect, and to ensure that its subcontractors at each tier protect, Sensitive Security Information made available during the administration of this Agreement. Such Sensitive Security Information includes, but is not limited to, information obtained or developed in the conduct of security activities, including research and development, the disclosure of which the Secretary of the United States Department of Transportation has determined would (1) constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file); or (2) reveal trade secrets or privileged or confidential information obtained from any person; or (3) be detrimental to transportation safety. [49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R., Part 15; 49 U.S.C Section 114(s) and

ARTICLE IV

INTELLECTUAL PROPERTY AND DATA RIGHTS

Section 4.1 Ownership of Data and Intellectual Property. To the extent that any right, title or interest in or to any intellectual property or data related to the Project vests in the Seller, by operation of law or otherwise, in a manner contrary to the agreed upon ownership as set forth in this Agreement or the Asset Purchase Agreement, the Seller shall, and hereby does, perpetually and irrevocably assign to the Purchaser any and all such right, title, and interest throughout the world in and to such intellectual property and data, free and clear of all liens and encumbrances without the need for any further action by either Party. The Seller agrees to assign to the Purchaser all of the Seller’s intellectual property rights in any inventions conceived or first reduced to practice and in original works of authorship created by Employees during the Term and that relate to provision of the Services. The Seller further agrees to execute all assignment and other transfer documents as may be necessary to cause the above assignment of intellectual property rights to be legally formalized. All such documents shall be prepared by the Purchaser at the Purchaser’s expense and provided to the Seller for review and execution with at least thirty (30) days written notice.

Section 4.2 Access to Data. Without limiting the foregoing in this Article IV, and subject to applicable law, regulation and privacy policies, the Seller will provide to the Purchaser upon request from time to time, copies of data generated by the Seller in providing the Services.

ARTICLE V

DISCLAIMER, LIMITATION OF LIABILITY AND INDEMNIFICATION

Section 5.1 Disclaimer of Warranties. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THE ASSET PURCHASE AGREEMENT OR EXPRESSLY IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY DISCLAIMS, ANY REPRESENTATIONS AND WARRANTIES IN CONNECTION WITH THIS AGREEMENT, INCLUDING IN CONNECTION WITH THE SERVICES TO BE PROVIDED HEREUNDER, INCLUDING EXPRESS, IMPLIED, AND STATUTORY REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, COURSE OF DEALING, USAGE OF TRADE, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE.
Section 5.2  No Consequential Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF PROFITS OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER THAT MAY BE INCURRED BY REASON OF ANY ACTION OR INACTION OF EITHER PARTY OR FOR ANY OTHER REASON RELATING TO OR ARISING OUT OF THE SERVICES, INCLUDING ANY BREACH BY THE OTHER PARTY OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT IS INTENDED TO SUPERSEDE OR WAIVE PURCHASER’S RIGHTS UNDER THE APA.

Section 5.3  Indemnification.

(a) The Purchaser shall hold harmless, defend and indemnify the Seller, its members, directors, officers, employees, agents, advisers and affiliates (each, a “Seller Indemnified Person”) at all times from and after the commencement of the Term against all losses, claims, damages, actions, suits, proceedings, demands, assessments, adjustments and expenses, including reasonable attorneys’ fees and costs (“Losses”), based upon, resulting from or arising out of (i) the performance of the Services by the Employees for the Purchaser during the Term, (ii) the presence, conduct or safety of the Employees while on the Purchaser’s premises performing the Services during the Term, (iii) any act or omission on the part of the Employees during the Term that relates to the Services, (iv) the failure to perform its obligations under this Agreement, or (v) the reclassification of the Employees by any insurer or governmental authority or agency as other than exclusive employees of the Seller (such indemnification for Losses pursuant to this clause (v) to include any incidental or consequential Losses suffered by or claimed against the Seller Indemnified Persons). Notwithstanding the foregoing, the Purchaser shall have no liability under this paragraph for Losses (i) to the extent such Losses are actually and unconditionally reimbursed to the Seller by the Seller's insurance policies, including but not limited to unemployment insurance or workers’ compensation coverage; or (ii) to the extent such Losses are caused by the gross negligence, recklessness or intentional misconduct of Seller.

(b) The Seller shall hold harmless, defend and indemnify the Purchaser, its members, directors, officers, employees, agents, advisers and affiliates (each, a “Purchaser Indemnified Person”) for Losses based upon, resulting from or arising out of any (i) failure by the Seller to timely pay salary, wages or benefits due the Employees (excluding, for the avoidance of doubt, the principal amounts of such salary, wages or benefits which Purchaser shall bear in accordance with Section 2.1(a)), (ii) failure by the Seller to withhold applicable income and employment taxes from the Employees' pay and to report and remit such applicable income and employment taxes to the appropriate taxing authority, (iii) work performed as part of the Winding Down Activities, or (iv) claim covered by the last sentence of Section 5.3(a). Notwithstanding the foregoing, the Purchaser shall hold harmless, defend and indemnify the Seller Indemnified Persons at all times from and after the commencement of the Term against all Losses and incidental and consequential damages arising from or relating to reclassification of the Employees by any insurer or governmental authority or agency as other than exclusive employees of the Seller.
ARTICLE VI

OTHER PROVISIONS

Section 6.1  Records. The Seller agrees to maintain accurate records arising from or related to any Services provided hereunder, including accounting records and documentation produced in connection with the rendering of any Service, at least substantially consistent with the Seller's past practices for similar services provided for its own account; provided that, to the extent any such records are generated by Employees in connection with performing of the Services and are located at the Purchaser's premises or otherwise under the Purchaser's control, the Purchaser shall preserve and keep in its possession or under its control all such records for a period of three (3) years or such longer period as may be required by Applicable Law; and shall make such records available to the Seller as may reasonably be required by the Seller, including in connection with any insurance claims or legal proceedings involving the Services, or any governmental investigations of the Seller or the Purchaser related to the Services. Subject to the foregoing in this Section 6.1, the Seller’s accounting records shall be reasonably sufficient to permit the computation and verification of all payments due the Seller hereunder.

ARTICLE VII

TERMINATION

Section 7.1  Termination.

(a) The Purchaser may terminate one or more or all of the Services upon thirty (30) days written notice to the Seller; provided, that the Purchaser shall be responsible for all costs and expenses actually incurred or irrevocably committed to by the Seller and arising out of or resulting from the provision of such Services. The Purchaser shall use its reasonable best efforts to prevent, or limit, such costs and expenses.

(b) Either Party may terminate this Agreement at any time in the event of a material breach by the other Party that remains uncured after thirty (30) calendar days’ written notice thereof to the breaching Party.

Section 7.2  Termination Notices. Any termination notice delivered by either Party shall specify the effective date of termination and, where applicable, detail the Service or Services to be terminated.

Section 7.3  Survival. Articles II, III, IV and V of this Agreement shall survive any expiration or termination of this Agreement.
ARTICLE VIII

MISCELLANEOUS

Section 8.1  Force Majeure. Neither Party shall be responsible for the delay or inability to perform any obligation hereunder due to accidents, fires, storms, floods, earthquake, pandemics, explosion, wars, acts of terrorism, riots, rebellions, insurrections, blockages, strikes or any labor disturbance, civil commotions, acts of governments, governmental requirements and regulations, restrictions imposed by law or any other similar conditions, beyond the reasonable control of such Party (a “Force Majeure Event”). The non-performing Party shall not be liable for breach of this Agreement with respect to such non-performance if and to the extent any such non-performance is due to a Force Majeure Event. Such non-performance will be excused for as long as such event shall be continuing; provided that the non-performing Party gives immediate written notice to the other Party of the Force Majeure Event and exercises all reasonable efforts to eliminate the Force Majeure Event and to resume performance of its affected obligations as soon as practicable. For the avoidance of doubt, the Term shall not be extended for any delay in provision of the Services attributable to any Force Majeure Event.

Section 8.2  Relationship of the Parties. Nothing in this Agreement shall be deemed to render either Party an agent of the other Party or grant either Party any authority to bind the other Party, transact any business in the other Party’s name or on its behalf, or make any promises or representations on behalf of the other Party. Each Party will perform all of its respective obligations under this Agreement as an independent contractor, and no joint venture, partnership or other relationship shall be created or implied by this Agreement.

Section 8.3  Further Cooperation. Each Party agrees to reasonably cooperate with the other, at such other Party’s request, in order to carry out the terms and intent of this Agreement.

Section 8.4  Assignment; Binding Effect. No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, and any purported assignment without such consent shall be void. This Agreement and all its provisions shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 8.5  Choice of 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 8.6 Consent to Jurisdiction and Service of Process.

(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 8.7.

Section 8.7 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 Expressway, LLC
c/o RPA Advisers, LLC
45 Eisenhower Drive
Paramus, NJ 07652
Phone: (201) 527-6660
Fax: (201) 527-6620
Attention: Kip Horton

With a copy to:

Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
Phone: 212-506-5000
Fax: 212-506-5151
Attention: Lorraine S. McGowen
If to the Purchaser:

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 8.8  No Right of Set-Off. The 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 the Asset Purchase Agreement, this Agreement or any other document or instrument delivered by the Purchaser in connection herewith or therewith.

Section 8.9  Headings. The headings contained in this Agreement are inserted for convenience only and shall not be considered in interpreting or construing any of the provisions contained in this Agreement.

Section 8.10  Entire Agreement. This Agreement and the Asset Purchase Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings between the Parties with respect to such subject matter.

Section 8.11  Interpretation.

(a) When a reference is made to an Article, Section, or Exhibit, such reference shall be to an Article, Section, or Schedule of or to this Agreement unless otherwise indicated.
(b) Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(c) References to "dollars" or "$" are to U.S. dollars.

(d) The terms "hereof," "herein," "hereby," "hereto," and derivative or similar words refer to this entire Agreement.

(e) This Agreement was prepared jointly by the Parties and no rule that it be construed against the drafter will have any application in its construction or interpretation.

Section 8.12 Waiver and Amendment. This Agreement may be amended, modified or supplemented only by a written agreement executed by the Seller and the Purchaser. Except as otherwise provided in this Agreement, any failure of any Party to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligations, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 8.13 Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein express or implied shall give or be construed to give to any person or entity, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

Section 8.14 Severability. If any provision of this Agreement or the application of any such provision to any person or entity or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

Section 8.15 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument binding upon all of the Parties, notwithstanding the fact that all Parties are not a signatory to the original or the same counterpart. For purposes of this Agreement, facsimile signatures shall be deemed originals.

[Signature Page Follows]
IN WITNESS WHEREOF, the Parties have caused this Transition Services Agreement to be executed the day and year first above written.

South Bay Expressway, LLC

By: __________________________
Name: Kip Horton
Title: Chairman

San Diego Association of Governments

By: __________________________
Name: _________________________
Title: __________________________
Services

1. General Administration
2. Financial Management
3. Revenue collection, traffic analysis and management
4. Technology/systems management
5. Traffic and roadway operations
6. Roadway inspection and maintenance
7. On-road technology
8. Facilities
9. Landscape maintenance and environmental
10. Customer service
11. Transponder inventory management
12. Violation enforcement/processing
13. Marketing and customer communications
SANDAG OFFICE SPACE USER AGREEMENT

I, ____________________, am an Employee of South Bay Expressway, LLC (the “Seller”) as defined in the Transition Services Agreement dated December _____, 2011. Seller has been hired by SANDAG (the “Purchaser”) to provide Services under SANDAG Contract No. __________. Seller intends to have Seller’s Employee work from Purchaser’s Facility during portions of the contract term. In order to ensure that the staff and interests of Purchaser are protected, Seller’s Employee is required to agree to the following terms:

A. Seller’s Employee is not an employee or agent of Purchaser and understands that he/she cannot act as a representative or enter into any agreement or contract on behalf of Purchaser without specific permission from Purchaser.

B. Seller’s Employee is not eligible for any Purchaser employee benefits.

C. Seller’s Employee will maintain confidentiality and not disclose confidential information that he/she may have access to while working under the Contract. Seller’s Employee may have access to databases and records storage areas that contain confidential information from law enforcement, records that could be used in an investigation or litigation, records containing bank and credit card account numbers, records specifically marked “trade secret” or “confidential,” or personnel or identity information.

D. Seller’s Employee agrees that he/she is forbidden from accessing any confidential databases or records storage areas without specific authorization from a manager of Purchaser. Seller’s Employee may not disclose any confidential or sensitive information to Seller or any other entity or person who is not a Purchaser Employee without first approval from the Purchaser PM.

E. Seller’s Employee will provide Purchaser with his/her home address and phone number in order to enable Purchaser to contact him/her in the event of an emergency such as a fire or security breach.

F. Seller’s Employee may receive a key, access card or door security codes to the Facility of Purchaser to be used only for the purposes of fulfilling Services under, and activities permitted by Section 1.2 of, the Transition Services Agreement. Seller’s Employee has a duty to ensure that nonauthorized persons do not gain access through use by Seller’s Employee of his/her access privileges.

G. Seller’s Employee’s access to Purchaser’s Facility or other premises he/she may need to access to perform work under the contract is limited to the areas where he/she has official business and the common areas, such as break rooms.

H. Seller’s Employee will comply with California Law and policies forbidding unlawful harassment and discrimination and acknowledges receiving training on harassment and discrimination prevention from Seller.

I. Seller’s Employee understands and agrees that workplace violence is prohibited at Purchaser’s Facility or while performing Services.
J. Seller’s Employee understands and agrees that use of drugs or alcohol is prohibited at Purchaser’s Facility or while performing Services.

K. Seller’s Employee will report and seek to avoid any possible conflict of interest that may be presented by access to information because of his/her use of Purchaser’s Facility. Seller’s Employee acknowledges that he/she has received training from Seller regarding ethical business practices and avoidance of financial or organization conflicts of interest.

L. Seller’s Employee agrees that access to and use of Purchaser computer systems and other data may be restricted and will be monitored by Purchaser. Seller’s Employee agrees to such monitoring and understands he/she shall have no right to privacy with regard to information stored or used at Purchaser’s facility.

M. Seller’s Employee will not use any Purchaser stationary, business cards, e-mail address signatures, or any other practice or methodology that may mislead the public into believing Seller’s Employee has an employment relationship with Purchaser or has authority to act on behalf of Purchaser.

By signing below I agree to all of the terms set forth in this agreement, which is effective this:

________________ day of ______________________, 20 __________

____________________________________________________________________________

Seller’s Employee
Estimated Budget
EXHIBIT G-1

Form of Seller’s Counsel Opinion
December __, 2011

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101

Re: Acquisition of Assets of South Bay Expressway, LLC

Ladies and Gentlemen:

We have acted as counsel to South Bay Expressway, LLC, a Delaware limited liability company (the “Seller”), in connection with the transactions contemplated by that certain Asset Purchase and Sale Agreement (the “Purchase Agreement”), dated as of December [__], 2011, by and between the Seller and San Diego Association of Governments. Capitalized terms used in this opinion but not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement.

In connection with the rendering of this opinion letter, we have examined executed originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the “Transaction Documents”), each dated as of December [__], 2011:

(i) the Purchase Agreement;
(ii) the Escrow Agreement;
(iii) the Transition Services Agreement;
(iv) the Assignment Agreement;
(v) the Caltrans Consent;
(vi) the SANDAG Release; and
(vii) [all other Contracts and agreements delivered on the Closing Date to be listed].
In rendering the opinions expressed below, we have also examined (a) the various documents, certificates, opinions and other items required as conditions precedent to Closing under the Purchase Agreement; and (b) such other documents as we have deemed necessary as a basis for the opinions expressed below.

We have also assumed the following: (a) the authenticity of original documents and the genuineness of all signatures; (b) the conformity to the originals of all documents submitted to us as copies; (c) the truth, accuracy and completeness of the information, factual matters, representations and warranties contained in the records, documents, instruments and certificates we have reviewed; (d) the due authorization, execution and delivery on behalf of the respective parties thereto (other than the Seller) of the Transaction Documents; and (e) except as provided in paragraph [__] below, the legal, valid and binding effect of the Transaction Documents on such parties.

Based upon and subject to the foregoing and subject also to the comments and qualifications set forth below, and having considered such questions of law as we have deemed necessary as a basis for the opinions expressed below, we are of the opinion that:

1. The Seller is a limited liability company duly formed, validly existing and in good standing under the law of the State of Delaware and has the power to execute, deliver and perform its obligations under the Transaction Documents.

2. The Seller has taken all necessary action to authorize the execution, delivery and performance by the Seller of the Transaction Documents.

3. The Seller has duly executed and delivered each of the Transaction Documents.

4. Each of the Transaction Documents constitutes the legal, valid, and binding obligation of the Seller, enforceable against the Seller in accordance with its terms.

Our opinion in paragraph 4 above is subject to: (a) limitations imposed by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other laws relating to or affecting the rights of creditors generally; (b) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing, and the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in a proceeding in equity or at law; and (c) rights to indemnification which may be limited by applicable law or equitable principles or otherwise unenforceable as against public policy.
We express no opinion herein as to laws other than the law of the State of California, the federal law of the United States of America, and the Limited Liability Company Act of the State of Delaware (without regard to judicial or administrative interpretations of any Delaware law).

This opinion is solely for your benefit in connection with the transactions contemplated by the Transaction Documents, and may not be relied upon, used, quoted, or referred to by, nor may copies hereof be delivered to, any other person without our prior written approval, except to the extent you are compelled to disclose this opinion pursuant to law. We disclaim any obligation to update this opinion letter for events occurring or coming to our attention after the date hereof.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP
EXHIBIT G-2

Form of Purchaser’s Counsel Opinion
December __, 2011

South Bay Expressway, LLC
c/o Mr. Kip Horton, RPA Advisers, LLC
45 Eisenhower Drive
Paramus, NJ 07652
Fax: (201) 527-6620

Re: Acquisition of Assets of South Bay Expressway, LLC

Ladies and Gentlemen:

As the General Counsel of the San Diego Association of Governments (“SANDAG”), I have acted as counsel to SANDAG, a California public agency (the “Purchaser”), in connection with the transactions contemplated by that certain Asset Purchase and Sale Agreement (the “Purchase Agreement”), dated as of December [__], 2011, by and between the South Bay Expressway, LLC, a Delaware limited liability company (the “Seller”) and the Purchaser. Capitalized terms used in this opinion which are not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement.

In connection with the rendering of this opinion letter, I have examined executed originals, or copies certified or otherwise identified to my satisfaction, of the following documents (collectively, the “Transaction Documents”), each dated as of December [__], 2011:

(i) the Purchase Agreement;
(ii) the Escrow Agreement;
(iii) the Transition Services Agreement;
(iv) the Assignment Agreement;
(v) the Caltrans Consent; and
(vi) the SANDAG Release.
In rendering the opinions expressed below, I have also examined (a) the various documents, certificates, opinions and other items required as conditions precedent to Closing under the Purchase Agreement; and (b) such other documents as I have deemed necessary as a basis for the opinions expressed below.

I have also assumed the following: (a) the authenticity of original documents and the genuineness of all signatures; (b) the conformity to the originals of all documents submitted to SANDAG as copies; (c) the truth, accuracy and completeness of the information, factual matters, representations and warranties contained in the records, documents, instruments and certificates that I have reviewed; (d) the due authorization, execution and delivery on behalf of the respective parties thereto (other than the Purchaser) of the Transaction Documents; and (e) except as provided in paragraph 4 below, the legal, valid and binding effect of the Transaction Documents on such parties.

Based upon and subject to the foregoing and subject also to the comments and qualifications set forth below, and having considered such questions of law as I have deemed necessary as a basis for the opinions expressed below, I am of the opinion that:

1. The Purchaser is a public agency, duly organized, validly existing and in good standing under the laws of the State of California and, as a public agency authorized to take action by its Board, has the power to execute, deliver, and perform its obligations under the Transaction Documents.

2. The Purchaser has taken all necessary public agency action to authorize the execution, delivery, and performance by it of the Transaction Documents.

3. The Purchaser has duly executed and delivered each of the Transaction Documents.

4. Each of the Transaction Documents constitutes the legal, valid, and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms.

My opinion in paragraph 4, above, is subject to: (a) limitations imposed by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other laws relating to or affecting the rights of creditors generally; (b) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing, and the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in a proceeding in equity or at law; and (c) rights to indemnification.
which may be limited by applicable law or equitable principles or otherwise unenforceable as against public policy.

I express no opinion herein as to laws other than the law of the State of California and the federal law of the United States of America.

Notwithstanding anything in the foregoing to the contrary, the opinions in this letter are subject to those additional qualifications and assumptions set forth below:

(1) The enforceability of the Transaction Documents is subject to general principles of equity (regardless whether such enforceability is considered in a proceeding in equity or at law or in a bankruptcy proceeding) and assumes that each of the parties will act with commercial reasonableness in exercising its rights and remedies thereunder.

(2) I express no opinion respecting compliance with, or the applicability of, any state or federal banking laws, rules or regulations to the transactions contemplated by the Transaction Documents.

(3) I express no opinion as to the validity or enforceability of any provision providing for distribution or application of the proceeds of any foreclosure or secured party sale otherwise than in accordance with law.

(4) I express no opinion as to: (i) the effect of any future renewals, extensions, restatements, replacements, substitutions, modifications, amendments, or supplements (whether oral or in writing) on the Transaction Documents or the property or collateral described therein, or (ii) the validity or enforceability of any future renewals, extensions, restatements, replacements, substitutions, modifications, amendments, or supplements to the Transaction Documents.

(5) I express no opinion as to any federal securities laws or regulations administered by the Securities and Exchange Commission, state "Blue Sky" laws or regulations, any federal, state or local tax laws or regulations, or laws or regulations relating to commodity (or other) futures or indices or other similar instruments.
This opinion is solely for your benefit in connection with the transactions contemplated by the Transaction Documents, and may not be relied upon, used, quoted, or referred to by, nor may copies hereof be delivered to, any other person without my prior written approval, except to the extent you are compelled to disclose this opinion pursuant to law. I hereby disclaim any obligation to update this opinion letter for events occurring or coming to my attention after the date hereof.

Very truly yours,

Julie D. Wiley
General Counsel
SANDAG
EXHIBIT H

Form of SANDAG Release
RElease

This Release (this “Release”) is made as of this [___] day of December, 2011, by South Bay Expressway, LLC, a Delaware limited liability company ("SBX"), for the benefit of the San Diego Association of Governments, a California public agency, the County of San Diego, a California municipality (the “County”) and all cities within the County.

Recitals

Whereas, the State of California, Department of Transportation has entered into the Development Franchise Agreement for a Privatized Transportation Project dated as of December 31, 1990 (as amended, the “DFA”), with California Transportation Ventures, Inc., a California corporation (“CTV”); CTV has assigned its rights under the DFA and related documents to South Bay Expressway, L.P., a California limited partnership and a corporate predecessor to SBX, including the right to develop, construct and operate a divided, limited access toll road in the County approximately 9.2 miles (15 kilometers) long, known as the South Bay Expressway (the “Project”);

Whereas, SBX and SANDAG have entered into an Asset Purchase Agreement, dated as of December [___], 2011 (the “Asset Purchase Agreement”), pursuant to which SBX intends to transfer, convey, sell and assign to SANDAG, and SANDAG intends to purchase, acquire and assume, certain of the assets, properties and rights to manage, operate, maintain and collect tolls on the Project, and certain liabilities relating thereto, on the terms and subject to the conditions set forth in the Asset Purchase Agreement (such acquisition and other transactions contemplated by the Asset Purchase Agreement being referred to herein collectively as the “Transactions”); all capitalized terms used but not defined herein are used as defined in the Asset Purchase Agreement;

Whereas, as of the date hereof, SBX and the County are involved in litigation proceedings related to SBX’s claim for reimbursement for certain property taxes with respect to the Project paid by SBX to the County ([IDENTIFY PROCEEDINGS BY COURT/DOCKET NUMBER] (the “Proceedings”); and

Whereas, it is a condition precedent to the closing of the Transactions that SBX execute and deliver this Release.

Now, Therefore, in consideration of the premises SBX states as follows:

1. Release. SBX hereby, on behalf of itself and its predecessors, successors, directors, officers, joint venture partners, employees, affiliates, subsidiaries, parent entities, assigns, attorneys, agents, sureties, and representatives, hereby fully and irrevocably releases, acquits, and forever discharges SANDAG, the County and all cities within the County and each of its respective assigns, predecessors, successors, affiliates, parent entities, related and constituent
entities, officers, directors, partners, employees, principals, agents, sureties, consultants, contractors and suppliers of every tier, representatives, reinsurers, attorneys-in-fact, and attorneys at law, whether past or present, of and from any and all liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys’ fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, in contract, in tort or otherwise that arose, or are based on events that occurred prior to the date hereof, whether or not now or heretofore known, suspected, or claimed against them, whether now existing or arising in the future, pertaining in any way to the Transportation Facilities (as defined in the DFA), including, but not limited to, claims, claims for relief asserted by SBX in the Proceedings, including all claims for attorneys’ fees and litigation costs that remain undetermined or unpaid, but, with respect to SANDAG, other than any obligations of SANDAG under the Asset Purchase Agreement and other Transaction Documents.

SBX expressly acknowledges that this Release is intended to include in its effect, without limitation, any and all claims, complaints, charges or suits, including those claims, complaints, charges or suits which it does not know and does not suspect to exist in its favor at the time of execution hereof, which if known or suspected, could materially affect its decision to execute this Release. This Release contemplates the extinguishment of any such claims, complaints, charges or suits and, therefore, all rights under Section 1542 of the California Civil Code are hereby expressly waived by SBX. Section 1542 provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

SBX represents that it has read and understands the provisions of California Civil Code § 1542. Further, SBX acknowledges that it is represented by counsel and has been specifically advised by its counsel of the consequences of the above waiver, as well as with respect to this Release, generally. SBX understands that the facts upon which this Release is given may hereafter turn out to be other than or different from the facts now known or believed to be true, and hereby accepts and assumes the risk of the facts turning out to be different and agrees that this Release shall be in all respects effective and not subject to termination or rescission by virtue of any such difference in facts.

2. Obligations Under Transaction Documents. None of the foregoing general waivers, releases, covenants not to sue or initiate further proceedings, or injunctions includes or shall be deemed to include a release by SBX of any liabilities or obligations of SANDAG under or in connection with the Asset Purchase Agreement or any other Transaction Document.

3. No Admissions. This Release is executed in compromise and in settlement of disputed claims in order to avoid litigation and controversy and is not, nor shall it be deemed or construed to be, an admission or confession for any purpose or in any respect by SBX of any liability whatsoever to any other person, and may not be offered, admitted or received in evidence in any court proceeding for any purpose other than to establish the release of the claims to which it
refers, or the breach hereof by SBX and pursuant to California Code of Civil Procedure §§ 877 and 877.6, SBX has executed this Release in good faith.

4. **Ownership of Claims.** SBX represents and warrants that it is the owner of the claims asserted by SBX in the Proceedings, and that it has not heretofore assigned transferred, or hypothecated, whether voluntarily or involuntarily, by operation of law or otherwise, to any person, firm or corporation whatsoever, any such claim.

5. **Governing Law.** This Release shall, in all respects, be interpreted, enforced and governed by and construed in accordance with the laws of the State of California. If any person attempts to institute a legal proceeding to enforce or interpret the terms of this Release, or otherwise, such proceeding must be instituted and maintained exclusively in the Superior Court of the State of California in and for the County of San Diego, and SBX expressly consents to the jurisdiction and venue of such court and waives any objections to such jurisdiction and venue in any action arising out of this Release. This Release may be enforced pursuant to Section 664.6 of the California Code of Civil Procedure.

6. **Authority.** SBX represents and warrants that the person who executed this Release on its behalf has the right and authority to execute this Release on behalf of SBX and to fully bind SBX to the terms and obligations of this Release, and that the execution and consummation of this Release will not result in any breach of, contravene any provision of, violate or constitute a default under any article of incorporation, charter, by-law, mortgage, indenture, contract, agreement, instrument, judgment, statute, rule or regulation to which SBX is subject, and there is no claim or assertion or potential claim or assertion to the contrary.
IN WITNESS WHEREOF, SBX has executed this Release on the day and year first written above.

South Bay Expressway, LLC

By: _____________________________________
Name: Kip Horton
Title: Chairman
EXHIBIT I

Form of Toll Violation Proceeds Assignment
This Toll Violations Proceeds Assignment (this “Assignment”) dated as of June [__], 2012 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”).

PRELIMINARY STATEMENT

A. Pursuant to that certain Asset Purchase and Sale Agreement dated as of December [__], 2011 (the “Asset Purchase Agreement”) between the Seller and the Purchaser, the Seller has agreed to sell, transfer and assign to the Purchaser, and the Purchaser has agreed to purchase and accept from the Seller, inter alia, the Pre-Closing Toll Proceeds which have not been collected by or on behalf of the Seller during a six-month period after the Closing Date. Capitalized terms used but not defined herein shall have the meanings set forth in the Asset Purchase Agreement; and

B. The Closing Date under the Asset Purchase Agreement occurred on December [__], 2011.

NOW THEREFORE, for good and valuable consideration paid by the Purchaser to the Seller, the receipt and sufficiency of which the Seller acknowledges:

1. Transfer of Pre-Closing Toll Proceeds. The Seller hereby sells, transfers, assigns, conveys and delivers to the Purchaser, and the Purchaser hereby purchases, acquires and accepts from the Seller, all of the Seller’s right, title and interest in and to the Pre-Closing Toll Proceeds which have not been collected by or on behalf of the Seller as of the date hereof; it being understood that (i) the Pre-Closing Toll Proceeds collected by the DMV on behalf of the Seller up to the date hereof but not yet remitted by DMV to the Seller constitute Retained Assets not subject to this Assignment. In accordance with Section 3.5 of the Asset Purchase Agreement, to the extent any of the Pre-Closing Toll Proceeds collected by the DMV during such six-month period are remitted to the successor operator of the Project after the end of the Transition Period, the Purchaser shall, or shall cause such successor operator to, forward such proceeds to the Seller; provided, however, that Purchaser will be reasonably able to distinguish between Pre-Closing Toll Proceeds and those collected on account of post-closing toll violations.

2. Benefit of and Conflict with Asset Purchase Agreement. This Assignment is executed pursuant to the Asset Purchase Agreement and is entitled to the benefits thereof, and the Pre-Closing Toll Proceeds are hereby sold, conveyed, assigned, transferred and delivered to the Purchaser subject to the terms and conditions contained in the Asset Purchase Agreement. The Seller and the Purchaser acknowledge and agree that this Assignment is intended only to document the sale and assignment of the Pre-Closing Toll Proceeds from the Seller to the Purchaser and that the Asset Purchase Agreement is the exclusive source of the agreement and
understanding between the Seller and the Purchaser respecting the transfer of the Pre-Closing Toll Proceeds. If there is any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement shall govern.

3. **Further Assurances.** The Seller shall, from time to time after the date hereof, execute and deliver such further instruments of transfer and assignment and take such further actions as the Purchaser may reasonably request, in each case to more effectively consummate the transactions contemplated by the Asset Purchase Agreement and to vest in the Purchaser good and marketable title in and to the Pre-Closing Toll Proceeds, free and clear of any and all Liens (other than Permitted Liens).

4. **Assignment.** This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Assignment shall create or be deemed to create any third-party beneficiary rights in any Person or entity not a party to this Assignment.

5. **Governing Law.** This Assignment 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).

6. **Counterparts.** This Assignment may be executed and delivered in two or more counterparts (including by facsimile or other electronic transmission), all of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank; Signature Page Follows.]
IN WITNESS WHEREOF, each of the Seller and the Purchaser has caused this Assignment 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: Kip Horton
Title: Chairman

San Diego Association of Governments

By: ______________________
Name: 
Title: 
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.
### Assigned Contracts

<table>
<thead>
<tr>
<th>Parties - SBX and</th>
<th>Contract</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>AECOM formerly EDAW, Inc. as amended</td>
<td>WATER AND SEDIMENT QUALITY MONITORING AGREEMENT</td>
<td>TBD</td>
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<tr>
<td>AECOM formerly EDAW, Inc. as amended</td>
<td>ENVIRONMENTAL SERVICES AGREEMENT</td>
<td>TBD</td>
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<tr>
<td>Alloy</td>
<td>SOFTWARE MAINTENANCE</td>
<td>3/23/2011</td>
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<tr>
<td>Astart</td>
<td>FEPT INTEGRATOR (TMS)</td>
<td>11/30/2011</td>
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<tr>
<td>AT&amp;T</td>
<td>VOICE AND DATA CIRCUIT MONTHLY AGREEMENT</td>
<td>9/27/2009</td>
</tr>
<tr>
<td>Bay Area Toll Authority (BATA)</td>
<td>DEVELOPMENT AGREEMENT - INTEROP</td>
<td>11/19/2007</td>
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<td>Caltrans DOT, State of California</td>
<td>DEVELOPMENT FRANCHISE AGREEMENT &amp; AMENDMENTS</td>
<td>9/9/1992</td>
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<tr>
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<td>SR 905/SR 125 INTERCHANGE COST SHARING AGREEMENT</td>
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<td>Capital Image</td>
<td>SOFTWARE MAINTENANCE</td>
<td>9/28/2011</td>
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<td>Concepts 2000 Consulting</td>
<td>LICENSE AGREEMENT RE DMV GATEWAY</td>
<td>8/7/2008</td>
</tr>
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<td>Cummins-Alison Corp</td>
<td>MAINTENANCE AGREEMENT</td>
<td>6/1/2009</td>
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<td>Data Ticket, Inc</td>
<td>OUT OF STATE VEHICLE ID/ADDRESS CONTRACT</td>
<td>10/26/2010</td>
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<td>Delcan</td>
<td>TMS SYSTEM INTEGRATOR</td>
<td>3/21/2011</td>
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<td>Dept of DMV, State of California</td>
<td>REGISTRATION HOLD PLUS BOND TO DMV</td>
<td>2/9/2010</td>
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<td>Digicert</td>
<td>SOFTWARE MAINTENANCE</td>
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<td>Dunbar Armored Inc including amendments</td>
<td>CASH COLLECTION</td>
<td>7/11/2011</td>
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<tr>
<td>Eaton Corporation (d/b/a Ramtek)</td>
<td>CRITICAL POWER EQUIPMENT SERVICE CONTRACT</td>
<td>12/13/2010 (Term started on 3/19/2011)</td>
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<td>ePrism</td>
<td>SPAM FILTERING SOFTWARE</td>
<td>3/8/2011</td>
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<td>Federal Signal Technologies (VESytems LLC)</td>
<td>IMAGE REVIEW OUTSOURCING</td>
<td>5/2/2011</td>
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<tr>
<td>Foothill/Eastern Transportation Corridor Agency</td>
<td>CORPORATE USER FEE PROCESSING AGREEMENT</td>
<td>10/1/2010</td>
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<td>Foothill/Eastern Transportation Corridor Agency</td>
<td>FASTRACK LICENCE AGREEMENT</td>
<td>1/15/2007</td>
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<td>6/30/2011</td>
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<td>HARDWARE MAINTENANCE</td>
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<tr>
<td>GE Capital Solutions</td>
<td>LEASE OF TWO PHOTO COPIERS - 3 YEARS</td>
<td>5/11/2010</td>
</tr>
</tbody>
</table>

1 The chart lists those contracts of the Seller in existence as of December 6, 2011, which will be assigned to the Purchaser.
<table>
<thead>
<tr>
<th>Parties - SBX and</th>
<th>Contract</th>
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Schedule 1.1(b)

Equipment

See attached PDF file.
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<th>Item Description</th>
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<td>Prox Card Reader</td>
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### Sched 1.1(b) Installed Hardware

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<tr>
<th>Item Description</th>
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<th>Per Panel/System Quantity</th>
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<td><strong>UPS</strong></td>
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<td>Single Lane ETCS Outdoor Cabinets</td>
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<td>Outdoor Equipment Cabinet NEMA 4X/3R Air-Conditioned</td>
<td>Single width</td>
<td>APX / Dantherm</td>
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<td>AC Unit Cover</td>
<td>CSO200020A-H005</td>
<td>APX / Dantherm</td>
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<td>RACK / Enclosure - Lane Controller</td>
<td>M2250-721</td>
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<td><strong>Enclosure for Lane Controller (Tunnel)</strong></td>
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<td>Wall Mount Double Door Enclosure</td>
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<td><strong>External Enclosure for Lane Controller (Hi-Speed ORT - Double Width)</strong></td>
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<td>DMZ Switch</td>
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<td>1-Port T1/Fractional T1 DSU/CSU WIC</td>
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<td>CIA</td>
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<td>170E Controller</td>
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### Traffic Monitoring Station

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<td>Input Files</td>
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<td>PDA</td>
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<td>Controller</td>
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<td>128K EPROM</td>
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<td>Reno A&amp;E</td>
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<td>Isolator Cards</td>
<td>Model 242 DC</td>
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<td>Cornet Technology, Inc.</td>
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<td>Ethernet Bridge</td>
<td>IP Serial IO Unit</td>
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### Camera Station

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<td>Composite Cable</td>
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<td>Esprit ES31PC</td>
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<td>Housing</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 Esprit Pedestal Adapter</td>
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<tr>
<td>Wiper</td>
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<td>Encoder</td>
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<td>Camera Control Surge Protection</td>
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### Surveillance and Access Control

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<tr>
<td>Surveillance and Access Control</td>
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<td>M2100 DBU Kit with memory for 20,000 cards Database unit, board only, with memory for 20,000 cards.</td>
<td>M2100-DBU-20K-KIT</td>
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<td>M2000 DCU-Kit for 4 readers, 20mA 4DCU board supports up to 4 readers/doors.</td>
<td>M2000-DCU-KIT</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>
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<tr>
<td>ZDCR 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>
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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>
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<tr>
<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>
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<td>MultiNODE Input / Output Option Board 8 monitor points &amp; 4 auxiliary outputs per 2 readers UL Listed</td>
<td>MN-I/O</td>
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<td>CAMERA, VARIDOME, 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>
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<td>PRESSURE DOME KIT, 25X DAY/NIGHT, OUTDOOR, PIPE MT, WHITE, 120VAC, 60Hz.</td>
<td>PRSE1</td>
<td>Bosch</td>
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<td>CAMERA, 1/2&quot; 480 TVL COLOR, DSP, HIGH SENSITIVITY, RS-232, 120VAC.</td>
<td>LTC 0610/60</td>
<td>Bosch</td>
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<td>PIR REQUEST EXIT (GRAY)</td>
<td>TG10Z0S13FCS</td>
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<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>Manufacturer/Vendor</td>
<td>Total Installed Quantity</td>
<td>Per Panel/System Quantity</td>
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<td>Sun shroud for EH8104 only.</td>
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<td>Sentrol</td>
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<td>Foot Rail Duress Alarm</td>
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<td>Ademco</td>
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<td>Hand Operated Duress Alarm</td>
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<td>Ademco</td>
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<td>Proximity Cards, ISO Prox lii Programmable Dual PVC Cards Sequentially ink-jet numbered</td>
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<td>MultiNODE CAB4 Enclosure with hinged lockable door, door tamper, AC power monitor and fixing kit.</td>
<td>MN-CAB4</td>
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<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>
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<tr>
<td>MultiNODE CAB3 Enclosure with hinged lockable door, door tamper, AC power monitor and fixing kit.</td>
<td>MN-CAB3</td>
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<td>ThinLine II à Switch Plate Proximity Reader Switch plate, Pigtail connection, Indoor / Outdoor 4&quot; read range, 5-16 VDC</td>
<td>TL-5395-B-N</td>
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<tr>
<td>Pro Series 60&quot; Tripod, This 60&quot; 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 8ge</td>
<td>WR-5</td>
<td>Atlas Sound</td>
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<td>30x24x6 NEMA 1 Enclosure</td>
<td>AB-30246LM</td>
<td>Austin</td>
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<td>COMPACT FULL FUNCTION KEYBOARD, VARIABLE SPEED JOYSTICK.</td>
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<td>Wall Mount Adapter w/ 24 VAC power supply</td>
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<td>Bosch</td>
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<td>Pole Mount Adapter</td>
<td>PRS Corner</td>
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<td>Data Converter Unit</td>
<td>LTC8780/60</td>
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<td>Rack Mount Kit</td>
<td>LTC9101/00</td>
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<td>RG99U &amp; 2 Conductor 18</td>
<td>TG10Z0513FCS</td>
<td>CBC America</td>
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<td>1/3&quot; 5-50mm fl 3.5 A/II (DC Type)</td>
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<td>YCH-02A</td>
<td>CBC America</td>
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<td>Dell Rack</td>
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<td>Intel® Pentium® 4 Processor, 3.00GHz, 512K / 800 Front Side Bus, Microsoft Windows® 2000 Professional (SP4) with Media using NTFS</td>
<td>Precision™ Workstation 370 Minitower</td>
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<td>DVTEL 5 Tb Raid Array</td>
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<td>Barcode Reader w/USB</td>
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## Sched 1.1(b) Installed Hardware

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### Definitions

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<td>Automatic Vehicle Identification - ETC</td>
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<td>Cabinet, Enclosure, Rack</td>
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<td>Canopy Mounted Equipment</td>
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<td>Toll Collector Equipment</td>
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<td>Color Camera Illumination</td>
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<td>UN-Interruptible Power Source</td>
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## Schedule 2.1(b)(iv)

### Excess Property

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<th>Description and Location of Property</th>
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<th>Caltrans’ Number</th>
<th>Recorded Document Number</th>
<th>Right of Way Map</th>
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<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>
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<td>6425 Lonestar Road &amp; South side of Lonestar east of La Media</td>
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<td>North of Olympic Parkway, west of SR125</td>
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<td>Triangle parcel</td>
<td>Across SR125 from the Operation Center</td>
<td>32014-01-01</td>
<td>2009-0692165</td>
<td>52005 &amp; 52006</td>
</tr>
<tr>
<td>12.78 acre industrial property</td>
<td>Airway and SR905</td>
<td>32001-01-01</td>
<td>2011-0487205</td>
<td>34007</td>
</tr>
</tbody>
</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 Clean Water Act, Section 404, Permit No. 952024200-TCD, entered into between SBX and the USACE dated July 30, 2001, and any amendments thereto.

3. California Department of Fish and Game -- 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>
</tr>
<tr>
<td>Slope by Wal-Mart</td>
<td>East of Olympic Parkway, west of SR125</td>
<td>32113-1</td>
<td>2009-0661860</td>
<td>52021-mA</td>
</tr>
<tr>
<td>Slope by Wal-Mart</td>
<td>East of Olympic Parkway, west of SR125</td>
<td>32113-2</td>
<td>2010-0539870</td>
<td>52021 &amp; 52021-A</td>
</tr>
</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, Chula Vista.

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

<table>
<thead>
<tr>
<th>Country</th>
<th>Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Mark</td>
<td>PUT THE FUN BACK IN DRIVING</td>
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<tr>
<td>Registration No.</td>
<td>929,140</td>
</tr>
<tr>
<td>Class</td>
<td>35</td>
</tr>
<tr>
<td>Services</td>
<td>Advertising; business management; business administration; office functions</td>
</tr>
<tr>
<td>Registered Owner</td>
<td>California Transportation Ventures, Inc</td>
</tr>
<tr>
<td>Effective Date of Registration</td>
<td>January 13, 2006</td>
</tr>
<tr>
<td>Term</td>
<td>10 years</td>
</tr>
<tr>
<td>Renewal Date</td>
<td>January 13, 2016</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>------------</td>
</tr>
<tr>
<td><strong>Country</strong></td>
<td>USA</td>
</tr>
<tr>
<td><strong>Service Mark</strong></td>
<td>PUT THE FUN BACK IN DRIVING</td>
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<tr>
<td><strong>Registration No.</strong></td>
<td>3,655,931</td>
</tr>
<tr>
<td><strong>Class</strong></td>
<td>37 and 39</td>
</tr>
<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>
</tr>
<tr>
<td><strong>Registered Owner</strong></td>
<td>California Transportation Ventures, Inc</td>
</tr>
<tr>
<td><strong>Effective Date of Registration</strong></td>
<td>July 14, 2009</td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td>10 years</td>
</tr>
<tr>
<td><strong>Renewal Date</strong></td>
<td>July 14, 2019</td>
</tr>
</tbody>
</table>

**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. Cost Sharing Agreement with Caltrans;
4. InTrans License Agreement;
5. Short-Term Site Sublicense (Sprint PCS Assets, LLC); and
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.
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**

<table>
<thead>
<tr>
<th>Policy Description</th>
<th>Insurance Company</th>
<th>Policy Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OPERATING POLICIES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Damage</td>
<td>The Insurance Company of the State of Pennsylvania (Chartis)</td>
<td>Policy Number: 7532583</td>
</tr>
<tr>
<td>General Liability</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: GL09263267-03</td>
</tr>
<tr>
<td>Automobile</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: BAP9263265-03</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: WC9263266-03</td>
</tr>
<tr>
<td>Executive Liability - D&amp;O and Employment Practices Liab</td>
<td>Arch Insurance Company</td>
<td>Policy Number: 6465729300</td>
</tr>
<tr>
<td>Excess Directors &amp; Officers Liability</td>
<td>National Union Fire Ins Co of Pittsburgh, PA</td>
<td>Policy Number: 017915240</td>
</tr>
<tr>
<td>Fidelity Bond - Comercial Crime</td>
<td>Federal Insurance Company (Chubb)</td>
<td>Policy Number: 82092348</td>
</tr>
<tr>
<td>DIC – Earthquake</td>
<td>Empire Indemnity Insurance Company (Zurich)</td>
<td>Policy Number: 312569XQ1</td>
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<tr>
<td>DIC – Earthquake</td>
<td>Hudson Specialty Insurance (OdysseyRe)</td>
<td>Policy Number: 312569XQ1</td>
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<tr>
<td>Umbrella Liability</td>
<td>National Union Fire Ins. Co. of Pittsburg, PA (Chartis)</td>
<td>Policy Number: BE012733745</td>
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<tr>
<td>Excess Umbrella Liability</td>
<td>St. Paul Fire and Marine Insurance Company (Travelers)</td>
<td>Policy Number: QIO9003875</td>
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<tr>
<td>Excess Umbrella Liability</td>
<td>Federal Insurance Company (Chubb)</td>
<td>Policy Number: 936535871</td>
</tr>
<tr>
<td>Excess Umbrella Liability</td>
<td>National Surety Corporation (Fireman's Fund)</td>
<td>Policy Number: SHX00014656920</td>
</tr>
<tr>
<td>Pollution Liability</td>
<td>Chubb Custom Insurance Company</td>
<td>Policy Number: 37312415</td>
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<tr>
<td><strong>COMPLETED OPERATIONS POLICIES</strong></td>
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<tr>
<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>Excess Liability Policy</td>
<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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<tr>
<td>General Liability</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: 3676496</td>
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<td>General Liability</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: 3676623</td>
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<tr>
<td>Incurred Deductible Agreement</td>
<td>Zurich American Insurance Company</td>
<td>N/A</td>
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<td><strong>PROFESSIONAL LIABILITY POLICIES</strong></td>
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<tr>
<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>Architects &amp; Engineers Professional Liability</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: EOC 3795266</td>
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<tr>
<td><strong>CONSTRUCTION PERIOD WORKERS COMPENSATION POLICIES</strong></td>
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<tr>
<td>Workers Compensation</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: WC 3676495-00</td>
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<tr>
<td>Workers Compensation</td>
<td>Zurich American Insurance Company</td>
<td>Policy Number: WC3676622-00</td>
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</tbody>
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**Claims:** none
## Schedule 5.14

### Material Permits

**PART A**

<table>
<thead>
<tr>
<th>Approval</th>
<th>Date of Approval</th>
<th>Approving or Granting Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Franchise Agreement including Amendments I through VI</td>
<td>January 6, 1991</td>
<td>State of California Department of Transportation (Caltrans)</td>
</tr>
<tr>
<td>Biological Opinion on State Route 125</td>
<td>February 26, 1999</td>
<td>U.S. Fish &amp; Wildlife Service (USFWS)</td>
</tr>
<tr>
<td>February 26, 1999 South San Diego County, California (1-6-99-F-14)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>California Department of Fish and Game Consistency Determination Fish and</td>
<td>June 11, 1999</td>
<td>California Department of Fish &amp; Game (CDFG)</td>
</tr>
<tr>
<td>Game Code Section 2080.1 CESA No. 2080-1999-022-5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Final Environmental Impact Report/Statement and Section 4(f) Evaluation,</td>
<td>January 2000</td>
<td>Federal Highway Administration (FHWA) and Caltrans</td>
</tr>
<tr>
<td>Route Location, Adoption, and Construction of State Route 125 Between</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Route 905 on Otay Mesa to State Route 54 in Spring Valley in the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County of San Diego, State of California</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental Impact Report Resolution for Adoption of Findings, Statement</td>
<td>February 23, 2000</td>
<td>California Transportation Commission</td>
</tr>
<tr>
<td>of Overriding Considerations and a Mitigation Monitoring Program (11-SD-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>125 0.0/11.2) Resolution E-00-12</td>
<td></td>
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</tr>
<tr>
<td>Notice of Determination, Environmental Impact Report, State Clearinghouse</td>
<td>February 24, 2000</td>
<td>California Transportation Commission and Caltrans</td>
</tr>
<tr>
<td>No. 89011118</td>
<td></td>
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</tr>
<tr>
<td>Record of Decision, Route Location, Adoption, and Construction of State</td>
<td>June 9, 2000</td>
<td>FHWA</td>
</tr>
<tr>
<td>Route 125 Between Route 905 on Otay Mesa and Route 54 in Bonita/Spring</td>
<td></td>
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<tr>
<td>Valley San Diego County, California [KP 0.0-18.02 (PM 0.0 to 11.2)]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Event Description</td>
<td>Date</td>
<td>Details</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<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>
</tr>
<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>
</tr>
<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 Party(s)</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>Letter clarification that the 401 certification includes construction of Mt. Miguel Road interchange</td>
<td>May 23, 2002</td>
<td>RWQCB</td>
</tr>
<tr>
<td>Detailed Vernal Pool Restoration Plan for State Route 125 South (EDAW)</td>
<td>June 2003</td>
<td>Condition of permits issued by RWQCB, USFWS, and USACE. All approved.</td>
</tr>
<tr>
<td>Request to Amend Special Condition No. 7 of the Corps Permit No. 952024200-TCD in association with SR-125 South, San Diego County, CA</td>
<td>July 14, 2003</td>
<td>USACE</td>
</tr>
<tr>
<td>Quino Checkerspot Butterfly Habitat Restoration Plan for State Route 125 South (Dudek)</td>
<td>August 2003</td>
<td>Condition of BO issued by USFWS.</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>Condition of permits issued by RWQCB, USFWS, CDFG, and 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>Condition of permits issued by USFWS and CDFG. All approved.</td>
</tr>
<tr>
<td>Habitat Management Plan for Lake Jennings Preserve, Lakeside, CA</td>
<td>September 2003</td>
<td>Condition of permits issued by USFWS and CDFG. All approved.</td>
</tr>
<tr>
<td>Amendment No. 1 to Streambed Alteration Agreement Notification No. 5-325-99 SR-125 South, San Diego County, CA</td>
<td>September 17, 2003</td>
<td>CDFG</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 SR-125 South, San Diego County, CA</td>
<td>January 16, 2004</td>
<td>CDFG</td>
</tr>
<tr>
<td>Amendment No. 3 to Streambed Alteration Agreement Notification No. 5-325-99 SR-125 South, San Diego County, CA</td>
<td>January 26, 2004</td>
<td>CDFG</td>
</tr>
<tr>
<td>Request</td>
<td>Date</td>
<td>Issuer</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
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</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>Request</td>
<td>Date</td>
<td>Agency</td>
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<tr>
<td>------------------------------------------------------------------------</td>
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<tr>
<td>Request to Extend the Expiration Date of the Corps Permit No. 95204200-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 State Route 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. 95204200-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>Event Description</td>
<td>Date</td>
<td>Issuing Authority</td>
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<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 Sweetwater River Crossing Temporary and Permanent Impacts</td>
<td>April 2008</td>
<td>Condition of permits issued by RWQCB, USFWS, CDFG, and USACE. All approved.</td>
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<td>Amendment to US Army Corps Permit No. 952024200-TCD in association with SR-125 South, San Diego County, CA</td>
<td>June 2, 2008</td>
<td>USACE</td>
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<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>
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<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>
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<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>Condition of permits issued by RWQCB, USFWS, CDFG, and USACE. All approved.</td>
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<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>
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<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>
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<td>Second Amendment to the Biological Opinion on State Route 125 to include Construction of a Pedestrian/Equestrian Bridge at Bonita Golf Course, San Diego County, California</td>
<td>August 11, 2009</td>
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<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>
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<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 permits associated with utility agreements, encroachment permits, approvals for connection of utilities to the highway and toll facilities, and construction permits for work performed outside of the access control line.</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>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>
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</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>
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<td>Vernal Pools at Johnson Canyon Mitigation property *</td>
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Obligations for this property are fully assumed by Caltrans pursuant to a settlement agreement dated April 6, 2011.
Schedule A

Certain Permitted Liens

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### Period End: 6/30/2011

#### Account Reconciliation & Analysis

**South Bay Expressway**

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<td>FOE/Maintenance Equipment 1630-000</td>
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<td>Autos &amp; Trucks 1650-000</td>
<td>Software 1690-000</td>
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| Total Assets | 222,433 | 183,357 | 240,105 | 584,996 | 166,713 | 256,403 | 1,659,007 |
CONSENT TO ASSIGNMENT

This CONSENT TO ASSIGNMENT (this “Consent”), entered into and effective December [__], 2011, is executed by the State of California, Department of Transportation (“Caltrans”), for the benefit of South Bay Expressway, LLC, a Delaware limited liability company (“SBX”) and San Diego Association of Governments, a California regional public agency (the “Assignee”).

RECITALS

A. WHEREAS, Caltrans has entered into the Development Franchise Agreement for a Privatized Transportation Project dated as of December 31, 1990 (as amended, the “DFA”) with California Transportation Ventures, Inc., a California corporation (“CTV”); CTV has assigned its rights under the DFA and related documents to South Bay Expressway, L.P., a California limited partnership and a corporate predecessor to SBX, including 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, known as the South Bay Expressway (the “Project”). Each capitalized term used and not otherwise defined herein shall have the meanings assigned to such term in the DFA.

B. WHEREAS, SBX and the Assignee have entered into an Asset Purchase Agreement, dated as of December [__], 2011 (the “Asset Purchase Agreement”), pursuant to which SBX intends to transfer, convey, sell and assign to the Assignee, and the Assignee intends to purchase, acquire and assume, certain of the assets, properties and rights to manage, operate, maintain and collect tolls on the Project, and certain liabilities relating thereto, on the terms and subject to the conditions set forth in the Asset Purchase Agreement (such acquisition and other transactions contemplated by the Asset Purchase Agreement being referred to herein collectively as the “Transactions”).

C. WHEREAS, in order to consummate the Transactions on the Closing Date (as defined in the Asset Purchase Agreement), SBX is required to assign all of its right, title and interest in, to and under the DFA and the Franchise Documents to the Assignee.

D. WHEREAS, Caltrans’s prior written consent for any such assignment and transfer is required by Section 21.3 of the DFA.

E. WHEREAS, Caltrans is willing to execute this Consent pursuant to Section 21.3 of the DFA on the terms and conditions set forth hereunder.

NOW, THEREFORE, in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Caltrans, intending to be legally bound, hereby agrees as follows:

1. Consent to Assignment. In accordance with Section 21.3(a) of the DFA, Caltrans hereby irrevocably consents to the assignment of all of SBX’s right, title and interest in, to and under the DFA and each of the following Franchise Documents by SBX to the Assignee:
a. Lease Agreement, dated November 16, 2007;

b. Memorandum of the Lease, dated November 16, 2007;

c. Memorandum of Understanding Regarding Traffic and Incident Management, dated as of December 21, 2006; and


e. SR905/SR 125 Interchange Cost Sharing Agreement between SBX and Caltrans dated as of May 22, 2003

2.

3. Acknowledgment of Airspace Lease Obligations. Caltrans hereby acknowledges its obligation to execute, deliver and record a completed Airspace Option to Lease Agreement under Section 4.3 of the DFA and to enter into leases of Airspace pursuant to Section 4.4 of the DFA, in each case on the terms set forth in the applicable provision of the DFA.

4. Waiver of Right Of First Refusal. Caltrans hereby consents to the transfer of the “Operations Center Parcel” (as such term is defined in that certain Settlement Agreement, dated as of April 6, 2011, by and among Caltrans, CTV, SBX, certain creditors to SBX and their agents, (the “Settlement Agreement”)) by SBX to the Assignee on the Closing Date (as defined by the Asset Purchase Agreement), and waives its rights under Section 3(a)(v)(1) and (2) of the Settlement Agreement.

5. Amendment to Description of Property. In connection with the change to the legal description of the Department’s property subject to the Lease Agreement, on or promptly following the Closing Date, the Department shall execute, deliver and record the amendment to the Memorandum of Lease, amending and replacing the existing Exhibit A thereto in its entirety with the amended description of property attached hereto as Exhibit A.

6. Status of Franchise Documents. Caltrans and, by and through the Asset Purchase Agreement, SBX, certify that as of the date hereof:

a. The DFA, the Lease Agreement and each other Franchise Document is in full force and effect; none of such documents have been rescinded or terminated; there have been no amendments or modifications to the DFA other than by Amendment I dated February 20, 1992, Amendment II dated February 28, 1997, Amendment III dated December 21, 1997, Amendment IV dated February 23, 2000, Amendment V dated July 30, 2002, Amendment VI dated May 22, 2003, Amendment VII effective as of November 16, 2007, Amendment VIII effective as of November 16, 2007, and Amendment IX effective as of October 22, 2009; none of the other Franchise Documents have been amended or modified;

b. No Event of Default by Developer under the DFA, and no event of default by SBX under any other Franchise Document, has occurred since the date...
of the Settlement Agreement; and no breach, default, unsatisfied condition or other event has occurred, and no circumstance exists, that constitutes such an event of default, or that, with the giving of notice by Caltrans or the passage of time, or both, would constitute a Developer’s Event of Default under the DFA or an event of default by SBX under such other Franchise Document, or would otherwise allow Caltrans to terminate the DFA or any other Franchise Document, suspend Caltrans’ performance thereunder or otherwise excuse Caltrans from any failure to perform thereunder.

c. No Event of Default by Caltrans under the DFA, and no event of default by Caltrans under any other Franchise Document, has occurred since the date of the Settlement Agreement and no breach, default, unsatisfied condition or other event has occurred, and no circumstance exists, that constitutes such an event of default, or that, with the giving of notice by SBX or the passage of time, or both, would constitute an Event of Default by Caltrans under the DFA or an event of default by Caltrans under such other Franchise Document.

d. Caltrans has no knowledge of any facts entitling it to any claim, counterclaim, offset or defense against SBX with respect to any of the Franchise Documents and there exists no dispute between SBX and Caltrans.

e. Caltrans has not received notice of any assignment of all or any part of SBX’s right, title and interest in, to and under any of the Franchise Documents.

f. As of the date hereof, there are no proceedings pending in any court, or threatened against, or affecting Caltrans or by or before any governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on Caltrans’ ability to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Consent or any of the Franchise Documents.

g. As of the date hereof, no default or breach or other event or condition exists under any of the Franchise Documents that (i) permits any party thereto to terminate such agreement or suspend its performance thereunder or excuse such party from any failure to perform thereunder or (ii) is reasonably likely to result in a material breach or material default thereunder.

7. Third-Party Beneficiary.

a. The Assignee may rely upon the certifications and representations made by Caltrans in this Consent and by SBX by and through the Asset Purchase Agreement, and is a third-party beneficiary thereof.

b. This Consent is provided for the sole benefit of the Assignee and SBX, and, except as specifically provided herein, shall not confer any rights or remedies upon any Person other than the Assignee, SBX and their respective successors and permitted assigns. No third party may rely on any statements of fact or representation or warranty made by Caltrans in this Consent, and Caltrans hereby retains any claims it may have against such third parties.
8. **Representations and Warranties.** Caltrans represents and warrants to each of SBX and the Assignee that:

   a. Caltrans has all requisite power and authority to execute and deliver and to perform its obligations under each of the Franchise Documents and this Consent.

   b. The execution, delivery and performance by Caltrans of each of the Franchise Documents and this Consent have been duly authorized by all necessary action.

   c. Each of the Franchise Documents and this Consent constitutes a legal, valid and binding obligation of Caltrans enforceable against it in accordance with the respective terms thereof, subject to the effect of rules of law governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies.

   d. The execution, delivery and performance of this Consent will not violate any applicable Law.

   e. The execution, delivery and performance of this Consent does not amend, modify or otherwise alter in any way the DFA and the rights, duties and obligations of the parties as specified therein, other than as contemplated by the Transactions.

9. **Miscellaneous.**

   a. **Notices.** All notices, other communications and approvals required or permitted by this Consent shall be in writing and shall be delivered, sent by certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

      (i) in the case of Caltrans:

      California Department of Transportation  
      Office of the Director  
      1120 N Street  
      Sacramento, California 95814  
      Attention: Director

      (ii) in the case of the Assignee:

      San Diego Association of Governments  
      401 B Street, Suite 800  
      San Diego, CA 92101  
      Attention: Executive Director

      (iii) in the case of SBX:
or such other persons or addresses as any party may, from time to time, designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a business day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next business day, or (ii) on the fourth business day after mailing if sent by U.S. registered mail.

b. **Headings.** The headings herein are for convenience only and shall be ignored in construing this Consent.

c. **Governing Law.** This Consent shall be governed by, and interpreted, construed, and determined in accordance with, the internal laws of the State of California.

d. **Severability.** In case any provision in or obligation under this Consent 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.

[signature page follows]
IN WITNESS WHEREOF, Caltrans has executed this Consent as of the date first written above.

STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION

By: ________________________________
   Name: ________________________________
   Title: ________________________________
EXHIBIT A

AMENDED DESCRIPTION OF PROPERTY
TRADEMARK ASSIGNMENT

This TRADEMARK ASSIGNMENT (this “Assignment”) is made as of December __, 2011, by South Bay Expressway, LLC, a Delaware limited liability company, having an address of 1129 La Media Road, San Diego, CA 92514, (“ASSIGNOR”), to the San Diego Association of Governments, a California public agency, having an address of 401 B Street, Suite 800, San Diego, CA 92101 (“ASSIGNEE”).

WHEREAS, ASSIGNOR and ASSIGNEE have entered into an Asset Purchase and Sale Agreement, dated as of December __, 2011 (the “Asset Purchase Agreement”), pursuant to which ASSIGNOR agreed to sell, assign and transfer certain assets to ASSIGNEE;

WHEREAS, ASSIGNOR is the owner of the trademarks and trademark registrations listed in Exhibit A attached hereto (collectively, the “Trademarks”);

WHEREAS, pursuant to the Asset Purchase Agreement, ASSIGNOR has assigned to ASSIGNEE all right, title and interest in and to the Trademarks, including the goodwill pertaining thereto.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained in the Asset Purchase Agreement, and the covenants and agreements in this Assignment, ASSIGNOR agrees as follows:

1. ASSIGNMENT.

   a. ASSIGNOR hereby assigns, sells, transfers and conveys to ASSIGNEE all of ASSIGNOR’s right, title and interest in and to the Trademarks including, without limitation, for all of the goods and/or services included in the relevant registrations or applications, together with the goodwill of the business associated with and symbolized by the Trademarks;

   b. At any time, and from time to time, hereafter, ASSIGNOR shall forthwith, upon ASSIGNEE’s reasonable request, execute, acknowledge and deliver to ASSIGNEE any and all further instruments and assurances reasonably necessary in order to vest the aforesaid rights in ASSIGNEE or record this assignment.

2. MISCELLANEOUS.

   a. Benefit of and Conflict with Asset Purchase Agreement. This Assignment is executed pursuant to the Asset Purchase Agreement and is entitled to the benefits thereof, and the Trademarks are hereby assigned, sold, transferred and conveyed to ASSIGNEE subject to the terms and conditions contained in the Asset Purchase Agreement. ASSIGNOR and ASSIGNEE acknowledge and agree that this Assignment is intended only to document the sale and assignment of the Trademarks from ASSIGNOR.
to ASSIGNEE and that the Asset Purchase Agreement is the exclusive source of the agreement and understanding between ASSIGNOR and ASSIGNEE respecting the transfer of the Trademarks. If there is any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement shall govern.

b. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Assignment shall create or be deemed to create any third-party beneficiary rights in any person or entity not a party to this Assignment.

c. **Governing Law.** This Assignment 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).

d. **Counterparts.** This Assignment may be executed and delivered in two or more counterparts (including by facsimile or other electronic transmission), all of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank; Signature Page Follows.]
IN WITNESS WHEREOF, ASSIGNOR has executed and ASSIGNEE has acknowledged this Assignment as of the date first set forth above.

SOUTH BAY EXPRESSWAY, LLC

By: ________________________________
   Name: Kip Horton
   Title: Chairman

State of _________ )
   ) ss:
County of _________ )

On this a _____ day of _____________, 2011 before me, the undersigned, personally appeared _______________, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of South Bay Expressway, LLC, and acknowledged that s/he executed it in such representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

____________________________________
Notary Public

Acknowledged:

SAN DIEGO ASSOCIATION OF GOVERNMENTS (ASSIGNEE)

By: ________________________________
   Name:
   Title:
EXHIBIT A

Trademark Registrations and Applications

US Registration No. 3,655,931 for the mark PUT THE FUN BACK IN DRIVING! in International Classes 37 and 39, registered July 14, 2009
ASSIGNMENT AND ASSUMPTION OF PERMIT OBLIGATIONS

South Bay Expressway, LLC

Permit [______]

This ASSIGNMENT OF PERMIT OBLIGATIONS is dated as of December [___], 2011. South Bay Expressway, LLC (“Assignor”) and San Diego Association of Governments (“Assignee”) wish to enter into this Assignment and Assumption of Permit Obligations (the “Assignment”) to confirm the assignment to Assignee of certain obligations of Assignor under the Clean Water Act Section 404 Permit No. 952024200 issued by the United States Department of the Army, Corps of Engineers, attached hereto as Exhibit A (the “Permit”), and the assumption of such obligations by Assignee.

Assignment

NOW THEREFORE, in consideration of the provisions contained in this Assignment, and other consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Scope of Assignment. The scope of this Assignment is to transfer all duties and obligations under the Permit, other than the obligations related to offsite mitigation on the Mitigation Property (the “Excluded Permit Obligations”), which have been assumed by the State of California, Department of Transportation (“Caltrans”) pursuant to the Settlement Agreement. As used herein, the “Settlement Agreement” means that certain Settlement Agreement, dated as of April 6, 2011, by and among the Assignor, Caltrans, California Transportation Ventures, Inc., and certain creditors to the Assignor identified therein and their agents.

2. Assignment. Assignor hereby assigns to Assignee all duties and obligations under the Permit arising after the date hereof, other than the Excluded Permit Obligations (collectively, the “Assigned Obligations”).

3. Assumption. Assignee hereby assumes the Assigned Obligations and agrees to comply therewith.

4. Obligations Not Assumed by Assignee. Except as described in Section 2 of this Assignment, above, Assignor does not assign and Assignee does not assume any rights, duties and obligations under the Permit relating to construction of Assignor’s project or onsite mitigation.

5. Assignor Remains Liable. Assignee shall be responsible only for compliance with the Assigned Obligations and Assignor shall remain liable for the portion of the obligations under the Permit that are not assigned to, and assumed by, Assignee under this Assignment. The obligations retained by Assignor hereunder are referred to herein as the “Retained Obligations.” No default by Assignor under the Retained Obligations shall constitute a default by Assignee.
under the Assigned Obligations, nor shall any Assignee default under the Assigned Obligations constitute a default by Assignor under the Retained Obligations.

6. Agency Consent. Concurrently with the execution and delivery of this Assignment, Assignor shall deliver to Assignee the Agency's written consent to this Assignment which shall state that:

(a) The Permit is in full force and effect;

(b) Assignor has performed and complied with all covenants and agreements required by the Permit to be performed and complied with by it prior to the date of the consent; and

(c) No event or condition has occurred that, with the passage of time or giving of notice (or both), would constitute a breach, or violation of, or a default under, the Permit.

7. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original and have the same effect as if both of the Parties executing the counterparts had executed a single instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day first above written.

Assignee

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: _____________________________

Name (Print): _____________________

Its: _____________________________

Assignor

SOUTH BAY EXPRESSWAY, LLC

By: _____________________________

Name (Print): _____________________

Its: _____________________________
On ______________________________, ________ 2011, ________ before ________ me, _______________, a Notary Public in and for said County and State, personally appeared ________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California, that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

______________________________
(Seal)

Notary Public
STATE OF )
) )
COUNTY OF )
) )
On , 2011, before me,

On ______________________________, ________ 2011, __________ before __________me, _____________________________, a Notary Public in and for said County and State, personally appeared ____________________________________________,who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California, that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

________________________________________(Seal)
Notary Public
EXHIBIT A

to

Assignment and Assumption of Permit Obligations

PERMIT
RECORDING REQUESTED BY and
AFTER RECORDING MAIL DEED AND
TAX STATEMENTS TO

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER’S USE

GRANT DEED

The undersigned Grantor declares that the Documentary Transfer Tax is - See attached Statement of Tax Due not to be made part of the public record, R&T 11932.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

South Bay Expressway, LLC,
a Delaware limited liability company

hereby GRANTS to

San Diego Association of Governments,
a California local public agency

all right, title and interest in and to that certain real property located in the City of San Diego, the County of San Diego, State of California, which is described on Exhibit A attached hereto.

Date: December __, 2011

South Bay Expressway, LLC,
a Delaware limited liability company

By: _____________________________
Name: 
Title:
State of California
County of ___________

On __________________ before me, personally appeared __________________ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________  (Seal)
Exhibit A

Legal Description of the Real Property


THERE SHALL BE NO ABUTTER’S RIGHTS, INCLUDING RIGHTS OF ACCESS APPURtenant TO THE ABOVE DESCRIBED REAL PROPERTY IN AND TO THE ADJACENT STATE FREEWAY.

CONTAINING 5.0 ACRES MORE OR LESS.

RESERVING THEREFROM AN EASEMENT UNTO THE STATE OF CALIFORNIA, ITS SUCCESSORS AND/OR ASSIGNS, FOR REASONABLE INGRESS AND EGRESS PURPOSES ACROSS THE ABOVE DESCRIBED PROPERTY, IN ORDER TO ACCESS THE WESTERLY ACCESS CONTROLLED RIGHT OF WAY FOR STATE HIGHWAY 11-SD-125 FROM LA MEDIA ROAD.

BEARING AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6, HPGN EPOCH 1991.35 MULTIPLY ALL DISTANCES BY 0.9999798 TO OBTAIN GROUND LEVEL DISTANCES.

NOTE: SAME PROPERTY AS ACQUIRED BY DIRECTORS DEED RECORDED SEPTEMBER 20, 2011 AS INSTRUMENT NO. 487204.
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.

“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.

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

“Bondholder,” or “holder” means, with respect to any Related Bond, the registered owner of such Related Bond.

“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 which are capitalized in accordance with generally accepted accounting principles.

“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 owned by SANDAG comprising a part, or necessary for the operation, of 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, but only to the extent such property is incorporated into, comprises a part, or is necessary for the operation, of the Project:

(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 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 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 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.

"Continuing Deposit Obligation" shall have the meaning ascribed to such term in Section 511 hereof.

“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.

“Discretionary Major Capital Expenditures” means any Capital Expenditures included in the Annual Budget 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.

“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.

"Event of Default" shall have the meaning ascribed to such term in Section 601 hereof.

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


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

“First Subordinated Obligations” means the SANDAG Reimbursement Obligation, 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 Debt Service Coverage Ratio” means the total of (i) Net Cash Flow less (ii) deposits to the Senior Obligations Debt Service Fund less (ii) deposits to the Major
Maintenance Reserve Fund deposits less (iii) deposits to the Extraordinary Reserve Fund, divided by debt service on the First Subordinated Obligations for any applicable twelve (12) month period.

“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 Approvals" shall have the meaning ascribed to such term in the TIFIA Loan Agreement.

“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.

“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.

“Instructing Controlling Lender” means the (a) the holder of the Senior Obligations and, if there are no Senior Obligations outstanding, then (b) 51% of the holder or holders of the First Subordinated Obligations and, if there are no Senior Obligations or First Subordinated Obligations outstanding, then (c) 51% of the then outstanding principal amount of the holder or holders of the Second Subordinated Obligations. In the event that the holder of the Senior Obligations, any holder of a First Subordinated Obligations or any holder of a Second Subordinated 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 Subordinated Obligations and Second Subordinated 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 Capital Requirement” means an unexpected repair or modification to the Project requiring (i) expenditures exceeding $5,000,000 or (ii) a partial or complete closing of the toll road that has resulted or is reasonably expected to result in a loss of Project Revenues exceeding $5,000,000.

“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 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.

“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” 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, Capital Expenditure Reserve Fund during such period under the terms of this Master Agreement.

“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 and any other 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, 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 Permitted Debt (as defined in the TIFIA Loan Agreement).

**“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; and

(k) Permitted Liens (as defined in the TIFIA Loan Agreement).
“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.

"Principal Project Agreements" shall have the meaning ascribed to such term in the TIFIA Loan Agreement.

“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 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 Master Trustee as of such December 31 (after giving effect to the disbursements from such accounts held by the Master 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 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.

“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.

“SANDAG Reimbursement Account” means the account of that name established pursuant to Section 501 of this Master Agreement.
“SANDAG Reimbursement Obligation” means that First Subordinated Obligation whereby the Project Revenues will be used to reimburse SANDAG for certain costs incurred in connection with the acquisition of the Project in a principal amount not to exceed $2,000,000 plus interest at the rate of 4.25% per annum.

“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.

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

"Series D Agreement" means the Series D Agreement dated as of ______, 2011 by and between SANDAG and the TIFIA Lender.

"Series D Collateral" means Project Revenues.

“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.

“Subordinated Obligations” means the First Subordinated Obligations and the Second Subordinated 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" shall have the meaning ascribed to such term in the TIFIA Loan Agreement.
“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 Note.

“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 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.

“Toll Road Lease” means the amended lease agreement entered into by SANDAG and Caltrans with respect to the Project, substantially in the form of Exhibit B to the Franchise 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 means initially Stantec Consulting Services, Inc. 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 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 Payment 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.

“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 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.

(a) 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; provided, however, that no other Obligations may be issued on a parity with the Senior Obligations.

(b) Additional Obligations on a parity with or subordinate to First Subordinated Obligations and senior to Second Subordinated Obligations may be issued to fund Required Capital Expenditures, Major Maintenance Costs, Extraordinary Expense Costs, or the refinancing of First Subordinated Obligations if the TIFIA Lender consents thereto, which consent may not be unreasonably withheld or delayed. If (x) no “event of default” under this Master Agreement or the TIFIA Loan Agreement has occurred and is continuing, and (y) the TIFIA Lender has received written confirmation from the Nationally Recognized Rating Agency then maintaining a rating on the Senior Obligations to the effect that the issuance of such additional Obligations will not in and of itself cause such Nationally Recognized Rating Agency to reduce or withdraw the then current rating on the TIFIA Loan, then the failure or refusal of the TIFIA Lender to consent to the issuance of such additional Obligations shall be deemed unreasonable if the proposed additional Obligation(s) meets the following standard which applies to the proposed additional Obligation(s) at the time they are proposed to be issued:

(i) With respect to additional Obligations issued for the purpose of complying with obligations under [Section _____] of the Franchise Agreement, SANDAG shall certify to the TIFIA Lender that (1) the proceeds of such additional Obligations, together with other funds available to SANDAG, if any, shall be sufficient for the proposed purpose, (2) the issuance of the additional Obligations, is not expected to have a Material Adverse Effect, and (3) the Net Cash Flow, for each annual period from proposed date of issuance of the additional Obligations to the scheduled termination of the Franchise Agreement, taking into account the
additional Obligations, is projected to be equal to or greater than total of the payments shown on Schedules 506 and 509 attached hereto for the same annual period (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);

(ii) With respect to additional Obligations issued for the purposes of funding Major Maintenance Costs and/or Extraordinary Expense Costs SANDAG shall certify to the TIFIA Lender that (1) the proceeds of such additional Obligations, together with other funds available to SANDAG, if any, shall be sufficient for the proposed purpose, (2) the issuance of the additional Obligations is not expected to have a Material Adverse Effect, (3) the Net Cash Flow, taking into account the additional Obligations is projected to be equal to or greater than 110% of the total of the payments shown on Schedules 506 and 509 attached hereto for the same annual period (based on a certified revenue forecast prepared by the Traffic Consultant and delivered prior to or concurrently with SANDAG’s request for approval of such additional Obligations), [and (4) the issuance of such additional Obligations shall not adversely affect SANDAG’s ability to repay the Series D Note as projected prior to the issuance of additional Obligations]; or

(iii) With respect to additional Obligations to refinance, replace or refund all or part of any then outstanding First Subordinated Obligations, SANDAG 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 Obligations) do not exceed the principal amount of the First Subordinated Obligations outstanding and proposed to be refinanced or replaced and (2) the scheduled debt service of such additional Obligations is less than or equal to the scheduled debt service of the First Subordinated Obligations proposed to be refinanced or replaced.

(c) An Officer’s Certificate delivered to the Master Trustee certifying that the TIFIA Lender has consented to the issuance of additional Obligations under subsection 201(b) or that the proposed additional Obligations meet the applicable standard of subsection 201(b) and that the TIFIA Lender has unreasonably failed or refused to consent thereto shall be sufficient for the Master Trustee to authenticate and recognize such additional Obligations under this Master 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____________________________________

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. Security. The Obligations are limited obligations of SANDAG payable from and secured solely by the Collateral or, in the case of the Second Subordinated Obligations, payable from and secured solely by 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 (i) first, among the owners of all Senior Obligations on a parity with other Senior Obligations on an equal and ratable basis, (ii) second, among the owners of all First Subordinated Obligations on a parity with other First Subordinated Obligations on an equal and ratable basis and (iii) third, commencing after the payment in full of all Senior Obligations and
satisfaction of all First Subordinated 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, subject to the priority set forth in Section 208(a) hereof, (i) with respect to the Senior Obligations and the First Subordinated Obligations, all of the Collateral, and (ii) with respect to the Second Subordinated Obligations, the Series D 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 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. 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.

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 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, and with respect to the Second Subordinated Obligations, only from the Series D 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 the Collateral with respect to the Senior Obligations and First Subordinated Obligations, and with respect to the Second Subordinated Obligations, only from the Series D Collateral, and be liable therefor solely from those applicable sources 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 effect 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. Operational Covenants and Adjustments.

(a) Operational Covenants

(i) As long as any portion of the Senior Obligations remain unpaid SANDAG shall fix, charge and collect rates and charges such that Net Cash Flow in each Fiscal Year will at all times produce (A) a Senior Debt Service Coverage Ratio of at least 1.10 (the “Senior Rate Covenant”), (B) a First Subordinated Debt Service Coverage Ratio of at least 1.00 (the “First Subordinated Rate Covenant”) and (C) a Project Life Cover Ratio of at least 1.50.

(ii) SANDAG shall 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) Adjustments

(i) SANDAG shall prepare and submit to the Master Trustee and the TIFIA Lender, on or before the ninetieth (90th) day preceding each Fiscal Year, a report in which SANDAG 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 meet the standards set forth in Section 406(a)(i) above, and such report shall include the numbers, assumptions and other information on which it is based.
(ii) If the conclusion stated in the report described in clause (i) above is that any of the standards set forth in Section 406(a)(i) above will not be met for any year, SANDAG 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 standards set forth in Section 406(a)(i) above. Within sixty (60) days of such engagement, the Traffic Consultant shall deliver a written report to SANDAG, the Master Trustee and the TIFIA Lender containing the results of such study and the recommendations of the Traffic Consultant.

(iii) SANDAG 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. SANDAG 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 SANDAG shall not be required to take any action that may result in a breach by SANDAG of its obligations under this Master Agreement.

Section 407. Permitted Reorganizations.

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

(a) 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.

(b) 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.

(c) 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.

(d) 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) an Officer’s Certificate of an Annual Budget concerning the Project 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, Operations and Maintenance Expenses, Capital Expenditures, Extraordinary Expense Costs, interest, and other costs and a pro forma balance sheet prepared in accordance with generally accepted accounting principles consistently applied 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 secured or payable from the Collateral.

Section 410. Permitted Dispositions.

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.

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; 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; and

(vi) 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 414 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 accounts 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 Subordinated Obligations Debt Service Fund, a “TransNet Payment Account”;

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

(x) “SANDAG Distribution Fund”; and 

(xi) “Clearing Fund.”

(b) Clearing Fund. Amounts deposited in the Clearing Fund shall be paid or transferred by the Master Trustee as directed by SANDAG in one or more Officer’s Certificate delivered to the Master Trustee. Upon such payments and transfers finally being accomplished, or in no event later than six months from the date of this Master Agreement, the Clearing Fund shall be closed by the Master Trustee upon receipt of an Officer’s Certificate of SANDAG directing the same, upon the lapse of said six months, or upon the fund being depleted. Any moneys remaining in the Clearing Fund at the time the Master Trustee is authorized to close the Clearing Fund shall be transferred to the SANDAG Distribution 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.

(c) Except as otherwise provided in this Section, transfers from the Project Revenue Fund shall be made to the following funds and in the following order of priority:

(i) “Operating and Maintenance Reserve Fund”;

(ii) “Capital Expenditure Reserve Fund”;

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

(iv) “Senior Obligations Debt Service Fund” and within the Senior Obligations Debt Service Fund, first to the “TIFIA Interest Account” and second to the “TIFIA Principal Account”;

(v) “Major Maintenance Reserve Fund”;

(vi) “Extraordinary Reserve Fund”;

(vii) “First Subordinated Obligations Debt Service Fund” and within the First Subordinated Obligations Debt Service Fund, first to the “SANDAG Reimbursement Account” and second to the “TransNet Payment Account”;

(viii) “Second Subordinated Obligations Debt Service Fund” and within the Second Subordinated Obligations Debt Service Fund, to the “Series D Payment Account”; and
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 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 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.

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.

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 506 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. Unless otherwise amended in the Annual Budget, deposits into the Major Maintenance Reserve Fund will be made in accordance with Schedule 507 attached hereto, subject to the other provisions of this Section 507.

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. Unless otherwise amended in the Annual Budget, deposits into the Extraordinary Reserve Fund will be made in accordance with Schedule 508 attached hereto, subject to the other provisions of this Section 508.

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 (i) to the SANDAG Reimbursement Account of the First Subordinated Obligations Debt Service Fund, an amount which, together with any other available funds in the SANDAG Reimbursement Account, is necessary to provide in equal quarterly installments, funds for the payment of the SANDAG Reimbursement Obligation
coming due on the immediately succeeding payment date in accordance with the Schedule 509 attached hereto, and then (ii) 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. [Provided that the PLCR is 1.50 or greater,] 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.

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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.

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 upon maturity; 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 holder of any Second Subordinated Obligation shall have any right as a holder of a Second Subordinated 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, or to enforce payment on its Second Subordinated Obligation so long as any First Subordinated
Obligations or Senior Obligations remain Outstanding without the written consent of the holders of such Outstanding First Subordinated Obligations and/or Senior Obligations, as applicable.

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 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 (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 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 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 (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 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 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 (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 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 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 Instructing Controlling Lender 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 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 Instructing Controlling Lender, 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 Instructing Controlling Lender. 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 Lender, 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, 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 Instructing Controlling Lender or 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 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 all Obligations outstanding hereunder are 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;

(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 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 Securities 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 all Obligations of a particular series or a portion of such a series outstanding hereunder 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 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 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:

(c) 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

(d) 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:

If to SANDAG: SANDAG
Attn: Executive Director
401 B Street, Suite 800
San Diego, CA 92101

If to the Master Trustee: U.S. Bank National Association
633 W. 5th Street, 24th Floor
Los Angeles, CA 90071
Attn: Corporate Trust Services

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

By: ________________________________
   Name: ________________________________
   Title: ________________________________
TransNet Principal Amount:
$255,749
(Loan + Swap + Closing Costs)
All Amounts in Thousands ($000) Schedule 509

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Total 2,085 3,193 447,952 453,230

* Remaining Fees: Barclays, 10 days of TIFIA debt service and O&M cost
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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EXHIBIT A-2 – Form of Tranche B-2 Note
EXHIBIT A-3 – Form of Tranche B-2 Note
EXHIBIT B – Form of Opinions of Counsel to Borrower
EXHIBIT C – Form of No-Debarment Certificate
EXHIBIT D – Compliance with Laws
EXHIBIT E – TIFIA Scheduled Debt Service
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 owned by the Borrower comprising a part of, used in connection with or necessary for the operation the Project, including all of the following property now owned or at any time hereafter acquired by the Borrower in which the Borrower now has or at any time in the future may
acquire any right, title or interests, but only to the extent such property is incorporated into, or comprises a part of, the Project:

(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 December 21, 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, as applicable, the Tranche A Debt Service Commencement Date, the Tranche B Debt Service Commencement Date and the Tranche C Debt Service Commencement Date.
“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 an engineering firm which shall be selected from a list maintained by 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 Exhibits A-1, A-2 and A-3, 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 Agreement (Security Agreement) between the Borrower and the Trustee, dated as of the Effective Date, as supplemented or amended by any Supplemental Agreement (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.

“SANDAG Reimbursement Obligation” has the meaning set forth in the Master Agreement.

“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 or 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 December 21, 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 Stantec Consulting Services, Inc. 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.

“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 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.

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 502 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 V 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 Major Maintenance Reserve deposits;
(vii) Required Extraordinary Reserve deposits (including any required expenditures to comply with the Franchise Documents);

(viii) Repayment of the SANDAG Reimbursement Obligation and TransNet Loan up to a total of [$447.6] million;

(ix) Repayment of Series D Loan; and

(x) 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 this Section 9(a). 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 this Section 9(b). 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.

(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 this Section 9(c). 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 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 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.
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.

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.

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.

The Commission Loan Agreement and, to the Borrower’s knowledge after due inquiry, 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.


(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 with respect to the Project. 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 1.05x 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 1.15x 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;
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.

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.

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.

Reserved.

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, or any 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 then 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:

1. 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);
(i) 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.

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 Recourse**

(a) The obligations of Borrower under this Agreement and the Financing Documents are limited obligations of Borrower secured solely by the Collateral. The liability of Borrower under this Agreement and the Financing Documents shall be limited to and payable solely from Borrower's interest in the Collateral, and there shall be no other recourse against Borrower. Neither the general credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the TIFIA Loans or the performance of the Borrower's obligations under this Agreement or the Financing Documents. This Agreement and the Financing Documents shall not be or be deemed obligations of the State or any political subdivision thereof other than Borrower and then only to the extent provided in this Agreement.

(b) 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
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), and the payment requirements set forth in Section 27 that arise prior to termination 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
FORM OF TRANCHE____ NOTE

SOUTH BAY EXPRESSWAY PROJECT
(TIFIA – 2003-1002)

Initial Principal Amount: $___________

Effective Date: December 21, 2011

Final Maturity Date: ____, 20__

Registered Owner: United States Department of Transportation

SAN DIEGO ASSOCIATION OF GOVERNMENTS, a California public agency (together with its successors and assigns, the “Borrower”), for value received, hereby promises to pay to the order of the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Federal Highway Administrator, or its assigns (the “TIFIA Lender”) the payments and amounts set forth in Appendix ___ hereto (including, if applicable, interest at the TIFIA Default Rate, as defined in the TIFIA Loan Agreement (as defined herein) on the Outstanding Loan Balance); provided, however, to the extent that the aggregate amount of debt service as set forth in Appendix ___ hereto is actually paid on the Payment Date set forth in Appendix ___ hereto shall be less than the aggregate amount of the debt service scheduled for such period as set forth in Appendix ___ hereto, then the unpaid portion of such scheduled debt service shall, in the case of interest, be capitalized and added to the then outstanding balance for this Tranche ___ Note as of the Semi-Annual Payment Date set forth in Appendix ___ hereto occurring at the end of such Payment Period or, in the case of principal on this Tranche ___ Note, deferred and added to the outstanding balance for this Tranche ___ Note 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 balance for this Tranche ___ Note shall be paid no later than the Final Maturity Date listed above.

The principal and interest hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement and as set forth in Appendix ___ hereof, as revised from time-to-time in accordance with the TIFIA Loan Agreement, until paid in full on the Final Maturity Date. Such Appendix ___ shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement. Payments hereon are to be made in accordance with Section 9 of the TIFIA Loan Agreement as the same become due or shall be deferred and capitalized. Principal of and interest on this Tranche ___ Note shall be paid in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

THIS TRANCHE ___ NOTE IS AN OBLIGATION OF THE BORROWER AND SHALL NOT BE DEEMED TO BE THE DEBT OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF OTHER THAN THE BORROWER AND THEN ONLY TO THE EXTENT PROVIDED IN THE TIFIA LOAN AGREEMENT. THE OBLIGATION OF THE BORROWER UNDER THIS TRANCHE ___ NOTE AND THE
TIFIA LOAN AGREEMENT ARE LIMITED OBLIGATIONS OF THE BORROWER PAYABLE SOLELY FROM THE COLLATERAL. NEITHER THE GENERAL CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THIS TRANCHE ___ NOTE OR THE PERFORMANCE OF THE BORROWER’S OBLIGATIONS UNDER THE TIFIA LOAN AGREEMENT.

This Tranche ___ Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Master Agreement until the Certificate of Authentication hereon shall have been signed by the Master Trustee.

This Tranche ___ Note constitutes a “Senior Obligation” under the Master Trust Agreement (Security Agreement), dated as of the Effective Date hereof (the “Master Agreement”), by and between the Borrower and US Bank National Association, as master trustee (“Master Trustee”) thereunder. Reference is hereby made to the Master Agreement and the TIFIA Loan Agreement for the provisions, among others, with respect to the collection and disposition of the Collateral (which includes the Project Revenues), the funds charged with and pledged to the payment of the interest on and the principal of this Tranche ___ Note, the nature and extent of the security, the terms and conditions on which this Senior Obligation is issued, the rights, duties and obligations of the Borrower and the Master Trustee and the owners of this Tranche ___ Note. By the acceptance of this Tranche ___ Note, the registered owner hereof assents to all of the provisions of the Master Agreement and the TIFIA Loan Agreement.

This Tranche ___ Note has been executed under and pursuant to a TIFIA Loan Agreement, dated as of the Effective Date hereof, between the TIFIA Lender and the Borrower (the “TIFIA Loan Agreement”) and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the Tranche ___ Loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this Tranche ___ Note and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This Tranche ___ Note is not subject to prepayment prior to the last payment date set forth in Appendix _____ 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.

The obligations of the Borrower under this Tranche ___ Note, the TIFIA Loan Agreement are senior in right of security to certain other indebtedness of the Borrower related to the Project, in the manner and to the extent provided in the Master Agreement and in the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.
All acts, conditions and things required by the laws of the State of California to happen, exist, and be performed precedent to and in the issuance of this Tranche ___ Note have happened, exist and have been performed as so required. This Tranche ___ Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State of California shall govern its construction to the extent such federal laws are not applicable.
IN WITNESS WHEREOF, the SAN DIEGO ASSOCIATION OF GOVERNMENTS has caused this Tranche ___ Note to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

(SEAL)

By: ____________________________
Name: [Gary Gallegos]
Title: Director

ATTEST:

______________________________
Secretary
Master Trustee’s Authentication Certificate

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

US BANK NATIONAL ASSOCIATION, as
Master Trustee

Dated: _________________

By______________________________

Authorized Officer
(FORM OF ASSIGNMENT)

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

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

the within note and all rights thereunder.

Dated: ________________

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

Initial Principal Sum: $_____  Final Maturity Date: _____, 20____

Borrower: San Diego Association of Governments

TIFIA Lender: The United States Department of Transportation

### SCHEDULED DEBT SERVICE

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<th>Date</th>
<th>[Amount of Principal Paid]</th>
<th>[Amount of Interest Paid]</th>
<th>[Unpaid Principal and Interest Sum] [Outstanding Loan Balance]</th>
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Appendix Two
TIFIA Loan Amortization Schedule
SOUTHBAY EXPRESSWAY PROJECT

Effective Date: December 21, 2011
Interest Rate: ____%

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<th>[Interest Paid]</th>
<th>[Interest (Capitalized &amp; Accrued)]</th>
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<th>[Principal Capitalized]</th>
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13704122.2
Exhibit B
United States Department of Transportation  
Acting by and through the Federal Highway Administrator  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590  

Re: Acquisition and Financing of the Purchase of Assets of South Bay Expressway, LLC  

Ladies and Gentlemen:  

As the General Counsel of the San Diego Association of Governments (“SANDAG”), I have acted as counsel to SANDAG, a California public agency (the “Borrower”), in connection with the transactions contemplated by that certain Second Amended And Restated TIFIA Loan Agreement (the “TIFIA Loan Agreement”), dated as of December [__], 2011, by and between the Borrower and the United States Department of Transportation, acting by and through the Federal Highway Administrator (“TIFIA Lender”). Capitalized terms used in this opinion but not otherwise defined herein shall have the respective meanings set forth in the TIFIA Loan Agreement.  

In connection with the rendering of this opinion letter, I have examined executed originals or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the “Transaction Documents”), each dated as of December [__], 2011:  

(i) the Master Agreement;  
(ii) the TIFIA Loan Agreement;  
(iii) the TIFIA Notes;  
(iv) the Sale Agreement;  
(v) the Commission Loan Agreement;  
(vi) the Series D Agreement and Note;  
(vii) the Assignment of Toll Road Lease; and  
(viii) the Toll Road Lease.
In rendering the opinions expressed below, I have also examined (a) the various
documents, certificates, opinions and other items required as conditions precedent to Closing
under the TIFIA Loan Agreement; and (b) such other documents as I have deemed necessary as a
basis for the opinions expressed below.

I have also assumed the following: (a) the authenticity of original documents and the
genuineness of all signatures; (b) the conformity to the originals of all documents submitted to us
as copies; (c) the truth, accuracy and completeness of the information, factual matters,
representations and warranties contained in the records, documents, instruments and certificates
we have reviewed; (d) the due authorization, execution and delivery on behalf of the respective
parties thereto (other than the Borrower) of the Transaction Documents; and (e) except as
provided in paragraph 4 below, the legal, valid and binding effect of the Transaction Documents
on such parties.

Based upon and subject to the foregoing and subject also to the comments and
qualifications set forth below, and having considered such questions of law as I have deemed
necessary as a basis for the opinions expressed below, I am of the opinion that:

1. The Borrower is a public agency duly formed, validly existing and in good standing
under the law of the State of California and has the power to execute, deliver and
perform its obligations under the Transaction Documents.

2. The Borrower has taken all action to authorize the execution, delivery and
performance by the Borrower of the Transaction Documents.

3. The Borrower has duly executed and delivered each of the Transaction Documents
required to be executed and delivered by it.

4. Each of the Transaction Documents constitutes the legal, valid and binding obligation
of the Borrower, enforceable against the Borrower in accordance with its terms.

My opinion in paragraph 4 above is subject to: (a) limitations imposed by bankruptcy,
insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other laws
relating to or affecting the rights of creditors generally; (b) general principles of equity, including
without limitation concepts of materiality, reasonableness, good faith and fair dealing, and the
possible unavailability of specific performance or injunctive relief, regardless of whether such
enforceability is considered in a proceeding in equity or at law; and (c) rights to indemnification
which may be limited by applicable law or equitable principles or otherwise unenforceable as
against public policy.
I express no opinion herein as to laws other than the law of the State of California and the federal law of the United States of America.

Notwithstanding anything in the foregoing to the contrary, the opinions in this letter are subject to those additional qualifications and assumptions set forth below:

(1) The enforceability of the Transaction Documents is subject to general principles of equity (regardless whether such enforceability is considered in a proceeding in equity or at law or in a bankruptcy proceeding) and assumes that each of the parties will act with commercial reasonableness in exercising its rights and remedies thereunder.

(2) I express no opinion respecting compliance with, or the applicability of, any state or federal banking laws, rules or regulations to the transactions contemplated by the Transaction Documents.

(3) I express no opinion as to the validity or enforceability of any provision providing for distribution or application of the proceeds of any foreclosure or secured party sale otherwise than in accordance with law.

(4) I express no opinion as to: (i) the effect of any future renewals, extensions, restatements, replacements, substitutions, modifications, amendments, or supplements (whether oral or in writing) on the Transaction Documents or the property or collateral described therein, or (ii) the validity or enforceability of any future renewals, extensions, restatements, replacements, substitutions, modifications, amendments, or supplements to the Transaction Documents.

(5) I express no opinion as to any federal securities laws or regulations administered by the Securities and Exchange Commission, state "Blue Sky" laws or regulations, any federal, state or local tax laws or regulations, or laws or regulations relating to commodity (or other) futures or indices or other similar instruments.

This opinion is solely for your benefit in connection with the transactions contemplated by the Transaction Documents, and may not be relied upon, used, quoted, or referred to by, nor may copies hereof be delivered to, any other person without our prior written approval, except to the extent you are compelled to disclose this opinion pursuant to law. I hereby disclaim any obligation to update this opinion letter for events occurring or coming to our attention after the date hereof.
Very truly yours,

Julie D. Wiley
General Counsel
SANDAG
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
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SAN DIEGO ASSOCIATION OF GOVERNMENTS
PROMISSORY NOTE IN FAVOR OF
THE SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION
REGARDING DEBT FINANCING THROUGH THE TRANSENET 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 $92,534,400 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 Collateral as defined in the Master Trust Agreement between SANDAG and US Bank National Association dated as of December 21, 2011 (the “Master Trust Agreement”), during the remaining 31 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 $1,445,850 known as the “Series D Note,” with rights and responsibilities as prescribed by the Master Trust Agreement (as defined herein).

USE OF TRANSMET 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 Collateral (as defined in the Master Trust 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 Collateral are set forth in the Master Trust Agreement. The Master Trust Agreement requires deposit of the Project Revenues with the Trustee by SANDAG 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 not devoted to the operating and capital expenses of the Project in the following order of priority and in the amounts set forth in the Master Trust Agreement:

a. The TIFIA Loan
b. Reimbursement of SANDAG expenses associated with the acquisition of the Transferred Assets followed by 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, to the extent of available Project Revenues under the Master Trust Agreement, 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 Trust 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 Note

d. TIFIA Loan

e. Master Trust 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 with all other indebtedness and obligations of SANDAG do 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
TransNet Promissory Note Payment Schedule (All Amounts in Thousands ($000))

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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
<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
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</thead>
</table>

**TABLE OF CONTENTS**
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 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 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 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 SANDAG and the Commission pursuant to which the Commission is making the TransNet Loan.

“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, as such agreement may be thereafter amended.

“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 Agreement (Security 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, and 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.

“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 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);

(ii) all 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, Capital Expenditure Reserve Fund and TIFIA Note Expense Account during such period under the terms of the Master Agreement.

“Permitted Debt” means any of the following, which are payable from the Collateral:

(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, or Project O&M Expenses and that do not in the aggregate have face amounts exceeding $1,000,000 (inflated annually by 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 and the TIFIA Loan 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) of the TIFIA Loan Agreement;

(c) Liens imposed pursuant to the Commission Loan Agreement;

(d) Liens imposed pursuant to this Agreement;
(e) Liens imposed 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) of the TIFIA Loan Agreement;

(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) of the TIFIA Loan 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 (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; 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 or Traffic Consultant (as defined in the Master Agreement) 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 $1,445,850 that TIFIA is making to SANDAG pursuant to this 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.

“State” means the State of California.

“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 Loan Agreement” means the Second Amended and Restated TIFIA Loan Agreement dated ______, 2011, between the TIFIA Lender and SANDAG.

“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.

“TIFIA Loan” has the meaning assigned to it under the TIFIA Loan 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 from 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 and signed by a duly authorized representative of such party. Nothing in this Agreement shall be interpreted to apply to SANDAG’s assets, operations, businesses or liabilities other than 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 Loan in the principal amount of One Million Four Hundred Forty-five Thousand Eight Hundred Fifty Dollars ($1,445,850.00). Subject to Section 2.3(b) hereof, the term of the Series D Note shall extend to the Final Maturity Date or to such earlier date as all amounts due or to become due under the Series D Loan have been paid.

Section 2.2 Interest.

(a) The Series D Note shall bear interest at the rate of fourteen percent (14%) per annum.

(b) Interest on the Series D 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 the Series D 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 Series D Note.

(f) All interest on the Series D Note shall be calculated on the basis of a 365- or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi-annually.

Section 2.3 Repayment of Series D 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 the Final Maturity Date. Any remaining amounts unpaid on the Note as of the Final 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 part without penalty. Prepayment of the Note in whole shall be made at a price equal to the accreted value of the Series D Note at the Final 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.

Section 2.6  Outstanding Balance

(a) The outstanding balance of the Series D Loan will be (i) increased on each occasion on which interest on the Series D Loan is capitalized pursuant to the provisions of Section 2.8 hereof, by the amount of interest so capitalized and (ii) decreased upon each payment of the principal amount of the Series D Loan, by the amount of principal so paid. TIFIA may in its discretion at any time and from time-to-time, or when so requested by SANDAG, advise SANDAG by written notice of the amount of the outstanding balance of the Series D Loan 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 balance of the Series D Loan, TIFIA may, but shall not be obligated to, make applicable revisions to Exhibit _ and the loan amortization schedule pursuant to Section 2.8 and in such event shall provide SANDAG with a copy of such Exhibit _ and loan amortization schedule as revised, but no failure to provide or delay in providing SANDAG with such copy shall affect any of the obligations of SANDAG under this Agreement.

(b) TIFIA shall make applicable revisions to Exhibit _ and the loan amortization schedule pursuant to Section 2.8 upon any authorized prepayment of the Series D Loan. Upon any such revisions TIFIA shall provide SANDAG with copies of such Exhibit _ and loan amortization schedule as revised, but no failure to provide or delay in providing SANDAG with such copies shall affect any of the obligations of SANDAG under this Agreement.

Section 2.7  Security and Priority; Flow of Funds.

(a) As security for the Series D Loan and any other payments or obligations of any kind required to be paid by SANDAG hereunder, SANDAG shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Master Trustee, Liens on the Series D Collateral in accordance with the provisions of the Master Agreement. The Series D Loan shall be secured by the Liens on the Series D Collateral junior to the Liens on the Series D Collateral of the TIFIA Loan and the TransNet Loan.
(b) SANDAG shall not use Project Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 2.7 and the Master Agreement and shall not apply any portion of the Project Revenues in contravention of this Agreement or the Master Agreement.

(c) Amounts on deposit in the Series D Payment Account 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.

(d) All terms used in this Section 2.7(d), 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 502 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 V of the Master Agreement:

(i) Budgeted Operating and Maintenance Expenses;

(ii) Required Capital Expenditure Reserve deposits;

(iii) Fees, costs and expenses due under the TIFIA Loan Agreement;

(iv) Interest portion of TIFIA Scheduled Debt Service;

(v) Principal portion of TIFIA Scheduled Debt Service;

(vi) Required Extraordinary Reserve deposits;

(vii) Required Major Maintenance Reserve deposits;

(viii) Repayment of the SANDAG Reimbursement Obligation and satisfaction of TransNet Loan;

(ix) Repayment of Series D Loan; and

(x) Deposits to SANDAG Distribution Account.

Section 2.8 Payment of Principal and Interest

(a) Capitalized Interest Period. No payment of the principal of or interest on the Series D Loan is required to be made until the TIFIA Loan is fully repaid and the TransNet Loan is fully satisfied (as described in Section 509 of the Master Agreement). On each January 1 and July 1 occurring during each year until payment of the Series D Loan is required to be made, interest accrued in the six month period ending immediately prior to such date on the Series D Loan shall be capitalized and added to the outstanding balance of the Series D Loan (the “Capitalized Interest Period”). Within 30 days after the end of the Capitalized Interest Period, TIFIA shall give written notice to SANDAG stating the outstanding balance of the Series D Loan as of the close of
business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of SANDAG hereunder.

(b) Payment of Series D Loan. On each January 1 and July 1 occurring on or after the end of the Capitalized Interest Period and before the Final Maturity Date, SANDAG shall pay the Series D Loan to the extent of available moneys in the Series D Payment Account established under and funded in accordance with the Master Agreement.

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:

(i) this Agreement;

(ii) the Series D Note;

(iii) the Master Agreement and the TIFIA Loan Agreement.

(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 T I F I A 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 Series D 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 Series D 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 Series D 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 Master Agreement 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 Master Agreement 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 the Master Agreement 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;
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 to 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.

(b) 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 Project O&M 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 Project O&M Expenses incurred and the budgeted Project O&M 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.

Section 5.4 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 covenants to require its contractors and subcontractors to abide by all applicable federal and State laws. The list of federal laws attached as Exhibit _ 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 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 Master Agreement 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 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 6.8 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 Trust Indenture 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 the Master Agreement 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

TIFIA
TIFIA Joint Program Office (HTTJ)
Federal Highway Administration
Room E64-301
1200 New Jersey Avenue, SE
Washington, DC 20590
Attention: Director

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 hereto or in connection herewith 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 sell the Series D Loan to another entity or reoffer the Series D Loan into the capital markets only in accordance with the provisions of this Section. Such sale or reoffering shall be on such terms as TIFIA shall deem advisable. However, in making such sale or reoffering TIFIA shall not change the terms and conditions of the Series D Loan without the prior written consent of SANDAG, which consent shall not be unreasonably withheld. TIFIA shall provide (i) at least 60 days prior to any sale or reoffering of the Series D Loan, written notice to SANDAG to the effect that TIFIA is considering the sale or reoffering of the Series D Loan and (ii) at least 30 days prior to any sale or reoffering of the Series D Loan, written notice to SANDAG confirming TIFIA’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 TIFIA to sell nor (ii) provide SANDAG with any rights or remedies in the event TIFIA, for any reason, does not sell the Series D Loan.

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; and
(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.

Section 9.11 No Fiduciary or Partnership Relationship.

Nothing in this Agreement, or in the Note, shall be deemed to create a fiduciary 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 9.16 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: __________________________
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 December __, 2011 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.

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 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 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

WHEREAS, over the past year the San Diego Association of Governments (SANDAG) Board of Directors (“Board”) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease and various assets from South Bay Expressway (SBX);

WHEREAS, in August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of the SR 125 toll road franchise and other SBX assets for $344.5 million (“the Project”), subject to various conditions, including performance of due diligence work and a public meeting process concerning financing options; and the purchase amount during negotiations has been reduced to $341.5 million;

WHEREAS, the document that incorporates the rights and obligations of SANDAG and SBX for the purchase of the Project is the Asset Purchase and Sale Agreement;

WHEREAS, in order to acquire the SR 125 lease and assets for approximately $341.5 million and pay for additional fees and expenses related to the purchase, SANDAG will need to finance the purchase through a loan from TransNet ($255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $92.5 million in the form of the Second Amended and Restated TIFIA Loan Agreement (“TIFIA Loan”) and approximately $1.5 million in the form of the “Series D Agreement” and “Series D Note”) receiving payment from toll revenues (collectively “the Financing”);

WHEREAS, the San Diego County Regional Transportation Commission (“Commission”) has sufficient funds in cash on hand ($3,000,000) and bond proceeds ($252,749,000) to authorize a loan of TransNet funds (the “TransNet Loan”) to accomplish a portion of the Financing by issuing a promissory note to SANDAG in the amount of $255,749,000 (“the TransNet Promissory Note”);

WHEREAS, the Commission has concurrently determined that the TransNet Loan will maximize the effective use of funds as it will allow the Project to be implemented by providing a mechanism for the Financing, which will, in turn, result in an improved regional transportation system sooner and less expensively than what would otherwise occur if the SR 125 toll road franchise remained in SBX’s ownership;
WHEREAS, the Commission has also concurrently determined that issuing the TransNet Promissory Note will not result in the forty-two and four-tenths percent limit on allocation of TransNet funds for major highway and transit Congestion Relief projects set forth in Section 7A of the Sales Tax Extension Ordinance;

WHEREAS, the Commission has also concurrently determined that detailed fund repayment provisions, including appropriate interest earnings such that the Commission will suffer no loss of funds as a result of issuing the TransNet Promissory Note and the terms of the TransNet Promissory Note are consistent with any and all applicable rules approved by the Commission relating to loans and exchanges of TransNet funds;

WHEREAS, the rate of interest for the TransNet Promissory Note shall be 4.25%, which is based on TransNet recent borrowing history;

WHEREAS, the document that establishes a flow of funds from the Project through operating and capital expenses, and into the payment of the financing instruments described above as part of the Financing is the “Master Trust Agreement,” which is by and between SANDAG and US Bank National Association, which will serve as the Master Trustee;

WHEREAS, the Asset Purchase and Sale Agreement calls for the transfer of certain assets (the “Transferred Assets” as defined in the Asset Purchase and Sale Agreement) and those assets include assignment and assumption of the Development Franchise Agreement (“DFA”) and Lease with the California Department of Transportation (“Caltrans”), which will require execution of various consents, assignments, schedules, exhibits, and related documentation (“Real Property Transfer Documents”);

WHEREAS, various amendments are needed to update the DFA, the Lease, and various other agreements with Caltrans related to the SR 125 toll road franchise, and Caltrans and SANDAG have come to an agreement regarding the nature of those amendments and documented their understanding in a “Letter of Intent”;

WHEREAS, in order to set forth the terms of the Project purchase and the Financing, the Executive Director of SANDAG has caused to be prepared and presented to SANDAG a proposed form of the Asset Sale And Purchase Agreement, Real Property Transfer Documents, the Master Trust Agreement, the Second Amended and Restated TIFIA Loan Agreement, the TransNet Promissory Note, the Series D Agreement and Series D Note, and the Letter Of Intent with Caltrans (collectively “the SR 125 Purchase and Financing Documents”);

WHEREAS, SANDAG has concurrently agreed to execute the TransNet Promissory Note and be bound to its terms and conditions;

WHEREAS, SANDAG is a public agency duly formed, validly existing and in good standing under the laws of the State of California and has the power to execute, deliver, and perform its obligations under the SR 125 Purchase and Financing Documents; and the SR 125 Purchase and Financing Documents will constitute legal, valid, and binding obligations of SANDAG, enforceable against SANDAG in accordance with their terms;

WHEREAS, SANDAG has been presented with the form of the SR 125 Purchase and Financing Documents, and SANDAG has examined and approved each document and desires to
authorize and direct the execution of such documents as are specified herein and such other
documents as are necessary in connection with the Project, and to authorize and direct the
consummation of the Project purchase and Financing; and

WHEREAS, all acts, conditions, and things required by the law and the Constitution and
laws of the State of California to exist, to have happened, and to have been performed precedent
to and in connection with the consummation of the purchase and Financing authorized hereby do
exist, have happened and have been performed in regular and due time, form and manner as
required by law, and SANDAG is now duly authorized and empowered, pursuant to each and every
requirement of law, to authorize such purchase and Financing and to authorize the issuance of the
SR 125 Purchase and Financing Document and accept the rights and obligations thereunder, in the
manner and upon the terms provided;

NOW, THEREFORE, BE IT RESOLVED by SANDAG as follows:

Section 1. The purchase of the SR 125 toll road franchise and other identified assets, is hereby
authorized and approved.

Section 2. The proposed form of the SR 125 Purchase and Financing Documents, submitted to
SANDAG, and the terms and conditions thereof, are hereby approved. The Secretary of the Board is
directed to file a copy of said form of the SR 125 Purchase and Financing Documents with the
minutes of this meeting, and the Chair of the Board and the Secretary of the Board are authorized
and directed to execute and deliver the SR 125 Purchase and Financing Documents, in substantially
such form, and with such additions thereto or changes therein, as they, with the advice of Lindborg
Mazor LLP, as special counsel (“Special Counsel”), shall approve, such approval to be conclusively
evidenced by the execution and delivery of the SR 125 Purchase and Financing Documents.

Section 3. The Chair and Secretary of the Board of Directors of SANDAG and Executive Director of
SANDAG are hereby delegated the power to complete the SR 125 Purchase and Financing
Documents and any schedules, exhibits, or documents related thereto necessary to consummate the
purchase and the Financing; and authorizing the taking of all actions necessary thereto.

Section 4. The Chair and the Secretary of the Board, the Executive Director and the Director of
Finance of SANDAG, and other appropriate officers of the Board or SANDAG, are hereby authorized
and directed, jointly and severally, for and in the name and on behalf of SANDAG, to execute and
deliver any and all documents, certificates and representations, and to do any and all things and
take any and all actions that may be necessary or advisable, in their discretion, to effectuate the
actions that SANDAG has approved in this Resolution.

In the event the Chair or Secretary of the Board or Executive Director of SANDAG is unavailable to
execute the documents authorized hereby, such documents may be executed by the First Vice Chair
of the Board or the Chief Deputy Executive Director or other designee of the Executive Director,
respectively.

Section 5. All approvals, consents, directions, instructions, notices, orders, requests, indemnifications
and other actions permitted or required by any of the documents authorized by this Resolution,
including, without limitation, any amendment of any of the documents authorized by this
Resolution or related thereto, and any of the foregoing that may be necessary or desirable in
connection with the SR 125 Purchase and Financing Documents, may be given or taken by the
Executive Director of SANDAG or his or her designee, without further authorization or direction by the Board, and any and all such actions heretofore taken by such officers are hereby ratified, confirmed, and approved, and the Executive Director of SANDAG or his or her designee is hereby authorized and directed to give any such approval, amendment, consent, direction, instruction, notice, order, request, indemnification or other action and to take any such action that such person, with the advice of Special Counsel, may deem necessary or desirable to further the purposes of this Resolution.

Section 6. This Resolution shall take effect from and after its adoption.

PASSED AND ADOPTED on 16th day of December 2011.
SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

RESOLUTION NO. RTC 2012-01

AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $255,749,000 AGGREGATE PRINCIPAL AMOUNT OF TRANSNET FUNDS BY THE SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION TO SANDAG PURSUANT TO A PROMISSORY NOTE, AND DELEGATING TO THE CHAIR AND SECRETARY OF THE BOARD OF DIRECTORS OF THE COMMISSION AND EXECUTIVE DIRECTOR OF THE COMMISSION POWER TO COMPLETE SAID DOCUMENTS, AUTHORIZING DISTRIBUTION OF THE PRINCIPAL AMOUNT OF THE PROMISSORY NOTE, AND AUTHORIZING THE TAKING OF ALL NECESSARY ACTIONS

WHEREAS, the San Diego County Regional Transportation Commission (the “Commission”) adopted the San Diego Transportation Improvement Program Ordinance and Expenditure Plan on July 31, 1987 (as amended, the “1987 Ordinance”), pursuant to the provisions of Sections 132000 through 132314, inclusive, of the Public Utilities Code of the State of California (the “San Diego County Regional Transportation Commission Act” or “Act”), which 1987 Ordinance provided for the imposition of a retail transactions and use tax (the “retail transactions and use tax”) applicable in the incorporated and unincorporated territory of the County of San Diego (the “County”) in accordance with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code of the State of California at the rate of one-half of one percent (1/2%) for a period not to exceed twenty (20) years;

WHEREAS, by its terms, the 1987 Ordinance became effective at the close of the polls on November 3, 1987, the day of the election at which the proposition imposing the retail transactions and use tax was adopted by a majority vote of the electors voting on such proposition;

WHEREAS, in order to provide for the extension of the initial term of the retail transactions and use tax for a period of forty (40) years, the Commission adopted the San Diego Transportation Improvement Program Ordinance and Expenditure Plan (the “Sales Tax Extension Ordinance,” and, together with the 1987 Ordinance, hereinafter collectively referred to as the “Ordinance”) on May 28, 2004;

WHEREAS, by its terms the Sales Tax Extension Ordinance became effective on November 3, 2004, the day following the date of the election at which the proposition providing for the extension of the retail transactions and use tax was approved by at least two-thirds of the electors voting on such proposition;

WHEREAS, the Board of Directors (the “Board”) of the Commission, pursuant to Section 7 the Sales Tax Extension Ordinance, is authorized to issue loans and exchanges of TransNet funds payable from the proceeds of the retail transactions and use tax levied by the Commission in order to maximize the effective use of revenues upon determining that certain conditions are met;
WHEREAS, over the past year, the San Diego Association of Governments (SANDAG) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease and various assets from South Bay Expressway (SBX);

WHEREAS, in August 2011 SANDAG considered a counteroffer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of the SR 125 toll road franchise and other SBX assets for $344.5 million (“the Project”), subject to various conditions, including performance of due diligence work and a public meeting process concerning financing options; and the purchase amount during negotiations has been reduced to $341.5 million;

WHEREAS, in order to acquire the SR 125 lease and assets for approximately $341.5 million and pay for additional fees and expenses related to the purchase, SANDAG will need to finance the purchase through a loan from TransNet ($255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $92.5 million in the form of the TIFIA loan and approximately $1.5 million in the form of the Series D Note) receiving payment from toll revenues (collectively “the Financing”);

WHEREAS, the document that establishes a flow of funds from the Project through operating and capital expenses, and into the payment of the financing instruments described above as part of the Financing is the “Master Trust Agreement,” which is by and between SANDAG and US Bank National Association, which will serve as the Master Trustee;

WHEREAS, the Commission has sufficient funds in cash on hand ($3,000,000) and bond proceeds ($252,749,000) to authorize a loan of TransNet funds (the “TransNet Loan”) to accomplish a portion of the Financing by issuing a promissory note to SANDAG in the amount of $255,749,000 (“the TransNet Promissory Note”);

WHEREAS, the Commission hereby determines that the TransNet Loan will maximize the effective use of funds as it will allow the Project to be implemented by providing a mechanism for the Financing, which will, in turn, result in an improved regional transportation system sooner and less expensively than what would otherwise occur if the SR 125 toll road franchise remained in SBX’s ownership;

WHEREAS, the Commission finds and determines that issuing the TransNet Promissory Note will not result in the forty-two and four-tenths percent limit on allocation of TransNet funds for major highway and transit Congestion Relief projects set forth in Section 7A of the Sales Tax Extension Ordinance;

WHEREAS, the Commission hereby further determines that detailed fund repayment provisions, including appropriate interest earnings such that the Commission will suffer no loss of funds as a result of issuing the TransNet Promissory Note, and the terms of the TransNet Promissory Note are consistent with any and all applicable rules approved by the Commission relating to loans and exchanges of TransNet funds;
WHEREAS, the rate of interest for the TransNet Promissory Note shall be 4.25%, which is based on TransNet recent borrowing history;

WHEREAS, in order to set forth the terms of the TransNet Loan, the Executive Director of the Commission has caused to be prepared and presented to the Commission a proposed form of the TransNet Promissory Note;

WHEREAS, SANDAG has concurrently agreed to execute the TransNet Promissory Note and be bound to its terms and conditions;

WHEREAS, SANDAG is a public agency duly formed, validly existing and in good standing under the laws of the State of California, and has the power to execute, deliver, and perform its obligations under the TransNet Promissory Note; SANDAG has or will take all action to authorize the execution, delivery, and performance of the TransNet Promissory Note; and the TransNet Promissory Note constitutes the legal, valid, and binding obligation of SANDAG, enforceable against SANDAG in accordance with its terms;

WHEREAS, the Commission has been presented with the form of the TransNet Promissory Note, and the Commission has examined and approved each document and desires to authorize and direct the execution of such documents as are specified herein and such other documents as are necessary in connection with the Financing, and to authorize and direct the consummation of the Financing that are within the purview of the Commission; and

WHEREAS, all acts, conditions, and things required by the law and the Constitution and laws of the State of California to exist, to have happened, and to have been performed precedent to and in connection with the consummation of the Financing authorized hereby do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Commission is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize such Financing and to authorize the issuance of the TransNet Promissory Note, in the manner and upon the terms provided;

NOW, THEREFORE, BE IT RESOLVED by the San Diego County Regional Transportation Commission as follows:

Section 1. The issuance by the Commission of not to exceed $255,749,000 and the payment of costs of issuance incurred in connection with the Financing, is hereby authorized and approved.

Section 2. The proposed form of TransNet Promissory Note, between the Commission and SANDAG, submitted to the Commission, and the terms and conditions thereof, are hereby approved. The Secretary of the Board is directed to file a copy of said form of TransNet Promissory Note with the minutes of this meeting, and the Chair of the Board and the Secretary of the Board are authorized and directed to execute and deliver the TransNet Promissory Note, in substantially such form, and with such additions thereto or changes therein, as they, with the advice of Lindborg & Mazor LLP, as special counsel (“Special Counsel”), shall approve, such approval to be conclusively evidenced by the execution and delivery of the
TransNet Promissory Note. The structure, date, maturity date or dates (not to exceed December 31, 2042), interest rate or rates (not to exceed four point twenty-five percent (4.25%) per annum with interest payment dates, forms, place or places of payment, terms of repayment, cancellation or forgiveness as provided in the TransNet Promissory Note as finally executed and delivered.

Section 3. The Chair and the Secretary of the Board, the Executive Director and the Director of Finance of the Commission, and other appropriate officers of the Board or the Commission, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of the Commission, to execute and deliver any and all documents, certificates and representations, and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that the Commission has approved in this Resolution.

In the event the Chair or Secretary of the Board or Executive Director of the Commission is unavailable to execute the documents authorized hereby, such documents may be executed by the First Vice Chair of the Board or the Chief Deputy Executive Director or other designee of the Executive Director, respectively.

Section 4. All approvals, consents, directions, instructions, notices, orders, requests, indemnifications and other actions permitted or required by any of the documents authorized by this Resolution, including, without limitation, any amendment of any of the documents authorized by this Resolution or related thereto, and any of the foregoing that may be necessary or desirable in connection with the Financing that are within the purview of the Commission, may be given or taken by the Executive Director of the Commission or his or her designee, without further authorization or direction by the Commission, and any and all such actions heretofore taken by such officers are hereby ratified, confirmed, and approved, and the Executive Director of the Commission or his or her designee is hereby authorized and directed to give any such approval, amendment, consent, direction, instruction, notice, order, request, indemnification or other action and to take any such action that such person, with the advice of Special Counsel, may deem necessary or desirable to further the purposes of this Resolution.
Section 5. This Resolution shall take effect from and after its adoption.

PASSED AND ADOPTED on December 16, 2011, by the following vote:

AYES:

NOES:

ABSENT:

__________________________________________
Chair of the Board of Directors
of the San Diego County Regional
Transportation Commission

[Seal]

Attest:

__________________________________________
Secretary of the Board of Directors of the
San Diego County Regional Transportation
Commission
SECRETARY’S CERTIFICATE

I, _______________________, Secretary of the Board of Directors of the San Diego County Regional Transportation Commission, hereby certify as follows:

The foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Commission duly and legally held at the regular meeting place of the Commission in San Diego, California, on December 16, 2011, of which meeting all of said directors of the Commission had due notice and at which a majority thereof were present and acting throughout;

At said meeting said resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

An agenda of said meeting was posted at least 72 hours before said meeting at a location in San Diego, California, freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda;

I have carefully compared the foregoing with the original minutes of said meeting on file and of record in my office, and the foregoing is a full, true, and correct copy of the original resolution adopted at said meeting and entered in said minutes; and

Said original resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

WITNESS my hand and the seal of the San Diego County Regional Transportation Commission this __________ day of __________________ 2011.

[Seal]

______________________________
Secretary of the Board of Directors of the San Diego County Regional Transportation Commission
ADOPTING A CLASS 1 CATEGORICAL EXEMPTION FOR THE ACQUISITION OF THE STATE ROUTE 125 TOLL ROAD FRANCHISE AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, over the past year the San Diego Association of Governments (SANDAG) Board of Directors (Board) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease from South Bay Expressway (SBX); and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §21000 et seq.) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.), SANDAG is the lead agency for the SR 125 toll road franchise lease and related actions; and

WHEREAS, in August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options; and

WHEREAS, SANDAG would acquire the SR 125 lease for approximately $341.5 million financed through a loan from TransNet ($255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $92.5 million in the form of the TIFIA loan and approximately $1.5 million in the form of the Series D Note) receiving payment from toll revenues; and

WHEREAS, to maximize the toll reduction possible on the toll road, the Board proposes to amend the TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets; and

WHEREAS, the swap would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs; and

WHEREAS, the Board will consider three related actions: (1) the franchise and lease acquisition and operation of the toll road; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance; and
WHEREAS, while the Board will consider all three actions in a single package, each item to be considered by the Board has independent utility, i.e., the actions are not integral to one another and can proceed individually; and

WHEREAS, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance; and

WHEREAS, a toll reduction of up to 22.5 percent is possible without reduction of SANDAG’s debt service on the toll road; and

WHEREAS, future toll modifications in excess of 22.5 percent of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends on the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment, however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction; and

WHEREAS, the proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues; and

WHEREAS, following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5 percent would fall within the statutory exemption for rates, tolls, fees and charges; and

WHEREAS, the lease acquisition and operation of the toll road falls under the Class 1 Categorical Exemption (CEQA Guidelines §15301), the toll modification falls within the statutory exemption for rates, tolls, fares and charges (Public Resources §21080(b)(8) and CEQA Guidelines §15273), and the TransNet Extension Ordinance amendment is analyzed in an Addendum to the Final Environmental Impact Report for the 2030 Regional Transportation Plan; and

WHEREAS, the Class 1 Categorical Exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features; and

WHEREAS, the Class 1 Categorical Exemption applies only to activities involving either negligible or no expansion of the previous use; and

WHEREAS, SANDAG’s acquisition of the SR 125 toll road franchise from SBX and subsequent operation of the road with no expansion of the existing use falls squarely within the Class 1 Categorical Exemption; and

WHEREAS, none of the exceptions to the categorical exemptions listed in CEQA Guidelines Section 15300.2 apply to SANDAG’s acquisition and operation of the SR 125 toll road; and

NOW THEREFORE BE IT RESOLVED, the Board’s findings in support of the decision in this resolution are attached hereto and incorporated fully by this reference; and
BE IT FURTHER RESOLVED that the Board finds the lease and operation of the SR 125 toll road franchise to be categorically exempt from CEQA under the Class 1 Categorical Exemption.

PASSED AND ADOPTED on 16th day of December 2011.
CEQA FINDINGS OF FACT
CLASS 1 CATEGORICAL EXEMPTION

I. Introduction

These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code §21000 et seq., “CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.) by the San Diego Association of Governments (SANDAG) Board of Directors (Board). SANDAG is the lead agency for the acquisition of the State Route (SR) 125 toll road franchise lease from South Bay Expressway (SBX) and two related actions including a modification to the SR 125 toll and a proposed amendment to the 2004 TransNet Extension Ordinance. These findings pertain to the Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15301.

II. Project Description/Summary

The Board has been evaluating the possible purchase of the SR 125 toll road franchise lease from SBX over the past year. In August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options. Based on purchase price deductions discussed during negotiations and fees and expenses incurred as part of the transaction, SANDAG would acquire SR 125 for a purchase price of approximately $341.5 million financed through a loan from TransNet ($255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $92.5 million in the form of the TIFIA Loan and approximately $1.5 million in the form of the Series D Note) receiving payment from toll revenues. To maximize the toll reduction possible on the toll road, the Board proposes to amend the 2004 TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million1) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets. This would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues, and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs.

The Board will consider three related actions: (1) the franchise and lease acquisition and operation of the SR 125 toll road franchise; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. While the Board will consider all three actions in a single package, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance. A toll reduction of up to 22.5% is possible without reduction of SANDAG’s debt service on the toll road. Future toll modifications in excess of 22.5% of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends upon the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment,

1 The 2010 value of the two planned HOV lanes 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.
however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction. The proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board of Directors based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues. Following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5% would fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273).

Due to the independent utility and status of: a) the lease acquisition, b) the toll reductions, and c) the swap via an amendment to the TransNet Extension Ordinance, each action is analyzed in a separate environmental document. The lease acquisition and operation of the toll road fall under the Class 1 Categorical Exemption (CEQA Guidelines §15301), the toll modifications fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273), and the Addendum analyzes a proposed amendment to the TransNet Extension Ordinance, which requires a change to the 2030 RTP.

III. CEQA Findings Related to the Lease Acquisition and Operation of SR 125

Background to Execution of the SR 125 Development Franchise Agreement

Streets & Highways Code Section 143 was enacted by the state legislature in 1989 based on the realization that neither direct tax revenues nor bonding authority would be sufficient to provide adequate transportation infrastructure for the state’s expected population growth. Section 143 authorized Caltrans to select four demonstration transportation projects to be financed and constructed by private sector developers under a Build-Operate-Transfer (BOT) delivery system. Under the BOT model envisioned 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.2

In September 1990 Caltrans selected the demonstration projects, one of which was SR 125. On December 31, 1990, Caltrans entered into a Development Franchise Agreement (DFA) with SBX’s predecessor-in-interest pursuant to Streets & Highways Code §143 for development and operation of the BOT model discussed above. The DFA specifically contemplated a lease term of 35 years. 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. SANDAG is now considering whether to acquire the lease from SBX, so that it may operate the toll road pursuant to the DFA.

Summary of Terms of the DFA

- Grants SBX the right and obligation to operate SR 125 within Caltrans’ standards until 2042 in exchange for an annual payment of $120. Caltrans is also entitled to a percentage of profit under certain circumstances.

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2 A later statute applicable solely to SR 125, Streets & Highways Code Section 143.1, was enacted in 2006. The statute provides, in relevant part, that SANDAG may operate the SR 125 toll road and collect tolls.
Grants SBX the right to set tolls for the use of SR 125, with limits imposed on its discretion by the terms of its loan documents.

Requires SBX to 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.

Obligates Caltrans to construct and maintain facilities that connect SR 125 “to and from” other roads.

Grants SBX the right to enter into subleases for facilities on, under, or over SR 125’s right of way.

Prohibits Caltrans from constructing competing transportation facilities within 6 miles of the centerline of SR 125, without payment of compensation.

Obligates SBX to pay for maintenance and operations costs.

Obligates SBX to carry $50 million in liability insurance.

Findings

SANDAG’s proposed lease acquisition and subsequent operation of the SR 125 toll road franchise is categorically exempt from CEQA by operation of the Class 1 Categorical Exemption for Existing Facilities contained in CEQA Guidelines Section 15301.

The Class 1 Categorical Exemption applies to “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.”

SANDAG’s acquisition of the SR 125 toll road franchise lease from SBX and subsequent operation of the road falls squarely within the Class 1 categorical exemption for all of the reasons listed herein.

Lease and Operation of SR 125

The Class 1 Categorical Exemption applies to the lease and operation of existing public facilities. SANDAG proposes to acquire the SR 125 lease from SBX (by assuming the Caltrans DFA) and subsequently operate the toll road, an existing facility.

No Physical Expansion of the Toll Road

SANDAG’s acquisition of the SR 125 toll road franchise would only authorize it to operate and maintain the roadway and to collect tolls. The lease acquisition does not authorize SANDAG to expand the roadway. Therefore, SANDAG has no immediate plans to undertake capital improvements to the existing roadway, widen or add traffic lanes, or modify the toll collection facilities in conjunction with its acquisition of the lease from SBX.

No Significant Impact on Level of Service (LOS)

SANDAG has performed modeling to determine whether the LOS will change under ownership by SANDAG if all of the actions described above in the Project Description occur. 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 proposed TransNet Extension Ordinance amendment, it is the LOS estimates described for these highway segments in that EIR that were compared to projected LOS for the Project described in these findings. The modeling results establish that removal of the I-805 improvements and reduction of the toll would not cause a significant impact to LOS on I-805 or SR 125.

**Expansion of Use is Negligible**

The Final EIR/EIS for State Route 125 South (SR 125 FEIR/EIS), completed in January 2000 (SCH #89011119), which analyzed the environmental effects of the 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 is incorporated herein by reference. The SR 125 FEIR/EIS reviewed a significantly higher level of average daily traffic (ADT) on SR 125 than currently exists on the toll road. (See Final EIR/EIS Table 1.4). The ADT reviewed in the Final EIR/EIS also significantly exceeds projected traffic levels on SR 125 in 2035, with or without SANDAG’s acquisition of the SR 125 lease.

Furthermore, SANDAG’s acquisition of the SR 125 lease and subsequent reduction of the toll would not result in a significant impact to traffic levels on the SR 125 toll road.

**Exceptions to Categorical Exemptions not Applicable**

None of the exceptions to categorical exemptions in CEQA Guidelines Section 15300.2 apply to SANDAG’s proposed lease acquisition and operation of SR 125.
RESOLUTION
NO. 2012-15

ADOPTING A STATUTORY EXEMPTION FOR THE MODIFICATION TO THE STATE ROUTE 125 TOLL AMOUNT AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, over the past year the San Diego Association of Governments (SANDAG) Board of Directors (Board) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease from South Bay Expressway (SBX); and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §21000 et seq.) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.), SANDAG is the lead agency for the SR 125 toll road franchise lease and related actions; and

WHEREAS, in August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options; and

WHEREAS, SANDAG would acquire the SR 125 lease for approximately $341.5 million financed through a loan from TransNet ($255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $92.5 million in the form of the TIFIA loan and approximately $1.5 million in the form of the Series D Note) receiving payment from toll revenues; and

WHEREAS, to maximize the toll reduction possible on the toll road, the Board proposes to amend the TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets; and

WHEREAS, the swap would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs; and

WHEREAS, the Board will consider three related actions: (1) the franchise and lease acquisition and operation of the toll road; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance; and

WHEREAS, while the Board will consider all three actions in a single package, each item to be considered by the Board has independent utility, i.e., the actions are not integral to one another and can proceed individually; and
WHEREAS, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance; and

WHEREAS, a toll reduction of up to 22.5 percent is possible without reduction of SANDAG’s debt service on the toll road; and

WHEREAS, future toll modifications in excess of 22.5 percent of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends on the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment, however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction; and

WHEREAS, the proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues; and

WHEREAS, following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5 percent would fall within the statutory exemption for rates, tolls, fees and charges; and

WHEREAS, the lease acquisition and operation of the toll road falls under the Class 1 Categorical Exemption (CEQA Guidelines §15301), the toll modification falls within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273), and the TransNet Extension Ordinance amendment is analyzed in an Addendum to the Final Environmental Impact Report for the 2030 Regional Transportation Plan; and

WHEREAS, the statutory exemption for rates, tolls, fares and charges set forth in Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 applies to the establishment, modification, structuring or restructuring, or approval of rates, tolls, fares, or other charges by public agencies that are not designed to increase services or expand a system and are for the purpose of:

1. Meeting operating expenses, including employee wage rates and fringe benefits,

2. Purchasing or leasing supplies, equipment or materials,

3. Meeting financial reserve needs and requirements,

4. Obtaining funds for capital projects, necessary to maintain service within existing services areas, or

5. Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter; and

WHEREAS, SANDAG proposes to implement a toll reduction of up to 45 percent over a period of three years if operational expenses and financial reserve needs are reduced as forecasted; and
BE IT FURTHER RESOLVED that the Board finds the lease and operation of the SR 125 toll road franchise to be categorically exempt from CEQA under the Class 1 Categorical Exemption;

BE IT FURTHER RESOLVED that the Board finds that the proposed toll modifications fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273).

PASSED AND ADOPTED on 16th day of December 2011.
CEQA FINDINGS OF FACT
STATUTORY EXEMPTION FOR RATES, TOLLS, FARES AND CHARGES

I. Introduction

These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code §21000 et seq., “CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.) by the San Diego Association of Governments (SANDAG) Board of Directors (Board). SANDAG is the lead agency for the acquisition of the State Route (SR) 125 toll road franchise lease from South Bay Expressway (SBX) and two related actions including a modification to the SR 125 toll and a proposed amendment to the 2004 TransNet Extension Ordinance. These findings pertain to the statutory exemption for rates, tolls, fares and charges pursuant to Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273.

II. Project Description/Summary

The Board has been evaluating the possible purchase of the SR 125 toll road franchise lease from SBX over the past year. In August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options. Based on purchase price deductions discussed during negotiations and fees and expenses incurred as part of the transaction, SANDAG would acquire SR 125 for a purchase price of approximately $341.5 million financed through a loan from TransNet ($255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $92.5 million in the form of the TIFIA Loan and approximately $1.5 million in the form of the Series D Note) receiving payment from toll revenues. To maximize the toll reduction possible on the toll road, the Board proposes to amend the 2004 TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million1) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets. This would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues, and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs.

The Board will consider three related actions: (1) the franchise and lease acquisition and operation of the SR 125 toll road franchise; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. While the Board will consider all three actions in a single package, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance. A toll reduction of up to 22.5% is possible without reduction of SANDAG’s debt service on the toll road. Future toll modifications in excess of 22.5% of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends upon the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment,

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1 The 2010 value of the two planned HOV lanes 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.
however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction. The proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board of Directors based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues. Following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5% would fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273).

Due to the independent utility and status of: a) the lease acquisition, b) the toll reductions, and c) the swap via an amendment to the TransNet Extension Ordinance, each action is analyzed in a separate environmental document. The lease acquisition and operation of the toll road fall under the Class 1 Categorical Exemption (CEQA Guidelines §15301), the toll modifications fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273), and the Addendum analyzes a proposed amendment to the TransNet Extension Ordinance, which requires a change to the 2030 RTP.

III. CEQA Findings Related to the Toll Modification

The SANDAG Board of Directors has reviewed various simulations regarding the amount of toll reduction it could potentially achieve on SR 125 under SANDAG management. Analyses of these simulated toll rate reductions show that a toll reduction of up to 45 percent (mid-point of the target range) could be achieved over time if SANDAG operational expenses and financial reserve needs are reduced as forecasted. 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 (22.5%), there would still be sufficient revenue to cover the toll road’s reduced financial obligations as compared to ownership by SBX, 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 could 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. Research suggests allowing six to twelve months between toll rate changes will provide sufficient time for the change in toll rates to settle and for SANDAG 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 and assumes the TransNet Extension Ordinance amendment occurs resulting in debt forgiveness on the TransNet Loan of $192 million.
The proposed toll modification is exempt from CEQA by operation of the statutory exemption contained in Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 which states in relevant part that CEQA does not apply to:

- The establishment, modification, structuring, restructuring, or approval of rates, tolls, fare and other charges by public agencies which the public agency finds are for the purpose of:
  1. Meeting operating expenses, including employee wage rates and fringe benefits,
  2. Purchasing or leasing supplies, equipment, or materials,
  3. Meeting financial reserve needs and requirements,
  4. Obtaining funds for capital projects, necessary to maintain service within existing service areas, or
  5. Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.

The proposed toll modifications are exempt for the following listed relevant permissible purposes listed in Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 for all of the reasons listed herein:

Meeting operating expenses, including employee wage rates and fringe benefits

The purpose of the SR 125 toll reduction is to adjust the toll so that it aligns with the reduced operating expenses SANDAG anticipates for its SR 125 operation, maintenance, and debt service budgets compared to the higher costs associated with SBX ownership. SANDAG would be able to reduce the current toll rate by an average of 40 percent to 50 percent of the rate in place at the
time of the purchase in order to operate the toll road after acquisition. This anticipated reduction would allow SANDAG to meet its operational and maintenance budget needs, and to service the debt incurred through the purchase of SR 125 assets.

Costs expected to decrease under SANDAG ownership compared to private sector ownership include reduced payroll and property taxes. Expected payroll reductions will come from a restructuring of top management. SANDAG plans to eliminate two senior positions for an annual savings of nearly $1.0 million. Expected property taxes would decrease because SANDAG is a public agency. SANDAG is exempt from property taxes, which would save an additional $3.0 million each year.

The annual budget prepared by SBX for 2012 toll road operations shows an aggregate amount of $14.381 million. SANDAG has prepared an annual proposed budget for operating the toll road, is approximately $10.381 million. The SANDAG Budget amendment for Fiscal Year 2012, which is scheduled for adoption by the Board of Directors concurrently with these findings, is hereby incorporated by reference. The Budget amendment includes figures for operating and maintenance expenses as well as debt service reserves. A breakdown of these expenses is in the table below:

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<th>Full Year CY12</th>
<th>Half Year (FY12 Amendment)</th>
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<tr>
<td>Operations</td>
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<td>5.191</td>
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<tr>
<td>Major Maintenance Expenditures</td>
<td>4.771</td>
<td>2.386</td>
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<tr>
<td>TIFIA</td>
<td>3.549</td>
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<td>TransNet</td>
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<tr>
<td>Reserve Deposits for future Major Maintenance</td>
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<td>1.750</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>26.439</strong></td>
<td><strong>13.220</strong></td>
</tr>
</tbody>
</table>

Meeting financial reserve needs and requirements

Furthermore, the TransNet project swap of I-805 improvement funds for the purchase of SR 125 assets reduces the debt outstanding on SR 125 by as much as $192 million. The reduction of the SR 125 toll by 40 to 50 percent from levels in place prior to the purchase would meet the substantially reduced annual debt payment reserves required from toll revenues as a result of this pay down of outstanding debt.

Under private ownership, SBX is currently paying debt service on a total of $288.0 million in loans. Pursuant to the TIFIA Loan, and the TransNet and Series D Notes, SANDAG’s total debt on the toll road following the debt forgiveness that would occur as a result of the proposed TransNet Extension Ordinance amendment will be approximately $157.7 million. (The SANDAG loans and documentation for the financing of the SR 125 toll road are explained further below in the Financial Summary of Lease Acquisition section.) Therefore, the financial reserves SANDAG will be required to set aside via the Master Trust Agreement for payments on its loans will be lower than the reserve requirements applicable to SBX.

**Financial Summary of Lease Acquisition**

The total purchase price payable to SBX for the SR 125 toll road is approximately $341,500,000, not including fees and transaction related expenses. The purchase of SR 125 assets, including
assignment of the Caltrans lease, would be accomplished through the payment of approximately $247,500,000 to SBX, consisting of $239,965,600 in cash to be transferred at closing and $7,500,000 to be placed into an escrow account, with additional closing costs to be paid in the amount of approximately $10,249,000. In order to complete the purchase, SANDAG would be required to assume the existing TIFIA loan in the amount of $92,534,400, and issue a “Series D Note” to TIFIA in the principal amount of $1,445,850.

Each aspect of the SR 125 purchase will have a separate agreement. There will also be a Master Trust Agreement governing the interrelationships among the three independent financing pieces. A description of these financing documents follows.

**Master Trust Agreement (MTA):**

The primary function of the MTA would be to establish a flow of funds from project revenues through operating and capital expenses and into the payment of the financing instruments. All project revenues would be deposited with the Master Trustee, which on a monthly basis would deposit funds to various reserve accounts in accordance with an annual budget approved by the Board. The first two reserve accounts to receive funds would be for ordinary and anticipated operating and capital expenses. The next two reserve accounts to receive funds would be for the payment of expenses, interest, and principal associated with the existing TIFIA loan. Remaining funds would next be applied to reserve accounts for long-term maintenance and capital expenses, plus any unanticipated emergencies. The next reserve account to receive funds would be dedicated to the repayment of the TransNet loan. After the TransNet loan has been fully satisfied, the next reserve account to receive funds is dedicated to Series D.

**TIFIA Loan Agreement:**

SANDAG would assume the existing TIFIA loan on SR 125 in the total amount of $92,534,400. The loan is divided into three separate notes, each of which has different principal amounts, interest rates, and/or payment commencement and due dates. The loans are secured by first liens on project revenue, the contract rights related to the project, and a deed of trust on the leasehold interest in the roadway’s right of way.

**TransNet Promissory Note:**

The TransNet loan documentation is in the form of a promissory note. 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 road.

**Series D Agreement:**

The Series D Agreement 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.
ADDENDUM TO FINAL ENVIRONMENTAL IMPACT REPORT, MARCH 2003
MOBILITY 2030, THE TRANSPORATION PLAN FOR THE SAN DIEGO REGION
SCH #2002071059

SANDAG, December 16, 2011

The San Diego Association of Governments (SANDAG) has prepared this Addendum to the March 2003 Final Environmental Impact Report (FEIR) for MOBILITY 2030, the Transportation Plan for the San Diego Region (2030 RTP) pursuant to the California Environmental Quality Act (Pub. Res. Code §21000 et seq., “CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.), for the proposed project described below.

The 2030 RTP FEIR is a program EIR which analyzed the environmental effects of the adoption of the 2030 RTP by SANDAG. The 2030 RTP is comprised of goals, policies, and objectives, as well as a list of transportation network improvements and other transportation projects that are intended to improve efficient movement of people and goods through the region. The 2030 RTP FEIR also analyzed the 2004 TransNet Extension Ordinance as one of the funding mechanisms necessary to implement the transportation programs and improvements proposed under the “Reasonably Expected Revenue” and “Unconstrained Revenue” scenarios contemplated in the 2030 RTP.

The TransNet Extension Ordinance contains a list of specific transportation improvement projects and programs that will be funded in whole or in part by revenues from the TransNet tax extension. All such projects are planned or proposed in the 2030 RTP and are consistent with the 2030 RTP. One of the specific transportation improvement projects funded by the TransNet Extension Ordinance is a set of improvements to Interstate 805 (I-805), including the addition of two reversible High Occupancy Vehicle (HOV) lanes between SR 905 and SR 54 at a cost of $212 million (less $10 million for environmental and design work that has already occurred). While the 2030 RTP identified SR 125 as part of the transportation network, the TransNet Extension Ordinance did not anticipate funding for that project as the project was previously funded by the private sector. The amendment would include the SR 125 toll road asset acquisition as a project eligible for TransNet funding.

This Addendum has been prepared to address changes in the 2030 RTP, specifically a proposed amendment to the TransNet Extension Ordinance, since initial approval of the 2030 RTP and its associated program EIR on March 28, 2003. The proposed amendment would consist of a swap of the two reversible HOV lanes on I-805 between SR 54 and SR 905 for a portion of the SR 125 toll road assets acquisition costs. This Addendum addresses a programmatic project description change because it analyzes a proposed change to the 2030 RTP “program”, i.e., a series of actions that can be characterized as one project, rather than a specific project. Projects identified in the 2030 RTP which have not been built will still require project-specific CEQA (and possibly NEPA) review.

Pursuant to CEQA Guidelines Section 15164, a lead agency shall prepare an addendum to a previously certified EIR if some changes and additions are necessary but none of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR have occurred.

Under CEQA Guidelines Section 15162, when an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:
1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162(a)(1).)

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162(a)(2).)

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
   a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
   b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
   c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
   d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. (CEQA Guidelines §15162(a)(3).)

**Background Discussion/Project Description:**

The Board has been evaluating the possible purchase of the SR 125 toll road franchise lease from SBX over the past year. In August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options.

Based on purchase price deductions discussed during negotiations and fees and expenses incurred as part of the transaction, SANDAG would acquire SR 125 for a purchase price of approximately $341.5 million financed through a loan from TransNet ($255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $92.5 million in the form of the TIFIA Loan and approximately $1.5 million in the form of the Series D Note) receiving payment from toll revenues.

To maximize the toll reduction possible on the toll road, the Board proposes to amend the 2004 TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets. This would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues, and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs.
The Board will consider three related actions: (1) the franchise and lease acquisition and operation of the SR 125 toll road franchise; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. While the Board will consider all three actions in a single package, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance. A toll reduction of up to 22.5% is possible without reduction of SANDAG’s debt service on the toll road. Future toll modifications in excess of 22.5% of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends upon the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment, however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction. The proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board of Directors based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues. Following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5% would fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273).

Due to the independent utility and status of: a) the lease acquisition, b) the toll reductions, and c) the swap via an amendment to the TransNet Extension Ordinance, each action is analyzed in a separate environmental document. The lease acquisition and operation of the toll road fall under the Class 1 Categorical Exemption (CEQA Guidelines §15301), the toll modifications fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273), and the Addendum analyzes a proposed amendment to the TransNet Extension Ordinance, which requires a change to the 2030 RTP.

**Environmental Factors Potentially Affected:**

The environmental factors checked below would be affected by one of more of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR as indicated by the checklist on the following pages.

- Aesthetics
- Agriculture Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology/Soils
- Hazards
- Land Use
- Mineral Resources
- Noise
- Population
- Mandatory Findings of Significance
- Public Services
- Recreation
- Transportation
- Utilities
- Water
DETERMINATION:

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

_____________________________________________ ___________________________
Signature Date

____________________________________________ ___________________________
Signature Date

EVALUATION OF ENVIRONMENTAL IMPACTS:

This section evaluates whether the proposed project would result in any of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR. The definitions of the response column headings include:

1. “Substantial Changes in Project” is appropriate if “substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162(a)(1).)

2. “Substantial Changes in Project Circumstances” is appropriate if “substantial changes occur with respect to the circumstances under which the project is undertaken which will require major
revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162(a)(2).)

3. “New Information of Substantial Importance” is appropriate if “new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

   a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

   b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;

   c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

   d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.” (CEQA Guidelines §15162(a)(3).)

4. “None of These Conditions Have Occurred” is appropriate if “some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” (CEQA Guidelines §15164(a).)

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<tr>
<td>I. AESTHETICS - Would the project:</td>
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<td>a) Have a substantial adverse effect on a scenic vista?</td>
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<td>b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</td>
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<td>c) Substantially degrade the existing visual character or quality of the site and its surroundings?</td>
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<td>d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?</td>
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DISCUSSION:

The proposed project consists of the elimination of two planned HOV lanes on I-805 for the purchase costs of SR 125 which requires an amendment to the 2004 TransNet Extension Ordinance. No new facilities would be constructed, therefore the proposed project would not create new, or substantially increase, significant aesthetic effects. The proposed project would not block panoramic views or views of significant landscape features or landforms, add a new urban, visual element to existing rural or open space, or add a modern element to an historic area. The toll road portion of SR 125 (from the junction of SR 54 and SR 125 to Otay Mesa Road) is not designated a state scenic highway, therefore the proposed project would not affect views from a state scenic highway. The existing facilities and traffic are a source of nighttime lighting and glare; the proposed project would not create a new source of substantial light or glare, or substantially increase these effects, and therefore would not adversely affect day or nighttime views in the area, or substantially degrade the existing visual character or quality of the site and its surroundings.

II. AGRICULTURE AND FOREST RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the states’ inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and the forest carbon measurement methodology provided in the Forest Protocols adopted by the California Air Resources Board.

Would the project:

- Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

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The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, therefore the proposed project would not result in the conversion of agricultural land, forest land to other uses, or conflict with existing zoning for these uses.

**III. AIR QUALITY** - Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

<table>
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<tr>
<th>Conditions</th>
<th>Substantial Changes Proposed in Project</th>
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<tr>
<td>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?</td>
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<td>c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220 (g)) or timberland (as defined in Public Resources Code section 4526)?</td>
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<td>d) Result in the loss of forest land or conversion of forest land to non-forest use?</td>
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<td>e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?</td>
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DISCUSSION:

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed as a result of the proposed project. The proposed project would not reduce the average daily level of service (LOS) to unacceptable levels (LOS E or F). As no additional congestion would result from the proposed project, it would not conflict with or obstruct implementation of the State Implementation Plan (SIP) or the National Ambient Air Quality Standards (NAAQS). Overall traffic volumes are not substantially higher than what was anticipated in the 2030 RTP FEIR, therefore the proposed project would not contribute substantially to an existing or projected air quality violation. Similarly, as no new facilities are being built as a result of this action and no additional congestion would result, the project would not expose sensitive receptors to substantial pollutant concentration. Two additional lanes that would have been built would not be constructed with the proposed project thereby reducing the encroachment of particulate matter to potential sensitive receptors. Finally, no objectionable odors affecting a substantial number of people will result from the proposed project as no new facilities will be built and no unacceptable traffic congestion would result (See Section XV- Transportation/Traffic).
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<th>by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</th>
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<td>d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</td>
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<td>e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?</td>
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<td>f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?</td>
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**DISCUSSION:**

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, therefore the proposed project would not result in the loss of habitat areas of any type, including riparian habitat, sensitive natural communities or federally protected wetlands. The Final EIR/EIS for State Route 125 South (SR 125 FEIR/EIS), completed in January 2000 (SCH #89011119), which analyzed the environmental effects of the 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 is incorporated herein by reference. The SR 125 FEIR/EIS reviewed a significantly higher level of average daily traffic (ADT) on SR 125 than currently exists on the toll road. (See Final EIR/EIS Table 1.4). The ADT reviewed in the Final EIR/EIS also significantly exceeds projected traffic levels on SR 125 in 2035, with or without SANDAG’s acquisition of the SR 125 lease. For this reason, noise levels would not increase beyond what was already anticipated on SR 125, and would therefore not create a new significant impact or substantially increase the severity of noise impacts to any noise-sensitive species, including birds. The proposed project would not conflict with any adopted conservation plans or local policies or ordinances protecting biological resources. Acquisition and operation of the existing toll road facilities would not result in a loss of contiguous open space and would therefore not create a new significant impact or substantially increase the severity of impacts to native fish and wildlife movement.
**V. CULTURAL RESOURCES - Would the project:**

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**DISCUSSION:**

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, therefore the proposed project would not cause a substantial adverse change in the significance of historical or archaeological resources, and would not affect paleontological resources or sites or unique geological features. No grading or excavation would occur, therefore the proposed project would not disturb human remains, including any interred outside of formal cemeteries.

**VI. GEOLOGY AND SOILS - Would the project:**

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The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed. During construction of SR 125 geologic risks were identified and appropriate seismic mitigation was provided for earthquakes, liquefaction, slope instabilities, and differential settlement to provide safety to the traveling public. Although the proposed project would not result in a substantial increase in traffic, even were traffic levels to increase, the proposed project would not expose people or structures to substantial risk of loss or injury related to geologic events.

**VIII. HAZARDS AND HAZARDOUS MATERIALS** - Would the project:

- a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

- b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials?
of hazardous materials into the environment?

c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?  

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d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

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e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

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f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

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g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

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h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

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**DISCUSSION:**

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. The proposed project does not directly involve, or change the regulatory environment for, the routine transport of hazardous materials. Although the proposed project would not result in a substantial increase in traffic, even if traffic levels were to increase, the proposed project would not create or substantially increase significant hazards to the public or the...
environment through upset or accident conditions involving the release of hazardous materials.

SR 125 crosses Safety Zones 2, 3, 4 and 6 within the Airport Influence Area for Brown Field Municipal Airport. However, roads are compatible uses within these zones; continued use of SR 125 would not create or substantially increase a safety hazard to people traveling the roadway.

IX. HYDROLOGY AND WATER QUALITY - Would the project:

a) Violate any water quality standards or waste discharge requirements? ☐ ☐ ☐ ☑

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? ☐ ☐ ☐ ☑

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? ☐ ☐ ☐ ☑

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? ☐ ☐ ☐ ☑

e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? ☐ ☐ ☐ ☑

f) Otherwise substantially degrade water quality? ☐ ☐ ☐ ☑

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Boundary? ☐ ☐ ☐ ☑
Substantial Changes Proposed in Project

Substantial Changes in Project Circumstances

New Information of Substantial Importance

None of These Conditions Have Occurred

---

Insurance Rate Map or other flood hazard delineation map?

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<tr>
<td>h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?</td>
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<tr>
<td>i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?</td>
<td>☐</td>
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<tr>
<td>j) Inundation by seiche, tsunami, or mudflow?</td>
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**DISCUSSION:**

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. No new impervious surfaces would be constructed, nor would Caltrans-required maintenance activities be changed, including litter removal, and maintenance of drainage facilities for stormwater management. SR 125 crosses two areas identified by FEMA as high risk flood areas: one near Sweetwater Reservoir, and one near Wiley Road. Although the proposed project would not result in a substantial increase in traffic, even if traffic levels were to increase, the increase would not substantially increase the risk that people would be exposed to significant risk of loss, injury or death as a result of flooding while traveling on SR 125 since that project included design considerations for flood-prone areas; continued or expanded use of SR 125 would have little to no effect on water quality.

**X. LAND USE AND PLANNING** - Would the project:

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<tr>
<td>a) Physically divide an established community?</td>
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<td>b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?</td>
<td>☐</td>
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<tr>
<td>c) Conflict with any applicable habitat conservation plan or natural community conservation plan?</td>
<td>☐</td>
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</tbody>
</table>
DISCUSSION:

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. Continued operation of SR 125 would not physically divide existing communities or conflict with land use plans, policies, regulations or zoning ordinances adopted for the purpose of avoiding or mitigating environmental effects.

**XI. MINERAL RESOURCES** - Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

- [ ] Substantial Changes Proposed in Project
- [ ] Substantial Changes in Project Circumstances
- [ ] New Information of Substantial Importance
- [x] None of These Conditions Have Occurred

DISCUSSION:

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. There would be no loss of availability of mineral resources as a result of the proposed project.

**XII. NOISE** - Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

- [ ] Substantial Changes Proposed in Project
- [ ] Substantial Changes in Project Circumstances
- [ ] New Information of Substantial Importance
- [x] None of These Conditions Have Occurred

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?

- [ ] Substantial Changes Proposed in Project
- [ ] Substantial Changes in Project Circumstances
- [ ] New Information of Substantial Importance
- [x] None of These Conditions Have Occurred

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

- [ ] Substantial Changes Proposed in Project
- [ ] Substantial Changes in Project Circumstances
- [ ] New Information of Substantial Importance
- [x] None of These Conditions Have Occurred
<table>
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<tr>
<th>Substantial Changes Proposed in Project</th>
<th>Substantial Changes in Project Circumstances</th>
<th>New Information of Substantial Importance</th>
<th>None of These Conditions Have Occurred</th>
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<tbody>
<tr>
<td>d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?</td>
<td>☐</td>
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<tr>
<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?</td>
<td>☐</td>
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<tr>
<td>f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?</td>
<td>☐</td>
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</table>

**DISCUSSION:**

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed. The project would not expose persons to, or generate noise levels in excess of standards established in the local general plan or noise ordinance in the vicinity of the project as traffic conditions would not degrade the LOS on I-805 or SR 125 to unacceptable levels (LOS E or F). The SR 125 FEIR/EIS reviewed a significantly higher level of average daily traffic (ADT) on SR 125 than currently exists on the toll road. (See Final EIR/EIS Table 1.4). The ADT reviewed in the Final EIR/EIS also significantly exceeds projected traffic levels on SR 125 in 2035, with or without SANDAG’s acquisition of the SR 125 lease. For this reason, noise levels would not increase beyond what was already anticipated on SR 125, and would therefore not create a new significant impact or substantially increase the severity of any noise impacts.In addition, the elimination of two HOV lanes on I-805 (between SR 905 and SR 54) would minimize the encroachment of I-805 on existing development, i.e. without the extra lanes, the edge of the road would be located further from sensitive receptors. (See Section XV – Transportation/Traffic).

### XIII. POPULATION AND HOUSING -

Would the project:

| a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? | ☐ | ☐ | ☑ |
| b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing | ☐ | ☐ | ☑ |
DISCUSSION:

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. The proposed project would not induce growth, or displace people or housing.

XIV. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

| Fire protection? | ☐ | ☐ | ☐ | ☑ |
| Police protection? | ☐ | ☐ | ☐ | ☑ |
| Schools? | ☐ | ☐ | ☐ | ☑ |
| Parks? | ☐ | ☐ | ☐ | ☑ |
| Other public facilities? | ☐ | ☐ | ☐ | ☑ |

DISCUSSION:

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. The proposed project would not affect service levels for fire, police, schools, parks or other public facilities.
### XV. RECREATION -

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<th>Substantial Changes Proposed in Project</th>
<th>Substantial Changes in Project Circumstances</th>
<th>New Information of Substantial Importance</th>
<th>None of These Conditions Have Occurred</th>
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<tbody>
<tr>
<td>a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?</td>
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<tr>
<td>b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?</td>
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**DISCUSSION:**

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. The proposed project would not affect existing recreational facilities, or require or result in the construction of new recreational facilities.

### XVI. TRANSPORTATION/TRAFFIC -

Would the project:

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<th>Substantial Changes Proposed in Project</th>
<th>Substantial Changes in Project Circumstances</th>
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<tr>
<td>a) Exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness (as designated in a general plan policy, ordinance, etc.) taking into account all relevant components off the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?</td>
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<tr>
<td>b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?</td>
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<td>c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?</td>
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DISCUSSION: The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. The traffic volumes on I-805 would remain below the volume to capacity (V/C) ratio of 0.85. A V/C ratio of 0.85 is the threshold above which the level of service on the roadway is considered ‘significant.’ The 2030 RTP FEIR defined a significant impact as any increase in the percentage of daily vehicle miles traveled at level of service E or F. The removal of the two lanes on I-805 and the lowering of the tolls on SR 125 would not result in an increase percentage of VMT at LOS E or F (V/C ratio greater than 0.85). Therefore, the project would not exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness taking into account all relevant components off the circulation system. In addition, the SR 125 FEIR/EIS, previously incorporated by reference, reviewed a significantly higher level of average daily traffic (ADT) on SR 125 than currently exists on the toll road. (See Final EIR/EIS Table 1.4). The ADT reviewed in the Final EIR/EIS also significantly exceeds projected traffic levels on SR 125 in 2035, with or without SANDAG’s acquisition of the SR 125 lease.

The proposed project would not conflict with any congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways. Further, while some change in travel patterns would result (a shift of some traffic from I-805 to SR 125), the increase in traffic levels would not exceed established LOS standards and the resulting travel pattern would not result in substantial safety risks.

Since the proposed project consists of the elimination of two planned HOV lanes on Interstate 805, no new facilities would be constructed. Therefore, no increase in hazards due to a design feature (e.g., sharp curves or dangerous intersections) would result. The proposed project would not change emergency access and the traffic volumes would not degrade to the point of impeding emergency access. Finally, the proposed project would not impact adopted policies, plans, or programs supporting alternative transportation.
XVII. UTILITIES AND SERVICE
SYSTEMS - Would the project:

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<tr>
<th>Conditions</th>
<th>Substantial Changes Proposed in Project</th>
<th>Substantial Changes in Project Circumstances</th>
<th>New Information of Substantial Importance</th>
<th>None of These Conditions Have Occurred</th>
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<td>a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?</td>
<td>☐</td>
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<tr>
<td>b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
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<tr>
<td>c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
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<td>d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?</td>
<td>☐</td>
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<td>e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments?</td>
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<td>f) Be served by a landfill with sufficient permitted capacity to accommodate the project’s solid waste disposal needs?</td>
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<td>g) Comply with federal, state, and local statutes and regulations related to solid waste?</td>
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DISCUSSION:

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. The proposed project would not increase demand for water or wastewater treatment. Solid waste disposal needs would remain approximately the same and would comply with applicable regulations.
XVIII. MANDATORY FINDINGS OF SIGNIFICANCE -

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<th>Substantial Changes Proposed in Project</th>
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a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

DISCUSSION:

The proposed project consists of a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. No new facilities would be constructed, and no changes in operation, other than reducing the toll charge, are contemplated. The proposed project would not result in the loss of any habitat type, including habitat for endangered, rare or threatened species. Although the proposed project would not result in a substantial increase in traffic, even were traffic levels to increase, indirect effects such as noise, nighttime lighting, and increased stormwater pollutant levels would not increase to a level which would degrade or substantially reduce habitat for fish or wildlife species, or restrict the range or rare or endangered species. No construction, grading or excavation would occur, therefore the proposed project would not affect examples of California history or pre-history, nor would it add new physical features to the environment for the public.

The proposed project would result in no new or substantially more severe cumulative impacts beyond what were previously analyzed in the 2030 RTP FEIR. No new facilities will be constructed, and no changes in operation, other than reducing the toll charge, are contemplated.
The proposed project has no new or substantially more severe environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly. No new facilities will be constructed, and no changes in operation, other than reducing the toll charge, are contemplated.
RESOLUTION
NO. 2012-16

APPROVING AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT PREPARED FOR
MOBILITY 2030, THE TRANSPORTATION PLAN FOR THE SAN DIEGO REGION (SCH #2002071059)
AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, over the past year the San Diego Association of Governments (SANDAG) Board of
Directors (Board) has been evaluating the possible purchase of the State Route (SR) 125 toll road
franchise lease from South Bay Expressway (SBX); and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code
§21000 et seq.) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.), SANDAG is the
lead agency for the SR 125 toll road franchise lease and related actions; and

WHEREAS, in August 2011 the Board considered a counter offer from SBX, which calls for
SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options; and

WHEREAS, SANDAG would acquire the SR 125 lease for approximately $341.5 million
financed through a loan from TransNet ($255.7 million), while the U.S. Department of
Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan
program would remain a secured creditor (approximately $92.5 million in the form of the TIFIA loan
and approximately $1.5 million in the form of the Series D Note) receiving payment from toll
revenues; and

WHEREAS, to maximize the toll reduction possible on the toll road, the Board proposes to
amend the TransNet Extension Ordinance to swap a portion of the planned I-805 improvements
(the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued
at $192 million) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and
providing for the funds currently planned for the lanes to be used to reimburse TransNet for the
purchase of the SR 125 assets; and

WHEREAS, the swap would leave a reduced loan amount from TransNet to be fully repaid
with interest from toll revenues and would allow the Board more flexibility to reduce tolls in the
future due to lower debt service costs; and

WHEREAS, the Board will consider three related actions: (1) the franchise and lease
acquisition and operation of the toll road; (2) a series of potential modifications to the SR 125 tolls;
and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase
costs of SR 125, which requires an amendment to the TransNet Extension Ordinance; and
WHEREAS, while the Board will consider all three actions in a single package, each item to be considered by the Board has independent utility, i.e., the actions are not integral to one another and can proceed individually; and

WHEREAS, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance; and

WHEREAS, a toll reduction of up to 22.5 percent is possible without reduction of SANDAG’s debt service on the toll road; and

WHEREAS, future toll modifications in excess of 22.5 percent of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends on the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment, however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction; and

WHEREAS, the proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues; and

WHEREAS, following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5 percent would fall within the statutory exemption for rates, tolls, fees and charges; and

WHEREAS, the lease acquisition and operation of the toll road falls under the Class 1 Categorical Exemption (CEQA Guidelines §15301) and the toll modification falls within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273), and the TransNet Extension Ordinance amendment is analyzed in an Addendum to the Final Environmental Impact Report for the 2030 Regional Transportation Plan; and

WHEREAS, the 2030 Regional Transportation Plan (2030 RTP) entitled Mobility 2030, The Transportation Plan for the San Diego Region was released by SANDAG in October 2002; and

WHEREAS, the 2030 RTP is comprised of goals, policies, and objectives, as well as a list of transportation network improvements and other transportation programs that are intended to improve efficient movement of people and goods through the region; and

WHEREAS, pursuant to CEQA and the State CEQA Guidelines, SANDAG prepared a program environmental impact report (2030 RTP FEIR) (SCH #2002071059) which provided full disclosure and programmatic analysis of the environmental effects of the 2030 RTP; and

WHEREAS, the 2030 RTP FEIR also analyzed the 2004 TransNet Extension Ordinance as one of the funding mechanisms necessary to implement the transportation programs and improvements proposed under the “Reasonably Expected Revenue” and “Unconstrained Revenue” scenarios contemplated in the 2030 RTP; and

WHEREAS, the 2030 RTP FEIR satisfied all the requirements of CEQA and the State CEQA Guidelines; and

WHEREAS, the Board, at a regular session assembled on March 28, 2003, considered the significant environmental effects of the 2030 RTP, including the TransNet Extension Ordinance, as analyzed in the 2030 RTP FEIR; and
WHEREAS, the Board certified that the 2030 RTP FEIR was completed in compliance with
CEQA and the State CEQA Guidelines, that the 2030 RTP FEIR was presented to and reviewed and
considered by the Board prior to approving the 2030 RTP, and that the 2030 RTP FEIR represented
the independent judgment and analysis of SANDAG; and

WHEREAS, the TransNet Extension Ordinance contains a list of specific transportation
improvement projects and programs that will be funded in whole or in part by revenues from the
TransNet tax extension, and all such projects are planned or proposed in the 2030 RTP and are
consistent with the 2030 RTP; and

WHEREAS, one of the specific transportation improvement projects funded by the TransNet
Extension Ordinance is a set of improvements to Interstate 805 (I-805), including the addition of two
reversible High Occupancy Vehicle (HOV) lanes between SR 905 and SR 54 at a cost of $212 million
(less $10 million for environmental and design work that has already occurred); and

WHEREAS, while the 2030 RTP identified SR 125 as part of the transportation network, the
TransNet Extension Ordinance did not anticipate funding for that project as the project was
previously funded by the private sector, therefore the amendment would include the SR 125 toll
road asset acquisition as a project eligible for TransNet funding; and

WHEREAS, under CEQA Guidelines Section 15162, when an EIR has been certified or
negative declaration adopted for a project, no subsequent EIR shall be prepared for that project
unless the lead agency determines, on the basis of substantial evidence in light of the whole record,
one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of
the previous EIR or negative declaration due to the involvement of new significant environmental
effects or a substantial increase in the severity of previously identified significant effects.” (CEQA
Guidelines §15162(a)(1).)

2. Substantial changes occur with respect to the circumstances under which the project
is undertaken which will require major revisions of the previous EIR or negative declaration due to
the involvement of new significant environmental effects or a substantial increase in the severity of
previously identified significant effects.” (CEQA Guidelines §15162(a)(2).)

3. New information of substantial importance, which was not known and could not
have been known with the exercise of reasonable diligence at the time the previous EIR was
certified as complete or the negative declaration was adopted, shows any of the following:

   a. The project will have one or more significant effects not discussed in the
      previous EIR or negative declaration;

   b. Significant effects previously examined will be substantially more severe than
      shown in the previous EIR;

   c. Mitigation measures or alternatives previously found not to be feasible would
      in fact be feasible and would substantially reduce one or more significant effects of the
      project, but the project proponents decline to adopt the mitigation measure or alternative;
      or
d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. (CEQA Guidelines §15162(a)(3)); and

WHEREAS, an agency may not require a further EIR unless it finds on the basis of substantial evidence that one of the three above listed exceptions to the rule against requiring a further EIR exists; and

WHEREAS, SANDAG has prepared an Addendum to the 2030 RTP EIR to document its decision that a subsequent EIR is not required; and

WHEREAS, the Addendum contains a detailed and comprehensive review of the changes to the 2030 RTP which will occur as a result of the amendment to the TransNet Extension Ordinance, specifically analyzing the environmental effects of the swap of funds currently planned for I-805 improvements to instead be used for the purchase of the SR 125 assets; and

WHEREAS, based on this detailed and comprehensive review, the Addendum concludes that the proposed changes would not trigger any of the conditions set forth in CEQA Guidelines Section 15162;

NOW THEREFORE BE IT RESOLVED that the Board finds that the amendment to the TransNet Extension Ordinance would not trigger any of the conditions set forth in CEQA Guidelines Section 15162; and

BE IT FURTHER RESOLVED, that pursuant to CEQA Guidelines Section 15164 the Board finds that none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred and therefore that an Addendum is appropriate; and

BE IT FURTHER RESOLVED, that the Addendum and the Board's findings in support of the decision in this resolution are attached hereto and incorporated fully by this reference; and

BE IT FURTHER RESOLVED, that the Board approves the Addendum based on its finding that no revisions to the 2030 RTP FEIR are required.

PASSED AND ADOPTED on 16th day of December 2011.

______________________________           ________________________________
CHAIRPERSON                   SECRETARY

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

ADVISORY MEMBERS: California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, San Diego Unified Port District, San Diego County Water Authority, Southern California Tribal Chairmen's Association, and Mexico.
I. Introduction

These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code §21000 et seq., “CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.) by the San Diego Association of Governments (SANDAG) Board of Directors (Board). SANDAG is the lead agency for the acquisition of the State Route (SR) 125 toll road franchise lease from South Bay Expressway (SBX) and two related actions including a modification to the SR 125 toll and a proposed amendment to the 2004 TransNet Extension Ordinance. These findings pertain to the Addendum to the Final Environmental Impact Report (FEIR) prepared for the 2030 Regional Transportation Plan (2030 RTP) (SCH #2002071059). The 2030 RTP, comprised of goals, policies, and objectives, as well as a list of transportation network improvements and other transportation programs that are intended to improve efficient movement of people and goods through the region and the 2030 RTP FEIR, a program environmental impact report which provided full disclosure and programmatic analysis of the environmental effects of the 2030 RTP are hereby incorporated by reference into these findings. These documents are available for public review at http://www.sandag.org/index.asp?projectid=197&fuseaction=projects.detail

II. Project Description/Summary

The Board has been evaluating the possible purchase of the SR 125 toll road franchise lease from SBX over the past year. In August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options. Based on purchase price deductions discussed during negotiations and fees and expenses incurred as part of the transaction, SANDAG would acquire SR 125 for a purchase price of approximately $341.5 million financed through a loan from TransNet ($255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $92.5 million in the form of the TIFIA Loan and approximately $1.5 million in the form of the Series D Note) receiving payment from toll revenues. To maximize the toll reduction possible on the toll road, the Board proposes to amend the 2004 TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets. This would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues, and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs.

1 The 2010 value of the two planned HOV lanes 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.
The Board will consider three related actions: (1) the franchise and lease acquisition and operation of the SR 125 toll road franchise; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance. While the Board will consider all three actions in a single package, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance. A toll reduction of up to 22.5% is possible without reduction of SANDAG’s debt service on the toll road. Future toll modifications in excess of 22.5% of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends upon the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment, however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction. The proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board of Directors based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues. Following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5% would fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273).

Due to the independent utility and status of: a) the lease acquisition, b) the toll reductions, and c) the swap via an amendment to the TransNet Extension Ordinance, each action is analyzed in a separate environmental document. The lease acquisition and operation of the toll road fall under the Class 1 Categorical Exemption (CEQA Guidelines §15301), the toll modifications fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273), and the Addendum analyzes a proposed amendment to the TransNet Extension Ordinance, which requires a change to the 2030 RTP.

III. CEQA Findings Related to the Addendum

The Addendum has been prepared in order to address changes in the 2030 RTP, specifically a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance, since initial approval of the 2030 RTP and its associated program EIR on March 28, 2003.

Pursuant to CEQA Guidelines Section 15164, “[t]he lead agency...shall prepare an addendum to a previously certified EIR if some changes and additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.”

Under CEQA Guidelines Section 15162, when an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162(a)(1).)
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162(a)(2).)

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

   a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

   b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;

   c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

   d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. (CEQA Guidelines §15162(a)(3).)

The Addendum sets forth a detailed and comprehensive review and analysis of the changes to the 2030 RTP which will occur as a result of the proposed amendment to the 2004 TransNet Extension Ordinance, and based on this review and analysis, supported by substantial evidence, concludes that the proposed changes would not trigger any of the conditions set forth in CEQA Guidelines Section 15162. Based on this conclusion, the analysis in the Addendum, and the substantial evidence set forth in support of this analysis and conclusion, the Board finds that this Addendum is appropriate and that no subsequent EIR is required. Furthermore, the Board adopts the factual analysis, discussion and conclusions set forth in the Addendum as incorporated by reference into these findings.
## TransNet Early Action Program
### 2011 Plan of Finance
#### ($thousands)

<table>
<thead>
<tr>
<th>CIP</th>
<th>Project Name*</th>
<th>Approved</th>
<th>Phase Funded Through</th>
</tr>
</thead>
<tbody>
<tr>
<td>1201501</td>
<td>I-15 South Segment 4 Express Lanes**</td>
<td>$364,299</td>
<td>Construction</td>
</tr>
<tr>
<td>1201502</td>
<td>I-15 Middle Segment 4 Express Lanes**</td>
<td>$477,069</td>
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<tr>
<td>1201503</td>
<td>I-15 North Segment 4 Express Lanes</td>
<td>$213,083</td>
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<td>1201504</td>
<td>I-15 FastTrak</td>
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<td>Construction</td>
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<tr>
<td>1201505</td>
<td>I-15 BRT Stations: (SR 56 to SR 78)</td>
<td>$46,170</td>
<td>Construction</td>
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<tr>
<td>1201506</td>
<td>I-15 Mira Mesa DAR and BRT Station</td>
<td>$96,557</td>
<td>Construction</td>
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<tr>
<td>1201507</td>
<td>I-15 BRT Stations: Mid-City</td>
<td>$21,631</td>
<td>Final Design</td>
</tr>
<tr>
<td>1201508</td>
<td>I-15 BRT</td>
<td>$34,608</td>
<td>Construction</td>
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<tr>
<td>1201509</td>
<td>Downtown BRT Stations</td>
<td>$9,154</td>
<td>Construction</td>
</tr>
<tr>
<td>1201510</td>
<td>SR 78 Nordahl Road Interchange</td>
<td>$37,042</td>
<td>Construction</td>
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<tr>
<td>1201511</td>
<td>Mira Mesa Blvd BRT Treatments</td>
<td>$14,000</td>
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<tr>
<td>1201512</td>
<td>I-15 Sabre Springs Parking Structure</td>
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<td>1201513</td>
<td>BRT Maintenance Facility</td>
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<tr>
<td>1201514</td>
<td>Downtown BRT Layover Facility</td>
<td>$16,000</td>
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<td></td>
<td><strong>I-15 Corridor</strong></td>
<td>$1,432,659</td>
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<tr>
<td>1280501</td>
<td>I-805 South 4 Express Lanes</td>
<td>$31,016</td>
<td>Final Environ. Doc.</td>
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<tr>
<td>1280503</td>
<td>I-805 North 4 Express Lanes</td>
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<tr>
<td>1280504</td>
<td>South Bay BRT</td>
<td>$99,908</td>
<td>Construction</td>
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<tr>
<td>1280505</td>
<td>I-805 2 HOV and Carroll Canyon DAR</td>
<td>$86,743</td>
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<tr>
<td>1280507</td>
<td>Bus-on-Shoulder</td>
<td>$22,500</td>
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<tr>
<td>1280508</td>
<td>SR 94 2 HOV (I-805 to Downtown)</td>
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<td>Draft Environ. Doc.</td>
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<tr>
<td>1280510</td>
<td>I-805 South 2 HOV Lanes</td>
<td>$200,000</td>
<td>Construction</td>
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<td>1280511</td>
<td>I-805 North 2 HOV Lanes</td>
<td>$163,000</td>
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<td>1280512</td>
<td>I-805 Imperial Ave BRT Station</td>
<td>$500</td>
<td>Prelim. Engineering</td>
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<td><strong>I-805 Corridor</strong></td>
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<td>1041501</td>
<td>Mid-Coast LRT</td>
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<tr>
<td>1041502</td>
<td>SuperLoop</td>
<td>$36,349</td>
<td>Construction</td>
</tr>
<tr>
<td>1210000</td>
<td>Blue and Orange Line Trolley Corridor</td>
<td>$552,000</td>
<td>Construction</td>
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<tr>
<td>1200505</td>
<td>I-5/I-8 West to North Connector</td>
<td>$23,901</td>
<td>Construction</td>
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<tr>
<td>1200506</td>
<td>I-5/Genesee Ave Interchange &amp; Widening</td>
<td>$93,129</td>
<td>Construction</td>
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<tr>
<td></td>
<td><strong>I-5 Corridor (International Border to I-805)</strong></td>
<td>$2,409,379</td>
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<td>1200501</td>
<td>I-5 North Coast 4 Express Lanes</td>
<td>$64,582</td>
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<td>1200502</td>
<td>I-5 HOV Extension &amp; Lomas Santa Fe Dr.**</td>
<td>$71,759</td>
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<tr>
<td>1200504</td>
<td>I-5 North Coast 2 HOV Lanes</td>
<td>$501,324</td>
<td>Construction</td>
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<td>1239800</td>
<td>COASTER Double-Tracking</td>
<td>$329,650</td>
<td>Construction</td>
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<td></td>
<td><strong>I-5 Corridor (I-805 to Vandegrift Blvd)</strong></td>
<td>$985,187</td>
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<td>1205202</td>
<td>SR 52 Widening**</td>
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<td>1205203</td>
<td>SR 52 Extension**</td>
<td>$528,921</td>
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<td>1207602</td>
<td>SR 76 Middle</td>
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<tr>
<td>1207606</td>
<td>SR 76 East</td>
<td>$201,549</td>
<td>Construction</td>
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<tr>
<td>1212501</td>
<td>SR 94/ SR 125 South to East Connector</td>
<td>$7,554</td>
<td>Draft Environ. Doc.</td>
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<tr>
<td>1240001</td>
<td>Mid-City Rapid Bus</td>
<td>$44,526</td>
<td>Construction</td>
</tr>
<tr>
<td></td>
<td><strong>Other</strong></td>
<td>$998,154</td>
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</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td>$6,457,970</td>
<td></td>
</tr>
</tbody>
</table>

*Bus Rapid Transit (BRT); Direct Access Ramp (DAR); High Occupancy Vehicle (HOV); Light Rail Transit (LRT)

**Project has been opened to the public but still in the close-out phase.
TransNet-Only Revenues* and Expenses for FY 2012
(Actual and Projected)

* Includes Bond Proceeds
TransNet Early Action Program
Projected Total Revenues and Expenses (FY 2013 through FY 2018)

Revenues
- New Bond Proceeds
- Other Revenues (State, Federal, Toll)
- Annual TransNet Receipts
- Carryover (remaining bond proceeds)

Expenses
- TransNet Program Debt Service
- EAP Capital Expenses
**WORK ELEMENT:** 33121.00  NEW - SR 125 Facility Operations  
**FY 2012 BUDGET:** $13,219,576  
**AREA OF EMPHASIS:** Smart Mobility Programs

**Funds Source**

<table>
<thead>
<tr>
<th></th>
<th>FY 2012</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SR 125 Toll Revenue</td>
<td>$13,219,576</td>
<td>$13,219,576</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$13,219,576</td>
<td>$13,219,576</td>
</tr>
</tbody>
</table>

**Funds Application**

<table>
<thead>
<tr>
<th></th>
<th>FY 2012</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries, Benefits, Indirect</td>
<td>$259,100</td>
<td>$259,100</td>
</tr>
<tr>
<td>Other Direct Costs</td>
<td>$4,429,255</td>
<td>$4,429,255</td>
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<tr>
<td>Materials and Equipment</td>
<td>$453,810</td>
<td>$453,810</td>
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<tr>
<td>Contracted Services</td>
<td>$2,434,021</td>
<td>$2,434,021</td>
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<tr>
<td>Debt Service and Project Reserves</td>
<td>$5,643,390</td>
<td>$5,643,390</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$13,219,576</td>
<td>$13,219,576</td>
</tr>
</tbody>
</table>

**OBJECTIVE**

The objective of this work element is to maintain and operate the State Route 125 (SR 125) toll facility, collecting project revenue to pay for operations, maintenance, and debt incurred in the purchase of the Development Franchise Agreement. The SR 125 facility is a 10-mile toll road extending from SR 54 in Spring Valley through eastern Chula Vista, to Otay Mesa Road/SR 905 in Otay Mesa near the international border. The facility also includes a building for the toll operations staff located at the southern portion of the road, toll booth facilities, and adjoining property along SR 125. The emphasis in FY 2012 will be to: (1) assume and continue operations and maintenance of the facility; (2) operate the facility within cost projections and debt repayment needs; and (3) provide accountability and transparency for financial performance and Board goals for the project through reporting and presentation.

**PREVIOUS ACCOMPLISHMENTS**

This is a new program for SANDAG.
**Product Manager:** Johnson, Samuel  
**Committee(s):** Transportation Committee  
**Working Group(s):**

### PRODUCTS, TASKS, AND SCHEDULES

<table>
<thead>
<tr>
<th>Task No.</th>
<th>% of Effort</th>
<th>Task Description / Product / Schedule</th>
</tr>
</thead>
</table>
| 1        | 50          | Task Description: Support services, contracts and fees related to utilities, credit card processing, enforcement, cash handling, along with equipment, hardware and software support.  
**Product:** monthly invoices  
**Completion Date:** 6/30/2012 |
| 2        | 5           | Task Description: Debt service payments for TIFIA, TransNet, and SANDAG loans.  
**Product:** Debt service payments.  
**Completion Date:** 6/30/2012 |
| 3        | 40          | Task Description: Contracted staffing for revenue collection, customer service and roadway/facility operations and maintenance.  
**Product:** Monthly invoices  
**Completion Date:** 6/30/2012 |
| 4        | 2           | Task Description: Marketing and promotion of the facility to increase usage and profitability  
**Product:** Marketing plan and activities.  
**Completion Date:** 6/30/2012 |
| 5        | 3           | Task Description: Project Management - Operational management and oversight of the facility and tolling program, including tracking revenue and expenditures, marketing efforts, presentations and ensuring adherence to Master Trust Agreement.  
**Product:** Data, reports and presentation to Board, Transportation Committee and TIFIA.  
**Completion Date:** 6/30/2012 |

### FUTURE ACTIVITIES

Future activities shall be defined during the interim operations period pending further discussions with the Board.
Acquisition of South Bay Expressway

December 16, 2011

South Bay Expressway Acquisition

• Financing the Purchase
• Purchase & Financing Documents
• CEQA Findings
• 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 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

Purchase & Financing Documents

- **Asset Purchase Agreement (APA)**

- **Financing Documents:**
  - **Master Trust Agreement (MTA)**
  - **TIFIA Loan Agreement**
  - **Series D Agreement**
  - **TransNet Loan Agreement**
Asset Purchase Agreement

The document fundamentally incorporating the rights and obligations of the parties to this transaction.

Asset Purchase Agreement

Finalizing Key Elements

• The Escrow Account
• SBX Documents
• TIFIA Fees
• Schedules
• Exhibits
Asset Purchase Agreement

The Escrow Account

• The $7,500,000 “Escrow Funds” constitute SANDAG’s sole recourse for post-closing claims against SBX

  – $1,500,000 IT Malfunction includes up to $100,000 in lost toll revenues attributable thereto

  – IT Malfunction definition

  – Dispute Resolution Procedure

Asset Purchase Agreement

SBX Documents

• SBX expended close to $50MM on a complex litigation and arbitration and $10MM more on a bankruptcy designed to resolve the litigation and arbitration claims.

• The parties agreed that, in addition to all of SBX’s business records pertaining to the Transferred Assets, all records relating to the Litigation and the Chapter 11 cases would be transferred to SANDAG.
Asset Purchase Agreement

TIFIA FEES

• SANDAG NOT RESPONSIBLE FOR TIFIA FEES
• The following language stricken from the APA: “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.”

Asset Purchase Agreement

Schedules

• Changes to:
  – Assigned Contracts (Schedule 1.1(a) – P. 169)
  – Excess Property (Schedule 2.1(b)(iv) – P. 180)
  – Owned Real Property (Schedule 5.5(b) – P. 184)
  – Material Contracts (Schedule 5.7(a) – P. 188)
ASSET PURCHASE AGREEMENT

Exhibits (Attachment 2)

• Definitions (EXHIBIT A – P. 62)
• Form of Assignment Agreement (EXHIBIT B – P. 72)
• Form of Assignment of Lease (EXHIBIT C – P.76)
• Form of Escrow Agreement (EXHIBIT D – P. 83)
• Form of Series D Note (EXHIBIT E – P. 94)
• Form of Transition Services Agreement (EXHIBIT F – P. 124)
• Form of Seller’s Counsel Opinion (EXHIBIT G-1 – P. 150)
• Form of Purchaser’s Counsel Opinion (EXHIBIT G-2 – P. 154)
• Form of SANDAG Release (EXHIBIT H – P. 159)
• Form of Toll Violation Proceeds Agreement (EXHIBIT I – P. 164)

Financing Documents

Primary Agreements

• Master Trust Agreement
• TIFIA Loan Agreement
• Series D Agreement
• TransNet Note
Master Trust Agreement

Primary Elements

• Flow of Funds
• Rate Covenant
• Toll Covenant
• Non-Recourse Provision

Master Trust Agreement

Resolved Issues

Objective Additional Debt Test:
• Required Capital Expenditures – Projection must show 1.05x coverage on TIFIA, TransNet and added debt
• Discretionary Capital Expenditures - Projection must show 1.15x coverage on TIFIA, TransNet and added debt
• Refinancing – New debt service is equal to or less than existing
Master Trust Agreement

Additional Provisions

• Rate Covenant protecting TransNet Note – Budgeted Income at TransNet level must equal or exceed scheduled TransNet payment

• Project Life Cover Ratio – must be 1.50 or higher
  – If not, trustee may not release funds to TransNet
  – Not an event of default under TIFIA loan

TIFIA Loan Agreement

Primary Elements

• Assumption of Existing Loans
• Existing Security
• Amortization Schedule
• Payment Default (Project Life Cover Ratio)
TIFIA Loan Agreement

Resolved Issues

• Limitations on Representations – written into Agreement
• Additional Junior Debt Test – same as in Master Trust Agreement
• Project Life Cover Ratio – default rate is less than 1.25
• Limitation on Indemnity Obligations – written into Agreement
• Express Non-Recourse Provision – written into Agreement
• Expenses – closing costs waived in APA; annual expenses baselined

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
**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
  - Protected by Rate Covenant
- Reimbursement of SANDAG expenses
- Maturity Date

**TransNet Promissory Note Changes**

- Description of collateral serving as security of the note revised to match TIFIA security
- Language added to Section 13(b) to align with Master Trust Agreement language on order of payment to reimburse SANDAG contingency
- Payment Schedule modified
  - Payments begin sooner
  - Reallocation of payments between TransNet cash and bond proceeds to adjust for changes in model
CEQA-Related Actions
(Acquisition and Toll Modification)

- Class 1 Categorical Exemption in CEQA Guidelines §15301 applies to acquisition
  - Applies to leasing of existing public or private structures or facilities
- Statutory Exemption in Public Resources Code §21080(b)(8) applies to proposed toll modifications
  - To meet operational expenses
  - To meet financial reserve needs

CEQA-Related Actions
(Potential TransNet Swap)

- Addendum to Final Environmental Impact Report, March 2003 MOBILITY 2030
  - No new significant effects or substantial increase in the severity of previously identified significant effects
    - Modeling showed no downgrade in LOS on SR 125 or I-805 due to potential removal of two HOV lanes on I-805
  - No new information of substantial importance
  - Mitigation is still feasible and will not be altered
- Addendum, Resolution 2012-16, and Findings prepared pursuant to CEQA Guidelines §15162
Next Steps

- Finalize all documents for closing on December 21, 2011
- Schedule proposed amendments to TransNet Extension Ordinance for a first and second reading
- Return to Board with a tolling and marketing strategy

Recommendation

The Board of Directors is asked to:

1) Adopt Resolution Nos. 2012-14 through 2012-16 relating to findings and actions required by the California Environmental Quality Act and the Addendum to Final Environmental Impact Report, March 2003 MOBILITY 2030, The Transportation Plan for the San Diego Region (Attachments 9 and 10);

2) Approve the acquisition and financing method for the State Route 125 (SR 125) asset purchase from SBX;

3) Adopt Resolution No. 2012-13, which will authorize the Executive Director to execute all of the documents necessary to acquire the SR 125 assets, including the Letter of Intent concerning amendments to the Development Franchise Agreement with Caltrans in substantially the same form as attached (Attachment 7), and to finance the purchase on behalf of SANDAG;
Recommendation (cont.)

4) Adopt RTC Resolution No. 2012-01, authorizing the Executive Director to issue a loan to SANDAG in the form of the TransNet Promissory Note in substantially the same form as attached on behalf of the San Diego County Regional Transportation Commission (Attachment 8);

5) Direct staff to return with a proposed amendment to the TransNet Extension Ordinance to swap the funds allocated for two reversible high-occupancy vehicle lanes on Interstate 805 between SR 905 and SR 54 for the acquisition of SR 125; and

6) Approve an amendment to the FY 2012 Budget related to SR 125 functions (Attachment 12).
Approval of Proposed Amendments to Comprehensive Fare Ordinance

December 2011

Reason for Proposed Changes

• NCTD implemented COASTER/BREEZE/LIFT promotional fares on January 20, 2011

• NCTD desires to make these promo fares permanent based on positive revenue/ridership results
Promotional NCTD Changes

• BREEZE single ride cash fare:
  – Reduce from $2.00 to $1.75
  – Senior/Disabled/Medicare (S/D/M) from $1.00 to $0.75
• Reduce LIFT fare from $4.00 to $3.50

Promotional NCTD Changes

• COASTER:
  – Single ride fares decrease by $1.00 ($0.50 for S/D/M)
  – Regular Monthly Pass reduce 10-22%
  – Change 4-zone structure to 3-zones
Other Proposed Changes

• Changes related to promotional changes:
  – Reduce RegionPlus Day Pass to $12
  – Reduce discount for transfers to COASTER

• Other changes:
  – Add language to be consistent with FTA regulations and guidance
  – Rail 2 Rail

Public Participation

• 2 Public Meetings:
  – NCTD – Thurs November 17 (6-8pm)
  – SANDAG – Fri November 18 (12-2pm)

• Comments received generally supportive of amendments

• Full Meeting Records attached to report
Recommendation

The Board of Directors is asked to approve amendments to the Regional Comprehensive Fare Ordinance. The proposed changes affect services operated by both Metropolitan Transit System and North County Transit District.
RESOLUTION  NO.  2012-13


WHEREAS, over the past year the San Diego Association of Governments (SANDAG) Board of Directors (“Board”) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease and various assets from South Bay Expressway (SBX);

WHEREAS, in August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of the SR 125 toll road franchise and other SBX assets for $344.5 million (“the Project”), subject to various conditions, including performance of due diligence work and a public meeting process concerning financing options; and the purchase amount during negotiations has been reduced to $341.445.850.5 million;

WHEREAS, the document that incorporates the rights and obligations of SANDAG and SBX for the purchase of the Project is the Asset Purchase and Sale Agreement;

WHEREAS, in order to acquire the SR 125 lease and assets for approximately $341.445.850.5 million and pay for additional fees and expenses related to the purchase, SANDAG will need to finance the purchase through a loan from TransNet ($254,068,973.54255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $94,183,509.462.5 million in the form of the Second Amended and Restated TIFIA Loan Agreement (“TIFIA Loan”) and approximately $1.5 million in the form of the “Series D Agreement” and “Series D Note”) receiving payment from toll revenues (collectively “the Financing”);

WHEREAS, the San Diego County Regional Transportation Commission (“Commission) has sufficient funds in cash on hand ($3,000,000) and bond proceeds ($251,068,973.54252,749,000) to authorize a loan of TransNet funds (the “TransNet Loan”) to accomplish a portion of the Financing by issuing a promissory note to SANDAG in the amount of $254,068,973.54 (“the TransNet Promissory Note”);
WHEREAS, the Commission has concurrently determined that the TransNet Loan will maximize the effective use of funds as it will allow the Project to be implemented by providing a mechanism for the Financing, which will, in turn, result in an improved regional transportation system sooner and less expensively than what would otherwise occur if the SR 125 toll road franchise remained in SBX’s ownership;

WHEREAS, the Commission has also concurrently determined that issuing the TransNet Promissory Note will not result in the forty-two and four-tenths percent limit on allocation of TransNet funds for major highway and transit Congestion Relief projects set forth in Section 7A of the Sales Tax Extension Ordinance;

WHEREAS, the Commission has also concurrently determined that detailed fund repayment provisions, including appropriate interest earnings such that the Commission will suffer no loss of funds as a result of issuing the TransNet Promissory Note and the terms of the TransNet Promissory Note are consistent with any and all applicable rules approved by the Commission relating to loans and exchanges of TransNet funds;

WHEREAS, the rate of interest for the TransNet Promissory Note shall be 4.25%, which is based on TransNet recent borrowing history;

WHEREAS, the document that establishes a flow of funds from the Project through operating and capital expenses, and into the payment of the financing instruments described above as part of the Financing is the “Master Trust Agreement,” which is by and between SANDAG and US Bank National Association, which will serve as the Master Trustee;

WHEREAS, the Asset Purchase and Sale Agreement calls for the transfer of certain assets (the “Transferred Assets” as defined in the Asset Purchase and Sale Agreement) and those assets include assignment and assumption of the Development Franchise Agreement (“DFA”) and Lease with the California Department of Transportation (“Caltrans”), which will require execution of various consents, assignments, schedules, exhibits, and related documentation (“Real Property Transfer Documents”);

WHEREAS, various amendments are needed to update the DFA, the Lease, and various other agreements with Caltrans related to the SR 125 toll road franchise, and Caltrans and SANDAG have come to an agreement regarding the nature of those amendments and documented their understanding in a “Letter of Intent”;

WHEREAS, in order to set forth the terms of the Project purchase and the Financing, the Executive Director of SANDAG has caused to be prepared and presented to SANDAG a proposed form of the Asset Sale And Purchase Agreement, Real Property Transfer Documents, the Master Trust Agreement, the Second Amended and Restated TIFIA Loan Agreement, the TransNet Promissory Note, the Series D Agreement and Series D Note, and the Letter Of Intent with Caltrans (collectively “the SR 125 Purchase and Financing Documents”);

WHEREAS, SANDAG has concurrently agreed to execute the TransNet Promissory Note and be bound to its terms and conditions;

WHEREAS, SANDAG is a public agency duly formed, validly existing and in good standing under the laws of the State of California and has the power to execute, deliver, and perform its obligations
under the SR 125 Purchase and Financing Documents; and the SR 125 Purchase and Financing Documents will constitute legal, valid, and binding obligations of SANDAG, enforceable against SANDAG in accordance with their terms;

WHEREAS, SANDAG has been presented with the form of the SR 125 Purchase and Financing Documents, and SANDAG has examined and approved each document and desires to authorize and direct the execution of such documents as are specified herein and such other documents as are necessary in connection with the Project, and to authorize and direct the consummation of the Project purchase and Financing; and

WHEREAS, all acts, conditions, and things required by the law and the Constitution and laws of the State of California to exist, to have happened, and to have been performed precedent to and in connection with the consummation of the purchase and Financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and SANDAG is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize such purchase and Financing and to authorize the issuance of the SR 125 Purchase and Financing Document and accept the rights and obligations thereunder, in the manner and upon the terms provided;

NOW, THEREFORE, BE IT RESOLVED by SANDAG as follows:

Section 1. The purchase of the SR 125 toll road franchise and other identified assets, is hereby authorized and approved.

Section 2. The proposed form of the SR 125 Purchase and Financing Documents, submitted to SANDAG, and the terms and conditions thereof, are hereby approved. The Secretary of the Board is directed to file a copy of said form of the SR 125 Purchase and Financing Documents with the minutes of this meeting, and the Chair of the Board and the Secretary of the Board are authorized and directed to execute and deliver the SR 125 Purchase and Financing Documents, in substantially such form, and with such additions thereto or changes therein, as they, with the advice of Lindborg & Mazor LLP, as special counsel (“Special Counsel”), shall approve, such approval to be conclusively evidenced by the execution and delivery of the SR 125 Purchase and Financing Documents.

Section 3. The Chair and Secretary of the Board of Directors of SANDAG and Executive Director of SANDAG are hereby delegated the power to complete the SR 125 Purchase and Financing Documents and any schedules, exhibits, or documents related thereto necessary to consummate the purchase and the Financing; and authorizing the taking of all actions necessary thereto.

Section 4. The Chair and the Secretary of the Board, the Executive Director and the Director of Finance of SANDAG, and other appropriate officers of the Board or SANDAG, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of SANDAG, to execute and deliver any and all documents, certificates and representations, and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that SANDAG has approved in this Resolution.

In the event the Chair or Secretary of the Board or Executive Director of SANDAG is unavailable to execute the documents authorized hereby, such documents may be executed by the First Vice Chair of the Board or the Chief Deputy Executive Director or other designee of the Executive Director, respectively.
Section 5. All approvals, consents, directions, instructions, notices, orders, requests, indemnifications and other actions permitted or required by any of the documents authorized by this Resolution, including, without limitation, any amendment of any of the documents authorized by this Resolution or related thereto, and any of the foregoing that may be necessary or desirable in connection with the SR 125 Purchase and Financing Documents, may be given or taken by the Executive Director of SANDAG or his or her designee, without further authorization or direction by the Board, and any and all such actions heretofore taken by such officers are hereby ratified, confirmed, and approved, and the Executive Director of SANDAG or his or her designee is hereby authorized and directed to give any such approval, amendment, consent, direction, instruction, notice, order, request, indemnification or other action and to take any such action that such person, with the advice of Special Counsel, may deem necessary or desirable to further the purposes of this Resolution.

Section 6. This Resolution shall take effect from and after its adoption.

PASSED AND ADOPTED on 16th day of December 2011.

CHAIRPERSON ____________________________________  ATTEST: ____________________________________

SECRETARY

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

ADVISORY MEMBERS: California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, San Diego Unified Port District, San Diego County Water Authority, Southern California Tribal Chairmen’s Association, and Mexico.
SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

RESOLUTION NO. RTC 2012-01

AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $254,068,973.5425,749,000 AGGREGATE PRINCIPAL AMOUNT OF TRANSNET FUNDS BY THE SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION TO SANDAG PURSUANT TO A PROMISSORY NOTE, AND DELEGATING TO THE CHAIR AND SECRETARY OF THE BOARD OF DIRECTORS OF THE COMMISSION AND EXECUTIVE DIRECTOR OF THE COMMISSION POWER TO COMPLETE SAID DOCUMENTS, AUTHORIZING DISTRIBUTION OF THE PRINCIPAL AMOUNT OF THE PROMISSORY NOTE, AND AUTHORIZING THE TAKING OF ALL NECESSARY ACTIONS

WHEREAS, the San Diego County Regional Transportation Commission (the “Commission”) adopted the San Diego Transportation Improvement Program Ordinance and Expenditure Plan on July 31, 1987 (as amended, the “1987 Ordinance”), pursuant to the provisions of Sections 132000 through 132314, inclusive, of the Public Utilities Code of the State of California (the “San Diego County Regional Transportation Commission Act” or “Act”), which 1987 Ordinance provided for the imposition of a retail transactions and use tax (the “retail transactions and use tax”) applicable in the incorporated and unincorporated territory of the County of San Diego (the “County”) in accordance with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code of the State of California at the rate of one-half of one percent (1/2%) for a period not to exceed twenty (20) years;

WHEREAS, by its terms, the 1987 Ordinance became effective at the close of the polls on November 3, 1987, the day of the election at which the proposition imposing the retail transactions and use tax was adopted by a majority vote of the electors voting on such proposition;

WHEREAS, in order to provide for the extension of the initial term of the retail transactions and use tax for a period of forty (40) years, the Commission adopted the San Diego Transportation Improvement Program Ordinance and Expenditure Plan (the “Sales Tax Extension Ordinance,” and, together with the 1987 Ordinance, hereinafter collectively referred to as the “Ordinance”) on May 28, 2004;

WHEREAS, by its terms the Sales Tax Extension Ordinance became effective on November 3, 2004, the day following the date of the election at which the proposition providing for the extension of the retail transactions and use tax was approved by at least two-thirds of the electors voting on such proposition;

WHEREAS, the Board of Directors (the “Board”) of the Commission, pursuant to Section 7 the Sales Tax Extension Ordinance, is authorized to issue loans and exchanges of TransNet funds payable from the proceeds of the retail transactions and use tax levied by the Commission in order to maximize the effective use of revenues upon determining that certain conditions are met;
WHEREAS, over the past year, the San Diego Association of Governments (SANDAG) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease and various assets from South Bay Expressway (SBX);

WHEREAS, in August 2011 SANDAG considered a counteroffer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of the SR 125 toll road franchise and other SBX assets for $344.5 million (“the Project”), subject to various conditions, including performance of due diligence work and a public meeting process concerning financing options; and the purchase amount during negotiations has been reduced to $341,445,850.5 million;

WHEREAS, in order to acquire the SR 125 lease and assets for approximately $341,445,850.5 million and pay for additional fees and expenses related to the purchase, SANDAG will need to finance the purchase through a loan from TransNet ($254,068,973.54255.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $94,183,509.4692.5 million in the form of the TIFIA loan and approximately $1,445,8501.5 million in the form of the Series D Note) receiving payment from toll revenues (collectively “the Financing”);

WHEREAS, the document that establishes a flow of funds from the Project through operating and capital expenses, and into the payment of the financing instruments described above as part of the Financing is the “Master Trust Agreement,” which is by and between SANDAG and US Bank National Association, which will serve as the Master Trustee;

WHEREAS, the Commission has sufficient funds in cash on hand ($3,000,000) and bond proceeds ($251,068,973.54252,749,000) to authorize a loan of TransNet funds (the “TransNet Loan”) to accomplish a portion of the Financing by issuing a promissory note to SANDAG in the amount of $254,068,973.54255,749,000 (“the TransNet Promissory Note”);

WHEREAS, the Commission hereby determines that the TransNet Loan will maximize the effective use of funds as it will allow the Project to be implemented by providing a mechanism for the Financing, which will, in turn, result in an improved regional transportation system sooner and less expensively than what would otherwise occur if the SR 125 toll road franchise remained in SBX’s ownership;

WHEREAS, the Commission finds and determines that issuing the TransNet Promissory Note will not result in the forty-two and four-tenths percent limit on allocation of TransNet funds for major highway and transit Congestion Relief projects set forth in Section 7A of the Sales Tax Extension Ordinance;

WHEREAS, the Commission hereby further determines that detailed fund repayment provisions, including appropriate interest earnings such that the Commission will suffer no loss of funds as a result of issuing the TransNet Promissory Note, and the terms of the TransNet Promissory Note are consistent with any and all applicable rules approved by the Commission relating to loans and exchanges of TransNet funds;
WHEREAS, the rate of interest for the *TransNet* Promissory Note shall be 4.25%, which is based on *TransNet* recent borrowing history;

WHEREAS, in order to set forth the terms of the *TransNet* Loan, the Executive Director of the Commission has caused to be prepared and presented to the Commission a proposed form of the *TransNet* Promissory Note;

WHEREAS, SANDAG has concurrently agreed to execute the *TransNet* Promissory Note and be bound to its terms and conditions;

WHEREAS, SANDAG is a public agency duly formed, validly existing and in good standing under the laws of the State of California, and has the power to execute, deliver, and perform its obligations under the *TransNet* Promissory Note; SANDAG has or will take all action to authorize the execution, delivery, and performance of the *TransNet* Promissory Note; and the *TransNet* Promissory Note constitutes the legal, valid, and binding obligation of SANDAG, enforceable against SANDAG in accordance with its terms;

WHEREAS, the Commission has been presented with the form of the *TransNet* Promissory Note, and the Commission has examined and approved each document and desires to authorize and direct the execution of such documents as are specified herein and such other documents as are necessary in connection with the Financing, and to authorize and direct the consummation of the Financing that are within the purview of the Commission; and

WHEREAS, all acts, conditions, and things required by the law and the Constitution and laws of the State of California to exist, to have happened, and to have been performed precedent to and in connection with the consummation of the Financing authorized hereby do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Commission is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize such Financing and to authorize the issuance of the *TransNet* Promissory Note, in the manner and upon the terms provided;

NOW, THEREFORE, BE IT RESOLVED by the San Diego County Regional Transportation Commission as follows:

Section 1. The issuance by the Commission of not to exceed $254,068,973.54255,749,000 and the payment of costs of issuance incurred in connection with the Financing, is hereby authorized and approved.

Section 2. The proposed form of *TransNet* Promissory Note, between the Commission and SANDAG, submitted to the Commission, and the terms and conditions thereof, are hereby approved. The Secretary of the Board is directed to file a copy of said form of *TransNet* Promissory Note with the minutes of this meeting, and the Chair of the Board and the Secretary of the Board are authorized and directed to execute and deliver the *TransNet* Promissory Note, in substantially such form, and with such additions thereto or changes therein, as they, with the advice of Lindborg & Mazor LLP, as special counsel (“Special Counsel”), shall approve, such approval to be conclusively evidenced by the execution and delivery of the
TransNet Promissory Note. The structure, date, maturity date or dates (not to exceed December 31, 2042), interest rate or rates (not to exceed four point twenty-five percent (4.25%) per annum with interest payment dates, forms, place or places of payment, terms of repayment, cancellation or forgiveness as provided in the TransNet Promissory Note as finally executed and delivered.

Section 3. The Chair and the Secretary of the Board, the Executive Director and the Director of Finance of the Commission, and other appropriate officers of the Board or the Commission, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of the Commission, to execute and deliver any and all documents, certificates and representations, and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that the Commission has approved in this Resolution.

In the event the Chair or Secretary of the Board or Executive Director of the Commission is unavailable to execute the documents authorized hereby, such documents may be executed by the First Vice Chair of the Board or the Chief Deputy Executive Director or other designee of the Executive Director, respectively.

Section 4. All approvals, consents, directions, instructions, notices, orders, requests, indemnifications and other actions permitted or required by any of the documents authorized by this Resolution, including, without limitation, any amendment of any of the documents authorized by this Resolution or related thereto, and any of the foregoing that may be necessary or desirable in connection with the Financing that are within the purview of the Commission, may be given or taken by the Executive Director of the Commission or his or her designee, without further authorization or direction by the Commission, and any and all such actions heretofore taken by such officers are hereby ratified, confirmed, and approved, and the Executive Director of the Commission or his or her designee is hereby authorized and directed to give any such approval, amendment, consent, direction, instruction, notice, order, request, indemnification or other action and to take any such action that such person, with the advice of Special Counsel, may deem necessary or desirable to further the purposes of this Resolution.
Section 5. This Resolution shall take effect from and after its adoption.

PASSED AND ADOPTED on December 16, 2011, by the following vote:

AYES:

NOES:

ABSENT:

Chair of the Board of Directors
of the San Diego County Regional
Transportation Commission

[Seal]

Attest:

Secretary of the Board of Directors of the
San Diego County Regional Transportation
Commission
SECRETARY’S CERTIFICATE

I, _______________________, Secretary of the Board of Directors of the San Diego County Regional Transportation Commission, hereby certify as follows:

The foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Commission duly and legally held at the regular meeting place of the Commission in San Diego, California, on December 16, 2011, of which meeting all of said directors of the Commission had due notice and at which a majority thereof were present and acting throughout;

At said meeting said resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

An agenda of said meeting was posted at least 72 hours before said meeting at a location in San Diego, California, freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda;

I have carefully compared the foregoing with the original minutes of said meeting on file and of record in my office, and the foregoing is a full, true, and correct copy of the original resolution adopted at said meeting and entered in said minutes; and

Said original resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

WITNESS my hand and the seal of the San Diego County Regional Transportation Commission this __________ day of __________________ 2011.

[Seal]
RESOLUTION NO. 2012-14

ADOPTING A CLASS 1 CATEGORICAL EXEMPTION FOR THE ACQUISITION OF THE STATE ROUTE 125 TOLL ROAD FRANCHISE AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, over the past year the San Diego Association of Governments (SANDAG) Board of Directors (Board) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease from South Bay Expressway (SBX); and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §21000 et seq.) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.), SANDAG is the lead agency for the SR 125 toll road franchise lease and related actions; and

WHEREAS, in August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options; and

WHEREAS, SANDAG would acquire the SR 125 lease for approximately $341,445,850.5 million financed through a loan from TransNet ($254,068,973.5 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $94,183,509.46 million in the form of the TIFIA loan and approximately $1,445,850.5 million in the form of the Series D Note) receiving payment from toll revenues; and

WHEREAS, to maximize the toll reduction possible on the toll road, the Board proposes to amend the TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets; and

WHEREAS, the swap would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs; and

WHEREAS, the Board will consider three related actions: (1) the franchise and lease acquisition and operation of the toll road; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance; and
WHEREAS, while the Board will consider all three actions in a single package, each item to be considered by the Board has independent utility, i.e., the actions are not integral to one another and can proceed individually; and

WHEREAS, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance; and

WHEREAS, a toll reduction of up to 22.5 percent is possible without reduction of SANDAG’s debt service on the toll road; and

WHEREAS, future toll modifications in excess of 22.5 percent of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends on the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment, however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction; and

WHEREAS, the proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues; and

WHEREAS, following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5 percent would fall within the statutory exemption for rates, tolls, fees and charges; and

WHEREAS, the lease acquisition and operation of the toll road falls under the Class 1 Categorical Exemption (CEQA Guidelines §15301), the toll modification falls within the statutory exemption for rates, tolls, fares and charges (Public Resources §21080(b)(8) and CEQA Guidelines §15273), and the TransNet Extension Ordinance amendment is analyzed in an Addendum to the Final Environmental Impact Report for the 2030 Regional Transportation Plan; and

WHEREAS, the Class 1 Categorical Exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features; and

WHEREAS, the Class 1 Categorical Exemption applies only to activities involving either negligible or no expansion of the previous use; and

WHEREAS, SANDAG’s acquisition of the SR 125 toll road franchise from SBX and subsequent operation of the road with no expansion of the existing use falls squarely within the Class 1 Categorical Exemption; and

WHEREAS, none of the exceptions to the categorical exemptions listed in CEQA Guidelines Section 15300.2 apply to SANDAG’s acquisition and operation of the SR 125 toll road; and

NOW THEREFORE BE IT RESOLVED, the Board’s findings in support of the decision in this resolution are attached hereto and incorporated fully by this reference; and
BE IT FURTHER RESOLVED that the Board finds the lease and operation of the SR 125 toll road franchise to be categorically exempt from CEQA under the Class 1 Categorical Exemption.

PASSED AND ADOPTED on 16th day of December 2011.

_____________________________  ________________________________
CHAIRPERSON                   ATTEST: ________________________________

SECRETARY

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

ADVISORY MEMBERS: California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, San Diego Unified Port District, San Diego County Water Authority, Southern California Tribal Chairmen’s Association, and Mexico.
RESOLUTION NO. 2012-15

ADOPTING A STATUTORY EXEMPTION FOR THE MODIFICATION TO THE STATE ROUTE 125 TOLL AMOUNT AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, over the past year the San Diego Association of Governments (SANDAG) Board of Directors (Board) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease from South Bay Expressway (SBX); and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §21000 et seq.) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.), SANDAG is the lead agency for the SR 125 toll road franchise lease and related actions; and

WHEREAS, SANDAG would acquire the SR 125 lease for approximately $341.5 million financed through a loan from TransNet ($254,068,973.545.7 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $94,183,509.4692.5 million in the form of the TIFIA loan and approximately $1,445,8501.5 million in the form of the Series D Note) receiving payment from toll revenues; and

WHEREAS, to maximize the toll reduction possible on the toll road, the Board proposes to amend the TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets; and

WHEREAS, the swap would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs; and

WHEREAS, the Board will consider three related actions: (1) the franchise and lease acquisition and operation of the toll road; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance; and

WHEREAS, while the Board will consider all three actions in a single package, each item to be considered by the Board has independent utility, i.e., the actions are not integral to one another and can proceed individually; and
WHEREAS, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance; and

WHEREAS, a toll reduction of up to 22.5 percent is possible without reduction of SANDAG’s debt service on the toll road; and

WHEREAS, future toll modifications in excess of 22.5 percent of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends on the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment, however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction; and

WHEREAS, the proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues; and

WHEREAS, following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5 percent would fall within the statutory exemption for rates, tolls, fees and charges; and

WHEREAS, the lease acquisition and operation of the toll road falls under the Class 1 Categorical Exemption (CEQA Guidelines §15301), the toll modification falls within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273), and the TransNet Extension Ordinance amendment is analyzed in an Addendum to the Final Environmental Impact Report for the 2030 Regional Transportation Plan; and

WHEREAS, the statutory exemption for rates, tolls, fares and charges set forth in Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 applies to the establishment, modification, structuring or restructuring, or approval of rates, tolls, fares, or other charges by public agencies that are not designed to increase services or expand a system and are for the purpose of:

1. Meeting operating expenses, including employee wage rates and fringe benefits,

2. Purchasing or leasing supplies, equipment or materials,

3. Meeting financial reserve needs and requirements,

4. Obtaining funds for capital projects, necessary to maintain service within existing services areas, or

5. Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter; and

WHEREAS, SANDAG proposes to implement a toll reduction of up to 45 percent over a period of three years if operational expenses and financial reserve needs are reduced as forecasted; and
BE IT FURTHER RESOLVED that the Board finds the lease and operation of the SR 125 toll road franchise to be categorically exempt from CEQA under the Class 1 Categorical Exemption;

BE IT FURTHER RESOLVED that the Board finds that the proposed toll modifications fall within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273).

PASSED AND ADOPTED on 16th day of December 2011.

__________________________           ATTEST: __________________________
CHAIRPERSON                   SECRETARY

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

ADVISORY MEMBERS: California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, San Diego Unified Port District, San Diego County Water Authority, Southern California Tribal Chairmen’s Association, and Mexico.
RESOLUTION NO. 2012-16

APPROVING AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT PREPARED FOR MOBILITY 2030, THE TRANSPORTATION PLAN FOR THE SAN DIEGO REGION (SCH #2002071059) AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, over the past year the San Diego Association of Governments (SANDAG) Board of Directors (Board) has been evaluating the possible purchase of the State Route (SR) 125 toll road franchise lease from South Bay Expressway (SBX); and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §21000 et seq.) and the State CEQA Guidelines (14 Cal. Code Regs §15000 et seq.), SANDAG is the lead agency for the SR 125 toll road franchise lease and related actions; and

WHEREAS, in August 2011 the Board considered a counter offer from SBX, which calls for SANDAG to acquire (by assuming the Caltrans franchise agreement), SBX’s lease of 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 financing options; and

WHEREAS, SANDAG would acquire the SR 125 lease for approximately $341.5 million341,445,850 financed through a loan from TransNet ($254,068,973.5 million), while the U.S. Department of Transportation (USDOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program would remain a secured creditor (approximately $94,183,509.4692.5 million in the form of the TIFIA loan and approximately $1,445,850.001.5 million in the form of the Series D Note) receiving payment from toll revenues; and

WHEREAS, to maximize the toll reduction possible on the toll road, the Board proposes to amend the TransNet Extension Ordinance to swap a portion of the planned I-805 improvements (the two planned reversible high occupancy (HOV) lanes on I-805 between SR 905 and SR 54 valued at $192 million) for the purchase costs for SR 125, thereby eliminating the I-805 HOV lanes and providing for the funds currently planned for the lanes to be used to reimburse TransNet for the purchase of the SR 125 assets; and

WHEREAS, the swap would leave a reduced loan amount from TransNet to be fully repaid with interest from toll revenues and would allow the Board more flexibility to reduce tolls in the future due to lower debt service costs; and

WHEREAS, the Board will consider three related actions: (1) the franchise and lease acquisition and operation of the toll road; (2) a series of potential modifications to the SR 125 tolls; and (3) a swap of the two planned HOV lanes on I-805 between SR 905 and SR 54 for the purchase costs of SR 125, which requires an amendment to the TransNet Extension Ordinance; and
WHEREAS, while the Board will consider all three actions in a single package, each item to be considered by the Board has independent utility, i.e., the actions are not integral to one another and can proceed individually; and

WHEREAS, the acquisition of the SR 125 assets is not dependent upon the proposed toll modifications or the amendment to the TransNet Extension Ordinance; and

WHEREAS, a toll reduction of up to 22.5 percent is possible without reduction of SANDAG’s debt service on the toll road; and

WHEREAS, future toll modifications in excess of 22.5 percent of current toll rates and the TransNet Extension Ordinance amendment are connected because the extent of toll reductions possible depends on the amount of TransNet debt relieved pursuant to the TransNet Extension Ordinance amendment, however, the SR 125 assets acquisition is not conditioned upon the occurrence of the TransNet Extension Ordinance amendment or any specific toll reduction; and

WHEREAS, the proposed additional toll reduction and TransNet Extension Ordinance amendment will occur, if at all, through future actions by the Board based on SR 125 toll road operating expenses, including financial reserves for debt service, and anticipated toll revenues; and

WHEREAS, following adoption of the proposed amendment to the TransNet Extension Ordinance, toll reductions in excess of 22.5 percent would fall within the statutory exemption for rates, tolls, fees and charges; and

WHEREAS, the lease acquisition and operation of the toll road falls under the Class 1 Categorical Exemption (CEQA Guidelines §15301) and the toll modification falls within the statutory exemption for rates, tolls, fares and charges (Public Resources Code §21080(b)(8) and CEQA Guidelines §15273), and the TransNet Extension Ordinance amendment is analyzed in an Addendum to the Final Environmental Impact Report for the 2030 Regional Transportation Plan; and

WHEREAS, the 2030 Regional Transportation Plan (2030 RTP) entitled Mobility 2030, The Transportation Plan for the San Diego Region was released by SANDAG in October 2002; and

WHEREAS, the 2030 RTP is comprised of goals, policies, and objectives, as well as a list of transportation network improvements and other transportation programs that are intended to improve efficient movement of people and goods through the region; and

WHEREAS, pursuant to CEQA and the State CEQA Guidelines, SANDAG prepared a program environmental impact report (2030 RTP FEIR) (SCH #2002071059) which provided full disclosure and programmatic analysis of the environmental effects of the 2030 RTP; and

WHEREAS, the 2030 RTP FEIR also analyzed the 2004 TransNet Extension Ordinance as one of the funding mechanisms necessary to implement the transportation programs and improvements proposed under the “Reasonably Expected Revenue” and “Unconstrained Revenue” scenarios contemplated in the 2030 RTP; and

WHEREAS, the 2030 RTP FEIR satisfied all the requirements of CEQA and the State CEQA Guidelines; and

WHEREAS, the Board, at a regular session assembled on March 28, 2003, considered the significant environmental effects of the 2030 RTP, including the TransNet Extension Ordinance, as analyzed in the 2030 RTP FEIR; and
WHEREAS, the Board certified that the 2030 RTP FEIR was completed in compliance with CEQA and the State CEQA Guidelines, that the 2030 RTP FEIR was presented to and reviewed and considered by the Board prior to approving the 2030 RTP, and that the 2030 RTP FEIR represented the independent judgment and analysis of SANDAG; and

WHEREAS, the TransNet Extension Ordinance contains a list of specific transportation improvement projects and programs that will be funded in whole or in part by revenues from the TransNet tax extension, and all such projects are planned or proposed in the 2030 RTP and are consistent with the 2030 RTP; and

WHEREAS, one of the specific transportation improvement projects funded by the TransNet Extension Ordinance is a set of improvements to Interstate 805 (I-805), including the addition of two reversible High Occupancy Vehicle (HOV) lanes between SR 905 and SR 54 at a cost of $212 million (less $10 million for environmental and design work that has already occurred); and

WHEREAS, while the 2030 RTP identified SR 125 as part of the transportation network, the TransNet Extension Ordinance did not anticipate funding for that project as the project was previously funded by the private sector, therefore the amendment would include the SR 125 toll road asset acquisition as a project eligible for TransNet funding; and

WHEREAS, under CEQA Guidelines Section 15162, when an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162(a)(1).)

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162(a)(2).)

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

   a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

   b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;

   c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. (CEQA Guidelines §15162(a)(3)); and

WHEREAS, an agency may not require a further EIR unless it finds on the basis of substantial evidence that one of the three above listed exceptions to the rule against requiring a further EIR exists; and

WHEREAS, SANDAG has prepared an Addendum to the 2030 RTP EIR to document its decision that a subsequent EIR is not required; and

WHEREAS, the Addendum contains a detailed and comprehensive review of the changes to the 2030 RTP which will occur as a result of the amendment to the TransNet Extension Ordinance, specifically analyzing the environmental effects of the swap of funds currently planned for I-805 improvements to instead be used for the purchase of the SR 125 assets; and

WHEREAS, based on this detailed and comprehensive review, the Addendum concludes that the proposed changes would not trigger any of the conditions set forth in CEQA Guidelines Section 15162;

NOW THEREFORE BE IT RESOLVED that the Board finds that the amendment to the TransNet Extension Ordinance would not trigger any of the conditions set forth in CEQA Guidelines Section 15162; and

BE IT FURTHER RESOLVED, that pursuant to CEQA Guidelines Section 15164 the Board finds that none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred and therefore that an Addendum is appropriate; and

BE IT FURTHER RESOLVED, that the Addendum and the Board’s findings in support of the decision in this resolution are attached hereto and incorporated fully by this reference; and

BE IT FURTHER RESOLVED, that the Board approves the Addendum based on its finding that no revisions to the 2030 RTP FEIR are required.

PASSED AND ADOPTED on 16th day of December 2011.
December 16, 2011

San Diego Association of Governments
SANDAG
401 B Street
San Diego, CA 921010

Dear SANDAG Board of Directors,

On behalf of the League of California Cities, San Diego County Division Executive Committee Officers, I am pleased to offer our support for the purchase of State Route 125 by the San Diego Association of Governments (SANDAG).

SANDAG has done its due diligence in exploring, negotiating and determining the benefit of the purchase of State Route 125. After many months of consideration and negotiation, the agreement reached to purchase State Route 125 is a win-win. It is a win for SANDAG as it will continue to operate an vital transportation corridor and most importantly a win for the region in that SANDAG will bring forward better service at a lower cost for toll road users, the road will continue to be in use and in the position to accommodate future growth in South County and offer reliability for current and future users.

For these reasons, the League of California Cities, San Diego County Division Executive Committee Officers support the proposal for SANDAG to purchase State Route 125.

Sincerely,

Dave Allan
President, San Diego Division
League of California Cities
Council Member, City of La Mesa
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