Transportation Committee Agenda
Friday, November 13, 2020
9 a.m. to 12 noon
**Teleconference Meeting**

Agenda Highlights

- **Update on the Coast, Canyons, and Trails Comprehensive Multimodal Corridor Plan**
- **Port of San Diego: Draft Port Master Plan Update**

MEETING ANNOUNCEMENT AMIDST COVID-19 PANDEMIC:

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Mission Statement

The 18 cities and county government are SANDAG serving as the forum for regional decision-making. SANDAG builds consensus; makes strategic plans; obtains and allocates resources; plans, engineers, and builds public transit; and provides information on a broad range of topics pertinent to the region's quality of life.

San Diego Association of Governments · 401 B Street, Suite 800, San Diego, CA 92101-4231
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Transportation Committee
Friday, November 13, 2020

Item No.          Action
+1. Approval of Meeting Minutes
The Transportation Committee is asked to review and approve the minutes from its October 16, 2020, meeting.

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 Transportation Committee on any issue within the jurisdiction of the Committee that is not on this agenda. Other public comments will be heard during the items under the heading “Reports.”

3. Executive Director’s Report
Hasan Ikhrata, SANDAG
An update on key programs, projects, and agency initiatives, including the agency’s response to COVID-19, San Diego Forward: The 2021 Regional Plan, and the Airport Connectivity project, will be presented.

Reports

+4. Update on the Coast, Canyons, and Trails Comprehensive Multimodal Corridor Plan
Karen Jewel, Caltrans
An overview on the Coast, Canyons, and Trails Comprehensive Multimodal Corridor Plan will be presented.

+5. TransNet Major Corridors Program: Short-Term Funding Needs and Considerations
Ray Major and Dawn Vettese, SANDAG
An overview on projected cashflow needs for the TransNet Major Corridors program and a preview of proposed financial mitigation strategies that the Board of Directors will be asked to consider in the coming months will be presented.
6. **Transportation Infrastructure Finance and Innovation Act Federal Credit Assistance: Mid-Coast Corridor Transit Project**  
*André Douzdjian and Dawn Vettese, SANDAG*

The Transportation Committee is asked to recommend that the Board of Directors, acting as the Regional Transportation Commission (RTC), approve a Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan Agreement and associated Direct Agreements to secure a replacement loan for the Mid-Coast Corridor Transit Project and the Tenth Supplemental Indenture, providing for the issuance of a Junior Subordinate Sales Tax Revenue Bond evidencing the RTC obligations under the TIFIA Loan Agreement. Additionally, the Transportation Committee is asked to recommend that the Board, also acting as the RTC:

1. approve the replacement TIFIA financing method for the Mid-Coast Corridor Transit Project;
2. adopt RTC Resolution No. RTC-2021-02, authorizing the Executive Director to execute the TIFIA Loan Agreement and Direct Agreements, and the Tenth Supplemental Indenture; and
3. adopt RTC Resolution No. RTC-2021-03, authorizing the Executive Director to execute the SANDAG Direct Agreement.

7. **North Coast Corridor Program: Status Update**  
*Allan Kosup, Caltrans*

An overview on the North Coast Corridor program will be presented.

8. **Port of San Diego: Draft Port Master Plan Update**  
*Lesley Nishihira, Port of San Diego*

An overview on the Port of San Diego’s Revised Draft Port Master Plan Update, its revised Draft Mobility Element, as well as mobility-related planning improvements identified in the planning districts around San Diego Bay will be presented.

9. **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.

10. **Upcoming Meetings**

The next Transportation Committee meeting is scheduled for Friday, December 11, 2020, at 9 a.m.

11. **Adjournment**
1. Approval of Meeting Minutes (Approve)

Upon a motion by Commissioner Gary Bonelli (Port of San Diego), and a second by Deputy Mayor Jack Feller (North County Transit District), the Transportation Committee was asked to review and approve the minutes from its September 4, 2020, meeting.

The motion passed.

Yes: Chair Desmond, Vice Chair Bill Sandke (South County), Johanna Schiavoni (San Diego County Regional Airport Authority), Councilmember Monica Montgomery Steppe (City of San Diego), Councilmember Jennifer Mendoza (East County), Mayor Alejandra Sotelo-Solis (Metropolitan Transit System), Mayor Jewel Edson (North County Coastal), Mayor Paul McNamara (North County Inland), Deputy Mayor Jack Feller (North County Transit District), and Commissioner Bonelli.

No: None.

Abstain: None.

Absent: None.

2. Public Comments/Communications/Member Comments

Gustavo Dallarda, Caltrans, provided updates on Caltrans projects and programs, including Pedestrian Safety Month.

3. Executive Director’s Report (Discussion)

Executive Director Hasan Ikhrata presented an update on key programs, projects, and agency initiatives, including the SANDAG Audit action plan, the rescheduling of the Rancho Lilac Workshop, and the passage of Assembly Bill 2731.

Action: Discussion only.

4. Specialized Transportation Grant Program: Proposed 2020 Program Management Plan (Adopt)

The Transportation Committee was asked to adopt the 2020 Program Management Plan.

Action: Adopt.

5. Specialized Transportation Grant Program: Quarterly Status Update

This report provided an update on progress made by Specialized Transportation Grant Program recipients from October 1, 2019, through June 30, 2020.

Action: Information only.
Action: Upon a motion by Mayor Sotelo-Solis, and a second by Vice Chair Sandke, the Transportation Committee voted on approval of Consent Item Nos. 4 and 5.

The motion passed.

Yes: Chair Desmond, Vice Chair Sandke, Johanna Schiavoni, Councilmember Montgomery Steppe, Councilmember Mendoza, Mayor Sotelo-Solis, Mayor Edson, Mayor McNamara, Deputy Mayor Feller, and Commissioner Bonelli.

No: None.

Abstain: None.

Absent: None.

Reports

7. Proposed FY 2021 Program Budget Amendment: Interstate 5/Gilman Drive Bridge Project (Approve)

The Transportation Committee was asked to approve an amendment to the FY 2021 Program Budget to add $400,000 in UC San Diego funds to the Interstate 5/Gilman Drive Bridge project (Capital Improvement Project No. 1200508) for construction of UC San Diego betterments.

Action: Upon a motion by Chair Desmond, and a second by Mayor Sotelo-Solis, the Transportation Committee voted on approval of the budget amendment.

The motion passed.

Yes: Chair Desmond, Vice Chair Sandke, Johanna Schiavoni, Councilmember Montgomery Steppe, Councilmember Mendoza, Mayor Sotelo-Solis, Mayor Edson, Mayor McNamara, Deputy Mayor Feller, and Commissioner Bonelli.

No: None.

Abstain: None.

Absent: None.

6. Update on the South Bay to Sorrento Comprehensive Multimodal Corridor Plan (Discussion/Possible Action)

Coleen Clementson, Director of Regional Planning; Jennifer Williamson, Principal Regional Planner; and Karen Jewel, Caltrans Central Corridor Director, presented an overview on the South Bay to Sorrento Corridor Comprehensive Multimodal Corridor Plan (CMCP).

Action: Upon a motion by Vice Chair Sandke, and a second by Commissioner Bonelli, the Transportation Committee voted on increasing the study area to include the existing State Route 75 right-of-way, including the Cays and Coronado Bridge, and State Route 282 (3rd and 4th Street Couplet) in the CMCP.

The motion passed.

Yes: Chair Desmond, Vice Chair Sandke, Johanna Schiavoni, Councilmember Montgomery Steppe, Councilmember Mendoza, Mayor Sotelo-Solis, Mayor Edson, Mayor McNamara, Deputy Mayor Feller, and Commissioner Bonelli.

No: None.

Abstain: None.

Absent: None.
8. **Continued Public Comments**

None.

9. **Upcoming Meetings**

The next Transportation Committee meeting is scheduled for Friday, November 13, 2020, at 9 a.m.

10. **Adjournment**

Chair Desmond adjourned the meeting at 11:07 a.m.
## Confirmed Attendance at SANDAG Transportation Committee Meeting

October 16, 2020

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<th>Name</th>
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<td>Mayor Paul McNamara</td>
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<td>Mayor Judy Ritter</td>
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<td>Southern California Tribal Chairmen’s Association</td>
<td>Erica Pinto</td>
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<td>Fred Nelson, Jr.</td>
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<td>Matt Tucker</td>
<td>NCTD</td>
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<td>Sharon Cooney</td>
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Update on the Coast, Canyons, and Trails Comprehensive Multimodal Corridor Plan

Overview

On September 27, 2019, the Board of Directors allocated $40 million over five years to complete Comprehensive Multimodal Corridor Plans (CMCP). These plans aim to inform decision-makers by providing a framework for an integrated transportation system by working with stakeholders and incorporating local, state, and federal policy considerations. The Coast, Canyons, and Trails (CC&T) was identified as one of the five CMCP corridors to be completed in the first half of the five-year program.

The CC&T (formerly Sea to Santee) study area includes the cities of San Diego, Santee, and El Cajon as well as a small portion of San Diego County. Major transportation facilities in the study area include State Route 52 (SR 52), portions of State Route 67 (SR 67), and their connections with Interstate 5 (I-5), Interstate 805 (I-805), State Route 163 (SR 163), Interstate 15 (I-15) and State Route 125 (SR 125). There are a few major arterials located throughout the study area. Existing transit services include the Green Line Trolley, Orange Line Trolley, and multiple local bus lines. An overview of the CMCP program and status on the five Phase I CMCPs was provided to the Transportation Committee in February and June 2020.

Key Considerations

The San Diego Association of Governments (SANDAG) and Caltrans are developing the CC&T CMCP in collaboration with the cities of San Diego, Santee, El Cajon; the County of San Diego; the Metropolitan Transit System; and the U.S. Marine Corps. Representatives from each organization make up the project team.
In June 2020, SANDAG shared the CC&T issues and opportunities statement with the Transportation Committee. The statement identified that there are high levels of congestion on the segment of SR 52 between Santee and San Diego in the westbound direction in the morning, and in the eastbound direction in the afternoon. Speeds on SR 52 are negatively affected by the terrain in the portion of the highway that travels through the Mission Trails Regional Park. Parallel local streets and arterial routes do not exist adjacent to the freeway through the park and the closest parallel route is Interstate 8 (I-8) south of SR 52. In addition, between I-805 and I-15, both morning and afternoon commutes see congestion due to the two Tier One job centers in the vicinity – Kearny Mesa and University City/Sorrento Valley. There is a lack of transit, Managed Lanes, and interconnected bikeways in the corridor to connect housing and employment centers. Portions of the route include bicycle travel but lack connections to the employment centers and freeway crossings. Intelligent Transportation Systems (ITS) have also been identified as an important need in the corridor.

Although currently SR 52 is not a heavy goods movement route, it services industrial areas located within the cities of El Cajon and Santee. It is anticipated that SR 125 to SR 52 would provide an alternate route for resiliency in the region’s local goods movement network originating from the Otay Mesa area. Also, there are two Regional landfills along the corridor with continuous truck travel throughout the day.

The CC&T corridor includes a broad cross section of mobility issues. This corridor connects the two Tier One Employment Centers mentioned above with East San Diego County and activity centers including Marine Corps Air Station Miramar, shopping centers, and Tier 2 employment centers (Santee/El Cajon).

Analysis completed to date by the project team includes defining the study area and brainstorming exercises that identified initial concerns and observations. A more detailed review of the data and transportation deficiencies in the corridor will be discussed during the presentation.

Over the next several months, the project team will conduct community outreach and work with stakeholders to develop integrated transportation solutions to meet the CMCP Guidelines. Planned upcoming work efforts include the use of GIS mapping analysis, Activity Based Modeling, and conceptual analysis of alternatives to better inform the decision-making process. These analyses will be used to develop the set of solutions for the corridor that can address the identified issues and opportunities. The final CMCP document is scheduled for completion in the Fall of 2021.

**Next Steps**

Caltrans and SANDAG will provide periodic updates on this project at future meetings.

**Coleen Clementson, Director of Regional Planning**

Key Staff Contact: Karen Jewel, (619) 688-6738, karen.jewel@dot.ca.gov
Brooke Emery, (858) 688-1592, brooke.emery@dot.ca.gov
Alex Estrella, (619) 699-1928, alex.estrella@sandag.org

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1 Employment centers are areas with high densities of employment. The 2019 analysis identified more than 75 employment centers in the San Diego region which are categorized into four tiers based on the number of employees. View the methodology for more information on the analysis and data sources.
Overview

The TransNet Major Corridors program has traditionally relied on bond proceeds, sales tax revenues, and borrowing capacity to not only pay for the local share of projects but also to cover up-front payments required by state and federal funding partners who operate programs on a reimbursed basis.

Based on current revenue projections, staff estimates that $170 million to $220 million will be needed over the next five fiscal years (FY 2021 – 2025) to cover project costs currently included in the SANDAG Program Budget.

Working with SANDAG’s financial advisors, staff has identified a package of strategies that will enable the agency to increase its financial flexibility and enjoy significant interest savings, while meeting its short-term funding commitments under the Major Corridors program.

Key Considerations

There are two main drivers for why additional funding will be needed to cover project costs over the next five years:

- Capital construction for large projects continues at either high levels of production or at a faster rate than originally anticipated, resulting in higher than anticipated monthly expenditures.
- Many SANDAG projects are paid for with funding programs that operate on a reimbursable basis from federal and state sources, sometimes many months and close to a year in arrears. This misalignment between expenditures and reimbursements results in the agency needing to front funds during this time.

Previously, the agency was able carry these up-front expenditures with its own funds due to the availability of bond proceeds or larger cash balances. These bond proceeds and cash balances have been largely spent down to complete Major Corridors program early action projects that include “lockbox” projects carried over from the first sales tax ordinance and projects prioritized by the Board of Directors to advance through debt financing. Additionally, per Board approval, the Major Corridors program has loaned funding to the Environmental Mitigation Program (EMP) to secure needed mitigation credits to construct priority projects.

The Major Corridors program is transitioning from a debt-financed program to a pay-as-you-go program, which limits SANDAG’s ability to accelerate projects. At the same time, uncertainty with federal, state, and local TransNet funds due to recession and economic impacts from the pandemic point to higher level of risk and the need for the agency to strengthen its financial position to meet this uncertainty.
Next Steps

The Board will be asked to consider the following package of strategies, which are detailed in Attachment 1, in the coming months.

- Refinance existing bonds to lower borrowing costs and issue new bonds.
- Release existing funds in the Series 2008 debt service reserve fund.
- Execute inter-fund loans between TransNet programs (Local EMP to EMP).
- Increase SANDAG’s commercial paper program.

It should be noted that some combination of borrowing is likely to be required, whether long-term bond issuances made possible by refinancing existing bonds to lower rates, agency inter-fund loans, or short-term Commercial Paper. While the Board may choose to limit the delay of start of work by increasing the amount of borrowing, staff recommends balancing a prudent use of its financial tools to address any other unforeseen challenges in the future by managing its financial commitments on the project delivery side and slowing the start of work on some projects.

If the Board chooses to pursue all of the options listed above, there likely will remain a funding need of $40 to $90 million in the short term. As part of the FY 2022 Budget development process, staff will work with the Board, starting in February or March 2021, to identify any project delays that would be needed based on the latest revenue projections available at that time. Staff will continue to work with SANDAG’s financial advisor, PFM, to refine strategies and return to the Board with specific recommendations and requests for approval in the next few months, with the exception of the TIFIA loan which is proceeding on an accelerated schedule and is included in this meeting agenda.

José Nuncio, TransNet Department Director
Key Staff Contact:  Dawn Vettese, (619) 595-5346, dawn.vettese@sandag.org
Attachment:  1. PFM Financial Advisors LLC Memorandum
Memorandum

To: SANDAG Board of Directors
From: PFM Financial Advisors LLC
RE: FY2021 Financing Considerations

INTRODUCTION

PFM Financial Advisors LLC ("PFM"), as the financial advisor to SANDAG, works with SANDAG to evaluate program financing needs, to identify refinancing opportunities and to evaluate borrowing options to meet TransNet program capital funding needs. Based upon recently updated project cost and program revenue estimates, SANDAG staff has identified cashflow needs – i.e., expected project expenditures exceeding expected project revenues – of approximately $170 million to $220 million over the next five years. SANDAG has been successful in advancing projects and meeting cashflow needs through bond financing in the past and has approximately $2.3 billion in outstanding bonds. The strong county-wide sales tax revenue supports this amount of debt and the associated “AAA” ratings received by Standard and Poor’s and Fitch rating agencies on the senior lien bonds. In recent Board discussions, staff have noted that SANDAG is moving into the pay-go portion of the program, relying on current revenues and using new debt issuance to a lesser degree.

In this context, we have examined a wide range of options to address the $170 million to $220 million cashflow need, rather than simply assume new bond issuance. The range of options include the following:

• Refinance existing bonds to lower borrowing costs and create new capacity (issue new bonds) for existing projects
• Release existing funds in the Series 2008 debt service reserve fund for projects
• Execute inter-fund loans between TransNet programs to support temporary cash shortfalls
• Increase SANDAG’s commercial paper program to support temporary cash shortfalls
• Delay some projects to reduce the long-term borrowing needs (approximately 5 percent of budgeted expenditures through FY 2025)

As an order of magnitude, given the currently low interest rates, debt service savings from refinancing some of SANDAG’s existing debt can be used to support approximately $113 million of new bond proceeds to advance $113 million of projects without increasing total debt service costs. Beyond that, additional strategies will need to be considered.

This memorandum discusses current bond market conditions, an overview of TransNet borrowing needs, and evaluates the options listed above.

MARKET UPDATE

For the purpose of tracking tax-exempt municipal interest rates over time, we use the AAA Municipal Market Data Index ("AAA MMD"), which serves as the benchmark against which most tax-exempt,
fixed-rate transactions are priced. For the purpose of tracking taxable municipal interest rates over time, we use the U.S. Treasury rates, which serves as the benchmark against which taxable, fixed-rate transactions are priced. The chart below tracks the 30-year MMD rate as well as the 30-year Treasury rate since 2000.

Both tax-exempt and taxable rates declined dramatically over the last few months with record lows in August 2020. The rates have since ticked up from their lowest levels. That said, the current market still provides a very favorable environment for borrowing. Investors have been flocking to safe investment options such as municipal bonds in the wake of the COVID-19 pandemic, uncertainty in economic recovery and the upcoming presidential election and related volatility. That coupled with a favorable supply-demand dynamic supports continued municipal demand for both tax-exempt and taxable debt.

As shown in the chart below the tax-exempt interest rates are low with the 30-year MMD rate at 1.72%, 2.22% lower than its twenty-year average. The taxable rates are also low with the 30-year Treasury rate at 1.53%, 2.37% lower than its twenty-year average (all rates as of October 17, 2020).
SANDAG’S OUTSTANDING DEBT OVERVIEW

SANDAG, serving as the San Diego County Regional Transportation Commission, has $2.315 billion of outstanding long-term debt, including the Series 2018A Short Term Notes (Notes) issued in April 2018. Of the total debt portfolio, 17 percent consists of synthetic, fixed-rate bonds (variable rate bonds hedged with fixed-payer interest rate swaps), and the remaining 83 percent are fixed-rate bonds. The Transportation Infrastructure Finance and Innovation Act (TIFIA) loan is undrawn and does not represent an obligation of SANDAG at this time. A summary of the outstanding bonds is tabulated and graphically presented below.

SANDAG has debt obligations on three separate lien levels, providing different priority of sales tax payment to investors based on their respective lien level. The Series 2008A through 2020A Bonds are senior lien obligations and are paid first. The 2018A Notes and commercial paper obligations are paid second as subordinate lien obligations. SANDAG’s TIFIA loan, when drawn upon, will be on the third lien, junior subordinate lien obligation.

SANDAG’s senior lien debt service is generally level in aggregate, in the range of $103.7 million to $106.7 million annually. The 2018A Notes are short-term obligations, with a final maturity in April 2021. Assuming SANDAG draws on the TIFIA loan as expected, to complete the Mid-Coast Corridor Transit Project, SANDAG’s aggregate debt service (including all three liens) will peak at $165 million in FY 2045. Senior lien debt service coverage, using sales tax receipts of $305.9 million for the 12 months ending June 30, 2020, is 2.86 times. Meaning, for every $1 of senior lien debt

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<th>Outstanding Par</th>
<th>Call Option</th>
<th>Final Maturity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008A</td>
<td>Tax-Exempt</td>
<td>Variable Rate</td>
<td>$150,000,000</td>
<td>$100,575,000</td>
<td>Current</td>
<td>4/1/2038</td>
</tr>
<tr>
<td>2008B</td>
<td>Tax-Exempt</td>
<td>Variable Rate</td>
<td>$150,000,000</td>
<td>$100,575,000</td>
<td>Current</td>
<td>4/1/2038</td>
</tr>
<tr>
<td>2008C</td>
<td>Tax-Exempt</td>
<td>Variable Rate</td>
<td>$150,000,000</td>
<td>$100,575,000</td>
<td>Current</td>
<td>4/1/2038</td>
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<tr>
<td>2008D</td>
<td>Tax-Exempt</td>
<td>Variable Rate</td>
<td>$150,000,000</td>
<td>$100,575,000</td>
<td>Current</td>
<td>4/1/2038</td>
</tr>
<tr>
<td>2010A</td>
<td>Taxable</td>
<td>Fixed Rate</td>
<td>$338,960,000</td>
<td>$338,960,000</td>
<td>Make-Whole</td>
<td>4/1/2048</td>
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<tr>
<td>2012A</td>
<td>Tax-Exempt</td>
<td>Fixed Rate</td>
<td>$420,585,000</td>
<td>$40,935,000</td>
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<td>4/1/2048</td>
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<tr>
<td>2014A</td>
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<td>Fixed Rate</td>
<td>$350,000,000</td>
<td>$170,420,000</td>
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<td>4/1/2048</td>
</tr>
<tr>
<td>2016A</td>
<td>Tax-Exempt</td>
<td>Fixed Rate</td>
<td>$325,000,000</td>
<td>$307,880,000</td>
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<td>4/1/2048</td>
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<tr>
<td>2019A</td>
<td>Taxable</td>
<td>Fixed Rate</td>
<td>$442,620,000</td>
<td>$442,620,000</td>
<td>4/1/2030</td>
<td>4/1/2048</td>
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<tr>
<td>2020A</td>
<td>Taxable</td>
<td>Fixed Rate</td>
<td>$74,820,000</td>
<td>$74,820,000</td>
<td>4/1/2030</td>
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<tr>
<td>2018A Notes</td>
<td>Tax-Exempt</td>
<td>Fixed-Rate</td>
<td>$537,480,000</td>
<td>$537,480,000</td>
<td>Non-Callable</td>
<td>4/1/2021</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>$2,315,415,000</td>
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Summary of TIFIA Loan Commitment

<table>
<thead>
<tr>
<th>Series</th>
<th>Tax Status</th>
<th>Coupon Type</th>
<th>Original Issue Size</th>
<th>Outstanding Par</th>
<th>Call Option</th>
<th>Final Maturity</th>
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<tbody>
<tr>
<td>TIFIA*</td>
<td>Taxable</td>
<td>Fixed-Rate</td>
<td>$537,484,439</td>
<td>$0</td>
<td>Anytime</td>
<td>10/1/2045</td>
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<td><strong>Total with Loan Commitment</strong></td>
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<td></td>
<td>$2,315,415,439</td>
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</table>

*The TIFIA loan will be drawn upon in 2021 to retire the 2018A Notes. The simultaneous draw on the TIFIA loan and the retirement of the 2018A Notes will have an offsetting impact and will not increase the amount of total obligations outstanding.
service, SANDAG received $2.86 of sales tax revenue providing ample coverage, supporting SANDAG senior lien triple-A ratings. Total coverage, when comparing the annual revenues for the 12 months ending June 30, 2020, to peak debt service (including assumed debt service on the undrawn TIFIA loan) in FY 2045, is 1.85 times.

OVERVIEW OF REFUNDING OPPORTUNITIES AND NEW BORROWING CAPACITY

SANDAG staff has recently updated project costs and state, federal and local revenue estimates to determine program capacity and cashflow needs for the next five years. Based upon these updates, SANDAG staff has identified approximately $170 million to $220 million in program cashflow needs. As part of the solution to meet this shortfall, one strategy is to refinance existing bonds at lower rates so that the savings from the refinancing can offset costs with the new borrowing for projects. The refunding opportunities include the following:

- Refund the existing undrawn federal TIFIA loan
- Refund the outstanding series 2014A Bonds
- Refinance the Series 2018A short-term Notes

Each cost saving strategy is individually discussed below and compared to the amount of new bond proceeds that the savings can support. Savings with the potential for new-money borrowing is presented in a comprehensive manner to estimate the net impact on total debt service costs over time.

Refund the Existing Undrawn Federal TIFIA Loan

SANDAG currently has an outstanding TIFIA loan with the US DOT in the amount of $537,484,439. The loan was executed in 2017 and has an interest rate of 2.72 percent, which reflected the 30-year US Treasury rate at that time. Currently, the 30-year US Treasury rate is approximately 1.50 percent. SANDAG and the financing team have been working with the TIFIA Office to renegotiate a lower interest rate to take advantage of the lower rates in the current market. TIFIA is prepared to lower the rate and has accepted SANDAG’s Letter of Interest (LOI) to execute an amended TIFIA loan agreement to achieve this outcome. An estimated new loan repayment assuming a rate of 1.50 percent and the associated debt service savings is presented below.
By lowering the rate from 2.72 percent to 1.50 percent, SANDAG can lower total borrowing costs on the TIFIA loan by approximately $156.2 million: approximately $7.4 million annually through 2046. The TIFIA loan agreement does not have SANDAG beginning loan repayment until 2026. Consequently, these debt service savings will begin in 2026 and extend through the final repayment of the loan, in 2046. Final savings will be dependent upon prevailing interest rates at the time the amended loan is executed early next year.

Refund the Outstanding Series 2014A Bonds

SANDAG currently has $170.4 million in outstanding tax exempt, Series 2014A bonds. Of this amount, approximately $146 million are callable on their upcoming call date of April 1, 2024. Under current tax law, SANDAG may refund these bonds with taxable bonds in advance of the call date. In order to do so, SANDAG would issue refunding bonds and place the proceeds in escrow until 2024. SANDAG refunded a portion of these 2014A bonds as a taxable advance refunding in 2019 to achieve debt service savings. As interest rates have further declined through 2020, there is the opportunity to refund the remaining portion of the 2014A bonds to capture the remaining debt service savings. Under current market conditions, SANDAG can achieve approximately $24.7 million in debt service savings, or $22.5 million in present value (PV) terms. The savings equates to approximately

### TIFIA Loan Repayment with Lower Interest Rate

**1.5% Interest**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Principal</th>
<th>Interest</th>
<th>Debt Service</th>
<th>Savings</th>
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</thead>
<tbody>
<tr>
<td>2026</td>
<td>13,650,000</td>
<td>8,319,978</td>
<td>21,967,978</td>
<td>7,442,966</td>
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<tr>
<td>2027</td>
<td>14,750,000</td>
<td>8,109,114</td>
<td>22,859,114</td>
<td>7,440,776</td>
</tr>
<tr>
<td>2028</td>
<td>15,880,000</td>
<td>7,894,356</td>
<td>23,774,356</td>
<td>7,441,348</td>
</tr>
<tr>
<td>2029</td>
<td>17,090,000</td>
<td>7,630,359</td>
<td>24,720,359</td>
<td>7,438,840</td>
</tr>
<tr>
<td>2030</td>
<td>18,310,000</td>
<td>7,380,001</td>
<td>25,690,001</td>
<td>7,441,210</td>
</tr>
<tr>
<td>2031</td>
<td>19,590,000</td>
<td>7,100,564</td>
<td>26,690,564</td>
<td>7,442,038</td>
</tr>
<tr>
<td>2032</td>
<td>20,915,000</td>
<td>6,810,950</td>
<td>27,725,950</td>
<td>7,438,310</td>
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<tr>
<td>2033</td>
<td>22,315,000</td>
<td>6,473,784</td>
<td>28,788,784</td>
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<tr>
<td>2034</td>
<td>23,740,000</td>
<td>6,142,744</td>
<td>29,882,744</td>
<td>7,439,319</td>
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<tr>
<td>2035</td>
<td>25,230,000</td>
<td>5,781,072</td>
<td>31,011,072</td>
<td>7,439,051</td>
</tr>
<tr>
<td>2036</td>
<td>26,765,000</td>
<td>5,404,155</td>
<td>32,169,155</td>
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<tr>
<td>2037</td>
<td>28,385,000</td>
<td>4,982,386</td>
<td>33,367,386</td>
<td>7,442,172</td>
</tr>
<tr>
<td>2038</td>
<td>30,045,000</td>
<td>4,557,384</td>
<td>34,602,384</td>
<td>7,440,644</td>
</tr>
<tr>
<td>2039</td>
<td>31,775,000</td>
<td>4,100,202</td>
<td>35,875,202</td>
<td>7,438,576</td>
</tr>
<tr>
<td>2040</td>
<td>33,560,000</td>
<td>3,621,702</td>
<td>37,181,702</td>
<td>7,441,235</td>
</tr>
<tr>
<td>2041</td>
<td>35,430,000</td>
<td>3,102,089</td>
<td>38,532,089</td>
<td>7,439,575</td>
</tr>
<tr>
<td>2042</td>
<td>37,355,000</td>
<td>2,567,859</td>
<td>39,922,859</td>
<td>7,438,300</td>
</tr>
<tr>
<td>2043</td>
<td>39,350,000</td>
<td>2,000,092</td>
<td>41,350,092</td>
<td>7,442,558</td>
</tr>
<tr>
<td>2044</td>
<td>41,425,000</td>
<td>1,403,770</td>
<td>42,828,770</td>
<td>7,438,637</td>
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<tr>
<td>2045</td>
<td>43,575,000</td>
<td>771,366</td>
<td>44,346,366</td>
<td>7,440,374</td>
</tr>
<tr>
<td>2046</td>
<td>45,800,000</td>
<td>141,386</td>
<td>47,211,386</td>
<td>7,442,587</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>557,935,000</td>
<td>104,293,311</td>
<td>662,228,311</td>
<td>156,249,951</td>
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</tbody>
</table>
15.4% of PV savings when PV savings is divided by the $146 million of bonds to be refunded. This is strong savings from a PV metric and exceeds the minimum 3% target established in SANDAG’s debt policy, Board Policy No. 037. A summary of the bond sources and uses and the potential savings is detailed below.

### Series 2021 Refunding Bonds
#### Sources and Uses

<table>
<thead>
<tr>
<th>2021_REF</th>
<th>Par Amount</th>
<th>171,505,000</th>
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<td>Premium</td>
<td>-</td>
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<tr>
<td>Prior Funds on Hand</td>
<td>1,219,708.33</td>
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<tr>
<td>Escrow Deposit</td>
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<tr>
<td>COI</td>
<td>745,833</td>
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<td>Total</td>
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### Series 2021 Refunding Bonds
#### Annual Debt Service Schedule

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<th>FY</th>
<th>2021_REF</th>
<th>Principal</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/30/2021</td>
<td>-</td>
<td>1,007,796</td>
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</tr>
<tr>
<td>6/30/2022</td>
<td>-</td>
<td>3,023,388</td>
<td></td>
</tr>
<tr>
<td>6/30/2023</td>
<td>-</td>
<td>3,023,388</td>
<td></td>
</tr>
<tr>
<td>6/30/2024</td>
<td>-</td>
<td>3,023,388</td>
<td></td>
</tr>
<tr>
<td>6/30/2025</td>
<td>10,385,000</td>
<td>3,023,388</td>
<td></td>
</tr>
<tr>
<td>6/30/2026</td>
<td>10,450,000</td>
<td>2,957,962</td>
<td></td>
</tr>
<tr>
<td>6/30/2027</td>
<td>10,545,000</td>
<td>2,863,912</td>
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<tr>
<td>6/30/2028</td>
<td>10,650,000</td>
<td>2,758,462</td>
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<tr>
<td>6/30/2029</td>
<td>10,780,000</td>
<td>2,628,532</td>
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<tr>
<td>6/30/2030</td>
<td>10,925,000</td>
<td>2,480,846</td>
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<tr>
<td>6/30/2031</td>
<td>11,090,000</td>
<td>2,320,249</td>
<td></td>
</tr>
<tr>
<td>6/30/2032</td>
<td>11,270,000</td>
<td>2,140,591</td>
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<tr>
<td>6/30/2033</td>
<td>11,460,000</td>
<td>1,946,747</td>
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<tr>
<td>6/30/2034</td>
<td>11,670,000</td>
<td>1,738,175</td>
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</tr>
<tr>
<td>6/30/2035</td>
<td>11,895,000</td>
<td>1,514,111</td>
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<tr>
<td>6/30/2036</td>
<td>12,125,000</td>
<td>1,279,779</td>
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<tr>
<td>6/30/2037</td>
<td>12,435,000</td>
<td>971,804</td>
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<tr>
<td>6/30/2038</td>
<td>12,750,000</td>
<td>655,955</td>
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<tr>
<td>6/30/2039</td>
<td>13,075,000</td>
<td>332,105</td>
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</tr>
<tr>
<td>6/30/2040</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>6/30/2041</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Total</td>
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### Series 2021 Refunding Bonds
#### Cash Flow Savings

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<thead>
<tr>
<th>FY</th>
<th>Prior Debt Service</th>
<th>Refunding Debt Service</th>
<th>Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/30/2021</td>
<td>2,439,417</td>
<td>1,007,796</td>
<td>1,431,621</td>
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<tr>
<td>6/30/2022</td>
<td>7,318,250</td>
<td>3,023,388</td>
<td>4,294,863</td>
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<tr>
<td>6/30/2023</td>
<td>7,318,250</td>
<td>3,023,388</td>
<td>4,294,863</td>
</tr>
<tr>
<td>6/30/2024</td>
<td>7,318,250</td>
<td>3,023,388</td>
<td>4,294,863</td>
</tr>
<tr>
<td>6/30/2025</td>
<td>14,103,250</td>
<td>13,408,388</td>
<td>694,863</td>
</tr>
<tr>
<td>6/30/2026</td>
<td>14,099,000</td>
<td>13,407,962</td>
<td>691,038</td>
</tr>
<tr>
<td>6/30/2027</td>
<td>14,103,000</td>
<td>13,408,912</td>
<td>694,088</td>
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<tr>
<td>6/30/2028</td>
<td>14,099,000</td>
<td>13,408,462</td>
<td>690,538</td>
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<tr>
<td>6/30/2029</td>
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<td>13,408,532</td>
<td>692,968</td>
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<tr>
<td>6/30/2030</td>
<td>14,099,250</td>
<td>13,405,846</td>
<td>693,404</td>
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<tr>
<td>6/30/2031</td>
<td>14,101,500</td>
<td>13,410,249</td>
<td>691,252</td>
</tr>
<tr>
<td>6/30/2032</td>
<td>14,102,000</td>
<td>13,410,591</td>
<td>691,410</td>
</tr>
<tr>
<td>6/30/2033</td>
<td>14,099,750</td>
<td>13,406,747</td>
<td>693,004</td>
</tr>
<tr>
<td>6/30/2034</td>
<td>14,103,750</td>
<td>13,408,175</td>
<td>695,576</td>
</tr>
<tr>
<td>6/30/2035</td>
<td>14,102,500</td>
<td>13,409,111</td>
<td>693,390</td>
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<tr>
<td>6/30/2036</td>
<td>14,100,000</td>
<td>13,404,779</td>
<td>695,221</td>
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<tr>
<td>6/30/2037</td>
<td>14,100,000</td>
<td>13,406,804</td>
<td>693,196</td>
</tr>
<tr>
<td>6/30/2038</td>
<td>14,101,000</td>
<td>13,405,955</td>
<td>695,045</td>
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<tr>
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<td>13,407,105</td>
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<tr>
<td>Total</td>
<td>235,911,167</td>
<td>211,195,573</td>
<td>24,715,593</td>
</tr>
</tbody>
</table>

The timing of the debt service savings on 2014A bond refunding complements the timing of cashflow savings on the TIFIA loan. While cashflow savings on the TIFIA loan begin in 2026, $14 million in savings for the 2014A bonds will be concentrated between 2021 and 2024: providing some cashflow flexibility during those years to support projects currently being delivered. Beyond these upfront years, annual debt service will be reduced by at least $690,000 each year through 2039. Final savings are dependent on prevailing interest rates at the time of pricing.
Refinance the Outstanding Series 2018A Short-Term Notes

In 2018, SANDAG issued short-term notes in the amount of $537,480,000 to fund project costs on the Mid Coast Transit Project. Under the existing plan, these short-term notes are going to be “taken out” with a draw on the TIFIA loan on April 1, 2021. While the current TIFIA loan has a rate of 2.72 percent, the short-term notes were issued at a rate of 1.85 percent, saving approximately $5 million per year during the construction period, compared to directly using the TIFIA loan for construction costs.

Under the updated strategy, SANDAG may realize a new TIFIA loan rate of approximately 1.50 percent. There is the possibility under the TIFIA loan agreement to delay the draw on that loan until October 1, 2022 and instead re-issue new short-term notes at an approximate rate of 0.53 percent for the additional 18-month period. Given the low yields in the current market and the expected 4.00 or 5.00 percent coupons to be offered to investors, the transaction would raise approximately $35 million in premium from investors which can be used to pay interest on the notes during the 18-month period. This strategy results in a lower total interest cost and delays the draw on the higher cost TIFIA loan and results in approximately $10.5 million of debt service savings over the life of the TIFIA loan.

Refinancing Savings and New Borrowing Capacity

The refinancing opportunities detailed above substantially reduce annual debt service costs through 2046 on each of the three liens. Commensurate with executing these refinancing strategies, SANDAG could issue new bonds to “absorb” the debt service savings, and generate approximately $113 million in bond proceeds for projects and essentially keep the total debt service costs for the program unchanged. The potential new-money bond issuance would occur in early calendar year 2021 and be issued as senior lien, fixed rate sales tax revenue bonds. A summary of the source and uses for these bonds and the annual debt service (i.e., principal and interest) requirements is presented below.

### Series 2021 New Money Borrowing Sources and Uses

| 2021_NM |  
| Par Amount | 84,765,000 |  
| Premium | 28,606,510 |  
| **113,371,510** |  
| Project Fund | 113,000,000 |  
| COI | 371,510 |  
| **113,371,510** |
Approximately $84.7 million in bonds would be sold in 2021. Given the low yields in the current market and the expected 5.00 percent coupons to be offered to investors, the transaction would raise approximately $28.6 million in premium from investors. Total proceeds of $113.3 million would be used to fund project costs and pay for cost of issuance. Annual debt service (principal and interest) payments would range from $4.2 million to $6.2 million through 2048.

### Comprehensive Impact from All Potential Initiatives

The individual refinancing opportunities discussed above represent a comprehensive strategy that takes advantage of the prevailing low interest rates to refinance existing bonds so that the savings from the refinancing can offset the costs with some new borrowing. By refunding the existing TIFIA loan, the 2014A Bonds and refinancing the 2018A short-term notes, SANDAG generates enough debt service savings to accommodate the new borrowing needs of approximately $113 million. The

<table>
<thead>
<tr>
<th>FY</th>
<th>Principal</th>
<th>2021_NM</th>
<th>Debt Service</th>
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<td>6/30/2021</td>
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<td>1,412,750</td>
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<tr>
<td>6/30/2022</td>
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<td>4,238,250</td>
<td>4,238,250</td>
</tr>
<tr>
<td>6/30/2023</td>
<td>-</td>
<td>4,238,250</td>
<td>4,238,250</td>
</tr>
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Total 84,765,000 78,140,000 162,905,000
primary cost savings comes from refinancing the TIFIA loan, however each individual component contributes meaningful cost savings to the TransNet program.

Appendix A details SANDAG’s total debt service costs on all outstanding and proposed new money bonds before and after these proposed transactions. As detailed in that table, the combination of debt refinancing and new money leads to a net decrease in total debt service of approximately $12 million through 2048. Years 2026 through 2046 result in lower debt service of approximately $1.1 million to $1.8 million annually. There is an increase in 2023 debt service of approximately $5.8 million and in 2025 of approximately $3.5 million. The final two years of the program (2047 and 2048) have increased debt service of approximately $6.2 million in each year. In aggregate, the total change is a decrease of approximately $12 million through 2048.

The total debt service structure changes slightly. Namely, total debt service on the third lien (i.e., the junior subordinate lien) reduces by $156 million with the savings generated by the lower rate on the TIFIA loan. The $113 million in new borrowing is assumed to be issued on the first lien (i.e., the senior lien) where all of SANDAG’s long-term sales tax bonds have been issued to date. This has the impact of lowering debt service coverage on the senior lien from 2.86x to 2.71x. This means for every dollar of debt service on the senior lien, there was $2.71 of sales tax revenue collected in the prior fiscal year (FY 2020). This decrease in senior lien coverage should still support SANDAG’s “AAA” ratings. The team will need to work with the rating agencies to manage that impact. SANDAG also has the option to issue the new borrowing on the subordinate lien for some additional cost, should we see that the “AAA” ratings would be negatively impacted.

ADDITIONAL OPTIONS TO ADDRESS FUNDING NEEDS

With the goal of keeping annual debt service unchanged, refinancing solutions can support an additional $113 million in project funds through a new bond issuance. Beyond these long-term bond issuance options, other alternatives will need to be considered, including the following:

- Release existing funds in the Series 2008 debt service reserve fund for projects
- Execute inter-fund loans between TransNet programs to support temporary cash shortfalls
- Increase SANDAG’s commercial paper program to support temporary cash shortfalls
- Delay some projects to reduce the long-term borrowing needs

Release the Debt Service Reserve Fund from the Series 2008 Bonds for Projects

SANDAG currently has $402.3 million outstanding in Series 2008A, B, C and D variable rate bonds. Those bonds were issued with a debt service reserve fund (DSRF), which is currently funded in the approximate amount of $17 million. In 2008, it was common to issue revenue bonds with a DSRF to satisfy rating agency criteria and support the highest possible ratings on the bonds. Since then, rating agency criteria has evolved and SANDAG has enjoyed “AAA” ratings on their sales tax revenue bonds without funding a DSRF since 2008. With the strong revenue source of the county-wide sales tax, high debt service coverage and the fact that SANDAG funds their debt service payments monthly in advance of payments coming due, rating agencies and investors have concluded that there is no added benefit to holding funds in a separate reserve. Consequently, SANDAG may release the $17 million in bond proceeds that are currently sitting in the 2008 DSRF and allocate those towards projects. The financing team will work with the legal team to attempt to do this without a new
issuance, but rather with a document amendment to the 2008 documents that will result in the release of those funds. This would likely occur in the second quarter of 2021.

**Execute inter-fund loans between TransNet programs**

Some projects may be experiencing short-term revenue delays and can benefit from an interim borrowing alternative. One option for Board consideration is lending available funds from one TransNet program to another. For example, the Environmental Mitigation Program (EMP) has a cashflow need of approximately $56 million over the next eight years (i.e. the shortfall peaks at $56 million in 2023, and recovers to a positive fund balance by 2029 based upon future, expected revenues). Rather than incur additional long-term debt, SANDAG could consider an interfund loan from a different TransNet program with excess cashflow during that period and repay that program when EMP funds become available in eight years. This would require a detailed evaluation of individual program cashflows to determine what program has lending capacity. It will also require the appropriate documentation to be brought before the Board for consideration and execution. This strategy both internalizes the risk of repayment to TransNet and minimizes the borrowing costs by avoiding a third-party lender. SANDAG has executed this strategy in the past with the EMP program borrowing from the Major Corridor program.

**Increase SANDAG’s Commercial Paper Program**

The estimated cashflow needs of $170 million to $220 million is, in part, determined by forecasted revenues and expenses. With the uncertainty during the COVID-19 pandemic and the related economic impact on employment and consumption, it is difficult to forecast sales tax revenues at this time with great accuracy. Further, it is not clear how the availability of state and federal funding may be impacted through these recent events.

SANDAG has a commercial paper program in place in the current amount of $100 million. Commercial paper is a cash management tool where SANDAG can draw funds as needed and repay as anticipated funding is received. It is a short-term borrowing instrument which is enjoying the current low short-term rates, with a current total borrowing cost below one percent. SANDAG may consider increasing the commercial paper program up to $200 million to provide additional flexibility during these uncertain times.

It is important to note that commercial paper is most appropriately a short-term or interim borrowing strategy and does not necessarily address long-term shortfalls. In this respect, SANDAG staff will need to distinguish between projects that are experiencing short-term funding delays and projects that have an identified long-term funding gap.

**Delay Some Projects**

The refinancing strategy can create debt service savings and thereby support approximately $113 million in new bond proceeds for projects. The release of the debt service reserve fund can directly release $17 million in bond proceeds for projects. This totals approximately $130 million in funding support for ongoing projects, without increasing annual debt service. Additional tools of the interfund loans or additional commercial paper can support cash management and short-term funding delays but does not necessarily translate to long-term capacity. Beyond the $130 million identified here, one potential is to delay a portion of projects to avoid incurring additional long-term debt. This would
require the examination of delaying approximately $40 million to $90 million of project expenditures into the latter years of the TransNet program: i.e., until additional project capacity is realized.

**NEXT STEPS**

**Team Selection:** SANDAG has issued a request for proposal (RFP) to underwriters to re-establish the ongoing underwriter pool and to potentially select underwriters to support SANDAG with these various transactions. Additionally, SANDAG staff is soliciting proposals from legal firms to provide bond counsel and disclosure counsel services.

**Rating Agency Strategy:** Since the onset of the COVID-19 pandemic, SANDAG staff has provided information to the rating agencies and both Fitch and S&P recently confirmed their “AAA” ratings on SANDAG. Staff and the financing team would engage both rating agencies to provide ratings on these upcoming transactions, should the Board desire to proceed.

**Documents and Schedule:** Staff and the financing team will prepare the documents for the Series 2021 long-term sales tax bonds which would include the refunding and the new-money component. Documents would come to the Board for review and approval prior to any transaction execution.

SANDAG staff and the financing team continue to work with the TIFIA office to renegotiate the existing loan agreement with the expectation of achieving the lower interest rate and closing on the amended loan in early 2021.

If market current market conditions continue to prevail, SANDAG staff and the financing team would prepare documents to refund the existing 2018A short-term notes for savings and bring documents to the Board in the first quarter of calendar year 2021.

SANDAG staff would prepare the needed documentation for any inter-fund loan and increase in the commercial paper program, should the Board desire to execute one or both of these strategies.

The release of the debt service reserve fund (DSRF) is not interest rate sensitive. Staff is in the process of engaging a legal team to determine the most efficient path towards releasing that reserve. Staff expects to bring any new documentation related to the DSRF release to the Board in the second quarter of calendar year 2021.
## APPENDIX A

### Comprehensive Impact From All Proposed Transactions

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| Total | 138,189,407 | 5,872,679 | 156,262,086 | 12,187,865 |
Transportation Infrastructure Finance and Innovation Act Federal Credit Assistance: Mid-Coast Corridor Transit Project

Overview

At its May 26, 2017, meeting, the Board of Directors approved a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for the Mid-Coast Corridor Transit Project (Project). TIFIA Loan Agreement 20171007A was executed on June 27, 2017, in the amount of $537,484,439 at an interest rate of 2.72%. The San Diego Association of Governments (SANDAG) has an opportunity to replace the existing loan with a new loan at a lower interest rate that could generate substantial long-term savings.

The purpose of this report is to present the draft replacement TIFIA Loan Agreement, a Tenth Supplemental Indenture that will replace the Seventh Supplemental Indenture, and other pertinent direct agreements for review, and to outline items remaining to be considered prior to execution of a loan.

Key Considerations

Since COVID-19 and revenue impacts to toll facilities and sales tax authorities, the Build America Bureau has adapted to provide a streamlined process for borrowers to replace existing undrawn TIFIA loans and secure additional project savings. SANDAG staff began working with its financial advisor, Public Financial Management (PFM), and the Build America Bureau in July 2020 to analyze options. In early September, SANDAG submitted a Letter of Interest to the Build America Bureau to initiate the process to replace the existing loan.

On October 29, 2020, SANDAG staff was informed by the Build America Bureau that the last Council on Credit and Finance meeting for the year was scheduled for December 9, 2020, and no meeting was scheduled for January. They requested that the process be expedited to secure approval of the loan replacement at the December 9, 2020, meeting.

The replacement loan will update the interest rate of the loan; no other major updates are planned. Long-term savings ranging from $100-$150 million is anticipated and will be based on the 30-year Treasury rate at the time the new loan is executed.

Action: Recommend

The Transportation Committee is asked to recommend that the Board of Directors, acting as the Regional Transportation Commission (RTC), approve a Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan Agreement and associated Direct Agreements to secure a replacement loan for the Mid-Coast Corridor Transit Project and the Tenth Supplemental Indenture, providing for the issuance of a Junior Subordinate Sales Tax Revenue Bond evidencing the RTC obligations under the TIFIA Loan Agreement. Additionally, the Transportation Committee is asked to recommend that the Board, also acting as the RTC:

1. approve the replacement TIFIA financing method for the Mid-Coast Corridor Transit Project;
2. adopt RTC Resolution No. RTC-2021-02, authorizing the Executive Director to execute the TIFIA Loan Agreement and Direct Agreements, and the Tenth Supplemental Indenture; and
3. adopt RTC Resolution No. RTC-2021-03, authorizing the Executive Director to execute the SANDAG Direct Agreement.

Fiscal Impact:
Potential cash flow savings ranging from $100-$150 million.

Schedule/Scope Impact:
The replacement loan is on schedule to be executed by the end of the calendar year.
**TIFIA Loan Costs**

As covered during the original loan transaction, there are fees associated with the TIFIA loan process. However, the replacement loan process will cost far less. Staff have been notified that the TIFIA financial advisor services and new credit ratings will not be needed to secure the replacement loan. However, SANDAG will need to pay for legal costs incurred on behalf of the Build America Bureau. Costs incurred by the Build America Bureau in negotiating the TIFIA Loan Agreement typically range from $400,000 to $700,000 for a new loan; however, this is anticipated to be greatly reduced for the replacement loan.

In addition to the fees paid to cover TIFIA office expenses, SANDAG would be responsible for other transaction costs including legal and advisory costs. Potential interest rate savings far outweigh TIFIA processing/transaction costs.

**Responsibilities for Review**

Attached to this report for review and information are the preliminary agreements and documents for the proposed replacement TIFIA loan, including the Tenth Supplemental Indenture and TIFIA Bond (Attachments 1 through 6). The Tenth Supplemental Indenture provides for the issuance of the TIFIA Bond secured by the sales tax and provides consistency with the TIFIA Loan Agreement. The TIFIA Bond is a junior subordinate sales tax revenue bond issued under the TransNet Indenture and the Tenth Supplemental Indenture, evidencing the San Diego County Regional Transportation Commission’s (RTC’s) obligations to repay the TIFIA loan. The Metropolitan Transit System (MTS) Direct Agreement reflects MTS responsibilities for the project that are included in the overall project budget, including acquisition of the light rail vehicles.

The TIFIA loan is secured with sales tax revenues, and the RTC is the borrower. The Board, in its role as the RTC, has the ultimate responsibility for approving the transaction. Before deciding, Board members will have an opportunity to review all the documents to become familiar with their contents. Board members will be advised to pay particular attention to the representations and warranties contained in the draft TIFIA Loan Agreement to ensure there are no inaccuracies concerning RTC or SANDAG.

SANDAG’s Borrower Counsel (Norton Rose Fulbright US LLP), and financial advisor (PFM) will be present at the Board meeting to provide information regarding the TIFIA loan transaction.

**Next Steps**

The TIFIA replacement loan documentation will be presented to the Board in substantially final form for approval at its November 20, 2020, meeting.

- Early December – anticipated notification of loan approval from Build America Bureau
- Late December – anticipated execution of loan documents

**Andre Douzdjian, Chief Financial Officer**

Key Staff Contacts: André Douzdjian, (619) 699-6931, andre.douzdjian@sandag.org
Dawn Vettese, (619) 595-5346, dawn.vettese@sandag.org

Attachments: 1. Draft RTC Resolution No. RTC-2021-02
2. Draft TIFIA Loan Agreement
3. Draft SANDAG Direct Agreement
4. Draft MTS Direct Agreement
5. Draft Tenth Supplemental Indenture
6. Draft RTC Resolution No. RTC-2021-03
7. PFM Financial Advisors LLC Memorandum
Authorization the Execution and Delivery of a Transportation
Infrastructure Finance and Innovation Act (TIFIA) Loan
Agreement for the Mid-Coast Corridor Transit Project in a
Principal Amount not to Exceed $537,484,439, a SANDAG
Direct Agreement, an MTS Direct Agreement, and a Tenth
Supplemental Indenture Supplementing and Amending the
TransNet Indenture and Providing for the Issuance of a
San Diego County Regional Transportation Commission Junior
Subordinate Sales Tax Revenue Bond (Limited Tax Bond) 20__,
TIFIA Series, and Authorizing All Actions Necessary or
Desirable in Connection Therewith

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 the “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 of not to exceed twenty (20) years; and

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; and

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 on May 28, 2004 (the “Sales Tax Extension Ordinance,” and, together with any amendments thereto and the 1987 Ordinance, hereinafter collectively referred to as the “Ordinance”); and

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; and
WHEREAS, the Board of Directors (the “Board”) of the Commission, pursuant to the San Diego County Regional Transportation Commission Act (constituting Chapter 2 of Division 12.7 of the California Public Utilities Code) and Chapter 6 of Part 1 of Division 2 of Title 5 of the California Government Code, as referenced in said Act, and other applicable provisions of the laws of the State of California, is authorized to issue bonds payable from the proceeds of the retail transactions and use tax levied by the Commission pursuant to the Ordinance (“Sales Tax Revenues”); and

WHEREAS, in order to provide for the issuance of bonds secured by Sales Tax Revenues, the Commission has heretofore executed and delivered the Indenture, dated as of March 1, 2008, between the U.S. Bank National Association, as trustee (the “Trustee”), and the Commission, as supplemented and amended by the First Supplemental Indenture, dated as of March 1, 2008, the Second Supplemental Indenture, dated as of July 1, 2008, the Third Supplemental Indenture, dated as of October 1, 2010, the Fourth Supplemental Indenture, dated as of June 1, 2012, the Fifth Supplemental Indenture, dated as of September 1, 2014, the Sixth Supplemental Indenture, dated as of August 1, 2016, the Seventh Supplemental Indenture, dated as of June 1, 2017, the Eighth Supplemental Indenture, dated as of December 1, 2019, and the Ninth Supplemental Indenture, dated as of February 1, 2020, each by and between the Commission and the Trustee (collectively, the “Indenture”); and

WHEREAS, the Commission has heretofore entered into a TIFIA Loan Agreement, dated as of June 27, 2017 (the “Original TIFIA Loan Agreement”), with the U.S. Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), for a TIFIA Secured (Direct) Loan (the “TIFIA Loan”) in the initial principal amount of not to exceed $537,484,439 in connection with the Mid-Coast Corridor Transit Project (the “Project”); and

WHEREAS, the Borrower has not yet drawn any proceeds under the Original TIFIA Loan Agreement, and the TIFIA Lender is prepared to restructure the Original TIFIA Loan Agreement to provide for the TIFIA Loan to bear interest at a lower rate by terminating the Original TIFIA Loan Agreement and entering into a replacement TIFIA Loan Agreement (the “TIFIA Loan Agreement”); and

WHEREAS, as contemplated by the TIFIA Loan Agreement, the Commission wishes to execute and deliver a Direct Agreement (the “SANDAG Direct Agreement”) with the U.S. Department of Transportation (USDOT) and SANDAG, and a Direct Agreement (the “MTS Direct Agreement”) with USDOT and San Diego Metropolitan Transit System; and

WHEREAS, as contemplated by the TIFIA Loan Agreement, the Commission and the Trustee wish to execute and deliver a Tenth Supplemental Indenture (the “Tenth Supplemental Indenture”) supplementing and amending the Indenture and providing for the issuance of a junior subordinate sales tax revenue bond evidencing the Commission’s obligation to repay the TIFIA Loan (the “TIFIA Bond”), and the Commission wishes to issue the TIFIA Bond; and

WHEREAS, Norton Rose Fulbright US LLP is representing the Commission as TIFIA Loan borrower’s counsel (“Borrower’s Counsel”) and PFM Financial Advisors, LLC is serving as municipal advisor to the Commission (the “Municipal Advisor”) in connection with the TIFIA Loan and issuance of the TIFIA Bond; and

WHEREAS, the Commission has been presented with forms of the TIFIA Loan Agreement, the SANDAG Direct Agreement, the MTS Direct Agreement, the Tenth Supplemental Indenture and the TIFIA Bond 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 contemplated by such documents (the “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 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 execution and delivery of the TIFIA Loan Agreement, the SANDAG Direct Agreement, the MTS Direct Agreement and the Tenth Supplemental Indenture and the issuance of the TIFIA Bond for the purposes, in the manner and upon the terms provided; NOW THEREFORE

BE IT RESOLVED that the SANDAG Board of Directors, ALSO ACTING AS THE SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1 The proposed form of the TIFIA Loan Agreement 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 TIFIA Loan Agreement with the minutes of this meeting, and the Chair of the Board, the Executive Director of the Commission and the Chief Financial Officer of the Commission, and each of their respective designees (each, an "Authorized Representative"), are each authorized and directed, for and in the name of and on behalf of the Commission, to execute and deliver the TIFIA Loan Agreement, in substantially such form, and with such additions thereto or changes therein, as they, with the advice of Borrower’s Counsel, shall approve, such approval to be conclusively evidenced by the execution and delivery of the TIFIA Loan Agreement. The initial principal amount of the TIFIA Loan shall not exceed $537,484,439, and the interest rate on the TIFIA Loan shall not exceed 2.72% per annum. The obligation to pay the TIFIA Loan shall be secured by a junior subordinate pledge of Sales Tax Revenues and the final maturity of the TIFIA Loan shall not be later than the expiration date of the retail transactions and use tax under the Ordinance.

Section 2 The proposed form of the SANDAG Direct Agreement, 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 SANDAG Direct Agreement with the minutes of this meeting, and the Authorized Representative is authorized and directed to execute and deliver the SANDAG Direct Agreement, in substantially such form, and with such additions thereto or changes therein, as such Authorized Representative, with the advice of Borrower’s Counsel, shall approve, such approval to be conclusively evidenced by the execution and delivery of the SANDAG Direct Agreement.

Section 3 The proposed form of the MTS Direct Agreement, 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 MTS Direct Agreement with the minutes of this meeting, and the Authorized Representative is authorized and directed to execute and deliver the MTS Direct Agreement, in substantially such form, and with such additions thereto or changes therein, as such Authorized Representative, with the advice of Borrower’s Counsel, shall approve, such approval to be conclusively evidenced by the execution and delivery of the MTS Direct Agreement.

Section 4 The proposed form of the Tenth Supplemental Indenture, 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 Tenth Supplemental Indenture with the minutes of this meeting, and the Authorized Representative and the Secretary of the Board are authorized and directed to execute and deliver the Tenth Supplemental Indenture to the Trustee, in substantially such form, and with such additions thereto or changes therein, as such Authorized Representative, with the advice of Borrower’s Counsel, shall approve, such approval to be conclusively evidenced by the execution and delivery of the Tenth Supplemental Indenture.

Section 5 The proposed form of the TIFIA Bond, 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 TIFIA Bond with the minutes of this meeting. The issuance of the TIFIA Bond evidencing the Commission’s obligation to repay the TIFIA Loan, and the execution thereof by any Authorized Officer, is hereby authorized.
Section 6 Funds of the Commission are hereby authorized to be used to pay costs of preparation, negotiation, execution and delivery of the TIFIA Loan Agreement, the SANDAG Direct Agreement, the MTS Direct Agreement, the Tenth Supplemental Indenture, the TIFIA Bond and any related documents and agreements, including but not limited to costs of Borrower’s Counsel, the Municipal Advisor and any other consultants and advisors to the Commission, the costs associated with rating agencies, filing fees and any related expenses.

Section 7 All actions heretofore taken by the officers, employees and agents of the Commission with respect to the TIFIA Loan Agreement, the SANDAG Direct Agreement, the MTS Direct Agreement, the Tenth Supplemental Indenture or the TIFIA Bond are hereby ratified, confirmed and approved. The officers, employees and agents of the Commission are hereby authorized and directed, jointly and severally, for and in the name and on behalf of the Commission, to do any and all things and to take any and all actions and to execute and deliver any and all agreements, instruments, certificates and documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by the TIFIA Loan Agreement, the SANDAG Direct Agreement, the MTS Direct Agreement and the Tenth Supplemental Indenture to incur and manage the TIFIA Loan, to issue the TIFIA Bond and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution and the documents approved hereby.

Section 8 In accordance with SB 450, good faith estimates of the following are set forth on [Exhibit A] attached hereto: (a) the true interest cost of the TIFIA Bond, (b) the sum of all fees and charges paid to third parties with respect to the TIFIA Bond, (c) the amount of proceeds of the TIFIA Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the TIFIA Bond, and (d) the sum total of all debt service payments on the TIFIA Bond calculated to the final maturity of the TIFIA Bond plus the fees and charges paid to third parties not paid with the proceeds of the TIFIA Bond.

Section 9 The provisions of this Resolution are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared to be invalid, such sections, phrases and provisions shall not affect any other provision of this Resolution.

PASSED AND ADOPTED this 20th of November 2020.

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
EXHIBIT A

GOOD FAITH ESTIMATES

The following information was obtained from PFM with respect to the TIFIA Bond approved in the Resolution, and is provided in compliance with Senate Bill 450 (Chapter 625 of the 2017-2018 Session of the California Legislature) with respect to the TIFIA Bond:

1. True Interest Cost of the TIFIA Bond. Assuming an aggregate principal amount of $537,484,439 of the TIFIA Bond and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the true interest cost of the TIFIA Bond, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the TIFIA Bond, is 1.75%.

2. Finance Charge of the TIFIA Bond. Assuming an aggregate principal amount of $537,484,439 of the TIFIA Bond and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the finance charge of the TIFIA Bond, which means the sum of all fees and charges paid to third parties (or costs associated with the TIFIA Bond), is $400,000.

3. Amount of Proceeds to be Received. Assuming an aggregate principal amount of $537,484,439 of the TIFIA Bond are sold and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the amount of proceeds expected to be received by the Commission for sale of the TIFIA Bond less the finance charge of the TIFIA Bond described in 2 above and any reserves or capitalized interest paid or funded with proceeds of the TIFIA Bond, is $537,484,439.

4. Total Payment Amount. Assuming an aggregate principal amount of $537,484,439 of the TIFIA Bond are sold and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the total payment amount, which means the sum total of all payments the Commission will make to pay debt service on the TIFIA Bond plus the finance charge of the TIFIA Bond described in paragraph 2 above not paid with the proceeds of the TIFIA Bond, calculated to the final maturity of the TIFIA Bond, is $705,501,855.

Attention is directed to the fact that the foregoing information constitutes good faith estimates only. The actual interest cost, finance charges, amount of proceeds and total payment amount may vary from the estimates above due to variations from these estimates in the timing of TIFIA Bond sale, the amount of TIFIA Bond sold, the amortization of the TIFIA Bond sold and market interest rates at the time of each sale. The date of sale and the amount of TIFIA Bond sold will be determined by the Commission based on market and other factors. The actual interest rates at which the TIFIA Bond will be sold will depend on the bond market at the time of sale. The actual amortization of the TIFIA Bond will also depend, in part, on market interest rates at the time of sale. Market interest rates are affected by economic and other factors beyond the Commission’s control.
UNITED STATES
DEPARTMENT OF TRANSPORTATION

TIFIA LOAN AGREEMENT

For Up to $537,484,439

With

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

For the

MID-COAST CORRIDOR TRANSIT PROJECT
(TIFIA – [20171007A])

Dated as of ______________
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TIFIA LOAN AGREEMENT

This TIFIA LOAN AGREEMENT (this “Agreement”), dated as of the Effective Date, is by and between the SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under the laws of California (the “State”), with an address of 401 B Street, Suite 800, San Diego, California 92101 (the “Borrower”), and the UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “Executive Director”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “TIFIA Lender”).

RECITALS:

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

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

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed $537,484,439 (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated October 28, 2016 (the “Application”); and

WHEREAS, on January 19, 2017, the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, pursuant to such approval, the Borrower and the TIFIA Lender entered into a TIFIA Loan Agreement on June 27, 2017 (the “Original TIFIA Loan Agreement”); and

WHEREAS, the Borrower has not yet drawn any proceeds under the Original TIFIA Loan Agreement, and the TIFIA Lender is prepared to restructure the Original TIFIA Loan Agreement to provide for the loan thereunder to bear interest at a lower rate by terminating the Original TIFIA Loan Agreement and entering into this Agreement; and

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

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the Base Case Projections (as defined herein) delivered by the Borrower.
NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

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

"Acceptable Credit Rating" means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues an Interest Rate Swap Agreement or Credit Enhancement (other than Existing Interest Rate Swap Agreements or Existing Credit Enhancements), ‘A+’, ‘A1’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

"Accreted Value" means, with respect to any Capital Appreciation Bonds, the principal amount thereof plus the interest accrued thereon, compounded at the approximate interest rate thereon on each date specified therein. The Accreted Value at any date shall be the amounts set forth in the Accreted Value Table as of such date, if such date is a compounding date, and if not, as of the immediately preceding compounding date.

"Accreted Value Table" means the table denominated as such which appears as an exhibit to, and to which reference is made in, a Supplemental Indenture providing for a Series of Capital Appreciation Bonds issued pursuant to such Supplemental Indenture.

"Act" means the Act as defined in the recitals hereto.

"Additional Credit Enhancement" means any Insurance, letter of credit, line of credit, surety bond, standby purchase agreement or other instrument issued by a Qualified Credit Provider, which secures or guarantees the payment of principal of, interest on, or the purchase of, a Permitted Debt, delivered or made available to the Trustee, on or after the Effective Date, as from time to time supplemented or amended pursuant to its respective terms.

"Additional Interest Rate Swap Agreements" means, to the extent from time-to-time permitted by law and this Agreement, with respect to Permitted Debt any interest rate protection arrangement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose, as
documented via any agreement entered into, on or after the Effective Date, by the Borrower and a Qualified Counterparty.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument (other than a Principal Project Contract) (or any series of the same) entered into by (or on behalf of) the Borrower or SANDAG after the Effective Date, providing for the design, construction, testing, start-up, safety, financial services, operation or maintenance of the Project, or otherwise relating to the Project, including any master contract providing goods or services for multiple projects or assets including the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (a) is entered into in the ordinary course of business in connection with the furnishing of goods or the performance of services, (b) commits the Borrower or SANDAG to spend, or is reasonably expected to involve expenditures by the Borrower or SANDAG in one contract or a series of related contracts of $10,000,000 or less in any Borrower Fiscal Year, and (c) is for a term not exceeding two (2) years.

“Additional Rights” means those additional rights provided to the TIFIA Lender by the Borrower pursuant to Section 17(n) (Additional Rights).

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

“Anticipated TIFIA Loan Disbursement Schedule” means the schedule set forth in Exhibit B, reflecting the anticipated disbursement of proceeds of the TIFIA Loan.

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

“Assumed Debt Service” means, for any Borrower Fiscal Year, the aggregate amount of principal and interest which would be payable on all Secured Obligations if each Excluded Principal Payment were amortized on a substantially level debt service basis for a period commencing on the date of calculation of such Assumed Debt Service and ending on the earlier of (a) the date specified by the Borrower not exceeding thirty (30) years from the date of calculation, or (b) the Tax Expiration Date. Assumed Debt Service will be calculated on a level debt service basis, based on a fixed interest rate equal to the rate at which the Borrower could borrow for such period. This rate will be as set forth in a certificate of a financial advisor or investment banker (which advisor or banker shall be reasonably acceptable to the TIFIA Lender), delivered to the Trustee and the TIFIA Lender, who may rely conclusively on such certificate, and which must be delivered no more than thirty (30) days prior to the date of calculation.


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

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case
referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9 (Payment of Principal and Interest), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; or

(c) solely with respect to the Borrower, the Trustee shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in the Revenue Fund, the Bond Reserve Fund, the Subordinate Obligations Fund, the Fees and Expenses Fund, the Existing Hedging Termination Obligations Fund, the Junior Subordinate Obligations Fund and the TIFIA Reserve Fund upon the occurrence and during the continuation of an Event of Default under the Indenture Documents for application to the prepayment or repayment of any principal amount of the Senior Obligations or Subordinate Obligations other than in accordance with the provisions of the Indenture.

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

“Base Case Projections” means the initial forecast for the receipt of Sales Tax Revenues by the State Board of Equalization and the transfer of such Sales Tax Revenues into the Revenue Fund, prepared as of the Effective Date using the Base Case Financial Model.

“Bondholder” or “Holder” means, when used with respect to the TIFIA Bond, the TIFIA Lender and, when used with respect to any other Secured Obligation, the registered owner of such Secured Obligation.
“Bond Obligation” means, as of any given date of calculation, (a) with respect to any Outstanding Senior Bond which is a current interest bond, the principal amount of such Senior Bond, and (b) with respect to any Outstanding Senior Bond which is a Capital Appreciation Bond, the Accreted Value thereof.

“Bond Reserve Fund” means the fund by that name established pursuant to Section 5.05 of the Indenture.

“Bond Reserve Requirement” with respect to one or more Series of Senior Bonds for which the Borrower shall have established a Bond Reserve Fund shall have the meaning specified in the Supplemental Indenture or Supplemental Indentures establishing the terms and provisions of such Series of Senior Bonds.

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

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

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

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

“Business Day” means any day other than a Saturday, a Sunday or 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, Washington, D.C., Los Angeles, California, or St. Paul, Minnesota.

“Calculation Date” means each April 1 and October 1 occurring after the Effective Date.

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

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

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

“Certificate”, “Statement”, “Request”, “Requisition” or “Order” of the Borrower means, respectively, a written certificate, statement, request, requisition or order signed in the name of the Borrower by a Borrower’s Authorized Representative. If and to the extent required
by Section 1.03 of the Indenture, each such instrument shall include the statements provided for in Section 1.03 of the Indenture.

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

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

“Construction Contract” means the Construction Services Agreement, by and between SANDAG and the Construction Contractor, dated July 21, 2015, as such agreement is amended and supplemented thereafter.

“Construction Contractor” means Mid-Coast Transit Constructors and any successors thereto.

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

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

“Contractual Obligation” means, as to any Person, any contractual provision or any pledge issued or entered into by such Person under any indenture, resolution, contract, agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property or assets is bound, in each case, creating or modifying payment obligations of the Borrower secured by a pledge of Sales Tax Revenues.

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

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

“Credit Enhancement” means, collectively, (a) the Existing Credit Enhancements, (b) the Subsequent Credit Enhancements and (c) the Additional Credit Enhancements.

“Debt Service” (a) when used with respect to the TIFIA Bond, TIFIA Debt Service and (b) when used with respect to any other Secured Obligations, means, as of any date of calculation the sum of:

(i) the interest required to be paid on such Secured Obligations during such Borrower Fiscal Year; and
(ii) the principal or Mandatory Sinking Account Payments required to be paid with respect to such Secured Obligations during such Borrower Fiscal Year;

computed, in each case, on the assumption that no portion of such Secured Obligations shall cease to be Outstanding during such Borrower Fiscal Year except by reason of the application of such scheduled payments;

provided, however, that for purposes of such computation:

(A) Excluded Principal Payments (and the interest related thereto provided such interest is being paid from the same source as the Excluded Principal Payments) shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation; provided, however, that Excluded Principal Payments (and the interest related thereto) will be included in the calculation of Debt Service in the immediately preceding Borrower Fiscal Year in which such Excluded Principal Payments come due unless the Borrower delivers to the Trustee and the TIFIA Lender a Certificate of the Borrower’s Authorized Representative that the Borrower has made provision for the payment of such Excluded Principal Payments from a source other than Sales Tax Revenues;

(B) in determining the principal amount due in each Borrower Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such Secured Obligations, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Secured Obligations on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment, and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Bond;

(C) with respect to any Variable Interest Rate Secured Obligations Outstanding, or any Variable Interest Rate Secured Obligations proposed to be issued, for which an Interest Rate Swap Agreement is not in place, the interest rate on such Variable Interest Rate Secured Obligations for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to twelve percent (12%) per annum;

(D) with respect to any Variable Interest Rate Secured Obligations for which an Interest Rate Swap Agreement is in place providing for a fixed rate of interest to maturity or for a specific term with respect to such Variable Interest Rate Secured Obligations, the interest rate on such Variable Interest Rate Secured Obligations shall be assumed to be the synthetic fixed interest rate specified in such Interest Rate Swap Agreement for such term; provided that if, pursuant to a Certificate of the Borrower’s Authorized Representative filed with the Trustee, the sum of (1) interest payable on such Variable Interest Rate Secured Obligations, plus (2) amounts payable by the Borrower under such Interest Rate Swap Agreement, less (3) amounts receivable by the Borrower under such Interest Rate Swap Agreement, is expected to be greater than the interest payable on the Variable Interest Rate Secured Obligations to which such Interest Rate
Swap Agreement relates (i.e., if such Interest Rate Swap Agreement is an “off-market” Interest Rate Swap Agreement), then, in such instance, such excess amounts payable by the Borrower under such Interest Rate Swap Agreement shall be included in the calculation of Debt Service;

(E) with respect to any Secured Obligations bearing interest, or expected to bear interest, at a fixed interest rate for which an Interest Rate Swap Agreement is in place providing for a net variable interest rate with respect to such Secured Obligations for a specific term, the interest rate on such Secured Obligations shall be assumed to be equal for such term to the sum of (1) the fixed interest rate or rates to be paid on the Secured Obligations, minus (2) the fixed interest rate receivable by the Borrower under such Interest Rate Swap Agreement, plus (3) the average interest rate of the index on which the Interest Rate Swap Agreement is based, as identified in a Certificate of the Borrower’s Authorized Representative, or, if not based on an identifiable index, then the SIFMA Swap Index, in each case, over the five (5) years preceding the date of calculation;

(F) if all or any portion of any Secured Obligations feature an option, on the part of the owners or an obligation under the terms of such Secured Obligations, to tender all or a portion of such Secured Obligations to the Borrower, the Trustee or other fiduciary or agent, and requires that such Secured Obligations or portion thereof be purchased if properly presented, then, for purposes of determining Debt Service, each such maturity shall, unless otherwise provided in the Supplemental Indenture pursuant to which such Secured Obligations are authorized or unless provision (G) of this definition then applies to such maturity, be treated as if it were to be amortized over a term of not more than thirty (30) years and with substantially level annual debt service funding payments commencing not later than the year following the year in which such Secured Obligations were issued, and extending not later than thirty (30) years from the date such Secured Obligations were originally issued; the interest rate used for such computation shall be that rate quoted in The Bond Buyer 25 Revenue Bond Index for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index designated by the Borrower’s Authorized Representative, taking into consideration whether such Secured Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;

(G) any maturity of Secured Obligations described in provision (F) of this definition and for which the stated maturity date occurs within twelve (12) months from the date such calculation of Debt Service is made, shall be assumed to become due and payable on the stated maturity date, and provision (F) above shall not apply thereto, unless there is delivered to the Trustee and the TIFIA Lender and any other entity making the calculation of Debt Service a certificate of a Borrower’s Authorized Representative stating (1) that the Borrower intends to refinance such maturity, (2) the probable terms of such refinancing and (3) that the debt capacity of the Borrower is sufficient to successfully complete such refinancing; upon the receipt of such certificate, such Secured Obligation shall be assumed to be refinanced in accordance with the probable terms set out in such certificate and such terms shall be used for purposes of calculating Debt
Service; provided that such assumption shall not result in an interest rate lower than that which would be assumed under provision (F) above and shall be amortized over a term of not more than thirty (30) years from the expected date of refinancing;

(I) principal and interest payments on Secured Obligations shall be excluded to the extent such payments are to be paid from Pledged Revenues then held on deposit by the Trustee or from other amounts on deposit with the Trustee or other fiduciary in escrow specifically therefor and interest payments shall be excluded to the extent that such interest payments are to be paid from the proceeds of Secured Obligations held by the Trustee or other fiduciary as capitalized interest specifically to pay such interest;

(J) reimbursement obligations to Qualified Credit Providers shall not be included in the calculation of Debt Service to the extent that such reimbursement obligations are duplicative of the Borrower’s obligations to make payments on the related Secured Obligations; and

(K) with respect to Subordinate Obligations issued by the Borrower as Subordinate Sales Tax Revenue Commercial Paper Notes (Limited Tax Bonds), such Subordinate Obligations shall not be treated as Excluded Principal Payments, the sole date of issuance shall be deemed to be the first date that any amount of Subordinate Sales Tax Revenue Commercial Paper Notes (Limited Tax Bonds) is issued, the maximum amount of Subordinate Obligations under such program shall be included in the calculation of Debt Service and shall be deemed to be amortized on a level debt service basis for a period commencing on the date of calculation and ending on the date on the tax imposed by the Sales Tax Act terminates and shall be assumed to bear interest at a fixed interest rate equal to the rate at which the Borrower could borrow for such period as set forth in a certification of an independent third-party delivered to the Borrower and the TIFIA Lender within thirty (30) day of the date of calculation.

“Debt Service Coverage Ratio” means, for each Calculation Period, the ratio of:
(a) Sales Tax Revenues received during such Calculation Period to (b) Debt Service on all Secured Obligations for such Calculation Period.

“Debt Service Payment Commencement Date” means the earlier of (a) October 1, 2025, (b) the Semi-Annual Payment Date immediately preceding the 5th anniversary of the Substantial Completion Date and (c) the Semi-Annual Payment Date immediately preceding the 5th anniversary date on which the TIFIA Loan is disbursed in accordance with Section 4(a).

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

“Development Default” means (a) a Borrower Related Party fails to diligently prosecute or cause the diligent prosecution of the work related to the Project, and, if a Recovery Plan has been provided in accordance with Section 23(b) (Recovery Plan), in accordance with such Recovery Plan or (b) SANDAG fails to complete the Project by the Projected Substantial Completion Date.
“Direct Agreements” means, collectively, (a) the SANDAG Direct Agreement and (b) the MTS Direct Agreement.

“Effective Date” means ______________.

“Eligible Project Costs” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, all of which shall arise from the following:

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

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

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

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

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

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

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

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

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

“Excluded Principal Payments” means each payment of principal of Secured Obligations which the Borrower determines (and certifies in a Certificate of the Borrower’s Authorized Representative to the Trustee and the TIFIA Lender) that the Borrower intends to pay with moneys that are not Sales Tax Revenues (such as commercial paper or bond anticipation notes) but from future debt obligations of the Borrower, grants from the State or federal government, or any agency or instrumentality thereof, or any other source of funds of the
Borrower, upon which determination of the Borrower the Trustee may conclusively rely. No such determination and certification shall affect the security for such Secured Obligations or the obligation of the Borrower to pay such payments from Sales Tax Revenues or amounts required to be on deposit in the Bond Reserve Fund, if any. No payment of principal of Secured Obligations may be determined to be an Excluded Principal Payment unless it is due on or prior to the Tax Expiration Date.

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

“Existing Credit Enhancement” means any Insurance, letter of credit, line of credit, surety bond, standby purchase agreement or other instrument issued by a Qualified Credit Provider, which secures or guarantees the payment of principal of, interest on, or the purchase of, Permitted Debt, delivered or made available to the Trustee, prior to the Effective Date, as listed and described in Schedule III, provided that (and notwithstanding Section 2 (Interpretation)) any replacement, amendment or extension of such agreements shall be a Subsequent Credit Enhancement.

“Existing Hedging Termination Obligations Fund” means the fund of that name established and created pursuant to the Indenture.

“Existing Interest Rate Swap Agreements” means each interest rate swap, cap, collar, option, floor, forward, derivative, or other hedging agreement, arrangement or security, however demonstrated, entered into and between the Borrower and a counterparty, in connection with or incidental to, the issuance or carrying of Senior Bonds, which agreement or arrangement was executed prior to the Effective Date, as listed and described in Schedule III, provided that, except as set forth in the next clause and notwithstanding Section 2 (Interpretation), any replacement, amendment or extension of such agreements shall be a Subsequent Interest Rate Swap Agreement; provided, further, that an Existing Interest Rate Swap Agreement shall remain such and shall not be considered a Subsequent Interest Rate Swap Agreement if such Existing Interest Rate Swap Agreement is amended only to revise the notational amount thereof in connection with a partial refunding or prepayment of the Senior Bonds associated therewith.

“Fees and Expenses” means the fees, expenses and similar charges (excluding Hedging Termination Obligations) owed by the Borrower in connection with Secured Obligations payable from the Fees and Expenses Fund, including the fees and expenses of the TIFIA Lender.

“Fees and Expenses Fund” means the fund of that name established and created pursuant to the Indenture.

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

“FFGA” means the Full Funding Grant Agreement, dated as of September 14, 2016, by and between the FTA and SANDAG.

“Final Maturity Date” means October 1, 2045.
“Financial Plan” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 22(a) (Financial Plan) and (b) any updates thereto required pursuant to Section 22(a) (Financial Plan).

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

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

“FTA Master Agreement” means the Fiscal Year 2015 FTA Master Grant Agreement, FTA G-23, dated October 1, 2016, which has no expiration date, and which continues to apply until modified or superseded as outlined therein.

“FTA Project Management Oversight Requirements” means the requirements and conditions set forth in 49 U.S.C. § 5327, in 49 C.F.R. Part 633, and any other laws governing FTA’s project management oversight procedures, in each case, as amended from time-to-time.


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

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

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

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

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

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

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

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

“**Indenture**” means the Indenture, dated as of March 1, 2008, between the Trustee and the Borrower, as amended by the First Supplemental Indenture, dated as of March 1, 2008, between the Borrower and the Trustee, as amended and supplemented from time to time, the Second Supplemental Indenture, dated as of July 1, 2008, between the Borrower and the Trustee, as amended and supplemented from time to time, the Third Supplemental Indenture, dated as of October 1, 2010, between the Borrower and the Trustee, as amended and supplemented from time to time, the Fourth Supplemental Indenture, dated as of June 1, 2012, between the Borrower and the Trustee, as amended and supplemented from time to time, the Fifth Supplemental Indenture, dated as of September 1, 2014, between the Borrower and the Trustee, as amended and supplemented from time to time, the Sixth Supplemental Indenture, dated as of August 1, 2016, between the Borrower and the Trustee, as amended and supplemented from time to time, the Seventh Supplemental Indenture, dated as of June 1, 2017, between the Borrower and the Trustee, as amended and supplemented from time to time, the Eighth Supplemental Indenture, dated as of December 1, 2019, between the Borrower and the Trustee, the Ninth Supplemental Indenture, dated as of February 1, 2020, between the Borrower and the Trustee, and the Tenth Supplemental Indenture, and as it may from time to time be supplemented or amended by any other Supplemental Indenture delivered pursuant to the provisions of the Indenture.

“**Indenture Documents**” means the Indenture, the Tenth Supplemental Indenture, each Supplemental Indenture executed on or after the Effective Date, the Subordinate Indenture, each
Interest Rate Swap Agreement, each Credit Enhancement, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

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

“**Insurance**” means any financial guaranty insurance policy or municipal bond insurance policy issued by an Insurer insuring the payment when due of principal of and interest on a Series of Secured Obligations as provided in such financial guaranty insurance policy or municipal bond insurance policy.

“**Insurer**” means any provider of Insurance with respect to a Series of Secured Obligations.

“**Interest Fund**” means the fund of that name established and created pursuant to the Indenture.

“**Interest Payment Date,**” with respect to each Series of Senior Bonds, shall have the meaning specified in the Supplemental Indenture establishing the terms and provisions of such Series of Senior Bonds.

“**Interest Rate Swap Agreement**” means, collectively, (a) the Existing Interest Rate Swap Agreements, (b) the Subsequent Interest Rate Swap Agreements and (c) the Additional Interest Rate Swap Agreements.

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

“**Junior Subordinate Obligations**” means the TIFIA Bond and any other Secured Obligations of the Borrower issued or incurred in accordance with Section 3.09 of the Indenture and Section 17(a) (Indebtedness) and secured by a lien and charge on Pledged Revenues that is subordinate to the liens and charges on Pledged Revenues that secure the Senior Obligations, the Subordinate Obligations and the obligation to pay Fees and Expenses and Hedging Termination obligations on Existing Interest Rate Swap Agreements.

“**Junior Subordinate Obligations Fund**” means the fund of that name established and created pursuant to the Indenture.

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

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

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

“Mandatory Sinking Account Payment” means, with respect to Term Bonds of any
Series and maturity, and pursuant to, the Supplemental Indenture establishing the terms and
provisions of such Series of Secured Obligations, the amount required to be deposited by the
Borrower in a sinking account in the “Principal Fund” established pursuant to Article V of the
Indenture for the payment of Term Bonds of such Series and maturity.

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

“Moody’s” means Moody’s Investors Service, a corporation duly organized and existing
under the laws of the State of Delaware, and its successors and assigns (to the extent such
successors are also a Nationally Recognized Rating Agency), except that if such corporation
shall be dissolved or liquidated or shall no longer perform the functions of a securities rating
agency, then the term “Moody’s” shall be deemed to refer to any other Nationally Recognized
Rating Agency selected by the Borrower.

“MTS” means the San Diego Metropolitan Transit System, a public agency in the State.

“MTS Authorized Representative” means any Person who shall be designated as such
pursuant to Section 12 of the MTS Direct Agreement.

“MTS Direct Agreement” means the Direct Agreement, dated ______________, by
and among the TIFIA Lender, the Borrower and MTS.

“Nationally Recognized Rating Agency” means any nationally recognized statistical
rating organization identified as such by the Securities and Exchange Commission.
“NEPA” means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means the Record of Decision for the Project issued by FTA on October 15, 2014 in accordance with NEPA, and which is supplemented by the US Fish and Wildlife Service determination letter dated October 7, 2016.

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

“Ordinance” means collectively (a) the San Diego Transportation Improvement Program Ordinance and Expenditure Plan, adopted by the Borrower on July 31, 1987 and approved by a majority of the electors voting on such proposition on November 3, 1987, as supplemented and amended, (b) the San Diego Transportation Improvement Program Ordinance and Expenditure Plan, adopted by the Borrower on May 28, 2004, and approved by at least two-third of electors voting on such proposition in the November 2, 2004 election, and (c) any future ordinance that is adopted pursuant to the Sales Tax Act from time to time and that is designated as an “Ordinance” under the Indenture pursuant to a Supplemental Indenture, and, in each case, any amendments or extensions thereto.

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

“Other Hedging Terminations Obligations Fund” means the fund of that name established and created pursuant to the Indenture.

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

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

“Other Material Indebtedness” has the meaning provided in Section 20(a)(v) (Acceleration of Senior Obligations or Other Material Indebtedness).

“Outstanding” when used as of any particular time with reference to Secured Obligations, means (subject to the provisions of Section 11.09 of the Indenture) all Secured Obligations theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except: (a) Secured Obligations theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Secured Obligations with respect to which all liability of the Borrower shall have been discharged in accordance with Section 10.02 of the Indenture, including Secured Obligations (or portions of Secured Obligations) referred to in Section 11.10 of the Indenture; (c) Secured Obligations for the transfer or exchange of or in lieu of or in substitution for which other Secured Obligations shall have been authenticated and delivered by the Trustee pursuant to the Indenture; and (d) for purposes of exercising rights under the Indenture, Secured Obligations held by or for the benefit of a Borrower Related Party; provided, however, that in the event the principal of or interest on any Secured Obligations shall be paid by a Qualified Credit Provider pursuant to a Credit Enhancement issued in connection with such Secured Obligations, such Secured Obligations shall remain Outstanding for all purposes and shall not be considered defeased or otherwise satisfied or paid by the Borrower and the pledge of Pledged Revenues and all covenants, agreements and other obligations of the Borrower to the Holders shall continue to exist and shall run to the benefit of such Qualified Credit Provider and such Qualified Credit Provider shall be subrogated to the rights of such Holders.

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

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

“Payment Date” means each April 1 and October 1.

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

“Payment Period” means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“Permitted Debt” means:
(a) Secured Obligations of the Borrower that have been issued or incurred pursuant to the Indenture or the Subordinate Indenture prior to the Effective Date, as listed and described in Schedule III;

(b) the Existing Credit Enhancement(s), as listed and described in Schedule III;

(c) the Existing Interest Rate Swap Agreements, as listed and described in Schedule III;

(d) TIFIA Bond;

(e) Secured Obligations issued or incurred after the Effective Date that satisfy the requirements of Sections 3.02, 3.03, 3.04, 3.05, 3.09 and 3.10, as applicable, of the Indenture and Sections 3.03, 3.04 and 3.05 of the Subordinate Indenture, as applicable, and Section 17(a) (Indebtedness);

(f) any bond, note, certificate, warrant, lease, contract or other financial obligation or security of the Borrower that is not, in whole or in part, secured by a Lien on the Pledged Revenues;

(g) Subsequent Credit Enhancements permitted pursuant to the terms of this Agreement;

(h) Additional Credit Enhancements permitted pursuant to the terms of this Agreement;

(i) Subsequent Interest Rate Swap Agreements permitted pursuant to the terms of this Agreement; and

(j) Additional Interest Rate Swap Agreements permitted pursuant to the terms of this Agreement.

“Permitted Hedging Termination” means the early termination, in whole or in part, of any Interest Rate Swap Agreement (a) at the request of the Borrower as a result of a determination by the Borrower that such (or any part of such) Interest Rate Swap Agreement is no longer necessary or required under the terms of this Agreement, (b) to evidence that such Interest Rate Swap Agreement provides for the notional amount thereof to amortize or otherwise be reduced from time to time or (c) as may be required pursuant to Section 16(n)(viii) (Hedging).

“Permitted Investments” means (with respect to the investment of the proceeds of the TIFIA Loan or the Project Account or the TIFIA Reserve Fund):

(a) Government Obligations;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates
of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Government;

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

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

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

“Permitted Liens” means (a) Liens permitted under the terms of the TIFIA Loan Documents, (b) Liens imposed by law for taxes, assessments or governmental charges that are not yet due or are being contested in compliance with Section 16(m) (Material Obligations; Liens), (c) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 20(a)(vii) (Judgments) and (d) Liens on the proceeds of the FFGA securing grant anticipation notes and other obligations issued by the Borrower but in principal amounts not exceeding the full amount of the FFGA minus the funds received thereunder at the time of the issuance of such obligations.

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

“Pledged Revenues” means (a) all Sales Tax Revenues, (b) all regularly-scheduled amounts (but not termination payments) owed or paid to the Borrower by any Qualified Counterparty under any Interest Rate Swap Agreement after offset for the regularly-scheduled amounts (but not termination payments) owed or paid by the Borrower to such Qualified Counterparty under such Interest Rate Swap Agreement, (c) any additional revenues or assets of the Borrower to be included in the definition of Pledged Revenues pursuant to a Supplemental Indenture; provided, however, that after making the required monthly deposits of Pledged Revenues from the Revenue Fund pursuant to Section 5.02 of the Indenture and Section 8(d) (Security and Priority; Flow of Funds), any remaining amounts transferred to the Borrower pursuant to Section 5.02(B) of the Indenture, shall be released from the lien of the Indenture and shall no longer constitute Pledged Revenues.

“Principal Fund” means the fund of that name established and created pursuant to the Indenture.
“Principal Project Contracts” means the Construction Contract, the FFGA, the Transit Vehicle Purchase Contract and any other contract entered into by a Borrower Related Party relating to the Project designated as a Principal Project Contract by the TIFIA Lender and the Borrower, and any document that replaces or supplements any of the foregoing agreements.

“Principal Project Party” means the Construction Contractor and any other Person (other than a Borrower Related Party and the FTA) party to a Principal Project Contract.

“Project” means the extension of the San Diego Trolley Blue Line from the Santa Fe Depot in downtown San Diego, California, north to the UTC Transit Center in University City, California, including (a) upgrades to signaling and traction power systems along 3.5 miles of existing trolley tracks from the Santa Fe Depot to the Old Town Transit Center, (b) construction of 10.9 miles of new double track between the Old Town Transit Center and the University City, (c) nine new stations; (d) five park-and ride facilities with 1,070 parking spaces; (e) two transfer facilities; and (f) 36 new low-floor light rail transit vehicles.

“Project Account” means the ____ Project Fund established pursuant to the Tenth Supplemental Indenture.

“Project BANs” means the Borrower’s Sales Tax Revenue Short-Term Notes (Limited Tax Bonds) to be issued by the Borrower during the Construction Period, in an aggregate principal amount (plus capitalized interest) at maturity not to exceed $537,484,439, in one or more series pursuant to the Third Supplement to the Subordinate Indenture the proceeds of which are intended to be applied to the payment of Eligible Project Costs.

“Project Budget” means the budget for the Project in the aggregate amount of $[1,913,801,000] attached to this Agreement as Schedule I showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs by SCC and the estimated sources and uses of funds for the Project, as amended from time to time with the approval of the TIFIA Lender.

“Projected Substantial Completion Date” means November 3, 2021, as such date may be adjusted in accordance with Section 22(a)(iii)(B) (Financial Plan) or Section 23(b) (Recovery Plan).

“Qualified Credit Provider” means (a) with respect to an Existing Credit Enhancement, the Insurer, commercial bank, pension fund, or other financial institution issuing (or having primary obligation, or acting as agent for the financial institutions obligated, under) such Existing Credit Enhancement, (b) with respect to a Subsequent Credit Enhancement that is amending, extending or replacing an Existing Credit Enhancement, any Insurer, commercial bank, pension fund, or other financial institution issuing (or having primary obligation, or acting as agent for the financial institutions obligated, under) such Subsequent Credit Enhancement, which provider has either (i) a rating that is at least equal to the rating of the provider being replaced or (ii) an Acceptable Credit Rating and (c) with respect to an Additional Credit Enhancement or a Subsequent Credit Enhancement that is amending, extending or replacing an Additional Credit Enhancement, any Insurer, commercial bank, pension fund, or other financial institution issuing (or having primary obligation, or acting as agent for the financial institutions
obligated, under) such Additional Credit Enhancement or Subsequent Credit Enhancement replacing an Additional Credit Enhancement, which provider has an Acceptable Credit Rating.

“Qualified Counterparty” means (a) with respect to an Existing Interest Rate Swap Agreement, each entity that has entered into an Existing Interest Rate Swap Agreement, (b) with respect to a Subsequent Interest Rate Swap Agreement that is amending, novating or replacing an Existing Interest Rate Swap Agreement, any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has either (i) a rating at least equal to the rating of the counterparty being replaced or (ii) an Acceptable Credit Rating or (c) with respect to an Additional Interest Rate Swap Agreement or Subsequent Interest Rate Swap Agreement amending, novating or replacing an Additional Interest Rate Swap Agreement, any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

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

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

“Related Documents” means the Indenture Documents, the TIFIA Loan Documents, and the Principal Project Contracts.

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

“Revenue Fund” means the Revenue Fund established pursuant to Section 5.01 of the Indenture.

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

“Sales Tax Act” means the San Diego County Regional Transportation Commission Act, Chapter 2 of Division 12.7 (Section 132000 et seq.) of the Public Utilities Code of the State as now in effect and as it may from time to time hereafter be amended or supplemented.

“Sales Tax Revenues” means the amounts available for distribution to the Borrower on account of the retail transactions and use tax imposed in the County of San Diego pursuant to the Sales Tax Act and the Ordinance after deducting amounts payable by the Borrower 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 Sales Tax Act known as TransNet.
“SANDAG” means the San Diego Association of Governments, a public agency in the State.

“SANDAG’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 12 of the SANDAG Direct Agreement.

“SANDAG Direct Agreement” means the Direct Agreement, dated _____________, by and among the TIFIA Lender, the Borrower and SANDAG.

“SCC” means Standard Cost Categories implemented by the FTA.

“Secretary” means the United States Secretary of Transportation.

“Secured Obligations” means the Senior Obligations, the Subordinate Obligations, the Junior Subordinate Obligations (including the TIFIA Bond), the Hedging Obligations and the Hedging Termination Obligations.

“Secured Parties” means the Trustee, the TIFIA Lender, and the Holders of any Secured Obligations.

“Semi-Annual Payment Date” means each April 1 and October 1.

“Senior Bonds” means (a) all of the Senior Bonds listed in Schedule III hereto issued prior to the Effective Date and (b) the bonds issued under the provisions of Article III of the Indenture and Section 17(a) (Indebtedness), payable and secured on a parity with such Schedule III senior bonds but shall not include any Senior Parity Obligations, Subordinate Obligations or Junior Subordinate Obligations.

“Senior Obligations” means collectively, the Senior Bonds and Senior Parity Obligations.

“Senior Parity Obligations” means (a) the Senior Parity Obligations listed in Schedule III hereto issued or incurred prior to the Effective Date, (b) any indebtedness, installment sale obligation, lease obligation or other obligations of the Borrower for borrowed money secured by the Sales Tax Revenues on parity with Senior Bonds issued or incurred by the Borrower after the Effective Date, (c) any obligation to pay the Rebate Requirement (as such term is defined in the Indenture), and (d) any Subsequent Interest Rate Swap Agreements or Additional Interest Rate Swap Agreements entered into in connection with a series of Senior Bonds, having an equal lien and charge upon the Sales Tax Revenues and therefore being payable on a parity with the Senior Bonds to which such Subsequent Interest Rate Swap Agreement or Additional Interest Rate Swap Agreement relates (whether or not any Senior Bonds are outstanding) (excluding Fees and Expenses and Hedging Termination Obligations thereon, which shall be secured by a lien and charge on the Sales Tax Revenues that is subordinate to the lien and charge upon Sales Tax Revenues that secures payment of principal of and interest on any Senior Obligations, Subordinate Obligations or Junior Subordinate Obligations).
“Serial Bonds” means Senior Bonds, maturing in specified years, for which no Mandatory Sinking Account Payments are provided.

“Series” whenever used herein with respect to Secured Obligations, means all of the Secured Obligations designated as being of the same series, authenticated and delivered in a simultaneous transaction regardless of variations in maturity, interest rate, redemption and other provisions, and any Secured Obligations thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Secured Obligations as provided in the Indenture.

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

“SIFMA Swap Index” means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or any Person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Trustee and effective from such date.

“Sinking Account” means an account by that name established in the Principal Fund pursuant to Section 5.04 of the Indenture.

“Standard & Poor’s” or “S&P” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns (to the extent such successors are also a Nationally Recognized Rating Agency), except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other Nationally Recognized Rating Agency selected by the Borrower.

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

“Subordinate Indenture” means the Amended and Restated Subordinate Indenture, dated as of November 1, 2005, between the Borrower and the Trustee, as supplemented and amended by the First Supplement to the Amended and Restated Subordinate Indenture, dated as of March 27, 2008 and the Second Supplement to the Amended and Restated Subordinate Indenture, dated as of October 1, 2010, as supplemented and amended from time to time hereafter pursuant to its terms.

“Subordinate Obligations” means (a) the Subordinate Obligations listed in Schedule III hereto issued or incurred prior to the Effective Date and (b) any obligations of the Borrower secured on a parity therewith and issued or incurred by the Borrower after the Effective Date in accordance with Section 3.05(d) of the Indenture, Section 3.03, 3.04 and 3.05, as applicable, of the Subordinate Indenture and Section 17(a) (Indebtedness).

“Subsequent Credit Enhancement” means any Insurance, letter of credit, line of credit, surety bond, standby purchase agreement or other instrument issued by a Qualified Credit
Provider, which (a) secures or guarantees the payment of principal of, interest on, or the purchase of, Permitted Debt and (b) replaces an Existing Credit Enhancement or an Additional Credit Enhancement.

“Subsequent Interest Rate Swap Agreement” has the meaning provided in Section 16(n)(iv) (Hedging).

“Substantial Completion” means the opening of the Project to passenger traffic.

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

“Supplemental Indenture” means an indenture supplementing or modifying the provisions of the Indenture entered into by the Borrower and the Trustee after the Effective Date in accordance with Article IX of the Indenture.

“Tax Expiration Date” means March 31, 2048, or such later date to which the levy of the retail transactions and use tax is extended in accordance with the Sales Tax Act and the Ordinance.

“Tenth Supplemental Indenture” means the Tenth Supplemental Indenture, dated as of ____________, between the Borrower and the Trustee in connection with the issuance of the TIFIA Bond.

“Term Bonds” means Secured Obligations payable at or before their specified maturity date or dates from Mandatory Sinking Account Payments established for that purpose and calculated to retire such Secured Obligations on or before their specified maturity date or dates.

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

“TIFIA Bond” means the Junior Subordinate Obligation issued by the Borrower to the TIFIA Lender pursuant to the Indenture, in substantially the form of Exhibit A, to evidence and secure the payment obligations of the Borrower on the TIFIA Loan, which constitutes a Junior Subordinate Obligation for purposes of the Indenture.

“TIFIA Debt Service” means, solely with respect to the TIFIA Bond, any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on Exhibit G, and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(c) (Payment of TIFIA Debt Service).

“TIFIA Debt Service Account” means the account within the Junior Subordinate Obligations Fund established and created pursuant to the Indenture.

“TIFIA Interest Rate” has the meaning provided in Section 6 (Interest Rate).
“TIFIA Lender” has the meaning provided in the preamble hereto.

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

“TIFIA Lien” means the right, pledge, charge, preference and priority with respect to the Trust Estate granted by the Borrower under the Indenture to secure the TIFIA Bond and the TIFIA Loan.

“TIFIA Loan” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed $537,484,439 (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

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

“TIFIA Reserve Event” means failure of the Borrower to maintain, as of a Calculation Date, a Debt Service Coverage Ratio for the immediately preceding Calculation Period of at least 1.35 to 1.00.

“TIFIA Reserve Fund” means the fund by that name established pursuant to the Indenture and the Tenth Supplemental Indenture.

“TIFIA Reserve Fund Requirement” means, as of the date of calculation, an amount equal to fifty percent (50%) of the maximum annual aggregate amount (without duplication) of TIFIA Debt Service (assuming, as of the date of calculation, that the TIFIA Loan is fully drawn by the Borrower) that will become due in the current or any future Calculation Period.

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

“Transit Vehicle Purchase Contract” means the contract by and between the MTS and Siemens Industry, Inc. (“Siemens”), dated September 30, 2009, providing for the purchase of 110 light rail vehicles, including 36 low-floor light rail transit vehicles constituting a component of the Project, as amended, amended and restated, supplemented or otherwise modified from time to time.
“Trust Estate” means as provided for in Section 5.01(A) of the Indenture (a) all Pledged Revenues; and (b) all amounts, including proceeds of the Secured Obligations, held on deposit in the funds and accounts established under the Indenture (except for amounts held in (i) the rebate fund established pursuant to Section 5.09 of the Indenture, (ii) any letter of credit account established pursuant to a Supplemental Indenture and (iii) any purchase fund established pursuant to a Supplemental Indenture), subject to the provision of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture as set forth in Section 5.02 of the Indenture.

“Trustee” means U.S. Bank National Association, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, or its successors, as Trustee as provided in the Indenture.

“Uncontrollable Force” means any cause beyond the control of a Borrower Related Party, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower Related Parties shall not be required to settle any strike or labor disturbance in which they 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 a Borrower Related Party and such Borrower Related Party 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 Related Parties.

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

“USDOT” means the United States Department of Transportation.

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

“Variable Interest Rate Secured Obligations” means any Secured Obligations under the Indenture or Subordinate Indenture that accrue interest at a Variable Interest Rate; provided however, Variable Interest Rate Secured Obligations shall not include Subordinate Obligations issued by the Borrower as Subordinate Sales Tax Revenue Commercial Paper Notes (Limited Tax Bonds) pursuant to the Subordinate Indenture.

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

**Section 3. TIFIA Loan Amount.** The principal amount of the TIFIA Loan shall not exceed $537,484,439. TIFIA Loan proceeds shall be disbursed from time-to-time in accordance with Section 4 (Disbursement Conditions) and Section 13(b) (Conditions Precedent to All Disbursements).

**Section 4. Disbursement Conditions.** (a) TIFIA Loan proceeds shall be disbursed solely to pay directly for, or to reimburse the Borrower for, the prior payment of, Eligible Project Costs incurred in connection with the Project and may be used to pay or redeem Project BANs to the extent the proceeds thereof have been previously applied to the payment of Eligible Project Costs incurred by or on behalf of the Borrower from time to time in connection with the Project. The TIFIA Loan proceeds shall be disbursed in a single disbursement and shall be made pursuant to a single requisition and certification (the “Requisition”) in the form set forth in Appendix One to Exhibit D, along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the TIFIA Lender, all in accordance with the procedures of Exhibit D and subject to the requirements of this Section 4 (Disbursement Conditions) and the conditions set forth in Section 13(b) (Conditions Precedent to All Disbursements); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of the Requisition to the TIFIA Lender, the FTA Regional Office and the Servicer (if any) on or before the first (1st) Business Day of the month for which the disbursement is requested. If the TIFIA Lender shall expressly
approve the Requisition or shall not expressly deny the Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which the disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express TIFIA Lender approval or denial shall be substantially in the form annexed hereto as Appendix Three to Exhibit D. In no event shall disbursements be made more than once each month. Any scheduled disbursement (as reflected in the Anticipated TIFIA Loan Disbursement Schedule) that remains undrawn at the end of any year shall be available for disbursement in subsequent years, subject to Section 4(a) (Disbursement Conditions) above.

(c) The Borrower anticipates that it will draw down all of the proceeds of the TIFIA Loan in a single disbursement to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of TIFIA Loan proceeds, including for the purpose of paying or redeeming the Project BANs. The Borrower shall deliver concurrently to the TIFIA Lender, the FTA Regional Office, and the Servicer (if any) invoices and records evidencing Eligible Project Costs (the “Eligible Project Costs Documentation”), irrespective of whether such costs were paid with the proceeds of the Project BANs; provided that the Borrower must deliver all Eligible Project Costs Documentation associated with any Eligible Project Costs included in a Requisition delivered to the TIFIA Lender, the FTA Regional Office, and the Servicer (if any) by the applicable following date: (i) with respect to Eligible Project Costs incurred by or on behalf of the Borrower prior to, and up to three (3) months after, the Effective Date, by the last Business Day of the fourth (4th) month immediately following the Effective Date and (ii) with respect to Eligible Project Costs incurred by or on behalf of the Borrower after the three-month period referred to in clause (i) above, by the last Business Day of each month immediately following such fourth (4th) month referred to in clause (i) above.

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

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

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

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

(iv) that there does not currently exist any Event of Default or an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default (a “prospective Event of Default”) or, if there does currently exist an Event of Default or prospective Event of Default, the certificate shall specify all the actions that the Borrower is taking to remedy such Event of Default or prospective Event of Default.
The Eligible Project Costs Documentation submitted pursuant to Section 4(c) and the certificate delivered pursuant to Section 4(d) must be satisfactory to the TIFIA Lender. The Eligible Project Costs Documentation must provide sufficient detail to enable the TIFIA Lender to verify that such costs are Eligible Project Costs paid by or on behalf of the Borrower. The Eligible Project Costs Documentation and the certificate must provide sufficient detail to enable the TIFIA Lender to verify that proceeds of the Project BANs were expended for Eligible Project Costs for the Project and to audit such other Eligible Project Costs paid by or on behalf of the Borrower. The certificate and the Eligible Project Costs Documentation are intended to document Eligible Project Costs in connection with the reimbursement of such Eligible Project Costs or for the purpose of paying or redeeming, in whole or part, only those Project BANs in respect of which the proceeds were used to pay such documented Eligible Project Costs. The TIFIA Lender shall review each such certificate for compliance with TIFIA disbursement requirements. Within fourteen (14) Business Days following the receipt of the Eligible Project Costs Documentation and the accompanying certificate, the TIFIA Lender shall deliver a notice to the Borrower confirming the Eligible Project Costs set forth in the certificate that have been approved, or notifying the Borrower as to which Eligible Project Costs have not been approved, and confirming the cumulative amount of Eligible Project Costs approved as of the notice date. Such approved amounts of Eligible Project Costs will be disbursed at such time as the Borrower submits the Requisition in respect of such approved amounts in accordance with clauses (a) and (b) above. The Borrower shall not submit a Requisition that seeks reimbursement of any Eligible Project Costs for which the related Eligible Project Costs Documentation was not delivered to the TIFIA Lender and the Servicer (if any) at least one (1) month prior to the date the Requisition is submitted.

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

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

Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule.
(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9(b) (Capitalized Interest Period), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time-to-time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

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

Section 8. Security and Priority; Flow of Funds. (a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The TIFIA Loan shall be secured by a Lien on the Trust Estate, (i) subordinate to the Liens and charges on the Trust Estate that secure the Senior Obligations, the Subordinate Obligations, the related Fees and Expenses and Hedging Termination Obligations on Existing Interest Rate Swap Agreements, (ii) on a parity with the Liens and charges on the Trust Estate that secure other Junior Subordinate Obligations, if any and (iii) senior to the Liens and charges on the Trust Estate that secure Hedging Termination Obligations on Subsequent Interest Rate Swap Agreements and Additional Interest Rate Swap Agreements.

(b) Except (i) for the Permitted Liens, or (ii) to the extent otherwise provided in clause (a) of this Section 8, the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with the Lien on the Trust Estate securing the TIFIA Loan and the TIFIA Bond created by the Indenture and
the Seventh Supplemental Indenture, and all corporate and regulatory action on the part of the Borrower or any other applicable entity to that end has been duly and validly taken.

(c) The Borrower shall not use, and shall not direct the Trustee to use, Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 and the Indenture, nor shall the Borrower apply, or direct the Trustee to apply, any portion of the Pledged Revenues in contravention of this Agreement or the Indenture Documents.

(d) The Indenture provides that all Pledged Revenues shall be deposited in the Revenue Fund and applied in the following order of priority, as more fully described, and in accordance with the requirements specified in Section 5.02 of the Indenture:

(i) First, to the Interest Fund, the amount required to be deposited therein in accordance with Section 5.02(A)(1) of the Indenture;

(ii) Second, to the Principal Fund, the amount required to be deposited therein in accordance with Section 5.02(A)(2) of the Indenture;

(iii) Third, to the Bond Reserve Fund, the amount required to be deposited therein in accordance with Section 5.05(D) of the Indenture;

(iv) Fourth, to the Subordinate Obligations Fund, the amount required to be deposited therein in accordance with Section 5.02(A)(4) of the Indenture;

(v) Fifth, to the Fees and Expenses Fund, the amount required to be deposited therein in accordance with Section 5.02(A)(5) of the Indenture;

(vi) Sixth, to the Existing Hedging Termination Obligations Fund, the amount required to be deposited therein in accordance with Section 5.02(A)(6) of the Indenture;

(vii) Seventh, to the Junior Subordinate Obligations Fund, the amount required by Section 5.02(A)(7) of the Indenture;

(viii) Eighth, to the TIFIA Reserve Fund, the amount required by Section 5.02(A)(8) of the Indenture and Section 16(k)(iii)(Funds and Accounts; Permitted Investments; TIFIA Reserve Fund) of this Agreement;

(ix) Ninth, to the Other Hedging Termination Obligations Fund, the amount required by Section 5.02(A)(9) of the Indenture; and

(x) Tenth, any Pledged Revenues remaining after the deposits described in (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) and (ix) above, except as the Borrower shall otherwise direct in writing, shall be transferred to the Borrower and shall no longer constitute Pledged Revenues.
Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay, and shall cause the Trustee to pay, solely from Pledged Revenues, the principal of and interest on the TIFIA Loan by making payments on the TIFIA Bond in accordance with the provisions of this Agreement and the Indenture Documents on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date on which payment thereof is required to be made hereunder (including, without limitation, the Final Maturity Date and any date on which payment thereof is due by reason of the mandatory prepayment and redemption, or acceleration of the maturity of the TIFIA Loan or otherwise); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be treated as a payment of the TIFIA Loan and any prepayment of principal of the TIFIA Loan shall be treated as a redemption of the TIFIA Bond.

(b) Capitalized Interest Period. No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each March 31 and September 30 occurring during the Capitalized Interest Period, interest accrued on the TIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding TIFIA Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(c) Payment of TIFIA Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay, or cause the Trustee to pay, solely from Pledged Revenues, TIFIA Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on Exhibit G, as the same may be revised as provided in Section 7 (Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule), which payments shall be made in accordance with Section 9(d) (Manner of Payment).

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

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

(f) TIFIA Bond; Adjustments to Loan Amortization Schedule. As evidence of the Borrower’s obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the
TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of Exhibit A, having a maximum principal amount (excluding capitalized interest) of $537,484,439 (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6 (Interest Rate). The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in Exhibit G from time to time in accordance with Section 7 (Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule) to reflect (i) the amount of each disbursement made under this Agreement, (ii) the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, (iii) each repayment or prepayment in respect of the principal amount of the TIFIA Loan and (iv) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Unless otherwise agreed at the time of a prepayment, each prepayment of principal shall be applied as set forth in Section 10(b) (General Prepayment Instructions). Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on Exhibit G shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

(g) Payment Obligations Limited to Pledged Revenues. Notwithstanding anything herein to the contrary, all obligations of the Borrower to pay TIFIA Debt Service or to make any other payments hereunder shall be limited in all cases to Pledged Revenues available under the Indenture.

Section 10. Prepayment.

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

(b) General Prepayment Instructions. Upon the TIFIA Lender’s receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its representative at the principal office of the TIFIA Lender. If the Borrower prepays only part of
the unpaid balance of principal of such TIFIA Bond, the TIFIA Lender may make a notation on Exhibit G indicating the amount of principal of and interest on such TIFIA Bond then being prepaid. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on Exhibit G shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document. All such partial prepayments of principal shall be applied to reduce future payments due on the TIFIA Bond in inverse order of maturity. If said monies shall not have been so paid on the prepayment date, such principal amount of such TIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate).

Section 11. Reserved.

Section 12. Compliance with Laws. The Borrower agrees to comply with all applicable federal and State laws. The Borrower further agrees to require its contractors and subcontractors at all tiers for the Project to comply in all material respects with all applicable federal and State laws in respect of the Project. The FTA Regional Office has oversight responsibility for ensuring compliance with all applicable provisions of federal transportation law and for project oversight activities for the Project, including compliance with the terms of the FTA Master Agreement and applicable federal law. The Borrower agrees to cooperate with the other Borrower Related Parties, the FTA Regional Office, its agents and representatives in carrying out their duties under this Agreement, the FFGA and the FTA Master Agreement. If the Borrower Related Parties fail to obtain all state and federal permits required for construction or operation of the Project or otherwise fail to comply with the foregoing provisions of this Section 12, the Borrower and the other Borrower Related Parties shall assume the risk of any loss associated therewith. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower’s risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof.

Section 13. Conditions Precedent.

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

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

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

(iii) Counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on *Exhibit H-1*) and bond counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on *Exhibit H-2*).

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

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

(vi) The Borrower shall have provided evidence to the TIFIA Lender’s satisfaction, no more than thirty (30), but no less than fourteen (14) days prior to the Effective Date, of the assignment by at least two (2) Nationally Recognized Rating Agencies of ratings of “AAA” on the Senior Bonds and “A-” or “A3” on the TIFIA Loan and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

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

(viii) The Borrower shall have demonstrated to the TIFIA Lender’s satisfaction that the funds forecasted to be available under the Base Case Projections will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(ix) SANDAG shall have satisfied the conditions precedent set forth in Section 4 of the SANDAG Direct Agreement, MTS shall have satisfied the conditions precedent set forth in Section 4 of the MTS Direct Agreement and each of the Direct Agreements shall be duly executed by the respective parties thereto and such agreement shall be in full force and effect and delivered to the TIFIA Lender.
(x) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of the Principal Project Contracts to which it is a party, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

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

(xii) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Sales Tax Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate a Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.75 to 1.00 and (C) otherwise be in form and substance acceptable to the TIFIA Lender.

(xiii) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender to the Borrower as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender’s counsel and financial advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

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

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

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

(xvii) The Borrower shall have delivered to the TIFIA Lender (a) certificates of insurance evidencing that the Borrower Related Parties and each applicable Principal Project Party have obtained insurance with respect to the Project that meets the requirements of Section 16(f) (Insurance), Section 7(b) of the SANDAG Direct Agreement and Section 7(c) of the MTS Direct Agreement.
(xviii) The Borrower shall have provided to the TIFIA Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified by the Borrower’s Authorized Representative: (A) a copy of its Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of the State or the state of its formation, to the extent applicable), which Organizational Documents shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents.

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

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

(xx) The representations and warranties of the Borrower set forth in this Agreement (including Section 14 (Representations and Warranties of Borrower)), the representations and warranties of SANDAG set forth in Section 5 of the SANDAG Direct Agreement and the representations and warranties of MTS set forth in Section 5 of the MTS Direct Agreement shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

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

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

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

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

(i) The Borrower shall have provided to the TIFIA Lender evidence satisfactory to the TIFIA Lender of the issuance of the Project BANs.

(ii) The Borrower shall certify that the proceeds of the Project BANs have been fully spent on costs of the Project; provided, however, that the proceeds of the TIFIA Loan shall solely be used to pay directly for, or to reimburse prior payment of, Eligible Project Costs;

(iii) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 22(a) (Financial Plan).

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

(v) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all Principal Project Contracts and all Additional Project Contracts requested by the TIFIA Lender pursuant to Section 16(b) (Copies of Documents) or Section 17(e) (Additional Project Contracts) (including, in each case, any amendment, modification or supplement thereto) entered into after the Effective Date.

(vi) The Borrower shall have demonstrated to the TIFIA Lender’s satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.
(vii) Each of the insurance policies obtained by any Borrower Related Party and by any applicable Principal Project Party in satisfaction of the conditions in Section 13(a)(xvii) (Conditions Precedent to Effectiveness) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

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

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

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

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

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

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

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

(xv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender.

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

(a) Organization; Power and Authority. The Borrower is a public agency organized and validly existing pursuant to the Sales Tax Act. Pursuant to the provisions of the Sales Tax Act, the Borrower controls the use of the $0.5 cent retail transactions and use tax collected in San Diego County known as TransNet. The Borrower is in good standing under the laws of the State, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers’ Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

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

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

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

(f) Litigation. As of the Effective Date, except as set forth in Schedule 14(f), there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Sales Tax Revenues, the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Sales Tax Revenues, the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower’s knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to result in a Material Adverse Effect. The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and State Government Code Section 5451 establish, in favor of the Trustee for the benefit of the TIFIA Lender, the valid and binding Lien on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Lien is in full force and effect and is (i) not subordinate or junior to any other Liens in respect of the Trust Estate except for the Lien of the Indenture associated with Senior Obligations, the Subordinate Obligations, the related Fees and Expenses and Hedging Termination Obligations on Existing Interest Rate Swap Agreements, (ii) not pari passu with any obligations other than any other Junior Subordinate Obligations and (iii) senior to Hedging Termination Obligations on Additional Interest Rate Swap Agreements and Subsequent Interest Rate Swap Agreements. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 16(a) (Securing Liens) or in the Indenture Documents with
respect to the matters described in such Section or documents. The TIFIA Lien is valid and
effective and enforceable under State law without any further action by the Borrower or any
other party, and no documents or instruments are required or necessary to be recorded or filed for
record in any place to establish the validity, effectiveness or enforceability of the TIFIA Lien to
the extent contemplated by the Indenture Documents. All taxes and filing fees that are due and
payable in connection with the execution, delivery or recordation of any Indenture Documents,
TIFIA Loan Documents, Principal Project Contract or any instruments, certificates or financing
statements in connection with the foregoing, have been paid. Neither the attachment, perfection,
validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to
the Indenture Documents is governed by Article 9 of the UCC.

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

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

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

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

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

(m) No Defaults. The Borrower is not in default under the terms of any
Related Document, and no event has occurred or condition exists that, with the giving of notice
or the passage of time or both, would constitute an Event of Default.
(n) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion of the Project, and for the operation and management thereof, have been obtained or effected by the Borrower Related Parties and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(o) Principal Project Contracts. The Borrower Related Parties have delivered to the TIFIA Lender a fully executed, complete, and correct copy of each Principal Project Contract, and each Additional Project Contract required to be delivered to, or requested by, the TIFIA Lender pursuant to Section 16(b) (Copies of Documents) (including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower’s knowledge, any Principal Project Party, the right to terminate any Principal Project Contract. The Borrower is not in breach of any material term in or in default under any Principal Project Contract, and to the knowledge of the Borrower, no party to any Principal Project Contract is in breach of any material term therein or in default thereunder.

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

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

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

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

(r) Compliance with Laws. The Borrower is in compliance in all material respects with, and has conducted (or caused to be conducted) its government functions, public transit operations and the implementation of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 14(s) (Environmental Matters)), including those set forth in Exhibit E and the FTA Master Agreement. To the Borrower’s knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws in respect of the Project, including those set forth in Exhibit E and the FTA Master Agreement that flow down to third-party contractors. No notices of violation of any applicable law have been issued, entered or received by the Borrower or, to the Borrower’s knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(s) Environmental Matters. The Borrower and, to the Borrower’s knowledge, each Principal Project Party is in material compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice “Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects,” 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at http://www.transportation.gov/policy/transportation-policy/environment/laws (“Environmental Laws”). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained by the Borrower Related Parties and are (or, as applicable, will be) in full force and effect. Except for all communications and notices that the Borrower has reasonably and in good faith determined to be either (A) without merit or (B) not expected to result in a Material Adverse Effect, the Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower or another Borrower Related Party is not in full compliance with all Environmental Laws and Governmental Approvals relating to or in connection with the Project and, to the Borrower’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower or any other Borrower Related Party with any such Environmental Law or Governmental Approval. The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower’s or the Project’s compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.
(t) **Insurance.** Schedule 14(t) lists all insurance policies of any nature maintained by each Borrower Related Party with respect to the Project, as well as a summary of the terms of each such policy. The Borrower is in material compliance with all insurance obligations required under each Principal Project Contract to which it is a party and the other Related Documents as of the date on which this representation and warranty is made.

(u) **Title.** The Borrower has valid legal and beneficial title to the Pledged Revenues and the Trust Estate on which it purports to grant Liens pursuant to the Indenture Documents, in each case free and clear of any Lien of any kind, except for Permitted Liens.

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

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

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

(y) **Taxes.** The Borrower is not required to file tax returns with any Governmental Authority.

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

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

(bb) **Sovereign Immunity.** Under the laws of the State, neither the Borrower nor the Pledged Revenues are exempt or immune from, whether on the basis of sovereign immunity or any similar legal or equitable principle, doctrine or rule of law and whether now or at any time hereafter arising, (1) jurisdiction, (2) liability, suit or other legal or equitable remedy for the amounts due and payable under the Secured Obligations, this Agreement or any of the other Related Documents or the performance of any of its other obligations hereunder or thereunder, or (3) enforcement of any judgment, order or decree to which the Borrower or the Pledged Revenues may be made subject, except in each case as provided in Sections 970 et seq. of the California Government Code, which provides that the traditional forms of enforcement of a money judgment under Title 9 of the California Code of Civil Procedure (e.g., attachment, garnishment and execution) are not available to enforce a judgment against a local governmental entity, and further provides that a writ of mandate is the appropriate remedy to compel the local governmental entity to satisfy a judgment.

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

(dd) **No Proposed Legal Changes.** There is no amendment or, to the knowledge of the Borrower, no proposed amendment certified for placement on a statewide or local ballot, to the Indenture Documents or any legislation that has passed, or any published judicial decision interpreting any of the foregoing, which could reasonably be expected to result in a Material Adverse Effect.

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

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

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

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

**Section 16.** **Affirmative Covenants.** The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:
(a) **Securing Liens.** The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the TIFIA Lien in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to the Lien of the Indenture.

(b) **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 offering documents, prepared by or on behalf of the Borrower in connection with the incurrence of such Permitted Debt, in each case promptly following the preparation or filing thereof. The Borrower shall provide written notice to the TIFIA Lender of the Borrower’s or SANDAG’s intent to enter into an Additional Project Contract and shall provide drafts of any such Additional Project Contracts at least thirty (30) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. The Borrower shall provide to the TIFIA Lender, promptly after execution thereof, a copy of each Additional Project Contract.

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

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

(e) **Reserved.**

(f) **Insurance.** The Borrower Related Parties shall at all times, through a combination of insurance policies and self-insurance programs, maintain or cause its contractors to maintain, all insurance necessary and sufficient to protect the Project and the Borrower Related Parties against accidental loss or damage while under construction and during subsequent periods of operation and maintenance, as is customarily maintained by the Borrower Related Parties with respect to works and properties of like character, against accident to, loss of, damage to and liability from such works or properties.
(g) Notice.

(i) The Borrower shall, within ten (10) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

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

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

(C) **Litigation**: (1) the filing of any litigation, suit or action, or the commencement of any proceeding against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any unsatisfied or uninsured judgments against the Borrower with award amounts in excess of $100,000,000, either individually or in the aggregate;

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

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

(F) **Insurance Claim**: any insurance claims made by the Borrower or any Principal Project Party in respect of the Project in excess of $80,000,000 either individually or in the aggregate;

(G) **Amendments**: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any Indenture Documents at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;
(H) **Principal Project Contract Defaults**: any material breach or default or event of default on the part of any party under any Principal Project Contract;

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

(J) **Project Changes**: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of Total Project Costs or (2) change to the Construction Schedule that delays completion of a critical path item for the Project or that could delay Substantial Completion by the Projected Substantial Completion Date;

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

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

(M) **Documents**: the delivery or receipt, by the Borrower, of any material plans, reports or notices under the Related Documents, unless the TIFIA Lender notifies the Borrower that any of such plans, reports or notices no longer need to be provided; provided, however, that, with respect to the Indenture Documents, the Borrower shall be required under this clause (M) to notify the TIFIA Lender only of the delivery or receipt of material notices thereunder;

(N) **Legislative and Judicial Action or Voter Initiative**: the proposal or initiation of any legislative or voter initiative or judicial action the result of which would (1) amend or otherwise alter the Sales Tax Act to (x) increase or decrease the retail transactions and use tax imposed in pursuant thereof or (y) cause the tax imposed by the Sales Tax Act to expire or otherwise terminate prior to March 31, 2048 or (2) amend or repeal the constitutional or statutory authority of any Borrower Related Party to operate under State law, provided, however, that such notice shall be provided prior to the legislative or judicial action or voter initiative; and

(O) **Other Adverse Events**: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.
(ii) Borrower shall provide a copy of any legislation proposing that the Borrower be reorganized, consolidated with, or merged into another Person, within fifteen (15) Business Days of the introduction of such legislation to the California State Assembly or State Senate.

(iii) The Borrower shall, within ten (10) Business Days of each Calculation Date, provide the TIFIA Lender and the Trustee with a Certificate signed by the Borrower’s Authorized Representative demonstrating (A) the Debt Service Coverage Ratio for the Calculation Period most recently ended and (B) whether or not a TIFIA Reserve Event has occurred.

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

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

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a public entity, established and existing under the laws of the State.

(j) Annual Rating. The Borrower shall, commencing in 2018, no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender (i) public ratings on the TIFIA Bond by two Nationally Recognized Rating Agencies, together with the rating report or letter delivered by such Nationally Recognized Rating Agencies in connection with each such rating, and (ii) the existing ratings on any outstanding Senior Bonds, in each case prepared no earlier than June 1 of such year.

(k) Funds and Accounts; Permitted Investments; TIFIA Reserve Event.

(i) In accordance with the provisions of the applicable Indenture Documents and this Agreement, the Borrower shall maintain the TIFIA Reserve Fund in an amount equal to the TIFIA Reserve Fund Requirement. Amounts in the TIFIA Reserve Fund shall be applied to ensure the timely payment of TIFIA Debt Service on the TIFIA Bond.

(ii) On the first Business Day of each month (A) after notice of the occurrence of a TIFIA Reserve Event has been delivered in accordance with Section 16(g)(iii) (Notice) and (B) during any period in which the TIFIA Reserve Fund is required to be funded, the Borrower shall transfer to the TIFIA Reserve Fund the amount of Pledged Revenues available as of the end of the immediately preceding month after making the transfers described in paragraphs First through Seventh in
Section 8(c) (Security and Priority; Flow of Funds) until the balance in the TIFIA Reserve Fund is equal to the TIFIA Reserve Fund Requirement.

(iii) If, after the occurrence of a TIFIA Reserve Event, the Borrower delivers to the TIFIA Lender certificates pursuant to Section 22(d) (Financial Statements) on four (4) consecutive Calculation Dates showing that the Debt Service Coverage Ratio for the Calculation Period preceding each such Calculation Date was not less than 1.35 to 1.00 and projecting that the Debt Service Coverage Ratio will not be less than 1.35 to 1.00 for the next four (4) consecutive Calculation Dates, the Borrower may, upon written notice to the TIFIA Lender at least ten (10) Business Days in advance, release any balance in the TIFIA Reserve Fund to the Borrower; provided that, if the duration of the TIFIA Reserve Event was longer than twenty four (24) months, then (A) any amounts on deposit in the TIFIA Reserve Fund shall remain therein for a period at least as long as the duration of the TIFIA Reserve Event and (B) the Borrower must deliver the certificates required by Section 22(d) (Financial Statements) on each Calculation Date during such period showing that the Debt Service Coverage Ratio for the preceding Calculation Period.

(iv) The Borrower shall cause the Bond Reserve Fund to be funded in such amounts and under such conditions as are required by this Agreement and the Indenture Documents.

(v) Amounts on deposit in the TIFIA Reserve Fund or the TIFIA Debt Service Account shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Reserve Fund, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the TIFIA Debt Service Account corresponding to amounts needed for the payment of interest, not later than the next Semi-Annual Payment Date, and (C) with respect to Permitted Investments maintained in the TIFIA Debt Service Account corresponding to amounts needed for the repayment of principal, the next Payment Date for repayment of principal in respect of such debt.

(vi) The Borrower may replace all or a portion of the required balance of the TIFIA Reserve Fund, in accordance with the terms of the applicable Indenture Documents, with a Credit Enhancement provided by a financial institution with an Acceptable Credit Rating. If at any time an issuer of a Credit Enhancement securing the TIFIA Reserve Fund ceases to have an Acceptable Credit Rating, the Borrower shall cause such Credit Enhancement to be replaced by a new Credit Enhancement within thirty (30) Business Days of the date on which the current issuer ceased to have an Acceptable Credit Rating, or the Trustee shall be permitted to immediately draw the full amount of such letter of credit and deposit the proceeds of such drawing into the TIFIA Reserve Fund. Any new Credit Enhancement shall have the same terms and conditions (including expiration date and face amount) as the letter of credit being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit securing the TIFIA Reserve Fund is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit with a new Credit Enhancement at
least ten (10) Business Days prior to the stated expiry date of the existing letter of credit and such new Credit Enhancement shall be in an amount equal to at least the amount of expiring letter of credit. If the Borrower fails to provide such new Credit Enhancement by the date required above, the Trustee shall be permitted to immediately draw the full undrawn amount of the existing letter of credit and deposit the proceeds of such drawing into the TIFIA Reserve Fund.

(l) Compliance with Laws. The Borrower shall comply in all material respects with all applicable material federal and State laws, including (i) all items set forth in Exhibit E, to the extent applicable, and (ii) the terms and conditions of the FTA Master Agreement and the FFGA.

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

(n) Hedging.

(i) The Borrower is required to have in effect an Interest Rate Swap Agreement with respect to any Variable Interest Rate Secured Obligation Outstanding as of the Effective Date. Any Variable Interest Rate Secured Obligation issued after the Effective Date may be the subject of an Additional Interest Rate Swap Agreement. The Borrower may elect to not enter into an Additional Interest Rate Swap Agreement with respect to Variable Interest Rate Secured Obligations issued after the Effective Date, so long as the issuance of such debt satisfies the additional debt requirements in Section 17(a) (Indebtedness), assuming for such purposes that the interest rate for such Variable Interest Rate Secured Obligations is twelve percent (12%) per annum. Any such Additional Interest Rate Swap Agreement shall have a stated maturity or termination date not earlier than the (x) the Final Maturity Date and (y) the final maturity date of the Variable Interest Rate Secured Obligations subject to such Additional Interest Rate Swap Agreement. Each Additional Interest Rate Swap Agreement and Subsequent Interest Rate Swap Agreement must have an aggregate stated notional amount of not less than (A) during the Construction Period, at least ninety percent (90%) and not more than one hundred ten percent (110%) of the aggregate principal amount of the Variable Interest Rate Secured Obligations projected to be outstanding during such time period and (B) at all other times, at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the aggregate principal amount of the Variable Interest Rate Secured Obligations projected to be outstanding until the maturity of such Variable Interest Rate
Secured Obligations. Each Additional Interest Rate Swap Agreement and Subsequent Interest Rate Swap Agreement shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of the applicable Variable Interest Rate Secured Obligations subject to such swap agreement.

(ii) Each Additional Interest Rate Swap Agreement or Subsequent Interest Rate Swap Agreement shall provide for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Qualified Counterparty.

(iii) The Borrower’s obligations to pay Hedging Obligations and Hedging Termination Obligations on the Additional Interest Rate Swap Agreements and Subsequent Interest Rate Swap Agreement shall be from the sources and in the priority specified in the Indenture Documents. For the avoidance of doubt, the Borrower’s obligations to pay (x) Hedging Obligations shall be made from amounts on deposit in the Interest Fund, (y) Hedging Termination Obligations on the Existing Interest Rate Swap Agreements shall be made from amounts on deposit in the Existing Hedging Termination Obligations Fund, senior to the payment of Junior Subordinate Obligations, and (z) Hedging Termination Obligations on the Additional Interest Rate Swap Agreements and Subsequent Interest Rate Swap Agreements shall be made from amounts on deposit in the Other Hedging Termination Obligations Fund, subordinated to the payment of the Junior Subordinate Obligations.

(iv) Any Existing Interest Rate Swap Agreement or Additional Interest Rate Swap Agreement that is replaced, amended or novated after the Effective Date shall be a “Subsequent Interest Rate Swap Agreement”; provided, that an Existing Interest Rate Swap Agreement shall remain such and shall not be considered a Subsequent Interest Rate Swap Agreement if such Existing Interest Rate Swap Agreement is amended only to revise the notational amount thereof in connection with a partial refunding or prepayment of the Senior Bonds associated therewith. Each Subsequent Interest Rate Swap Agreement shall (A) be with a Qualified Counterparty, (B) commence no later than the date of amendment, novation or replacement of the Interest Rate Swap Agreement that is being amended, novated or replaced (in whole or in part) and (C) terminate no earlier than the earlier to occur of (1) the Final Maturity Date and (2) the final maturity date of the Variable Interest Rate Secured Obligations subject to such Subsequent Interest Rate Swap Agreement.

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

(vi) The Trustee shall be granted a security interest in each Interest Rate Swap Agreement and payments due under each Interest Rate Swap Agreement in order to secure the Borrower’s obligations under the TIFIA Loan Documents. The Interest Rate Swap Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Trustee for deposit and disbursement in accordance with the Indenture Documents.

(vii) As long as the Borrower is required to maintain Interest Rate Swap Agreements pursuant to this Agreement, the Borrower shall neither terminate (other than Permitted Hedging Terminations), transfer, nor consent to any transfer of (other than to a Qualified Counterparty) any Interest Rate Swap Agreement without the prior written consent of the TIFIA Lender.

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

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

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

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

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

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

(ii) within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

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

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

(a) **Indebtedness.**

(i) Except for Permitted Debt that satisfies the requirements of this Section 17(a) (Indebtedness), the Borrower shall not issue or incur indebtedness secured by Pledged Revenues without the prior written consent of the TIFIA Lender.

(ii) In order to issue any Secured Obligations under the Indenture, the Borrower shall, prior to the issuance of thereof provide the Trustee and the TIFIA Lender with a certificate of the Borrower’s Authorized Representative, certifying that:

(A) upon issuance of such Secured Obligations, the Sales Tax Revenues collected during any twelve (12) consecutive calendar months specified by the Borrower within the most recent eighteen (18) calendar months...
immediately preceding the date of issuance of such Secured Obligation shall be at least equal to 1.15 times the maximum amount of Debt Service becoming due and payable on all Secured Obligations Outstanding (and, as applicable, to be Outstanding) in any Borrower Fiscal Year during the period from the Calculation Date through the Final Maturity Date;

(B) (1) no Event of Default has occurred hereunder or under any of the Indenture Documents and (2) no event has occurred which with the passage of time or the delivery of notice will become an Event of Default hereunder or under any of the Indenture Documents;

(C) if such Secured Obligations are Senior Obligations, the Borrower has complied with the requirements for issuance of additional Senior Obligations set forth in Sections 3.02 and 3.03, as applicable, of the Indenture;

(D) if such Secured Obligations are Subordinate Obligations, the Borrower has complied with the requirements for issuance of additional Subordinate Obligations set forth in Section 3.05(d) of the Indenture and Section 3.03 and 3.04, as applicable, of the Subordinate Indenture; and

(E) if such Secured Obligations are Subordinate Obligations issued as commercial paper notes, such commercial paper notes shall be secured and payable pursuant to an Additional Credit Enhancement.

(iii) In addition, prior to the issuance of any Secured Obligations (other than Secured Obligations issued or incurred for purposes of refunding in compliance with the requirements for the issuance of refunding bonds set forth in Section 3.04 of the Indenture or Section 3.05 of the Subordinate Indenture), the Borrower shall certify to the Trustee and the TIFIA Lender that the TIFIA Bond is rated at least “A-” or “A3” and that the issuance of such Secured Obligations will not, in and of itself, result in its downgrade below “A-” or “A3” or withdrawal of the then-existing credit rating of the TIFIA Bond, as confirmed by the Nationally Recognized Rating Agency that provided the most recent public rating of the TIFIA Bond in accordance with Section 16(j) (Annual Rating).

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, either (i) extinguish or impair the Liens on the Trust Estate granted pursuant to the Indenture, (ii) amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender’s determination) in connection with the TIFIA Loan, (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender’s determination) in connection with the TIFIA Loan, (iv) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender’s determination), (v) except as otherwise expressly permitted in this Agreement, take any action, or fail to take any action, which would have the effect of reducing the ½ cent rental transactions and use tax imposed by
the Sales Tax Act and the Ordinance or cause the expiration of that tax to occur prior to March 31, 2048, or (vi) provide for the acceleration of any Secured Obligations (for the avoidance of doubt, swap termination payments and term-outs of Secured Obligations that occur in accordance with the terms of such Secured Obligations shall not be considered acceleration). Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification or supplement to any Related Document within five (5) Business Days after execution thereof.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Trust Estate, the Pledged Revenues, or the Borrower’s respective rights therein.

(d) Reserved.

(e) Additional Project Contracts. The Borrower shall not, nor permit any Borrower Related Party to, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) that commits the Borrower or SANDAG to spend, or is reasonably expected to involve expenditures by the Borrower or SANDAG of, amounts that either: (i) exceed $10,000,000 in any Borrower Fiscal Year, or (ii), alone or when aggregated with the other Total Project Costs in the same line item of the applicable budget set forth in the Financial Plan most recently approved by the TIFIA Lender, would cause aggregate Total Project Costs for such line item in any Borrower Fiscal Year to exceed the amounts for such line item for any Borrower Fiscal Year reflected in the budget in the Financial Plan most recently approved by the TIFIA Lender by more than five percent (5%).

(f) No Prohibited Sale, Lease or Assignment. Except to a Borrower Related Party, the Borrower shall not, nor provide consent to any Borrower Related Party to, sell, lease or assign its rights in and to the Project, a substantial portion of the assets included in the Project, or its rights and obligations under any Related Document, in each case unless such sale, lease or assignment could not reasonably be expected to result in a Material Adverse Effect.

(g) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) propose an amendment to or modification of the constitutional and statutory provisions that are the basis for its existence and authority (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days’ prior written notice to the TIFIA Lender.

(h) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, the Borrower shall not, nor permit any other Borrower Related Party to, (i) sell or transfer any property or assets constituting part of the Project to, or purchase or acquire any property or assets of, any other Governmental Authority, or (ii) otherwise engage in any other transactions in connection with the Project with, any other Governmental Authority (including any other Governmental Authority of or in the
State) the terms and provisions of which are materially adverse to any Borrower Related Party or the Project or, in either case, that could reasonably be expected to result in a Material Adverse Effect.

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

(j)  Change in Legal Structure; Mergers and Acquisitions. The Borrower shall not, and shall not agree to reorganize, consolidate with, or merge into another Person, unless (i) such Person is a successor public authority created by State law that succeeds to the assets of the Borrower and assumes the obligations of the Borrower hereunder and under the Related Documents to which the Borrower is a party, including payment of the TIFIA Bond and (ii) such reorganization, consolidation or merger, does not adversely affect or impair to any extent or in any manner (A) the Pledged Revenues or other elements of the Trust Estate, or (B) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender.

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

(l)  OFAC Compliance. The Borrower shall not:

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

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

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

(m) Hedging. Other than Interest Rate Swap Agreements expressly permitted hereunder, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, “cap” or “collar” transactions, futures, or any other hedging transaction without the prior written consent of the TIFIA Lender.

(n) Additional Rights. In the event that the Borrower shall, directly or indirectly, enter into, consent to, or otherwise grant any Contractual Obligation which provides any counterparty to such Contractual Obligation with rights to accelerate any Secured Obligations or other obligations (the “Additional Rights”) in violation of Section 17(b)(vi) (No Lien Extinguishment or Adverse Amendments), then, to the extent permitted by law, such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the TIFIA Lender shall have the benefits of such Additional Rights including the right to accelerate the TIFIA Loan pursuant to Sections 20(c) and (d) (Events of Default and Remedies). The Borrower shall promptly, upon entering into or otherwise consenting to a Contractual Obligation containing such Additional Rights, notify the TIFIA Lender of such Contractual Obligation and, to the extent permitted by law, enter into an amendment to this Agreement to include such Additional Rights; provided, that, the TIFIA Lender shall have the benefit of such Additional Rights, to the extent permitted by law, even if the Borrower fails to provide such notice or enter into an amendment hereto to include said Additional Rights into this Agreement.

(o) No Prohibited Payments. Except in accordance with the terms of this Agreement, the Borrower shall not, at any time, make, or permit to be made, any payments from the Pledged Revenues received by the Trustee under the Indenture to any party prior to satisfying all obligations then due and payable to the TIFIA Lender under this Agreement.

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

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

Section 20. Events of Default and Remedies.

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

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

(ii) **Covenant Default.** (A) The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), (B) SANDAG shall fail to observe or perform any covenant, agreement or obligation of SANDAG under the SANDAG Direct Agreement or (C) MTS shall fail to observe or perform any covenant, agreement or obligation of MTS under the MTS Direct Agreement, and any such failure described in clauses (A), (B) or (C) shall not be cured within thirty (30) days after receipt by the applicable Borrower Related Party 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 thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(ii) (Covenant Default), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower, SANDAG or MTS, as applicable, shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date of the notice of default from the TIFIA Lender.

(iii) **Development Default.** A Development Default shall occur, in which case the TIFIA Lender may (A) suspend the disbursement of TIFIA Loan proceeds under this Agreement and (B) pursue such other remedies as provided in this Section 20 (Events of Default and Remedies). If so requested by the TIFIA Lender in connection with a Development Default, the Borrower shall immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.

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

1. such misrepresentation is not intentional;

2. in the case of the Borrower, such misrepresentation is not a misrepresentation in respect of Section 14(h) (No Debarment), Section 14(j) (Compliance with Federal Requirements), Section 14(k) (Transportation Improvement Program), Section 14(p) (Information), Section 14(q) (OFAC; Anti-Corruption Laws), Section 14(x) (Financial Statements) or Section 14(cc) (Patriot Act);

3. in the case of SANDAG, such misrepresentation is not a misrepresentation in respect of Sections 5(g), 5(i), 5(m) or 5(n) of the SANDAG Direct Agreement;

4. in the case of MTS, such misrepresentation is not a misrepresentation in respect of Sections 4(g), 4(i), 4(m) or 4(n) of the MTS Direct Agreement;

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

6. in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

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

8. the applicable Borrower Related Party diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Secured Obligations or Other Material Indebtedness. Any acceleration shall occur of the maturity of any (A) Secured Obligations or (B) any indebtedness or other payment obligations of the Borrower secured by Pledged Revenues in an aggregate principal amount equal to or greater than $1,000,000 that is senior to, or in parity with, the TIFIA Loan in right of payment or in right of security (“Other Material Indebtedness”), or any other indebtedness shall not
be paid in full upon the final maturity thereof. For the avoidance of doubt, swap termination payments and term-outs of Secured Obligations that occur in accordance with the terms of such Secured Obligations shall not be considered acceleration.

(vi) Cross Default. (A) Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the Indenture Documents, or made in or delivered pursuant to the documents (the “Other Loan Documents”) under which any Secured Obligations is created or incurred, shall prove to be false or misleading in any material respect (each an “Other Indebtedness Misrepresentation Default”), or any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Indenture Documents or the Other Loan Documents, and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Indenture Documents or the Other Loan Documents (as the case may be) with respect to such default (each an “Other Indebtedness Covenant Default”), if the effect of such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default shall be to permit the immediate acceleration of the maturity of any or all of the Secured Obligations, and, in the case of any such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default, the Borrower shall have failed to cure such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of such Secured Obligations. For the avoidance of doubt, swap termination payments and term-outs of Secured Obligations that occur in accordance with the terms of such Secured Obligations shall not be considered acceleration.

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

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

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

(ix) **Occurrence of a Bankruptcy Related Event.** (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to any Borrower Related Party (other than the Borrower) or any Principal Project Party; provided, that: (1) a Bankruptcy Related Event in connection with a Principal Project Party shall not constitute an Event of Default if the relevant Borrower Related Party shall have promptly provided evidence satisfactory to the TIFIA Lender demonstrating that any substitute Principal Project Party has sufficient financial resources and operating expertise to complete the Principal Project Contract to which such Principal Project Party was a party; and (2) after the Substantial Completion Date, the occurrence of a Bankruptcy Related Event in connection with any Principal Project Party shall not constitute an Event of Default if at the time of such occurrence, (x) each applicable warranty period shall have ended and no claim against any warranty under the applicable Principal Project Contract shall exist or remain outstanding, or (y) if any applicable warranty period has not yet ended or any claim against any warranty remains outstanding, the Borrower promptly provides evidence satisfactory to the TIFIA Lender showing that SANDAG or MTS has (I) sufficient moneys to correct any defect or nonconforming work of such Principal Project Party, and (II) a plan to carry out such works referred to in clause (I) hereof.

(x) **Project Abandonment.** Any Borrower Related Party shall abandon the Project.

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

(xii) Cessation of Operations. Operation of the Project shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of any Borrower Related Party (and which none of the Borrower Related Parties could reasonably have avoided or mitigated).

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

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and, if an Event of Default described in Section 20(a)(v) (Acceleration of Secured Obligations or Other Material Indebtedness) shall occur or if the TIFIA Lender has a right to accelerate the TIFIA Loan pursuant to Section 17(n) (Additional Rights), the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived. Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan and (ii) if an Event of Default described in Section 20(a)(v) (Acceleration of Secured Obligations or Other Material Indebtedness) shall occur or if the TIFIA Lender has a right to accelerate the TIFIA Loan pursuant to Section 17(n) (Additional Rights), declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

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

(e) 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.

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

(g) The parties acknowledge and agree that the rights and remedies of the TIFIA Lender as the Holder of the TIFIA Bond, including any rights and remedies with respect to the payment thereof, shall be governed exclusively by the Indenture. In addition to the rights and remedies of Holders set forth in the Indenture, the parties further acknowledge and agree that the TIFIA Loan shall be made under and subject to, the terms and conditions set forth in this Agreement and the rights and remedies of the TIFIA Lender hereunder, including the right to enforce the representations, warranties and covenants made by the Borrower exclusively for the benefit of the TIFIA Lender, shall be governed exclusively by those remedies set forth in Section 20(b), (c), (d), (e) and (f) hereof. In the event of a conflict between the Indenture and this Agreement, the provisions of this Agreement shall be given precedence; provided, however, in the event there exists a conflict between the provisions of this Agreement and the Indenture and performance with the provisions of this Agreement is contrary to or inconsistent with the rights of the Holders of other Secured Obligations under the Indenture, then the provisions of the Indenture shall be given precedence and performance with the provisions thereof shall not constitute a violation of this Agreement. Subject to the immediately previous sentence, the Borrower shall comply with all provisions of the Indenture and with all documents entered into or delivered in connection with this transaction.

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

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Pledged Revenues, and TIFIA Loan requisitions received and disbursements made with regard to the Project), so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the TIFIA Loan,
accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

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

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

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

(e) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in 2020 and annually thereafter, except to the extent biennial audits are permitted for the Borrower.
pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 C.F.R. § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 22. Financial Plan, Statements, and Reports.

(a) Financial Plan. The Borrower shall provide to the TIFIA Lender and the FTA Regional Office, within sixty (60) days after the Effective Date and annually thereafter not later than ninety (90) days after the beginning of each Borrower Fiscal Year, a Financial Plan. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model. The initial and each subsequent Financial Plan delivered hereunder shall be subject to approval by the TIFIA Lender.

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

(ii) The Financial Plan shall include: (A) a certificate signed by the Borrower’s Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower’s knowledge and belief; (B) a certificate signed by the Borrower’s Authorized Representative demonstrating that annual projected Sales Tax Revenues shall be sufficient to meet the Loan Amortization Schedule and to maintain Debt Service Coverage Ratio of at least 1.35 to 1.00 through the Final Maturity Date; and (C) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, in substantially the form of the Base Case Financial Model, based upon assumptions and projections with respect to the Sales Tax Revenues, expenses and other financial aspects of the Project that shall reflect the prior experience and current status of the Project, and the expectations of the Borrower with respect to the Project, as of the most recent practicable date prior to the delivery of such Revised Financial Model.

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

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the preceding Financial Plan;
(B) provide updates to the Construction Schedule, including an update, if any, to the Projected Substantial Completion Date and an explanation of any such adjustment;

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

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

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

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

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

(H) to the extent that any Interest Rate Swap Agreements secured by Pledged Revenues are then in effect, report on the notional amounts covered by such Interest Rate Swap Agreements;

(I) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative executive summary of the topics described in clauses (A) through (H) above since the Effective Date and since the preceding Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower’s obligations under this Agreement, including any adjustment to the Projected Substantial Completion Date, and the causes thereof; and

(J) comply in all respects with FTA Project Management Oversight Requirements.

(iv) For the period following the Substantial Completion Date until repayment of the TIFIA Loan in full, the Financial Plan shall:
(A) provide an updated cash flow schedule showing annual cash inflows (Sales Tax Revenues, interest and other income) and outflows (whether or not required to be paid pursuant to the provisions of Section 9 (Payment of Principal and Interest)), replenishment of the Bond Reserve Fund, the TIFIA Reserve Fund and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls;

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

(C) provide an updated schedule of actual and projected Sales Tax Revenues, showing actual and projected Debt Service Coverage Ratios for the TIFIA Bond;

(D) to the extent that any Interest Rate Swap Agreements secured by Pledged Revenues are then in effect, report on the notional amounts and mark to market values under such Interest Rate Swap Agreement; and

(E) include a written narrative report explaining any variances in Sales Tax Revenues since the Base Case Financial Model and the preceding Financial Plan 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.

(b) Not later than ninety (90) days following Substantial Completion, the Borrower shall provide the TIFIA Lender with a final written narrative report, summarizing all significant activities and events, since the Base Case Financial Model, affecting the operation, maintenance, financing, or management of the Project in a form reasonably satisfactory to the TIFIA Lender. Such report shall include an updated cash flow schedule and currently projected Sales Tax Revenues for all Borrower Fiscal Years during the term of the TIFIA Loan.

(c) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the TIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than five percent (5%), which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower’s notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the TIFIA Lender’s security or the Borrower’s ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(d) Financial Statements. The Borrower shall furnish to the TIFIA Lender:
(i) (A) as soon as available, but no later than the last day of the month that is two months after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited statement of revenues, expenditures, and changes in fund balances and statement of cash flows of the Borrower as of the end of such period and the related unaudited balance sheet of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower’s Authorized Representative fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(B) as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, a copy of the audited statement of revenues, expenditures, and changes in fund balances and statement of cash flows of the Borrower as of the end of such fiscal year and the related audited balance sheet 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.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP (or in the case of non-U.S. Persons, substantially equivalent principles) applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

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

Section 23. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. Pursuant to the SANDAG Direct Agreement, SANDAG shall be responsible for administering construction oversight of the Project in accordance with the FTA Master

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Agreement and the FFGA, and SANDAG’s oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the FTA Master Agreement and the FFGA, which may be amended from time to time upon mutual agreement of SANDAG and the FTA Regional Office, or when so required by federal statute or otherwise required by Congress. The Borrower agrees to cooperate in good faith with SANDAG, the TIFIA Lender and FTA Regional Office in the conduct of such monitoring by promptly providing the TIFIA Lender and FTA Regional Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and FTA Regional Office, or its agents, including any independent engineer reports, documentation or information.

(b) **Recovery Plan.** If the monthly construction progress report described in Section 10(d)(i) of the SANDAG Direct Agreement or the monthly report issued pursuant to the FTA Project Management Oversight Regulations indicates either (i) a failure to maintain the Construction Schedule, including a failure to achieve Substantial Completion by the Projected Substantial Completion Date or the anticipated Substantial Completion Date set forth in the previous monthly construction progress report provided pursuant to Section 10(d)(i) of the SANDAG Direct Agreement, or (ii) actual or projected Eligible Project Cost overruns in excess of five percent (5%) of the Eligible Project Costs reflected in the Project Budget, or both, then the Borrower shall notify the TIFIA Lender and the FTA Regional Office of such failure and shall, upon request by the TIFIA Lender or the FTA Regional Office, provide the TIFIA Lender and the FTA Regional Office within thirty (30) days of receipt of such request, a Recovery Plan for review and acceptance by the TIFIA Lender and the FTA Regional Office.

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

(d) **Project Operations.** For the period following the Substantial Completion Date, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project’s operations and, as the TIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project. 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 requested by the TIFIA Lender. 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 24. No Personal Recourse.** No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

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

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

Section 27. TIFIA Lender’s Authorized Representative.

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

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

Section 28. Servicer. The TIFIA Lender may from time to time designate another entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.
Section 29. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (“FFY”) 2018 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the fifteenth (15th) of November. The TIFIA Lender shall establish the amount of this annual fee, and the TIFIA Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the fee, the TIFIA Lender will adjust the previous year’s base amount in proportion to the percentage change in CPI. For the FFY 2021 calculation, the TIFIA Lender will use the FFY 2020 base amount of $[13,000.0014,000.00], which applies to other TIFIA borrowers, as the previous year’s base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year’s base amount using increments of $500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

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

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

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

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

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

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

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

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

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

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

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

Section 36. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith in accordance with Section 37 (Notices; Payment Instructions) shall be effective as delivery of an originally executed counterpart of this Agreement or such other document or instrument, as applicable.
Section 37. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

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

with copies to:
Federal Transit Administration
San Francisco Federal Building
90, 7th Street
Suite 15-300
San Francisco, California 94103
Attention: Regional Administrator
Email: Leslie.Rogers@dot.gov

If to Borrower:
San Diego County Regional Transportation Commission
401 B Street, Suite 800
San Diego, California 92101
Attention: Andre Douzdjian,
Chief Financial Officer
Email: andre.douzdjian@sandag.org

With copies to:
San Diego County Regional Transportation Commission
401 B Street, Suite 800
San Diego, California 92101
Attention: John Kirk,
General Counsel
Email: john.kirk@sandag.org

U.S. Bank National Association
633 West 5th Street, 24th Floor
Los Angeles, California 90071
Attention: Fonda Hall,
Vice President
Email: fonda.hall@usbank.com
Unless otherwise instructed by the TIFIA Lender’s Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower’s Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender’s Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(d) (Manner of Payment) and the payment instructions hereafter provided by the TIFIA Lender’s Authorized Representative, as modified from time-to-time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 37 (Notices; Payment Instructions) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 37 (Notices; Payment Instructions) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

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

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

Section 40. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: ______________________________
Name: Kim Kawada
Title: Deputy Executive Director

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

By: ______________________________
Name: Martin Klepper
Title: Executive Director
SCHEDULE I

PROJECT BUDGET

[To be provided by Borrower]
SCHEDULE II

CONSTRUCTION SCHEDULE

[To be provided by Borrower]
SCHEDULE III
EXISTING INDEBTEDNESS, EXISTING INTEREST RATE SWAP AGREEMENTS AND EXISTING CREDIT ENHANCEMENTS

[To be provided by Borrower]

Secured Obligations

A. Senior Bonds

B. Senior Parity Obligations
   1. Existing Interest Rate Swap Agreement
   2. Credit Enhancements

C. Subordinate Obligations
   1. Credit Enhancements
SCHEDULE 14(f)

LITIGATION
SCHEDULE 14(t)

INSURANCE

[To be provided by Borrower]
EXHIBIT A

FORM OF TIFIA BOND

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION
JUNIOR SUBORDINATE SALES TAX REVENUE BOND
(LIMITED TAX BOND)
____ TIFIA SERIES
(TIFIA – [20171007A])
TIFIA BOND

Holder: UNITED STATES DEPARTMENT OF TRANSPORTATION,
an agency of the United States of America, acting by and through the
Executive Director of the Build America Bureau

Maturity Date: October 1, 2045

Maximum Principal Amount: $ 537,484,439

Interest Rate: ____%

Issue Date: __________

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

Payments hereon are to be made in accordance with Section 9(d) (Manner of Payment) and Section 37 (Notices; Payment Instructions) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended in connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 22(a)(iii)(b) (Financial Plan) of the TIFIA Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

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

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

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

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

The obligations of the Borrower under this TIFIA Bond, the TIFIA Loan Agreement and the other TIFIA Loan Documents referred to therein are subordinated in right of security to certain senior indebtedness of the Borrower in the manner and to the extent provided in the Indenture referred to in the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.
All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION has caused this TIFIA Bond to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

(SEAL)

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By ______________________________

Name: ______________________________

Title: ______________________________

ATTEST:

_________________________
Secretary
CERTIFICATE OF AUTHENTICATION

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

Dated: _____________

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: __________________________
    Authorized Signatory
(FORM OF ASSIGNMENT)

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

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

the within note and all rights thereunder.

Dated: ______________

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

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

<table>
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<tr>
<th>Borrower Fiscal Year</th>
<th>Amount</th>
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EXHIBIT C

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

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

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

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

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

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

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

Dated: ________________

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: ________________________________
Name: ________________________________
Title: ________________________________

Exhibit C-1
EXHIBIT D

REQUISITION PROCEDURES

[PROCEDURES TO BE DETERMINED WITH BORROWER RELATED PARTIES]

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

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

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

The Borrower must deliver all invoices and records associated with any Eligible Project Costs included in a Requisition delivered by the applicable following date: (i) with respect to Eligible Project Costs incurred by or on behalf of the Borrower prior to, and up to three (3) months after, ______________ (the “Effective Date”), by the last Business Day of the third (3rd) month immediately following the Effective Date and (ii) with respect to Eligible Project Costs incurred by or on behalf of the Borrower after the one-month period referred to in clause (i) above, by the last Business Day of each third month immediately following such second (2nd) month referred to in clause (i) above.
Section 2. **Rejection.** A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

(a) submitted without signature;

(b) submitted under signature of a Person other than a Borrower’s Authorized Representative;

(c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or

(d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by the [independent engineer] relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

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

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

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

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

(b) the Borrower:

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

(ii) the San Diego Association of Governments (“SANDAG”) fail to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or with good engineering practices, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by the Borrower, SANDAG or the Metropolitan Transit System (“MTS”) with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement, the Direct Agreement, dated as of ____________ (the
“SANDAG Direct Agreement”), by and among SANDAG, the Borrower and the TIFIA Lender or the Direct Agreement, dated as of ____________ (the “MTS Direct Agreement”), by and among MTS, the Borrower and the TIFIA Lender; or

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

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

(v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.
APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

Build America Bureau
Room W12-464
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
California Division Office
650 Capital Mall
Sacramento, CA 95814
Attention: Division Administrator

Re: MID-COAST CORRIDOR TRANSIT PROJECT (TIFIA – 20171007A)

Ladies and Gentlemen:

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

1. This Requisition is Requisition number [_______].

2. The requested date of disbursement is [__________] 15, 20[____] (the “Disbursement Date”), which is the first Business Day following [__________] 15, 20[____].

3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, $[__________]. The amounts previously disbursed and to be disbursed under the Indenture as of the date of the requested disbursement equal, in the aggregate, $[__________].

4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.

5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan, and the amount of this Requisition together with the sum of all disbursements of TIFIA Loan proceeds made and to be made for the current year will not exceed the cumulative disbursements through the end of the current year as set forth in the Anticipated TIFIA Loan Disbursement Schedule.

Exhibit D-4
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.

7. The Borrower, the San Diego Association of Governments (“SANDAG”) or the San Diego Metropolitan Transit System (“MTS”) have all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).

8. Each of the insurance policies obtained by the Borrower, SANDAG or MTS in satisfaction of the condition in Section 13(a)(xvii) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the TIFIA Lender and the FTA Regional Office and with good engineering practices.

10. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.

12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [____________, 20__] and is continuing.1

13. [A copy of the most recent certificate or report of the [independent engineer] delivered pursuant to Section [_____] of the Indenture has been delivered to each of the above named addressees.]

14. A copy of the monthly construction progress report pursuant to Section 10(d)(i) (Monthly Construction Progress Report) of the Direct Agreement, dated as of ____________, by and among SANDAG, the Borrower and the TIFIA Lender for the month preceding the

---

1 Insert the date on which the Borrower submitted the Application to the TIFIA Lender.
101298354.2

date of the applicable Requisition has been delivered to each of the above named addresses.

15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Government deems appropriate.

16. A copy of this requisition has been delivered to each of the above named addressees.

17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.
[Add wire instructions for Trustee.]

Date: ______________________

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: _________________________
Name: _______________________
Title: _______________________

Exhibit D-7
APPENDIX TWO TO EXHIBIT D
FORM OF ACKNOWLEDGMENT OF RECEIPT OF
REQUISITION FOR DISBURSEMENT OF TIFIA LOAN PROCEEDS

[Borrower name and address]

Re: Receipt of Requisition for Disbursement of TIFIA Loan Proceeds

Ladies and Gentlemen:

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

1. The date of receipt of the Requisition is [______________].

2. Unless this Requisition is denied, disbursement shall be made on or before [______________].

Date: [______________]

On behalf of the TIFIA Lender’s Authorized Representative
Name:
Title:
APPENDIX THREE TO EXHIBIT D

[APPROVAL/DISAPPROVAL] OF THE TIFIA LENDER

(To be delivered to the Borrower)

Requisition Number [●] is [approved in the amount of $[●]] [approved in part in the amount of $[●]] [not approved]² by the TIFIA Lender (as defined herein) pursuant to Section 4 (Disbursement Conditions) of the TIFIA Loan Agreement, dated as of [Dated Date], by and between SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”).

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

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

By: ____________________________
TIFIA Lender’s Authorized Representative
Name: __________________________
Title: __________________________
Dated: _________________________

² Attached hereto as Exhibit A are reasons for any partial or full denial of approval.
EXHIBIT A TO APPENDIX THREE TO EXHIBIT D

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

COMPLIANCE WITH LAWS

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


(vii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.), and 49 C.F.R. § 21;

(viii) 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;

(ix) 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);

(x) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. Part 20);

(xi) The Clean Air Act, as amended (42 U.S.C. § 7401 et seq.);


(xiii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq., as amended by Pub. L. 92-500);

(xiv) 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;


(xvi) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;

(xvii) The health and safety requirements set forth in 23 C.F.R. § 635.108;

(xviii) The prevailing wage requirements set forth in 40 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. § 5, 23 C.F.R. §§ 635.117(f) and 635.118, and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
(xix) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 C.F.R. § 635.410);


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

(xxii) The applicable requirements of 49 C.F.R. § 26 relating to the Disadvantaged Business Enterprise program.
EXHIBIT G

TIFIA DEBT SERVICE
EXHIBIT H-1

OPINIONS REQUIRED OF COUNSEL TO BORROWER

An opinion of the counsel of the Borrower [Borrower Related Party], dated as of the Effective Date, to the effect that: (a) the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization; (b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower; (f) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel’s knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; (g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.
EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that: (a) each of the TIFIA Bond, the Indenture, the Seventh Supplemental Indenture (including the amendments to the Indenture included in the Seventh Supplemental Indenture) and the Subordinate Indenture has been duly authorized, executed, and delivered by the Borrower in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (b) each of the TIFIA Bond, the Indenture, the Seventh Supplemental Indenture and the Subordinate Indenture is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions; (c) the TIFIA Bond is secured by the Trust Estate and is a Bond entitled to the benefits of a Bond under the Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person; (d) the Indenture creates the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act; (e) all actions by the Borrower that are required for the use of Pledged Revenues as required under the Indenture and under the TIFIA Loan Agreement have been duly and lawfully made; (f) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Pledged Revenues as required by the terms of the Indenture and the TIFIA Loan Agreement; and (h) and the Borrower is not entitled to claim governmental immunity in any breach of contract action under the TIFIA Loan Agreement or the TIFIA Bond or by the Trustee under the Indenture Documents.
EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

TIFIA Bond,
Mid-Coast Corridor Transit Project
(TIFIA – [20171007A])

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

1. That the Trustee is a national banking association duly organized and validly existing under the laws of the United States of America and is in good standing under the laws of the United States of America.

2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter known to the Trustee which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained by the Trustee and are in full force and effect.

3. That the documents pertaining to the issuance of the TIFIA Bond to which the Trustee is a party were executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.

4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture (“Trusts”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument known to the Trustee to which it is a party or by which it may be bound.

5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.
6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section [____] of that certain Indenture, dated as of March 1, 2008, as supplemented and amended, including as supplemented by the Tenth Supplemental Indenture, dated as of ________________ (collectively, the “Indenture”), between San Diego County Regional Transportation Commission (the “Borrower”) and the Trustee.

7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of ________________ (the “TIFIA Loan Agreement”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Bondholder”).

8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee for and in respect of the TIFIA Bond as set forth in the Indenture and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Section [____] of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Section [____] of the Indenture.

9. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Indenture (including, but not limited to, [insert name of account designated for TIFIA Debt Service]) have been established as provided in the Indenture.

SIGNATURE PAGE Follows]
Dated: ______________

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: ______________________________
Name: _____________________________
Title: ______________________________
ANNEX ONE TO EXHIBIT J
OFFICERS OF TRUSTEE
ANNEX TWO TO EXHIBIT J
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE
EXHIBIT K

FORM OF BORROWER’S OFFICER’S CERTIFICATE

Dated: __________

Reference is made to that certain TIFIA Loan Agreement, dated as of __________ (the “TIFIA Loan Agreement”), by and among San Diego County Regional Transportation Commission (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

The undersigned, **Kim Kawada**, as a Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in her personal capacity, as of the date hereof:

(a) in satisfaction of Section 13(a)(ii) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement, attached hereto as Exhibit A are complete and fully executed copies of each Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, has not been amended, restated, modified or supplemented except as listed on Exhibit A and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the TIFIA Lender in its sole discretion;

(b) in satisfaction of Section 13(a)(vii) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower’s Authorized Representative in accordance with Section 26 (Borrower’s Authorized Representative) of the TIFIA Loan Agreement;

(c) in satisfaction of Section 13(a)(viii) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement, the funds forecasted to be available under the Base Case Projections will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion;

(d) in satisfaction of Section 13(a)(ix) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement, the Borrower has duly executed the Direct Agreement, dated as of __________, by and among the TIFIA Lender, the Borrower and the San Diego Association of Governments, and the Direct Agreement, dated as of __________, by and among the TIFIA Lender, the Borrower and the San Diego Metropolitan Transit System, and each such agreement is in full force and effect and has not been amended, restated, modified or supplemented;

(e) in satisfaction of Section 13(a)(xi) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement, the Borrower, MTS and/or SANDAG have obtained all Governmental

Exhibit K-1
Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(f) in satisfaction of Section 13(a)(xii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit C is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Sales Tax Revenues are sufficient to meet the Loan Amortization Schedule and (ii) demonstrates a Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.75 to 1.00;

(g) in satisfaction of Section 13(a)(xiv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit D is a true, correct and complete copy of the final NEPA determination, which document has not been revoked or amended on or prior to the date hereof;

(h) in satisfaction of Section 13(a)(xvi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower’s Federal Employer Identification Number is 68-0162675 and attached hereto as Exhibit E-1 is evidence thereof, (ii) the Borrower’s Data Universal Numbering System number is 078387711, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as Exhibit E-2 is evidence of each of (ii) and (iii);

(i) in satisfaction of Section 13(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit F are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of Section 16(f) (*Insurance*) of the TIFIA Loan Agreement, Section 7(b) of the SANDAG Direct Agreement and Section 7(c) of the MTS Direct Agreement;

(j) in satisfaction of Section 13(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as (i) Exhibit G-1 is a copy of the Borrower’s Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate, (ii) Exhibit G-2 is a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (iii) as Exhibit G-3 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents;

(k) in satisfaction of Section 13(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit H are complete and fully executed copies of
each performance security instrument delivered to or by the Borrower or any other Borrower Related Party pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instruments is in compliance with the requirements for such performance security instrument pursuant to the applicable Principal Project Contract and is in full force and effect;

(l) the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(m) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs.
IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: _______________________________
   NAME: Kim Kawada
   TITLE: Authorized Representative
Exhibit A

Indenture Documents

1) Indenture, dated as of March 1, 2008, between the Borrower and U.S. Bank National Association, as trustee (the “Trustee”), as amended and supplemented by the First Supplemental Indenture, dated as of March 1, 2008, between the Borrower and the Trustee, the Second Supplemental Indenture, dated as of July 1, 2008, between the Borrower and the Trustee, the Third Supplemental Indenture, dated as of October 1, 2010, between the Borrower and the Trustee, the Fourth Supplemental Indenture, dated as of June 1, 2012, between the Borrower and the Trustee, the Fifth Supplemental Indenture, dated as of September 1, 2014, between the Borrower and the Trustee, and the Sixth Supplemental Indenture, dated as of August 1, 2016, between the Borrower and the Trustee, the Seventh Supplemental Indenture, dated as of June 1, 2017, between the Borrower and the Trustee, the Eighth Supplemental Indenture, dated as of December 1, 2019, between the Borrower and the Trustee, and the Ninth Supplemental Indenture, dated as of February 1, 2020, between the Borrower and the Trustee.

(See Item Number [ ] of the Closing Proceedings)

2) Tenth Supplemental Indenture, dated as of __________, between the Borrower and the Trustee.

(See Item Number [ ] of the Closing Proceedings)

3) Amended and Restated Subordinated Indenture, between the Borrower and the Trustee dated as of November 1, 2005, as amended and supplemented by the First Supplement to the Amended and Restated Subordinate Indenture, between the Borrower and the Subordinate Trustee, dated as of March 27, 2008, the Second Supplement to the Amended and Restated Subordinate Indenture, between the Borrower and the Trustee, the Eighth Supplemental Indenture, dated as of December 1, 2019, between the Borrower and the Trustee, and the Ninth Supplemental Indenture, dated as of October 1, 2010, as amended and supplemented from time to time.

(See Item Number [ ] of the Closing Proceedings)

4) Standby Bond Purchase Agreement, among the Borrower, the Trustee and JPMorgan Chase Bank, National Association (“JPMorgan”), dated March 27, 2008, in connection with the Borrower’s Sales Tax Revenue Bonds (Limited Tax Bonds), 2008 Series A and 2008 Series B, as amended by the First Amendment to Standby Bond Purchase Agreement, among the Borrower, the Trustee and JPMorgan, dated March 11, 2009, the Second Amendment to Standby Bond Purchase Agreement, among the Borrower, the Trustee and JPMorgan, dated March 10, 2010, the Third Amendment to Standby Bond Purchase Agreement, among the Borrower, the Trustee and JPMorgan, dated March 1, 2011, the Fourth Amendment to Standby Bond Purchase Agreement, among the Borrower, the Trustee and JPMorgan, dated March 1, 2012, the Fifth Amendment to Standby Bond Purchase Agreement, among the Borrower, the Trustee and JPMorgan,
dated as of February 21, 2014, and the Sixth Amendment to the Standby Bond Purchase Agreement, among the Borrower, the Trustee and JPMorgan, dated March 1, 2017.

(See Item Number [     ] of the Closing Proceedings)

5) Standby Bond Purchase Agreement, among the Borrower, the Trustee and Mizuho Corporate Bank, Ltd., acting through its New York Branch, dated as of September 1, 2011, in connection with the Borrower’s Sales Tax Revenue Bonds (Limited Tax Bonds), 2008 Series C, as extended by the Notice of Extension dated August 27, 2014.

(See Item Number [     ] of the Closing Proceedings)

6) Standby Bond Purchase Agreement, among the Borrower, the Trustee, State Street Bank and Trust Company (“State Street”) and California State Teachers’ Retirement System (“CalSTRS”), dated as of September 28, 2011, in connection with the Borrower’s Sales Tax Revenue Bonds (Limited Tax Bonds), 2008 Series D, as amended by the First Amendment to Standby Purchase Agreement, dated June 4, 2015, among the Borrower, the Trustee, State Street and CalSTRS.

(See Item Number [     ] of the Closing Proceedings)


(See Item Number [     ] of the Closing Proceedings)

8) ISDA Master Agreement, along with the Schedule, the ISDA Credit Support Annex to Schedule and Confirmation, each between the Borrower and Bank of America, N.A. (“Bank of America”) and dated as of November 22, 2005, and the Confirmation, dated as of May 23, 2012.

(See Item Number [     ] of the Closing Proceedings)

9) ISDA Master Agreement, along with the Schedule, the ISDA Credit Support Annex to Schedule, each dated November 22, 2005, and Confirmation, dated November 29, 2005, each between the Borrower and Goldman Sachs Mitsui Marine Derivative Products, L.P., and the Confirmation, dated May 23, 2012.

(See Item Number [     ] of the Closing Proceedings)

10) ISDA Master Agreement, along with the Schedule, the ISDA Credit Support Annex to Schedule and Confirmation, each between the Borrower and Merrill Lynch Capital Services, Inc. (“Merrill Lynch”) and the Borrower and dated as of November 22, 2005, the ISDA Novation Agreement, dated as of August 17, 2011, between Merrill Lynch and the Bank of America, and the Confirmation, dated as of May 23, 2012.
11) ISDA Master Agreement, along with the Schedule, the ISDA Credit Support Annex to Schedule and Confirmation, each between the Borrower and Barclays Bank PLC and dated as of March 19, 2009.

(See Item Number [ ] of the Closing Proceedings)
Exhibit B

INCUMBENCY CERTIFICATE

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

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IN WITNESS WHEREOF, the undersigned has executed this certificate as of this ____ day of ____________, ___.

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: __________________________
    
    Name: Tessa Ann Lero
    Title: Clerk
Exhibit C

Base Case Financial Model
Exhibit D

NEPA
Exhibit E-1

Federal Employer Identification Number
Exhibit E-2

DUNS and SAM
Exhibit F

Insurance
Exhibit G-1

Organization Documents
Exhibit G-2

Resolutions
Exhibit G-3

Additional Documents
Exhibit H

Performance Security Instrument
EXHIBIT L

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

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

Project: Mid-Coast Corridor Transit Project (TIFIA – [20171007A])

Dear Director:

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

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

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

(a) on [insert date Substantial Completion requirements were satisfied], the Project satisfied each of the requirements for Substantial Completion set forth in the [Insert reference to the concession agreement, design-build or similar agreement for the Project];

(b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and

(c) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

[Borrower’s Authorized Representative]

Name:
Title:

Exhibit L-1
EXHIBIT M

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

The undersigned, on behalf of SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION, hereby certifies, to the best of his or her knowledge and belief, that:

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

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

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

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Dated: _________________

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By:

Name:

Title:

3 To be executed by Borrower’s Authorized Representative.

Exhibit M-1

101298354.2
DIRECT AGREEMENT

This DIRECT AGREEMENT (this “Direct Agreement”) dated as ___________ (the “Effective Date”), is made by and among the SAN DIEGO ASSOCIATION OF GOVERNMENTS (“SANDAG”), a public agency of the State of California (the “State”), the SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION (the “Borrower”), a public agency of the State, and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”).

PRELIMINARY STATEMENTS

WHEREAS, on July 21, 2015, SANDAG entered into the Construction Services Agreement with Mid-Coast Transit Contractors, a joint venture limited liability company, and each of its members, and any successors thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Construction Contract”) for land, easements, rights of way, capital improvements and equipment constituting an extension of the San Diego Trolley Blue Line (the “Project”);

WHEREAS, SANDAG has entered into the FTA Full Funding Grant Agreement, dated September 14, 2016 (the “FFGA”) with the Federal Transit Authority (the “FTA”), pursuant to which the FTA has agreed to fund a portion of the development and construction costs of the Project;

WHEREAS, the Borrower intends to issue or incur debt obligations under the Indenture, dated as of March 1, 2008, between the Borrower and the Trustee, as amended and supplemented (the “Indenture”) in order to raise financing for a portion of the costs of the Project;

WHEREAS, the TIFIA Lender desires to make available to the Borrower a loan pursuant to the TIFIA Loan Agreement, dated as of the date hereof, by and between the TIFIA Lender and the Borrower (as amended, amended and restated, supplemented or otherwise modified from time to time, the “TIFIA Loan Agreement”) for the purpose of financing certain costs in connection with the construction and development of the Project; and

WHEREAS, it is a condition to the consummation of the transactions contemplated by the TIFIA Loan Agreement that SANDAG and the Borrower enter into this Direct Agreement to provide certain assurances and agreements with respect to the Construction Contract, the FFGA and any other Principal Project Contract or Additional Project Contract to which SANDAG is or becomes a party (collectively, with this Direct Agreement, the Construction Contract, and the FFGA, the “SANDAG Project Contracts”), as further described below, in connection with the TIFIA Loan Agreement and the transactions contemplated thereby.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SANDAG, the Borrower, and the TIFIA Lender (each, a “Party”) hereby agree as follows:
Section 1. All capitalized terms not defined herein shall have the meanings ascribed to them in the TIFIA Loan Agreement.

Section 2. Compliance with Laws, etc. SANDAG agrees to comply with all applicable federal and State laws in respect of the Project. SANDAG further agrees to require its contractors and subcontractors at all tiers for the Project to comply in all material respects with all applicable federal and State laws in respect of the Project. The FTA Regional Office has oversight responsibility for ensuring compliance with all applicable provisions of federal transportation law and for project oversight activities for the Project, including compliance with the terms of the FTA Master Agreement and applicable federal law. SANDAG agrees to cooperate with the other Borrower Related Parties, the FTA Regional Office, its agents and representatives in carrying out their duties under the TIFIA Loan Agreement, the FFGA and the FTA Master Agreement.

Section 3. Compliance with SANDAG Project Contracts. SANDAG agrees to take all action necessary to comply with its obligations, covenants and responsibilities set forth in the SANDAG Project Contracts.

Section 4. Conditions Precedent. Notwithstanding anything in this Direct Agreement to the contrary, this Direct Agreement shall not become effective until the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(a) SANDAG shall have delivered to the TIFIA Lender a certified, complete, and fully executed copy of the Construction Contract, this Direct Agreement and any other SANDAG Project Contract (excluding the FTA Master Agreement and the FFGA) then in effect, and such agreements shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(b) Counsel to SANDAG shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on Exhibit A).

(c) SANDAG shall have provided a certificate from SANDAG’s Authorized Representative (as defined in Section 12) 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 B with respect to SANDAG and its principals (as defined in 2 C.F.R. § 180.995).

(d) SANDAG shall have delivered to the TIFIA Lender a certificate from SANDAG’s Authorized Representative in the form attached hereto as Exhibit C (i) as to the satisfaction of certain conditions precedent set forth in this Section 4 (as required by the TIFIA Lender), (ii) designating SANDAG’s Authorized Representative, and (iii) confirm such person’s position and incumbency.

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

(f) SANDAG shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender.

Section 5. Representations and Warranties of SANDAG. SANDAG hereby represents and warrants that as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 5(b), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. SANDAG is a public agency of the State, duly organized and validly existing and in good standing under the laws of the State, has full legal right, power and authority to enter into or become a signatory to the SANDAG Project Contracts and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the SANDAG Project Contracts.

(b) SANDAG’s Officers’ Authorization. As of the Effective Date, the officers of SANDAG executing (or that previously executed) the SANDAG Project Contracts and any certifications or instruments related thereto, are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each SANDAG Project Contract has been duly authorized, executed and delivered by SANDAG and constitutes the legal, valid and binding agreement of SANDAG enforceable in accordance with its respective terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the SANDAG Project Contracts, the consummation of the transactions contemplated herein and therein and the fulfillment of or compliance with the terms and conditions hereof and thereof will not (i) conflict with SANDAG’s Organizational Documents or (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after
notice or the passage of time or both) by SANDAG of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which SANDAG is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

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

(f) **Litigation.** As of the Effective Date, there is no action suit, proceeding or, to the knowledge of SANDAG, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of SANDAG, threatened against or affecting the Project or the ability of SANDAG to execute, deliver and perform its obligations under the SANDAG Project Contracts. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of SANDAG, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of SANDAG, threatened against or affecting the Project, SANDAG or the assets, properties or operations of SANDAG, that in any case could reasonably be expected to result in a Material Adverse Effect. To SANDAG’s knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to result in a Material Adverse Effect. SANDAG is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) **No Debarment.** SANDAG has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge neither SANDAG nor any of its principals (as defined in 2 C.F.R. § 180.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 4(c).
(h) **Accuracy of Representations and Warranties.** The representations, warranties and certifications of SANDAG set forth in the SANDAG Project Contracts are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

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

(j) **No Defaults.** SANDAG is not in default under the respective terms of the SANDAG Project Contracts, and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute an event of default thereunder.

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

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

(m) **Information.** The information furnished by SANDAG to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of SANDAG.
(n) **OFAC; Anti-Corruption Laws.** SANDAG:

(i) is not in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act; (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or

(ii) is not a Person (A) that is charged with, or has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws; (B) that has been, since the date that is five (5) years prior to the Effective Date, convicted of any violation of, has been subject to criminal or civil penalties pursuant to, had any of its property seized or forfeited under, or has entered into any agreement with the Government or a state or local government related to violations of any such laws; (C) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list); (D) with whom any U.S. Person (as defined by the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by the TIFIA Loan Agreement and the other Related Documents under any other applicable law; or (E) with respect to a Principal Project Party, that is owned (other than any Person beneficially owning or holding five percent (5%) or less of the equity interests of such Principal Project Party), Controlled by, or affiliated with any Person identified in subclause (A), (B), (C) or (D) of this clause (ii).

(o) **Compliance with Law.** SANDAG is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed Section 5(p) below), including those set forth in the FFGA, to the extent applicable. To SANDAG’s knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws in respect of the Project, including those set forth in the FFGA that flow down to third-party contractors. No notices of violation of any applicable law have been issued, entered or received by SANDAG or, to the knowledge of SANDAG and solely in respect of the Project or any SANDAG Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(p) **Environmental Matters.** SANDAG and, to the knowledge of SANDAG, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all Environmental Laws. All Governmental Approvals
for the Project relating to Environmental Laws have been, or, when required, will be, obtained by a Borrower Related Party and are (or, as applicable, will be) in full force and effect. Except for all communications and notices that SANDAG, has reasonably and in good faith determined to be either (A) without merit or B) not expected to result in a Material Adverse Effect, SANDAG has not received any written communication or notice whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that SANDAG is not in full compliance with all Environmental Laws and Governmental Approvals relating to or in connection with the Project and, to the knowledge of SANDAG, there are no circumstances that may prevent or interfere with full compliance in the future by SANDAG with any such Environmental Law or Governmental Approval. SANDAG has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to SANDAG regarding SANDAG’s or the Project’s compliance with (x) Environmental Laws, and (y) Governmental Approvals relating to Environmental Laws that are required for the Project.

(q) Sufficient Rights and Utilities. SANDAG possesses either valid legal and beneficial title to, leasehold title to, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the construction of the Project. As of any date on which this representation and warranty is made, the SANDAG Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in SANDAG sufficient to enable SANDAG to construct the Project. All utility services, means of transportation, facilities and other materials necessary for the construction the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(r) Insurance. SANDAG is in material compliance with all insurance obligations required under each SANDAG Project Contract as of the date on which this representation and warranty is made. To the extent SANDAG self-insures, such self-insurance program is actuarially sound and SANDAG has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that such insurance program is actuarially sound.

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

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

(u) **Taxes.** SANDAG is not required to file tax returns with any Governmental Authority.

(v) **Sovereign Immunity.** SANDAG either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the SANDAG under a SANDAG Project Contract or the transactions contemplated hereby or thereby, including the obligations of SANDAG hereunder and thereunder, or, to the extent that SANDAG has such immunity, SANDAG has waived such immunity pursuant to Section 7(g) (except as provided in Sections 970 et seq. of the California Government Code).

**Section 6.** **Representations and Warranties of the TIFIA Lender.** The TIFIA Lender represents and warrants that:

(a) **Power and Authority.** The TIFIA Lender has all requisite power and authority to perform all transactions contemplated by this Direct Agreement.

(b) **Due Execution and Enforceability.** This Direct Agreement has been duly authorized, executed and delivered by the TIFIA Lender, and is a legally valid and binding agreement of the TIFIA Lender, enforceable in accordance with its terms.

(c) **Officer’s Authorization.** The officer of the TIFIA Lender executing this Direct Agreement is duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

**Section 7.** **Affirmative Covenants.** SANDAG covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under the TIFIA Loan Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) **Prosecution of Work; Verification Requirements.**

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

(ii) SANDAG shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to SANDAG and shall ensure that any letter of credit provided pursuant to any
SANDAG Project Contract meets the respective requirements therefor set forth in such SANDAG Project Contract.

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

(b) Insurance. SANDAG shall, for so long as the Project is under construction, through a combination of insurance policies and self-insurance programs, maintain or cause its contractors to maintain, all insurance necessary and sufficient to protect the Project and the Borrower Related Parties against accidental loss or damage while under construction, as is customarily maintained by SANDAG with respect to works and properties of like character, against accident to, loss of, damage to and liability from such works or properties.

(c) Notice.

(i) SANDAG shall, within ten (10) Business Days after SANDAG learns of the occurrence, give the TIFIA Lender and the Borrower notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Litigation: the filing of any litigation, suit or action, or the commencement of any proceeding against SANDAG, before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by SANDAG in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against SANDAG that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim and (2) any unsatisfied or uninsured judgments against SANDAG with award amounts in excess of $100,000,000, either individually or in the aggregate;

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

(C) Environmental Notices: any material notice of violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;
(D) **Insurance Claim**: any insurance claims made by SANDAG or any Principal Project Party in respect of the Project in excess of $80,000,000 either individually or in the aggregate;

(E) **Amendments**: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any SANDAG Project Contract (excluding change orders) at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(F) **SANDAG Project Contract Defaults**: any material breach or default or event of default on the part of SANDAG or any other party under any SANDAG Project Contract;

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

(H) **Project Changes**: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of Total Project Costs or (2) change to the Construction Schedule that delays completion of a critical path item for the Project or that could delay Substantial Completion by the Projected Substantial Completion Date;

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

(J) **Documents**: the delivery or receipt, by SANDAG, of any material plans, reports or notices under the SANDAG Project Contracts, unless the TIFIA Lender notifies SANDAG that any of such plans, reports or notices no longer need to be provided; provided, however, that, with respect to the Construction Contract, SANDAG shall be required under this clause (K) to notify the TIFIA Lender only of the delivery or receipt of material notices thereunder; and

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

(ii) SANDAG shall provide a copy of any legislation or notices proposing that the SANDAG be reorganized, consolidated with, or merged into another Person, within fifteen (15) Business Days of the introduction of such legislation to the California State Assembly or State Senate.
(iii) SANDAG shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described this Section 7(e).

(d) **Maintain Legal Structure.** SANDAG shall maintain its existence as a local government agency organized and existing under the laws of the State.

(e) **Immunity.** To the fullest extent permitted by applicable law, SANDAG agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of SANDAG under the SANDAG Project Contracts.

**Section 8. Negative Covenants.** SANDAG covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under the TIFIA Loan Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

(a) **No Lien Extinquishement or Adverse Amendments.** SANDAG shall not permit, nor shall it permit any Person, unless the TIFIA Lender has otherwise approved in writing, to terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any SANDAG Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender’s determination).

(b) **No Prohibited Liens.** SANDAG shall not collaterally assign any of its rights under or pursuant to any SANDAG Project Contract and shall not permit a Lien to encumber the SANDAG’s rights or privileges under any SANDAG Project Contract, unless pursuant to the Indenture in favor of the Trustee.

(c) **Additional Project Contracts.** SANDAG shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) that commits SANDAG, MTS or the Borrower to spend, or is reasonably expected to involve expenditures by SANDAG, MTS or the Borrower of, amounts that either: (i) exceed $10,000,000 in any Borrower Fiscal Year, or (ii), alone or when aggregated with the other Total Project Costs in the same line item of the applicable budget set forth in the Financial Plan most recently approved by the TIFIA Lender, would cause aggregate Total Project Costs for such line item in any Borrower Fiscal Year to exceed the amounts for such line item for any Borrower Fiscal Year reflected in the budget in the Financial Plan most recently approved by the TIFIA Lender by more than five percent (5%).

(d) **No Prohibited Sale, Lease or Assignment.** SANDAG shall not sell, lease or assign its rights in and to the Project, a substantial portion of the assets included in the Project, or its rights and obligations under any SANDAG Project Contract, in each case unless such sale, lease or assignment could not reasonably be expected to result in a Material Adverse Effect.
(e) **Organizational Documents.** SANDAG shall not at any time consent to any amendment or modification of its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Indenture or in the Trust Estate) without the prior written approval of the TIFIA Lender.

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

(g) **Change in Legal Structure; Mergers and Acquisitions.** SANDAG shall not, and shall not agree to reorganize, consolidate with, or merge into another Person unless such reorganization, merger or consolidation is with or into another entity established and Controlled by SANDAG that succeeds to the assets of SANDAG and assumes the obligations of SANDAG, and in each case, including reorganization, does not adversely affect or impair to any extent or in any manner TIFIA’s rights under the TIFIA Loan Agreement. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Direct Agreement and the other SANDAG Project Contracts. In addition, SANDAG provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender.

(h) **OFAC Compliance.** SANDAG shall not:

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

(ii) be a Person (A) that is charged with, or that has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws, (B) that is convicted of any violation of, is subject to civil or criminal penalties pursuant to, has any of its property seized or forfeited under, or enters into any agreement with the Government or a state or local government related to violations of, any such laws, (C) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United
States Department of State (or any successor Government office or list), (D) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by the SANDAG Project Contracts under any other applicable law, (E) that is owned, Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this Section 8(h)(ii), or (F) is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States of America and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

(iii) SANDAG shall not knowingly make a payment, directly or indirectly, to any Principal Project Party that has violated any of the laws referenced in Section 8(h)(ii) or that is a Person described in Section 8(h)(ii).

Section 9. Indemnification. SANDAG (an “Indemnifying Party”) 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 the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of any SANDAG Project Contract, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Indemnifying Party shall be entitled, at its own expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the expense of the Indemnifying Party and such participation by the Indemnifying Party in the defense thereof shall not release the Indemnifying Party of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 9 is made shall be entitled, after consultation with the Indemnifying Party and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Indemnifying Party for purposes of this Section 9. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither SANDAG nor the TIFIA Lender shall assert, and both SANDAG and the TIFIA Lender hereby waive, any claim against any Indemnitee or the Indemnifying Party, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or
actual damages) arising out of, in connection with, or as a result of, this Direct Agreement, any other SANDAG Project Contract, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Indemnifying Party’s indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 9 shall be payable promptly upon demand therefor. The obligations of SANDAG under this Section 9 shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Direct Agreement or any other SANDAG Project Contract, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 9) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of SANDAG hereunder or thereunder.

Section 10. Reports and Records; Required Audit; Financial Plan.

(a) Reports and Records. SANDAG shall maintain and retain all files relating to the Project until three (3) years after the later of the date on which (i) all rights and duties of the Borrower under the TIFIA Loan Agreement and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project or the SANDAG Project Contracts is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and SANDAG. SANDAG shall provide to 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.

(b) Financial Plan. SANDAG agrees to furnish the required information under Section 22 (Financial Plan, Statements, and Reports) of the TIFIA Loan Agreement with respect to the Financial Plan and the statements and reports related thereto to enable the Borrower to fully comply with the Financial Plan requirements.

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

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

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

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

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

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

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

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

(G) specifies any proposed or pending change orders;

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

(I) includes a copy of each report delivered by the Construction Contractor to SANDAG that has not previously been delivered to the TIFIA Lender in a prior report delivered pursuant to this Section 10(d)(i); and
(J) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. SANDAG and the Borrower shall respond, and use commercially reasonable efforts to cause the Principal Project Parties to respond, to the TIFIA Lender’s inquiries regarding such report, the construction of the Project and the Principal Project Parties’ performance of its obligations under the SANDAG Project Contracts.

(ii) Recovery Plan. If the monthly construction progress report described in Section 10(d)(i) or the monthly report issued pursuant to the FTA Project Management Oversight Requirements indicates either a failure to maintain the Construction Schedule, including a failure to achieve Substantial Completion by the Projected Substantial Completion Date or the anticipated Substantial Completion Date set forth in the previous monthly construction progress report provided pursuant to Section 10(d)(i), or actual or projected Eligible Project Cost overruns in excess of five percent (5%) of the Eligible Project Costs reflected in the Project Budget, or both, then SANDAG or the Borrower shall notify the TIFIA Lender and the FTA Regional Office of such failure and shall, upon request by the TIFIA Lender or the FTA Regional Office, provide the TIFIA Lender and the FTA Regional Office within thirty (30) days of receipt of such request, a recovery plan with respect to the construction of the Project, which includes a certificate from the Borrower’s Authorized Representative concluding that Substantial Completion is likely to occur by the date specified recovery plan, for review and acceptance by the TIFIA Lender and the FTA Regional Office.

Section 11. No Personal Recourse. No official, employee or agent of the TIFIA Lender or SANDAG or any person executing this Direct Agreement shall be personally liable on this Direct Agreement by reason of the issuance, delivery or execution hereof.

Section 12. SANDAG’s Authorized Representative. SANDAG shall at all times have appointed a SANDAG’s Authorized Representative by designating such person or persons from time to time to act on SANDAG’s behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by SANDAG.

Section 13. TIFIA Lender’s Authorized Representative. Pursuant to Section 27 (TIFIA Lender’s Authorized Representative) of the TIFIA Loan Agreement, the TIFIA Lender’s 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 TIFIA Lender’s behalf pursuant to a written certificate furnished to Borrower and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by the TIFIA Lender.

Section 14. Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Direct Agreement shall in any event be effective without the written consent of the Parties hereto.
Section 15.  Governing Law.  This Direct 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 16.  Severability.  In case any provision in or obligation under this Direct 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 17.  Successors and Assigns.  This Direct Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall inure, together with the rights and remedies of the Trustee hereunder, to the benefit of the Parties hereto and the successors and assigns of the TIFIA Lender.  Neither SANDAG nor the Borrower may sell, assign, transfer or delegate any of its rights or obligations under this Direct Agreement without the prior written consent of the TIFIA Lender.

Section 18.  Remedies Not Exclusive.  No remedy conferred upon the TIFIA Lender in this Direct Agreement or the TIFIA Loan Agreement or reserved to the TIFIA Lender thereunder 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 thereunder or now or hereafter existing at law or in equity or by statute.

Section 19.  Delay or Omission Not Waiver.  No waiver by the TIFIA Lender of any breach by SANDAG of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or omission of the TIFIA Lender to exercise any right or remedy provided under this Direct Agreement or the TIFIA Loan Agreement upon a default of SANDAG (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 Direct Agreement or the TIFIA Loan 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 20.  No Liability for TIFIA Loan.  Nothing in this Direct Agreement shall be construed to mean that the SANDAG is liable under the TIFIA Loan Agreement for the debt of the Borrower, as Borrower under the TIFIA Loan Agreement.

Section 21.  Notices.  All notices and other communications hereunder shall be in writing (including by facsimile), shall be deemed to have been duly given when delivered by hand, or in the case of notice given by mail or facsimile, when received, and shall be addressed:  
(a) if to SANDAG, at 401 B Street, Suite 800, San Diego, California 92101, Attention: Jose Nuncio, TransNet Program Director, with a copy to 401 B Street, Suite 800, San Diego, California 92101, Attention: John Kirk, General Counsel;  
(b) if to the Borrower, at 401 B Street, Suite 800, San Diego, California 92101, Attention: Jose Nuncio, TransNet Program Director, and with a copy to 401 B Street, Suite 800, San Diego, California 92101, Attention: John Kirk, General Counsel;  
(c) if to the TIFIA Lender, at Build America Bureau, Room W12-464, United States Department of Transportation, 1200 New Jersey Avenue, SE, Washington, D.C. 20590,
Section 22. Miscellaneous.

(a) The TIFIA Lender is hereby authorized to demand specific performance of this Direct Agreement, whether or not the Borrower shall have complied with any of the provisions hereof, at any time when SANDAG shall have failed to comply with any of the provisions of this Direct Agreement applicable to it. SANDAG irrevocably waives any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.

(b) SANDAG shall fully cooperate with the TIFIA Lender and perform all additional acts reasonably requested by the TIFIA Lender to effect the purposes of this Direct Agreement. The Parties hereto agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the TIFIA Lender may reasonably request to effectuate the terms of this Direct Agreement.

Section 23. Counterparts. This Direct Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by 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 but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Direct Agreement or of any document or instrument delivered in connection herewith in accordance with Section 21 shall be effective as delivery of an original executed counterpart of this Direct Agreement or such other document or instrument, as applicable.

Section 24. Effectiveness. This Direct Agreement shall be effective as of the date hereof.
IN WITNESS WHEREOF, the Parties hereto have executed this Direct Agreement as of the date first above written.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: ________________________________

Name: 
Title: 

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11/02/20

Mid-Coast – Signature Page – SANDAG Direct Agreement

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BORROWER:

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: 

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

By: ________________________________
   Name:
   Title:
EXHIBIT A

OPINIONS REQUIRED OF COUNSEL TO SANDAG

An opinion of the counsel of SANDAG, dated as of the Effective Date, to the effect that:
(a) SANDAG is duly formed, validly existing, and in good standing under the laws of the
jurisdiction of its organization; (b) SANDAG has all requisite power and authority to conduct its
business and to execute and deliver, and to perform its obligations under the SANDAG Project
Contracts; (c) the execution and delivery by SANDAG of, and the performance of its respective
obligations under, the SANDAG Project Contracts have been duly authorized by all necessary
organizational or regulatory action; (d) SANDAG has duly executed and delivered the SANDAG
Project Contracts and each such agreement constitutes the legal, valid and binding obligation of
SANDAG; enforceable against SANDAG in accordance with their respective terms; (e) no
authorization, consent, or other approval of, or registration, declaration or other filing with any
governmental authority of the United States of America or of the State is required on the part of
SANDAG for the execution and delivery by such party of, and the performance of such party
under, the SANDAG Project Contracts other than authorizations, consents, approvals,
registrations, declarations and filings that have already been timely obtained or made by
SANDAG; (f) the execution and delivery by SANDAG of, and compliance with the provisions
of, the SANDAG Project Contracts in each case do not (i) violate the Organizational Documents
of SANDAG, (ii) violate the law of the United States of America or of the State or (iii) conflict
with or constitute a breach of or default under any material agreement or other instrument known
to such counsel to which SANDAG is a party or signatory, or to the best of such counsel’s
knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or
any other law to which SANDAG is subject; (g) SANDAG is not an investment company
required to register under the Investment Company Act of 1940, as amended; and (h) to our
knowledge after due inquiry, there are no actions, suits, proceedings or investigations against
SANDAG by or before any court, arbitrator or any other Governmental Authority in connection
with the SANDAG Project Contracts or the Project that are pending.
EXHIBIT B

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

The undersigned, on behalf of the SAN DIEGO ASSOCIATION OF GOVERNMENTS ("SANDAG"), hereby certifies that SANDAG has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, SANDAG and its principals (as defined in 2 C.F.R. § 180.995):

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

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

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

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

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement, dated as of ____________ (the "Effective Date"), between the TIFIA Lender and the San Diego County Regional Transportation Commission, as the same may be amended from time to time.

Dated: ____________

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: ________________________________
Name: ______________________________
Title: ______________________________

EXHIBIT C

FORM OF SANDAG'S OFFICERS CERTIFICATE

Dated: ____________

Reference is made to that certain Direct Agreement, dated as of ____________ (the “SANDAG Direct Agreement”), by and among the San Diego Association of Governments (“SANDAG”), the San Diego County Regional Transportation Commission (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau. Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the SANDAG Direct Agreement.

The undersigned, _________________, as a SANDAG’s Authorized Representative, does hereby certify on behalf of SANDAG and not in her personal capacity, as of the date hereof:

(a) in satisfaction of Section 4(d) (Conditions Precedent) of the SANDAG Direct Agreement, attached hereto as Exhibit A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by SANDAG to execute the Construction Contract, the Direct Agreement, the FFGA and the other Related Documents to which SANDAG is or will be a party, and who have been appointed a SANDAG Authorized Representative in accordance with the SANDAG Direct Agreement;

(b) in satisfaction of Section 4(a) (Conditions Precedent) of the SANDAG Direct Agreement, attached hereto as Exhibit B are true, correct and complete copies of the Construction Contract (excluding those supplements unrelated to the Project) and the SANDAG Direct Agreement, and such agreements are in full force and effect and have not been amended, restated, modified or supplemented except as listed in Exhibit B;

(c) in satisfaction of Section 4(e) (Conditions Precedent) of the SANDAG Direct Agreement, attached hereto as (i) Exhibit C-1 is a copy of SANDAG’s Organizational Documents, as in effect on the Effective Date (and certified by SANDAG’s Authorized Representative), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate, (ii) Exhibit C-2 is a copy of all resolutions authorizing SANDAG to execute and deliver, and to perform its respective obligations under the Construction Contract, the Direct Agreement and the FFGA, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by SANDAG relating to the matters described therein, and (iii) as Exhibit C-3 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions, the Construction Contract, the Direct Agreement and the FFGA; and
(d) the representations and warranties of SANDAG set forth in the SANDAG Direct Agreement are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date.
IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: ________________________________
Name: ________________________________
Title: Authorized Representative
Exhibit A to
FORM OF SANDAG's OFFICER’S CERTIFICATE

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the Clerk of SAN DIEGO ASSOCIATION OF GOVERNMENTS, a public agency created under the laws of the State of California, ("SANDAG"), and as such she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of SANDAG in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the SANDAG Project Contracts as SANDAG’s Authorized Representative (each as defined in that certain Direct Agreement, dated as of the date hereof, between the San Diego County Regional Transportation Commission and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, and SANDAG):

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IN WITNESS WHEREOF, the undersigned has executed this certificate as of this __th day of ________, 20__.  

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: ______________________________________
Name:  Tessa Ann Lero  
Title:  Clerk
Exhibit B to

FORM OF SANDAG’s OFFICER’S CERTIFICATE

1) Construction Services Agreement, by and between San Diego Association of Governments (“SANDAG”) and the Mid-Coast Transit Constructors, dated July 21, 2015, as such agreement is amended and supplemented thereafter.

(See Item Number 9 of the Closing Proceedings)

2) Direct Agreement, dated as of __________, by and among SANDAG, the San Diego County Regional Transportation Commission and the United States Department of Transportation.

(See Item Number 5 of the Closing Proceedings)

3) FTA Full Funding Grant Agreement, dated September 14, 2016 with the Federal Transit Authority and SANDAG.

(See Item Number 10 of the Closing Proceedings)
Exhibit C-1 to
FORM OF SANDAG’s OFFICER’S CERTIFICATE

Organizational Documents
Exhibit C-2 to
FORM OF SANDAG’s OFFICER’S CERTIFICATE

Resolutions
Exhibit C-3 to
FORM OF SANDAG’s OFFICER’S CERTIFICATE

Additional Documents

None
DIRECT AGREEMENT

This DIRECT AGREEMENT (this “Direct Agreement”) dated as __________ (the “Effective Date”), is made by and among the SAN DIEGO METROPOLITAN TRANSIT SYSTEM (“MTS”), a public agency of the State of California (the “State”), the SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION (the “Borrower”), a public agency of the State, and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”).

PRELIMINARY STATEMENTS

WHEREAS, on or about September 30, 2009, MTS entered into a contract with Siemens Industry, Inc. to purchase 110 light rail vehicles (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Transit Vehicle Purchase Contract”), including the purchase of 36 new low-floor light rail transit vehicles as part of the project to extend the San Diego Trolley Blue Line from the Santa Fe Depot in downtown San Diego, California north to the UTC Transit Center in University City, California (the “Project”);

WHEREAS, the Borrower intends to issue or incur debt obligations under the Indenture, dated as of March 1, 2008, between the Borrower and the Trustee, as amended and supplemented (the “Indenture”) in order to raise financing for a portion of the costs of the Project;

WHEREAS, upon completion of construction of the Project, MTS will assume responsibility for the operation and maintenance of the Project in accordance with the California Public Utilities Code Section 120000 et seq.;

WHEREAS, the TIFIA Lender desires to make available to the Borrower a loan pursuant to the TIFIA Loan Agreement dated as of the date hereof, by and between the TIFIA Lender and the Borrower (as amended, amended and restated, supplemented or otherwise modified from time to time, the “TIFIA Loan Agreement”) for the purpose of financing certain costs in connection with the construction and development of the Project; and

WHEREAS, it is a condition to the consummation of the transactions contemplated by the TIFIA Loan Agreement that MTS and the Borrower enter into this Direct Agreement to provide certain assurances and agreements with respect to the Transit Vehicle Purchase Contract and any other Principal Project Contract to which MTS is or becomes a party (collectively, with this Direct Agreement and the Transit Vehicle Purchase Contract, the “MTS Project Contracts”), as further described below, in connection with the TIFIA Loan Agreement and the transactions contemplated thereby.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MTS, the Borrower, and the TIFIA Lender (each, a “Party”) hereby agree as follows:

Section 1. All capitalized terms not defined herein shall have the meanings ascribed to them in the TIFIA Loan Agreement.
Section 2. Compliance with Laws, etc. MTS agrees to comply with all applicable federal and State laws in respect of the Project. MTS further agrees to require its contractors and subcontractors at all tiers for the Project to comply in all material respects with all applicable federal and State laws in respect of the Project. The FTA Regional Office has oversight responsibility for ensuring compliance with all applicable provisions of federal transportation law and for project oversight activities for the Project, including compliance with the terms of the FTA Master Agreement and applicable federal law. MTS agrees to cooperate with the other Borrower Related Parties, the FTA Regional Office, its agents and representatives in carrying out their duties under the TIFIA Loan Agreement, the FFGA and the FTA Master Agreement.

Section 3. Compliance with MTS Project Contracts. MTS agrees to take all action necessary to comply with its obligations, covenants and responsibilities set forth in the MTS Project Contracts.

Section 4. Conditions Precedent. Notwithstanding anything in this Direct Agreement to the contrary, this Direct Agreement shall not become effective until the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(a) MTS shall have delivered to the TIFIA Lender a certified, complete and fully executed copy of the Transit Vehicle Purchase Contract, this Direct Agreement and any other MTS Project Contract then in effect, and such agreements shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(b) Counsel to MTS shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on Exhibit A).

(c) MTS shall have provided a certificate from MTS’s Authorized Representative (as defined in Section 12) 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 B with respect to MTS and its principals (as defined in 2 C.F.R. § 180.995).

(d) MTS shall have delivered to the TIFIA Lender a certificate from MTS’s Authorized Representative in the form attached hereto as Exhibit C (i) as to the satisfaction of certain conditions precedent set forth in this Section 4 (as required by the TIFIA Lender), (ii) designating MTS’s Authorized Representative, and (iii) confirm such person’s position and incumbency.

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

(f) MTS shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender.

Section 5. Representations and Warranties of MTS. MTS hereby represents and warrants that as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 5(b), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. MTS is a public agency of the State, duly organized and validly existing and in good standing under the laws of the State, has full legal right, power and authority to enter into or become a signatory to the MTS Project Contracts and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the MTS Project Contracts.

(b) MTS’s Officers’ Authorization. As of the Effective Date, the officers of MTS executing (or that previously executed) the MTS Project Contracts and any certifications or instruments related thereto, are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each MTS Project Contract has been duly authorized, executed and delivered by MTS and constitutes the legal, valid and binding agreement of MTS enforceable in accordance with its respective terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the MTS Project Contracts, the consummation of the transactions contemplated herein and therein and the fulfillment of or compliance with the terms and conditions hereof and thereof will not (i) conflict with MTS’s Organizational Documents or (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by MTS of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument
to which MTS is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

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

(f) **Litigation.** As of the Effective Date, there is no action suit, proceeding or, to the knowledge of MTS, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of MTS, threatened against or affecting the Project or the ability of MTS to execute, deliver and perform its obligations under the MTS Project Contracts. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of MTS, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of MTS, threatened against or affecting the Project, MTS or the assets, properties or operations of MTS, that in any case could reasonably be expected to result in a Material Adverse Effect. To MTS’ knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to result in a Material Adverse Effect. MTS is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) **No Debarment.** MTS has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge neither MTS nor any of its principals (as defined in 2 C.F.R. § 180.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 4(c).

(h) **Accuracy of Representations and Warranties.** The representations, warranties and certifications of MTS set forth in the MTS Project Contracts are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).
Compliance with Federal Requirements. MTS has complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.).

No Defaults. MTS is not in default under the respective terms of the MTS Project Contracts, and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute an event of default thereunder.

Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the acquisition of the transit vehicles pursuant to the Transit Vehicle Purchase Contract (the “Transit Vehicles”) and the operation and management of the Project, have been obtained or effected by a Borrower Related Party and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

MTS Project Contracts. Each MTS Project Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each MTS Project Contract have been satisfied. MTS has delivered to the Borrower and the TIFIA Lender a fully executed, complete, and correct copy of each such MTS Project Contract, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives MTS, or, to MTS’s knowledge, any Principal Project Party, the right to terminate any MTS Project Contract. MTS is not in breach of any material term in or in default under any MTS Project Contract, and to the knowledge of MTS, no party to any MTS Project Contract is in breach of any material term therein or in default thereunder.

Information. The information furnished by MTS to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of MTS.

OFAC; Anti-Corruption Laws. MTS:

(i) is not in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act; (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or
(ii) is not a Person (A) that is charged with, or has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws; (B) that has been, since the date that is five (5) years prior to the Effective Date, convicted of any violation of, has been subject to criminal or civil penalties pursuant to, had any of its property seized or forfeited under, or has entered into any agreement with the Government or a state or local government related to violations of any such laws; (C) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list); (D) with whom any U.S. Person (as defined by the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by the TIFIA Loan Agreement and the other Related Documents under any other applicable law; or (E) with respect to a Principal Project Party, that is owned (other than any Person beneficially owning or holding five percent (5%) or less of the equity interests of such Principal Project Party), Controlled by, or affiliated with any Person identified in subclause (A), (B), (C) or (D) of this clause (ii).

(o) Compliance with Law. MTS is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed Section 5(p) below). To MTS’s knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws in respect of the Project. No notices of violation of any applicable law have been issued, entered or received by MTS or, to the knowledge of MTS and solely in respect of the Project or any MTS Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(p) Environmental Matters. MTS and, to the knowledge of MTS, each Principal Project Party, is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all Environmental Laws. All Governmental Approvals for the operation of the Project relating to Environmental Laws have been, or, when required, will be, obtained by a Borrower Related Party and are (or, as applicable, will be) in full force and effect. Except for all communications and notices that MTS has reasonably and in good faith determined to be either (A) without merit or (B) not expected to result in a Material Adverse Effect, MTS has not received any written communication or notice, whether from a Governmental Authority, employee citizens group, or any other Person, that alleges that MTS is not in full compliance with all Environmental Laws and Governmental Approvals relating to or in connection with the operation of the Project and, to the knowledge of MTS, there are no circumstances that may prevent or interfere with full compliance in the future by MTS with any such Environmental Law or Governmental Approval. MTS has provided to the TIFIA Lender all material
assessments, reports, results of investigations or audits, and other material information in
the possession of or reasonably available to MTS regarding MTS’s or the Project’s
compliance with (x) Environmental Laws, and (y) Governmental Approvals relating to
Environmental Laws that are required for the operation of the Project.

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

(r) Insurance. MTS is in material compliance with all insurance obligations
required under each MTS Project Contract as of the date on which this representation and
warranty is made. To the extent MTS self-insures, such self-insurance program is
actuarially sound and MTS has received an opinion from an accredited actuary within the
last twelve (12) months, which opinion confirms that such insurance program is
actuarially sound.

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

(t) Intellectual Property. MTS owns, or has adequate licenses or other valid
rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises,
formulas, licenses and other rights with respect thereto and has obtained assignment of all
licenses and other rights of whatsoever nature, in each case, necessary for the acquisition
of the Transit Vehicles, operation of the Project and the operation of its business. To the
knowledge of MTS, there exists no conflict with the rights or title of any third party with
respect to the intellectual property described in the preceding sentence. Excluding the
use of commercially available “off-the-shelf” software, to the knowledge of MTS, no
product, process, method, substance, part or other material produced or employed or
presently contemplated to be produced by or employed by the Project infringes or will
infringe any patent, trademark, service mark, trade name, copyright, franchise, formula,
license or other intellectual property right of any third party.
(u) **Taxes.** MTS is not required to file tax returns with any Governmental Authority.

(v) **Sovereign Immunity.** MTS either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of MTS under the MTS Project Contracts or the transactions contemplated hereby or thereby, including the obligations of MTS hereunder and thereunder, or, to the extent that MTS has such immunity, MTS has waived such immunity pursuant to Section 7(f) (except as provided in Section 970 et seq. of the California Government Code).

**Section 6. Representations and Warranties of the TIFIA Lender.** The TIFIA Lender represents and warrants that:

(a) **Power and Authority.** The TIFIA Lender has all requisite power and authority to perform all transactions contemplated by this Direct Agreement.

(b) **Due Execution and Enforceability.** This Direct Agreement has been duly authorized, executed and delivered by the TIFIA Lender, and is a legally valid and binding agreement of the TIFIA Lender, enforceable in accordance with its terms.

(c) **Officer’s Authorization.** The officer of the TIFIA Lender executing this Direct Agreement is duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

**Section 7. Affirmative Covenants.** MTS covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under the TIFIA Loan Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) **Prosecution of Work; Verification Requirements.**

   (i) MTS shall diligently prosecute the work relating to the acquisition of the Transit Vehicles in accordance with the Construction Schedule.

   (ii) MTS shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to MTS and shall ensure that any letter of credit provided pursuant to any MTS Project Contract meets the respective requirements therefor set forth in such MTS Project Contract.

   (iii) MTS shall comply with the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320.
(b) **Operations and Maintenance.** MTS shall (i) operate and maintain the Project in a reasonable and prudent manner and (ii) maintain the Project in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. MTS shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(c) **Insurance.** MTS shall, through a combination of insurance policies and self-insurance programs, maintain or cause its contractors to maintain, all insurance necessary and sufficient to protect the Project and the Borrower Related Parties against accidental loss or damage during periods of operation and maintenance, as is customarily maintained by MTS with respect to works and properties of like character, against accident to, loss of, damage to and liability from such works or properties.

(d) **Notice.**

(i) MTS shall, within ten (10) Business Days after MTS learns of the occurrence, give the TIFIA Lender and the Borrower notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) **Assumption of Operations:** the date on which MTS assumes full responsibility for the operation of the Project;

(B) **Litigation:** (1) the filing of any litigation, suit or action, or the commencement of any proceeding against MTS, before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by MTS in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against MTS that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any unsatisfied or uninsured judgments against MTS with award amounts in excess of $100,000,000, either individually or in the aggregate;

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

(D) **Insurance Claim:** any insurance claims made by MTS or any Principal Project Party in respect of the Project in excess of $80,000,000 either individually or in the aggregate;

(E) **Amendments:** except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any MTS Project Contract (excluding change orders) at least thirty (30) days prior to
the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

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

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

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

(I) Documents: the delivery or receipt, by MTS, of any material plans, reports or notices under the MTS Project Contracts, unless the TIFIA Lender notifies MTS that any of such plans, reports or notices no longer need to be provided; provided, however, that, with respect to the Transit Vehicle Purchase Contract, MTS shall be required under this clause (J) to notify the TIFIA Lender only of the delivery or receipt of material notices thereunder; and

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

(ii) MTS shall provide a copy of any legislation or notices proposing that the MTS be reorganized, consolidated with, or merged into another Person, within fifteen (15) Business Days of the introduction of such legislation to the California State Assembly or State Senate.

(iii) MTS shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described this Section 7(d).

(e) Maintain Legal Structure. MTS shall maintain its existence as local governmental agency duly organized under the laws of the State.

(f) Immunity. To the fullest extent permitted by applicable law, MTS agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of MTS under the MTS Project Contracts.
Section 8. Negative Covenants. MTS covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under the TIFIA Loan Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

(a) No Lien Extinguishment or Adverse Amendments. MTS shall not permit, nor shall it permit any Person, unless the TIFIA Lender has otherwise approved in writing, to terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any MTS Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender’s determination).

(b) No Prohibited Liens. MTS shall not collaterally assign any of its rights under or pursuant to any MTS Project Contract and shall not permit a Lien to encumber MTS’s rights or privileges under any MTS Project Contract, unless pursuant to the Indenture in favor of the Trustee.

(c) No Prohibited Sale, Lease or Assignment. MTS shall not sell, lease or assign its rights in and to the Project, a substantial portion of the assets included in the Project, or its rights and obligations under any MTS Project Contract, in each case unless such sale, lease or assignment could not reasonably be expected to result in a Material Adverse Effect.

(d) Organizational Documents. MTS shall not at any time (i) propose an amendment to or modification of the constitutional and statutory provisions that are the basis for its existence and authority (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender.

(e) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, MTS shall not (i) sell or transfer any property or assets constituting part of the Project to, or purchase or acquire any property or assets of, any other Governmental Authority for inclusion as part of the Project, or (ii) otherwise engage in any other transactions in connection with the Project with, any other Governmental Authority (including any other Governmental Authority of or in the State) the terms and provisions of which are materially adverse to any Borrower Related Party or the Project or, in either case, that could reasonably be expected to result in a Material Adverse Effect.

(f) Change in Legal Structure; Mergers and Acquisitions. MTS shall not, and shall not agree to reorganize, consolidate with, or merge into another Person unless such reorganization, merger or consolidation is with or into another entity established and Controlled by MTS that succeeds to the assets of MTS and assumes the obligations of MTS, and in each case, including reorganization, does not adversely affect or impair to any extent or in any manner TIFIA’s rights under the TIFIA Loan Agreement. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such
reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Direct Agreement and the other MTS Project Contracts. In addition, MTS provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender.

(g) OFAC Compliance. MTS shall not:

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

(ii) be a Person (A) that is charged with, or that has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws, (B) that is convicted of any violation of, is subject to civil or criminal penalties pursuant to, has any of its property seized or forfeited under, or enters into any agreement with the Government or a state or local government related to violations of, any such laws, (C) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list), (D) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by the MTS Project Contracts under any other applicable law, (E) that is owned, Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this Section 8(g)(ii), or (F) is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States of America and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

(iii) MTS shall not knowingly make a payment, directly or indirectly, to any Principal Project Party that has violated any of the laws referenced in Section 8(g)(ii) or that is a Person described in Section 8(g)(ii).

Section 9. Indemnification. MTS (an “Indemnifying Party”) 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 the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery, and performance of any MTS Project Contract, (b) the TIFIA Loan or
the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Indemnifying Party shall be entitled, at its own expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the expense of the Indemnifying Party and such participation by the Indemnifying Party in the defense thereof shall not release the Indemnifying Party of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 9 is made shall be entitled, after consultation with the Indemnifying Party and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Indemnifying Party for purposes of this Section 9. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither MTS nor the TIFIA Lender shall assert, and both MTS and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Indemnifying Party, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Direct Agreement, any other MTS Project Contract the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Indemnifying Party’s indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 9 shall be payable promptly upon demand therefor. The obligations of MTS under this Section 9 shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Direct Agreement, or any other MTS Project Contract, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 9) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of MTS hereunder or thereunder.

Section 10. Reports and Records; Required Audit; Financial Plan.

(a) Reports and Records. MTS shall maintain and retain all files relating to the Project until three (3) years after the later of the date on which (i) all rights and duties of the Borrower under the TIFIA Loan Agreement and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project or the MTS Project Contracts is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and MTS. MTS shall provide to 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.
(b) Financial Plan. MTS agrees to furnish the required information under Section 22 (Financial Plan, Statements, and Reports) of the TIFIA Loan Agreement with respect to the Financial Plan and the statements and reports related thereto to enable the Borrower to fully comply with the Financial Plan requirements.

(c) Acquisition of Light Rail Transit Vehicles. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the acquisition of the light rail transit vehicles as part of the Project. MTS agrees to cooperate in good faith with SAND AG, the Borrower, the TIFIA Lender and the FTA Regional Office in the conduct of such monitoring by promptly providing the Borrower, SAND AG, the TIFIA Lender and the FTA Regional Office with such reports, documentation or other information as shall be requested by the TIFIA Lender, FTA Regional Office, or its agents.

(d) Reporting. MTS shall furnish to the TIFIA Lender copies of the quarterly construction updates provided to the FTA under the FFGA, a report executed by MTS’s Authorized Representative that (i) provides a detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the acquisition of the light rail transit for the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems and (ii) specifies the delivery status of the transit vehicles and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule.

Section 11. No Personal Recourse. No official, employee or agent of the TIFIA Lender or MTS or any person executing this Direct Agreement shall be personally liable on this Direct Agreement by reason of the issuance, delivery or execution hereof.

Section 12. MTS’s Authorized Representative. MTS shall at all times have appointed a MTS’s Authorized Representative by designating such person or persons from time to time to act on MTS’s behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by MTS.

Section 13. TIFIA Lender’s Authorized Representative. Pursuant to Section 27 (TIFIA Lender's Authorized Representative) of the TIFIA Loan Agreement, the TIFIA Lender’s 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 TIFIA Lender’s behalf pursuant to a written certificate furnished to Borrower and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by the TIFIA Lender.

Section 14. Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Direct Agreement shall in any event be effective without the written consent of the Parties hereto.
Section 15. Governing Law. This Direct 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 of California if and to the extent such federal laws are not applicable.

Section 16. Severability. In case any provision in or obligation under this Direct 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 17. Successors and Assigns. This Direct Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall inure, together with the rights and remedies of the Trustee hereunder, to the benefit of the Parties hereto and the successors and assigns of the TIFIA Lender. Neither MTS nor the Borrower may sell, assign, transfer or delegate any of its rights or obligations under this Direct Agreement without the prior written consent of the TIFIA Lender.

Section 18. Remedies Not Exclusive. No remedy conferred upon the TIFIA Lender in this Direct Agreement or the TIFIA Loan Agreement or reserved to the TIFIA Lender thereunder 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 thereunder or now or hereafter existing at law or in equity or by statute.

Section 19. Delay or Omission Not Waiver. No waiver by the TIFIA Lender of any breach by MTS of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or omission of the TIFIA Lender to exercise any right or remedy provided under this Direct Agreement or the TIFIA Loan Agreement upon a default of MTS (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 Direct Agreement or the TIFIA Loan 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 20. No Liability for TIFIA Loan. Nothing in this Direct Agreement shall be construed to mean that MTS is liable under the TIFIA Loan Agreement for the debt of the Borrower, as Borrower under the TIFIA Loan Agreement.

Section 21. Notices. All notices and other communications hereunder shall be in writing (including by facsimile), shall be deemed to have been duly given when delivered by hand, or in the case of notice given by mail or facsimile, when received, and shall be addressed: (a) if to MTS, at 1255 Imperial Avenue, Suite 1000, San Diego, CA 92101, Attention: Chief Executive Officer, with a copy to 1255 Imperial Avenue, Suite 1000, San Diego, CA 92101, Attention: Karen Landers, General Counsel and a copy to the Borrower; (b) if to the Borrower, at 401 B Street, Suite 800, San Diego, California 92101, Attention: José Nuncio, TransNet Program Director, and with a copy to 401 B Street, Suite 800, San Diego, California 92101, Attention: John Kirk, General Counsel; (c) if to the TIFIA Lender, at Build America Bureau, Room W12- 464, United States Department of Transportation, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, Attention: Director, Office of Credit Programs, email:
Section 22. Miscellaneous.

(a) The TIFIA Lender is hereby authorized to demand specific performance of this Direct Agreement, whether or not the Borrower shall have complied with any of the provisions hereof, at any time when MTS shall have failed to comply with any of the provisions of this Direct Agreement applicable to it. MTS irrevocably waives any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.

(b) MTS shall fully cooperate with the TIFIA Lender and perform all additional acts reasonably requested by the TIFIA Lender to effect the purposes of this Direct Agreement. The Parties hereto agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the TIFIA Lender may reasonably request to effectuate the terms of this Direct Agreement.

Section 23. Counterparts. This Direct Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by 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 but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Direct Agreement or of any document or instrument delivered in connection herewith in accordance with Section 21 shall be effective as delivery of an original executed counterpart of this Direct Agreement or such other document or instrument, as applicable.

Section 24. Termination of 2017 Direct Agreement. The Direct Agreement dated as June 27, 2017, by and among the MTS, Borrower and the TIFIA Lender is hereby terminated.

Section 25. Effectiveness. This Direct Agreement shall be effective as of the date hereof.
IN WITNESS WHEREOF, the Parties hereto have executed this Direct Agreement as of the date first above written.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

By: ________________________________
   Name: ________________________________
   Title: ________________________________
BORROWER:

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: ______________________________
    Name: __________________________
    Title: ___________________________
UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau

By: ________________________________
Name: 
Title: 
EXHIBIT A

OPINIONS REQUIRED OF COUNSEL TO MTS

An opinion of the counsel of MTS, dated as of the Effective Date, to the effect that: (a) MTS is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization; (b) MTS has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the MTS Project Contracts; (c) the execution and delivery by MTS of, and the performance of its respective obligations under, the MTS Project Contracts have been duly authorized by all necessary organizational or regulatory action; (d) MTS has duly executed and delivered the MTS Project Contracts and each such agreement constitutes the legal, valid and binding obligation of MTS; enforceable against MTS in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of MTS for the execution and delivery by such party of, and the performance of such party under, the MTS Project Contracts other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by MTS; (f) the execution and delivery by MTS of, and compliance with the provisions of, the MTS Project Contracts in each case do not (i) violate the Organizational Documents of MTS, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which MTS is a party or signatory, or to the best of such counsel’s knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which MTS is subject; (g) MTS is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against MTS by or before any court, arbitrator or any other Governmental Authority in connection with the MTS Project Contracts or the Project that are pending.
EXHIBIT B

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

The undersigned, on behalf of the SAN DIEGO METROPOLITAN TRANSIT SYSTEM (“MTS”), hereby certifies that MTS has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, MTS and its principals (as defined in 2 C.F.R. § 180.995):

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

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

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

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

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement, dated as of _________ (the “Effective Date”), between the TIFIA Lender and the San Diego County Regional Transportation Commission, as the same may be amended from time to time.

Dated: __________

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

By: ________________________________
Name: ________________________________
Title: ________________________________
EXHIBIT C

FORM OF MTS’S OFFICER’S CERTIFICATE

Dated: __________

Reference is made to that certain Direct Agreement, dated as of __________ (the “MTS Direct Agreement”), by and among the San Diego Metropolitan Transit System (“MTS”), the San Diego County Regional Transportation Commission (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau. Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the MTS Direct Agreement.

The undersigned, _____________, as a MTS’s Authorized Representative, does hereby certify on behalf of MTS and not in her personal capacity, as of the date hereof:

(a) in satisfaction of Section 4(d) (Conditions Precedent) of the MTS Direct Agreement, attached hereto as Exhibit A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by MTS to execute the Transit Vehicle Purchase Contract, the MTS Direct Agreement and the other Related Documents to which MTS is or will be a party, and who have been appointed a MTS Authorized Representative in accordance with the MTS Direct Agreement;

(b) in satisfaction of Section 4(a) (Conditions Precedent) of the MTS Direct Agreement, attached hereto as Exhibit B is a true, correct and complete copies of the MTS Direct Agreement and the Transit Vehicle Purchase Contract, and such agreements are in full force and effect and have not been amended, restated, modified or supplemented except as listed in Exhibit B;

(c) in satisfaction of Section 4(e) (Conditions Precedent) of the MTS Direct Agreement, attached hereto as (i) Exhibit C-1 is a copy of MTS’s Organizational Documents, as in effect on the Effective Date (and certified by the MTS’s Authorized Representative), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate and (ii) as Exhibit C-2 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions, the Transit Vehicle Purchase Contract and the MTS Direct Agreement; and

(d) the representations and warranties of MTS set forth in the MTS Direct Agreement are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date.
IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

By: ________________________________
Name: ______________________________
Title: Authorized Representative
Exhibit A to
FORM OF MTS’S OFFICER’S CERTIFICATE

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the Clerk of the Board of SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a public agency created under the laws of the State of California, (“MTS”), and as such she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of MTS in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the MTS Project Contracts as MTS’s Authorized Representative (each as defined in that certain Direct Agreement, dated as of the date hereof, between the San Diego County Regional Transportation Commission and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, and MTS):

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IN WITNESS WHEREOF, the undersigned has executed this certificate as of this ___th day of ____________, 20__.  

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

By: ________________________________
   Name:
   Title: Clerk of the Board
Exhibit B to
FORM OF MTS’S OFFICER’S CERTIFICATE

MTS PROJECT CONTRACTS

1) Contract, dated on or about September 30, 2009, by and between San Diego Metropolitan Transit System (“MTS”) and Siemens Industry, Inc., as such agreement is amended and supplemented thereafter.

(See Item Number 11 of the Closing Proceedings)

2) Direct Agreement, dated as of __________, by and among MTS, the San Diego County Regional Transportation Commission and the United States Department of Transportation.

(See Item Number 6 of the Closing Proceedings)
Exhibit C-1 to
FORM OF MTS’S OFFICER’S CERTIFICATE

ORGANIZATIONAL DOCUMENTS

(California Public Utilities Code sections 120000 through 120702 attached)
Exhibit C-2 to
FORM OF MTS’S OFFICER’S CERTIFICATE

ADDITIONAL DOCUMENTS

None
TENTH SUPPLEMENTAL INDENTURE

between

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

and

U.S. BANK NATIONAL ASSOCIATION, as Trustee

Dated as of __________ 1, 20__

Relating to

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION
JUNIOR SUBORDINATE SALES TAX REVENUE BOND
(LIMITED TAX BOND)
20__ TIFIA SERIES

(Supplementing the Indenture
Dated as of March 1, 2008)
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TENTH SUPPLEMENTAL INDENTURE

THIS TENTH SUPPLEMENTAL INDENTURE, dated as of __________ 1, 20__ (this “Tenth Supplemental Indenture”), between the SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION, a public entity duly established and existing under the laws of the State of California (the “Commission”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the “Trustee”):

WITNESSETH:

WHEREAS, this Tenth Supplemental Indenture is supplemental to the Indenture, dated as of March 1, 2008 (as supplemented and amended from time to time pursuant to its terms, the “Indenture”), between the Commission and the Trustee;

WHEREAS, the Seventh Supplemental Indenture (i) established a new lien for the Junior Subordinate Obligations and (ii) set forth certain terms and conditions of a TIFIA Loan (the “2017 TIFIA Loan”) pursuant to a TIFIA Loan Agreement, dated as of June 27, 2017 (the “2017 TIFIA Loan Agreement”), between the Commission and the TIFIA Lender, which 2017 TIFIA Loan is to be evidenced by the 2017 TIFIA Bond, issued in an initial principal amount not to exceed $537,484,439; and

WHEREAS, the Commission has not yet drawn any proceeds under the 2017 TIFIA Loan Agreement, and the TIFIA Lender is prepared to restructure the 2017 TIFIA Loan Agreement to provide for the TIFIA Loan to bear interest at a lower rate by terminating the 2017 TIFIA Loan Agreement and entering into a replacement TIFIA Loan Agreement; and

WHEREAS, the Commission and the Trustee desire to enter into this Tenth Supplemental Indenture to (i) set forth certain terms and conditions of a TIFIA Loan (the “20__ TIFIA Loan”) pursuant to a TIFIA Loan Agreement, dated as of __________ __, 20__ (the “20__ TIFIA Loan Agreement”), between the Commission and the TIFIA Lender, which 20__ TIFIA Loan is to be evidenced by a bond entitled “San Diego County Regional Transportation Commission Junior Subordinate Sales Tax Revenue Bond (Limited Tax Bond), 20__ TIFIA Series” (the “20__ TIFIA Bond”), to be issued in an initial principal amount not to exceed $537,484,439, and (ii) provide for surrender for cancellation of the 2017 TIFIA Bond and amendment of the Indenture in conjunction with replacement of the 2017 TIFIA Loan Agreement; and

WHEREAS, the 20__ TIFIA Bond is being issued as a Junior Subordinate Obligation under the Indenture; and

WHEREAS, the 20__ TIFIA Loan Agreement is being entered into as indebtedness under, pursuant to and in accordance with the Act, and the proceeds of the 20__ TIFIA Loan shall be disbursed by the TIFIA Lender to be used by the Commission to finance the Mid-Coast Corridor Transit Project, as provided in this Tenth Supplemental Indenture;

NOW, THEREFORE, the parties hereto hereby agree as follows:
ARTICLE LVI
DEFINITIONS; AMENDMENTS TO INDENTURE

Section 56.01 Defined Terms.

(a) Definitions. Unless the context otherwise requires, all terms that are defined in Section 1.02 of the Indenture shall have the same meanings in this Tenth Supplemental Indenture.

Section 56.02 Amendments to Indenture.

(a) Section 1.02 of the Indenture is hereby amended by adding the following defined terms:

“Authorized Denomination” means, with respect to the 20__ TIFIA Bond, initially the principal amount of the 20__ TIFIA Bond, and thereafter any principal amount equal to the outstanding principal amount of the TIFIA Loan.

“20__ TIFIA Bond” means the San Diego County Regional Transportation Commission Junior Subordinate Sales Tax Revenue Bond (Limited Tax Bond), 20__ TIFIA Series, authorized by Article XLIII of the Tenth Supplemental Indenture.

“20__ TIFIA Debt Service” means, with respect to any Semi-Annual Payment Date occurring on or after the 20__ TIFIA Debt Service Commencement Date, the principal and/or interest required to be paid on the 20__ TIFIA Loan on such Semi-Annual Payment Date as shown on Exhibit G of the 20__ TIFIA Loan Agreement in accordance with the provisions of Section 9 of the 20__ TIFIA Loan Agreement.

“20__ TIFIA Debt Service Payment Commencement Date” means the earliest of (a) October 1, 2025, (b) the Semi-Annual Payment Date immediately preceding the 5th anniversary of the Substantial Completion Date and (c) the Semi-Annual Payment Date immediately preceding the 5th anniversary of the date on which the 20__ TIFIA Loan is disbursed in accordance with the 20__ TIFIA Loan Agreement.

“20__ TIFIA Loan Agreement” means the TIFIA Loan Agreement, dated as of _____________, 20__, by and between the Commission and the TIFIA Lender, relating to the Mid-Coast Corridor Transit Project, as amended in accordance with its terms.

“20__ TIFIA Reserve Event” means a TIFIA Reserve Event as defined in the 20__ TIFIA Loan Agreement.

“20__ TIFIA Reserve Fund” means the fund by that name established within the Junior Subordinate Obligations Reserve Fund.
“20__ TIFIA Reserve Requirement” means the TIFIA Reserve Fund Requirement as defined in the 20__ TIFIA Loan Agreement.

(b) Section 41.02(a) of the Seventh Supplemental Indenture is hereby amended to replace in the following defined terms all references to “2017 TIFIA Loan Agreement” with “20__ TIFIA Loan Agreement”: “Additional Interest Rate Swap Agreement,” “Existing Interest Rate Swap Agreement,” “Hedging Termination Obligations,” “Mid-Coast Corridor Transit Project,” “Nationally Recognized Rating Agency,” “Subsequent Interest Rate Swap Agreement,” “Substantial Completion Date,” and “Total Maximum Annual Debt Service.”

(c) Section 1.02 of the Indenture is hereby amended by adding the following defined terms in replacement of the corresponding defined terms in Section 1.02:

“Issue Date” means __________ __, 20__.

(d) Sections 41.02(g), 41.02(h), 41.02(j), 41.02(n), 41.02(r), 41.02(s), 41.02(u), 41.02(v) and 41.02(w) of the Seventh Supplemental Indenture are hereby amended (1) to replace all references to “2017 TIFIA Loan Agreement” with “20__ TIFIA Loan Agreement”, (2) to replace all references to “2017 TIFIA Bond” with “20__ TIFIA Bond” and (3) to replace all references to “2017 TIFIA Reserve Fund” with “20__ TIFIA Reserve Fund”.

ARTICLE LVII
FINDINGS, DETERMINATIONS AND DIRECTIONS FOR ISSUANCE OF 20__ TIFIA BOND

Section 57.01 Findings and Determinations. The Commission hereby finds and determines that the 20__ TIFIA Bond shall be issued pursuant to Article III and upon the issuance of the 20__ TIFIA Bond, any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the issuance thereof, will exist, will have happened and will have been performed, in due time, form and manner, as required by the Constitution and statutes of the State.

Section 57.02 Recital in Bonds. There shall be included in the definitive 20__ TIFIA Bond, and also in the temporary 20__ TIFIA Bond, if any is issued, a certification and recital that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by that 20__ TIFIA Bond, and in the issuing of that 20__ TIFIA Bond, exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State and the Act, and that said 20__ TIFIA Bond, together with all other indebtedness of the Commission payable out of Revenues, is within every debt and other limit prescribed by the Constitution and statutes of the State and the Act, and that such certification and recital shall be in such form as is set forth in the form of the 20__ TIFIA Bond attached hereto as Exhibit B.

Section 57.03 Effect of Findings and Recital. From and after the issuance of the 20__ TIFIA Bond, the findings and determinations herein shall be conclusive evidence of the existence of the facts so found and determined in any action or proceeding in any court in which the validity of the 20__ TIFIA Bond is at issue.
ARTICLE LVIII
AUTHORIZATION OF 20__ TIFIA BOND

Section 58.01 Authorization; Principal Amount, Designation and Series. The Commission hereby approves the terms and provisions of the 20__ TIFIA Loan Agreement substantially in form and substance contained in Exhibit A to this Tenth Supplement Indenture. Pursuant to the provisions of the Indenture and the provisions of the Act, and to evidence the principal, interest and other payment obligations of the Commission under the 20__ TIFIA Loan Agreement, a bond entitled to the benefit, protection and security of such provisions, is hereby authorized in the aggregate principal amount not to exceed $537,484,439. Such bond shall be designated as, and shall be distinguished from the Junior Subordinate Obligations of all other Series by the title, “San Diego County Regional Transportation Commission Junior Subordinate Sales Tax Revenue Bond (Limited Tax Bond), 20__ TIFIA Series.”

Section 58.02 Priority and Lien. The principal and interest payment obligations pursuant to the 20__ TIFIA Loan Agreement and evidenced by the 20__ TIFIA Bond shall constitute Junior Subordinate Obligations under the Indenture. Payment obligations other than the obligation to pay principal and interest under the 20__ TIFIA Loan Agreement (and corresponding obligation to pay principal of and interest on the 20__ TIFIA Bond), including but not limited to fees and expenses payable to the TIFIA Lender under the 20__ TIFIA Loan Agreement, shall be secured by and payable from amounts on deposit in the Fees and Expenses Fund. As provided in the Indenture, Junior Subordinate Obligations shall be payable from Revenues pursuant to the Indenture and shall be secured by a subordinate pledge of and lien on the Trust Estate, subject to the prior pledge and lien securing the payment of all principal, premium, interest and reserve fund requirements, if any, for all Senior Obligations and Subordinate Obligations, all obligations payable from the Fees and Expenses Fund, and Hedging Termination Obligations with respect to Existing Interest Rate Swap Agreements.

Section 58.03 Purpose. The 20__ TIFIA Bond is being issued for the purpose of financing a portion of the costs of the Mid-Coast Corridor Transit Project.

Section 58.04 Form, Denomination, Numbers and Letters. The 20__ TIFIA Bond shall not be issued as a book-entry-only obligation. Initially there shall be delivered hereunder one fully registered 20__ TIFIA Bond numbered R-1, without interest coupons. Any 20__ TIFIA Bond issued in replacement thereof upon transfer or exchange shall be numbered consecutively from R-2 upward, payable to the Holder thereof. The 20__ TIFIA Bond and the certificate of authentication shall be substantially in the form attached hereto as Exhibit B, which form is hereby approved and adopted as the form of the 20__ TIFIA Bond and as the form of the certificate of authentication. The 20__ TIFIA Bond shall be issued as one or more single 20__ TIFIA Bonds for each Holder, and each such 20__ TIFIA Bond shall be in an Authorized Denomination.
Section 58.05 Date, Maturity and Interest Rate.

(a) The 20__ TIFIA Bond shall be dated the Issue Date. The principal amount of the 20__ TIFIA Bond will increase by the amount disbursed by the TIFIA Lender to the Commission pursuant to the 20__ TIFIA Loan Agreement, as noted by the TIFIA Lender on the grid attached to the 20__ TIFIA Bond as Appendix One, with a copy to the Commission and the Trustee. Interest on such principal amount of the 20__ TIFIA Bond will be compounded and capitalized in accordance with the provisions of the 20__ TIFIA Loan Agreement. The 20__ TIFIA Bond (i) may and shall be prepaid prior to the respective payment dates, in whole or in part, and at such time, in such amounts and with such notice as may be provided in the 20__ TIFIA Loan Agreement, and (ii) the principal of and interest on the 20__ TIFIA Bond shall be payable, all as provided, and in the manner required or indicated, herein and in the 20__ TIFIA Loan Agreement.

(b) The 20__ TIFIA Loan as evidenced by the 20__ TIFIA Bond shall mature on October 1, 2045, and shall bear interest at the rate of ____% per annum (or the TIFIA Default Rate of 2.00% above the foregoing rate, if applicable), compounded and payable on the above dates and in accordance with the 20__ TIFIA Loan Agreement.

(c) The entity in whose name the 20__ TIFIA Bond shall be registered in the registration books of the Trustee at any time shall be deemed and treated as the absolute Holder thereof for all purposes of the Indenture, whether or not the 20__ TIFIA Bond shall be overdue, and the Commission and the Trustee shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. Payment of, or on account of, the principal of, premium, if any, and interest on the 20__ TIFIA Bond shall be made only to such Holder. All such payments shall be valid and effectual to satisfy and discharge the liability upon the 20__ TIFIA Bond to the extent of the sum or sums so paid. The Holder of the 20__ TIFIA Bond shall at all times be the party to the 20__ TIFIA Loan Agreement having all rights and obligations of the “TIFIA Lender” thereunder. Accordingly, the 20__ TIFIA Bond may be transferred by a Holder only to a transferee that is a party to the 20__ TIFIA Loan Agreement having all rights and obligations of the “TIFIA Lender” thereunder. The Trustee shall not register any transfer or exchange of the 20__ TIFIA Bond unless the Holder’s prospective transferee delivers to the Trustee a letter substantially in the form as set forth in Exhibit C attached hereto. The Trustee may rely on the letter in making a transfer or exchange of the 20__ TIFIA Bond without any investigation. In the event there is more than one Holder of the 20__ TIFIA Bond, payments of principal of and interest on the 20__ TIFIA Bond shall be made ratably, based on the aggregate principal amount of 20__ TIFIA Bond held by each such Holder.

(d) The Commission appoints the Trustee to act as the paying agent for paying the principal of and interest on the 20__ TIFIA Bond and any other amounts due and payable thereunder, and hereby instructs the Trustee to make the payments when due to the TIFIA Lender in accordance with this Section 43.05. The Trustee shall keep proper records of all payments made by the Commission and the Trustee with respect to the 20__ TIFIA Bond, and of all exchanges and replacements of 20__ TIFIA Bond, as provided in the Indenture.

Section 58.06 Conditions To Delivery of 20__ TIFIA Bonds. The 20__ TIFIA Bond shall be executed and delivered as authorized by this Tenth Supplemental Indenture and the
Indenture (for clarity, after giving effect to the amendments under this Tenth Supplemental Indenture), including Sections 3.09 and 3.10 thereof, upon execution and delivery of the 20___ TIFIA Loan Agreement and surrender of the 2017 TIFIA Bond to the Trustee for cancellation.

Section 58.07 Disposition of Proceeds of 20___ TIFIA Bond. The proceeds from the issuance of the 20___ TIFIA Bond shall be received by the Commission and applied by the Commission in accordance with the 20___ TIFIA Loan Agreement.

ARTICLE LIX
DEPOSITS TO AND TRANSFERS
FROM JUNIOR SUBORDINATE OBLIGATIONS FUND

Section 59.01 Deposits to and Transfers from 20___ TIFIA Debt Service Account.

(a) There is hereby established within the Junior Subordinate Obligations Fund the 20___ TIFIA Debt Service Account (the “20___ TIFIA Debt Service Account”) and within the 20___ TIFIA Debt Service Account there is further established the Interest Subaccount and the Principal Subaccount, all to be held by the Trustee.

(b) Commencing on the date six months prior to the 20___ TIFIA Debt Service Payment Commencement Date, the Trustee shall deposit from Revenues pursuant to Section 5.02(A)(7) of the Indenture to the Interest Subaccount of the 20___ TIFIA Debt Service Account as soon as practicable in such month an amount equal to one-sixth of the aggregate amount of interest becoming due and payable on the 20___ TIFIA Bond on the next Semi-Annual Payment Date (excluding any interest earned on moneys deposited in the 20___ TIFIA Debt Service Account and reserved to pay such interest during the next ensuing six (6) months), until the requisite amount of interest becoming due on the 20___ TIFIA Bond is on deposit in such Subaccount. On such Semi-Annual Payment Date and on each Semi-Annual Payment Date thereafter, the Trustee shall transfer to the Holder of the 20___ TIFIA Bond amounts on deposit in the Interest Subaccount of the 20___ TIFIA Debt Service Account sufficient to pay the interest on the 20___ TIFIA Bond due and payable on such Semi-Annual Payment Date.

(c) Commencing on the date six months prior to the 20___ TIFIA Debt Service Payment Commencement Date, the Trustee shall deposit from Revenues pursuant to Section 5.02(A)(7) of the Indenture to the Principal Subaccount of the 20___ TIFIA Debt Service Account as soon as practicable in such month an amount equal to one-sixth of the aggregate amount of principal becoming due and payable on the 20___ TIFIA Bond on the next Semi-Annual Payment Date (excluding any interest earned on moneys deposited in the 20___ TIFIA Debt Service Account and reserved to pay such principal during the next ensuing six (6) months), until the requisite amount of principal becoming due on the 20___ TIFIA Bond is on deposit in such Subaccount. On such Semi-Annual Payment Date and on each Semi-Annual Payment Date thereafter, the Trustee shall transfer to the Holder of the 20___ TIFIA Bond amounts on deposit in the Principal Subaccount of the 20___ TIFIA Debt Service Account sufficient to pay the principal of the 20___ TIFIA Bond due and payable on such Semi-Annual Payment Date.

(d) The 2017 TIFIA Debt Service Account is hereby closed.
Section 59.02 Deposits to and Transfers from 20__ TIFIA Debt Service Reserve Account.

(a) There is hereby established within the Junior Subordinate Obligations Reserve Fund the 20__ TIFIA Reserve Fund (the “20__ TIFIA Reserve Fund”), such fund to be held by the Trustee. The 20__ TIFIA Reserve Fund shall function as the “TIFIA Reserve Fund” described in the 20__ TIFIA Loan Agreement.

(b) On the first Business Day of each month (A) after the Trustee’s receipt of written notice from the Commission of the occurrence of a 20__ TIFIA Reserve Event and (B) during any period in which the 20__ TIFIA Reserve Fund is required to be funded pursuant to Section 16(k)(iii) of the 20__ TIFIA Loan Agreement, the Trustee shall transfer to the 20__ TIFIA Reserve Fund the amount of Revenues available in the Revenue Fund after making the transfers required by Section 5.02(A)(1) through and including (A)(7) until the balance in the 20__ TIFIA Reserve Fund is equal to the 20__ TIFIA Reserve Requirement. The Revenues set aside and placed in the 20__ TIFIA Reserve Fund shall be held solely for the benefit of the Holder of the 20__ TIFIA Bond, and shall be used, withdrawn, and replenished as provided herein and in Section 5.13 of the Indenture.

(c) Amounts on deposit in the 20__ TIFIA Reserve Fund shall be invested in Permitted Investments as defined in the 20__ TIFIA Loan Agreement. If, on any date of valuation of such Permitted Investments credited to the 20__ TIFIA Reserve Fund pursuant to Section 5.11 of the Indenture, the amount on deposit in the 20__ TIFIA Reserve Fund exceeds the 20__ TIFIA Reserve Requirement as of such date, the Trustee shall transfer such excess amount to the Revenue Fund.

(d) The 2017 TIFIA Reserve Fund is hereby closed.

ARTICLE LX
MISCELLANEOUS

Section 60.01 Tax Status. It is the intention of the Commission that the 20__ TIFIA Bond not be an obligation described in section 103 of the Code interest on which is excludable from the gross income of the holders and in that regard the Commission agrees not to file a Form 8038-G, or any comparable information return relating to tax-exempt obligations, with the Internal Revenue Service with respect to the 20__ TIFIA Bond.

Section 60.02 Severability. If any covenant, agreement or provision, or any portion thereof, contained in this Tenth Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Tenth Supplemental Indenture, and the application of any such covenant, agreement or provision, or portion thereof, to other Persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Tenth Supplemental Indenture and the 20__ TIFIA Bond issued pursuant hereto shall remain valid, and the Holders of the 20__ TIFIA Bond shall retain all valid rights and benefits accorded to it under the Indenture, the Act, and the Constitution and statutes of the State.
Section 60.03 Parties Interested Herein. Nothing in this Tenth Supplemental Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Commission, the Trustee and the Holders of the 20__ TIFIA Bond, any right, remedy or claim under or by reason of this Tenth Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Tenth Supplemental Indenture contained by and on behalf of the Commission shall be for the sole and exclusive benefit of the Commission, the Trustee and the Holders of the 20__ TIFIA Bond.

Section 60.04 Headings Not Binding. The headings in this Tenth Supplemental Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Tenth Supplemental Indenture.

Section 60.05 Indenture to Remain in Effect. Save and except as amended and supplemented by this Tenth Supplemental Indenture, the Indenture, as heretofore supplemented by the First Supplemental Indenture, the Second Supplemental Indenture, the Third Supplemental Indenture, the Fourth Supplemental Indenture, the Fifth Supplemental Indenture, the Sixth Supplemental Indenture, the Seventh Supplemental Indenture, the Eighth Supplemental Indenture and the Ninth Supplemental Indenture shall remain in full force and effect.

Section 60.06 Effective Date of Tenth Supplemental Indenture. This Tenth Supplemental Indenture shall take effect upon its execution and delivery.

Section 60.07 Execution in Counterparts. This Tenth Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
IN WITNESS WHEREOF, the parties hereto have executed this Tenth Supplemental Indenture by their officers thereunto duly authorized as of the day and year first written above.

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: _____________________________
    Chief Financial Officer

ATTEST:

_______________________________
    Clerk

APPROVED AS TO FORM:

_______________________________
    General Counsel

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____________________________
    Authorized Officer
EXHIBIT A

FORM OF 20__ TIFIA LOAN AGREEMENT
EXHIBIT B  
[FORM OF 20__ TIFIA BOND]  

No. R-1  

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION  
JUNIOR SUBORDINATE SALES TAX REVENUE BOND  
(LIMITED TAX BOND)  
20__ TIFIA SERIES  

Holder: UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau  

Maturity Date: October 1, 2045  
Maximum Principal Amount: FIVE HUNDRED THIRTY-SEVEN MILLION FOUR HUNDRED EIGHTY-FOUR THOUSAND FOUR HUNDRED THIRTY-NINE AND NO/100 DOLLARS  
Interest Rate: [___]%  
Issue Date: __________ __, 20__  

The SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION, a public entity duly organized and existing under and pursuant to the laws of the State of California (the “Commission”), for value received, hereby promises to pay (but only out of the Revenues hereinafter referenced) to the order of the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau, and its successors and assigns (the “TIFIA Lender” or the “Holder”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement, dated __________ __, 20__, by and between the Commission and the TIFIA Lender (the “20__ TIFIA Loan Agreement”), being hereinafter referred to as the “Outstanding TIFIA Loan Balance”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the 20__ TIFIA Loan Agreement) on the Outstanding TIFIA Loan Balance, and all fees, costs and other amounts payable in connection therewith, all as more fully described in the 20__ TIFIA Loan Agreement, which is hereby made a part hereof. Each Disbursement made by the TIFIA Lender to the Commission pursuant to the 20__ TIFIA Loan Agreement, and each prepayment made on account of the Outstanding TIFIA Loan Balance, shall be recorded by or on behalf of the TIFIA Lender endorsed on the grid attached hereto as Appendix One with a copy to the Commission in accordance with the terms of the 20__ TIFIA Loan Agreement. The principal
hereof shall be payable in the manner and at the place provided in the 20__ TIFIA Loan Agreement in accordance with Appendix Two, as revised from time-to-time in accordance with the 20__ TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in Appendix Two from time to time in accordance with the terms of the 20__ TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Commission thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on Appendix Two shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Commission’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(d) (Manner of Payment) and Section 37 (Notices; Payment Instructions) of the 20__ TIFIA Loan Agreement as the same become due. Principal of and interest on this 20__ TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts.

This 20__ TIFIA Bond has been executed under and pursuant to the 20__ TIFIA Loan Agreement and is issued to evidence the obligation of the Commission under the 20__ TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Commission under the 20__ TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the 20__ TIFIA Loan Agreement for all details relating to the Commission’s obligations hereunder. All capitalized terms used in this 20__ TIFIA Bond and not defined herein shall have the meanings set forth in the 20__ TIFIA Loan Agreement.

This 20__ TIFIA Bond is a fully registered Bond and the principal of and interest on the Bond shall be payable by wire transfer to the Holder hereof in accordance with the 20__ TIFIA Loan Agreement.

This 20__ TIFIA Bond is one of a duly authorized issue of the San Diego County Regional Transportation Commission Junior Subordinate Sales Tax Revenue Bonds (Limited Tax Bond), 20__ TIFIA Series (the “20__ TIFIA Bond”) of the series and designation indicated on the face hereof, all of which are being issued pursuant to the provisions of the Section 132310 of the Public Utilities Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented, the 1987 Ordinance and the Sales Tax Extension Ordinance. This 20__ TIFIA Bond is issued pursuant to an Indenture, dated as of March 1, 2008, between the Commission and the Trustee, as supplemented and amended, including as supplemented by a Tenth Supplemental Indenture, dated as of __________ 1, 20__ (the “Tenth Supplemental Indenture”), between the Commission and the Trustee, authorizing the issuance of the 20__ TIFIA Bond (such indenture as amended and supplemented, including as supplemented by the Tenth Supplemental Indenture, collectively, the “Indenture”). Reference is hereby made to the Indenture, the 20__ TIFIA Loan Agreement and to the Act for a description of the terms on which the 20__ TIFIA Bond is issued and to be issued, the provisions with regard to the nature and extent of the Revenues (as that term is defined in the Indenture), and the rights of the registered owners of the 20__ TIFIA Bond; and all the terms of
the Indenture and the Act are hereby incorporated herein and constitute a contract between the Commission and the registered owner from time to time of this 20__ TIFIA Bond, and to all the provisions thereof the registered owner of this 20__ TIFIA Bond, by its acceptance hereof, consents and agrees. This 20__ TIFIA Bond constitutes a Junior Subordinate Obligation (as defined in the Indenture). Senior Bonds, Parity Obligations, Subordinate Obligations and other Junior Subordinate Obligations (each as defined in the Indenture) may be issued, and indebtedness may be incurred, but only subject to the conditions and limitations contained in the Indenture and the 20__ TIFIA Loan Agreement.

The 20__ TIFIA Bond and the interest thereon (to the extent set forth in the Indenture and the 20__ TIFIA Loan Agreement), are payable from, and are secured by a subordinate pledge of the proceeds derived by the Commission from the transactions and use tax imposed pursuant to the Act (as more particularly defined in the Indenture, the “Revenues”). The 20__ TIFIA Bond is equally secured by such subordinate pledge of, and subordinate lien upon, the Revenues, and the Revenues constitute a trust fund for the security and payment of the interest on and principal of the 20__ TIFIA Bond, subject to the prior pledge and lien securing Senior Bonds, Parity Obligations and Subordinate Obligations; but nevertheless out of Revenues certain amounts may be applied for other purposes as provided in the Indenture.

The 20__ TIFIA Bond is a limited obligation of the Commission and is payable as to principal and interest and as to any premiums upon the redemption thereof, out of Revenues, as provided for in the Indenture. The general fund of the Commission is not liable, and the credit or taxing power (other than as described above) of the Commission is not pledged; for the payment of this 20__ TIFIA Bond or interest thereon. This 20__ TIFIA Bond is not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the Commission or any of its income or receipts, except the Revenues to the extent set forth in the Indenture.

This 20__ TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the 20__ TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least $1,000,000 or any integral multiple of $1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the 20__ TIFIA Bond in accordance with the 20__ TIFIA Loan Agreement.

This 20__ TIFIA Bond shall be subject to mandatory prepayment in accordance with the 20__ TIFIA Loan Agreement.

The rights and obligations of the Commission and of the Holder and registered owner of this 20__ TIFIA Bond may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture and the 20__ TIFIA Loan Agreement.

This 20__ TIFIA Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its attorney duly authorized in writing, at the corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and
cancellation of this 20__ TIFIA Bond. Upon such transfer a new fully registered 20__ TIFIA Bond without coupons, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the transferee in exchange therefor.

Pursuant to the Tenth Supplemental Indenture, the Holder of this 20__ TIFIA Bond shall at all times be the party to the 20__ TIFIA Loan Agreement having all rights and obligations of the “TIFIA Lender” under the 20__ TIFIA Loan Agreement. The Trustee shall not register any transfer or exchange of this 20__ TIFIA Bond unless the Holder’s prospective transferee delivers to the Trustee a letter substantially in the form as set forth in Exhibit C attached to the Tenth Supplemental Indenture.

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.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this 20__ TIFIA Bond, and in the issuing of this 20__ TIFIA Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this 20__ TIFIA Bond, together with all other indebtedness of the Commission pertaining to the Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of indebtedness permitted to be issued under the Indenture or the Act.

This 20__ TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State of California shall govern its construction to the extent such federal laws are not applicable.

This 20__ TIFIA Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.
IN WITNESS WHEREOF, SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION has caused this 20__ TIFIA Bond to be executed in its name and on its behalf by its duly authorized officer by manual or facsimile signature, and this 20__ TIFIA Bond to be dated as of the Issue Date specified above.

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

By: ____________________________
    Chief Financial Officer
CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is the 20__ TIFIA Bond described in the within mentioned Indenture and registered on the date set forth below.

Dated: _____________, 20__

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: __________________________________

Authorized Officer
ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(Name, Address and Tax Identification or Social Security Number of Assignee) the
within-registered Bond and hereby irrevocably constitute(s) and appoint(s)
___________________ attorney, to transfer the same on the registration books of the Trustee
with full power of substitution in the premises.

Dated:____________________

Signature Guaranteed:

Note:  Signature(s) must be guaranteed by an
eligible guarantor institution.

Note:  This signature(s) on this Assignment
must correspond with the name(s) as
written on the face of the within Bond
in every particular without alteration or
enlargement or any change whatsoever.
APPENDIX ONE

Maximum Principal Sum: $537,484,439    Maturity Date: October 1, 2045

Borrower: San Diego County Regional Transportation Commission

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

DISBURSEMENTS AND PAYMENTS OF PRINCIPAL

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<tr>
<th>Date</th>
<th>Amount of Disbursement</th>
<th>Amount of Principal Paid</th>
<th>Unpaid Principal Sum</th>
<th>Notation Made By</th>
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</table>

1 This Grid may be extended if the number of Disbursements, payments and extensions so requires.
APPENDIX TWO
TIFIA LOAN AMORTIZATION SCHEDULE

Maximum Principal Amount: $537,484,430

Effective Date: __________ __, 20__

Interest Rate: [___]%

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<th>Beginning Balance</th>
<th>Disbursements</th>
<th>Interest (Accrued)</th>
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</table>

Interest calculated based on actual days elapsed.
EXHIBIT C

FORM OF TRANSFEREE’S LETTER

U.S. Bank National Association,
as Trustee
633 West Fifth Street
24th Floor
Los Angeles, California  90071

Re: San Diego County Regional Transportation Commission
Junior Subordinate Sales Tax Revenue Bond (Limited Tax Bond),
20__ TIFIA Series

Ladies and Gentlemen:

The undersigned representative of ____________________________ (the “Purchaser”), hereby certifies, represents and warrants for the benefit of U.S. Bank National Association, as trustee (the “Trustee”), that the Purchaser is a party to the 20__ TIFIA Loan Agreement having all rights and obligations of the “TIFIA Lender” thereunder. The Purchaser understands that in connection with any future transfer or exchange of the San Diego County Regional Transportation Commission Junior Subordinate Sales Tax Revenue Bond (Limited Tax Bond), 20__ TIFIA Series (the “20__ TIFIA Bond”) by the Purchaser, there must be delivered to the Trustee a letter of the transferee in substantially the form of Exhibit C to the Tenth Supplemental Indenture.

The undersigned Purchaser hereby further represents as follows:

1. The Purchaser has full power and authority to carry on its business as now conducted, deliver this letter and make the representations contained herein.

2. The Purchaser has knowledge and experience in financial and business matters that make it capable of evaluating the 20__ TIFIA Bond and the risks associated with the purchase of the 20__ TIFIA Bond; has the ability to bear the economic risk of an investment in the 20__ TIFIA Bond; and is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.

3. The Purchaser has conducted its own investigation of the financial condition of the Commission, the 20__ TIFIA Bond, the Indenture and the Revenues, and has obtained such information regarding the 20__ TIFIA Bond, such facilities and the Commission and its operations, financial condition and financial prospects as the Purchaser deems necessary to make an informed investment decision with respect to the purchase of the 20__ TIFIA Bond.

4. The Purchaser is purchasing the 20__ TIFIA Bond for its own account solely and not with a present view to any distribution of the 20__ TIFIA Bond or any interest therein.
or portion thereof or without a present intention of distributing or reselling the 20__ TIFIA Bond or any interest therein or portion thereof, provided that the Purchaser retains the right at any time to dispose of the 20__ TIFIA Bond or any interest therein or portion thereof as it may determine to be in its best interests, subject to the requirements and provisions of the Indenture. In the event that the Purchaser disposes of the 20__ TIFIA Bond or any part thereof in the future, the Purchaser understands that it has the responsibility for complying with any applicable federal and state securities laws and all rules and regulations promulgated pursuant thereto.

5. The Purchaser understands that the 20__ TIFIA Bond is a limited obligation of the Commission secured solely by a subordinate pledge of and subordinate lien on the Revenues as defined and provided in the Indenture and the Commission is not obligated to pay the 20__ TIFIA Bond except from said Revenues. The 20__ TIFIA Bond does not constitute a debt or liability of the State of California or any political subdivision of the State other than the Commission. Neither the full faith and credit nor the taxing power of the State of California or any political subdivision of the State of California is pledged to the payment of principal of or interest on the 20__ TIFIA Bond.

6. The Purchaser acknowledges that the 20__ TIFIA Bond has not been registered under the Securities Act of 1933, as amended, and that such registration is not legally required. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any subsequent disposition of the 20__ TIFIA Bond, and further acknowledges that any current exemption from registration of the 20__ TIFIA Bond does not affect or diminish this requirement.

7. In entering into this transaction, the Purchaser has not relied upon any representations or opinions of the Commission (except as with respect to representations, warranties and covenants made by the Commission in the Indenture), its counsel, Norton Rose Fulbright US LLP, or other counsel to the Commission relating to the legal consequences or other aspects of its investment in the 20__ TIFIA Bond.

8. The Purchaser has been informed that the 20__ TIFIA Bond (i) has not been and will not be registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

9. None of the Commission, its governing body, or any of its employees, counsel or agents will have any responsibility to the Purchaser for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Commission or its financial condition or regarding the 20__ TIFIA Bond, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the Commission to the Purchaser with respect to the 20__ TIFIA Bond. The Purchaser acknowledges that, as between the Purchaser and all of such parties, the Purchaser has assumed responsibility for obtaining such information and making such review as the Purchaser deemed necessary or desirable in connection with its decision to purchase the 20__ TIFIA Bond.
Terms not defined herein shall have the meanings given to them under the Indenture, dated as of March 1, 2008, as supplemented and amended to date (as so supplemented, the “Indenture”), including as supplemented by the Tenth Supplemental Indenture, dated as of __________ 1, 20__ (the “Tenth Supplemental Indenture”), each by and between the San Diego County Regional Transportation Commission and U.S. Bank National Association, as Trustee.

IN WITNESS WHEREOF, the undersigned representative has hereunto executed this letter as of the ________ day of ____________________.

[PURCHASER]

By: _________________________________
Name: _______________________________
Title: ________________________________

[MUST BE SIGNED BY ACTUAL PURCHASER – MAY NOT BE SIGNED BY NOMINEE OR AGENT]
Resolution No. 2021-03

Authorizing the Execution and Delivery of a Direct Agreement Relating to the San Diego County Regional Transportation Commission’s Execution and Delivery of a Transportation Infrastructure Finance and Innovation Act Loan Agreement for the Mid-Coast Corridor Transit Project, and Authorizing All Actions Necessary or Desirable in Connection Therewith

WHEREAS, the San Diego County Regional Transportation Commission (the “Commission”) heretofore entered into a TIFIA Loan Agreement, dated as of June 27, 2017 (the “Original TIFIA Loan Agreement”), with the U.S. Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), for a Transportation Infrastructure Finance and Innovation Act (TIFIA) Secured (Direct) Loan (the “TIFIA Loan”) in the initial principal amount of $537,484,439 in connection with the Mid-Coast Corridor Transit Project (the “Project”); and

WHEREAS, the Commission has not yet drawn any proceeds under the Original TIFIA Loan Agreement, and the TIFIA Lender is prepared to restructure the Original TIFIA Loan Agreement to provide for the TIFIA Loan to bear interest at a lower rate by terminating the Original TIFIA Loan Agreement and entering into a replacement TIFIA Loan Agreement (the “TIFIA Loan Agreement”); and

WHEREAS, in connection with the Commission’s execution and delivery of the TIFIA Loan Agreement, the San Diego Association of Governments (“SANDAG”) is required to enter into a Direct Agreement (the “Direct Agreement”) with the TIFIA Lender and the Commission; and

WHEREAS, SANDAG has been presented with the form of the Direct Agreement and SANDAG has examined and approved the Direct Agreement and desires to authorize and direct the execution of the Direct Agreement and such other documents as are necessary in connection with the Direct Agreement; 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 execution and delivery of the Direct Agreement 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 the execution of the Direct Agreement for the purposes, in the manner and upon the terms provided;

BE IT RESOLVED that the SANDAG Board of Directors, ALSO ACTING AS THE SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION, DOES HEREBY RESOLVE AS FOLLOWS:
Section 1  The proposed form of the Direct Agreement 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 Direct Agreement with the minutes of this meeting, and the Chair of the Board, the Executive Director of SANDAG, the Chief Deputy Executive Director of SANDAG and the Director of Finance of SANDAG, and each of their respective designees (each, an "Authorized Representative"), are each authorized and directed, for and in the name of and on behalf of SANDAG, to execute and deliver the Direct Agreement, in substantially such form, and with such additions thereto or changes therein, as they, with the advice of Norton Rose Fulbright US LLP, as the Commission’s Counsel, shall approve, such approval to be conclusively evidenced by the execution and delivery of the Direct Agreement.

Section 2  All actions heretofore taken by the officers, employees and agents of SANDAG with respect to the Direct Agreement are hereby ratified, confirmed and approved. The officers, employees and agents of SANDAG are hereby authorized and directed, jointly and severally, for and in the name and on behalf of SANDAG, to do any and all things and to take any and all actions and to execute and deliver any and all agreements, instruments, certificates and documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by the Direct Agreement to carry out, give effect to and comply with the terms and intent of this Resolution and the documents approved hereby.

Section 3  The provisions of this Resolution are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared to be invalid, such sections, phrases and provisions shall not affect any other provision of this Resolution.

PASSED AND ADOPTED this 20th of November 2020.

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
Memorandum

To: SANDAG Board of Directors
From: PFM Financial Advisors LLC
RE: TIFIA Loan Refinancing Opportunity

INTRODUCTION

PFM Financial Advisors LLC (“PFM”), as the financial advisor to SANDAG, works with SANDAG to identify refinancing opportunities in the current market environment. Following the recent economic slowdown during the COVID-19 pandemic, taxable and tax-exempt interest rates have decreased significantly. The 30-year tax-exempt rate is currently approximately 1.72%, 2.22% lower than its twenty-year average. The US Treasury taxable rates are also low with the 30-year Treasury rate at 1.53%, 2.37% lower than its twenty-year average. These low rates have created the opportunity to refinance SANDAG’s existing TIFIA loan with the US Department of Transportation (USDOT). While the existing loan has a current long-term rate of 2.72%, this rate could be lowered to 1.53% under prevailing market conditions. This would result in reduced debt service costs (i.e., loan repayment costs) of approximately $150 million. Actual savings will be determined by the prevailing interest rate upon closing of the amended TIFIA loan, which would likely occur in late 2020 or early 2021.

SANDAG staff has engaged the TIFIA office and they have received and are currently reviewing SANDAG’s request to refinance the loan. This memorandum discusses current bond market conditions, SANDAG’s existing debt portfolio and details the potential savings from refinancing the existing TIFIA loan.

MARKET UPDATE

For the purpose of tracking tax-exempt municipal interest rates over time, we use the AAA Municipal Market Data Index (“AAA MMD”), which serves as the benchmark against which most tax-exempt, fixed-rate transactions are priced. For the purpose of tracking taxable municipal interest rates over time, we use the U.S. Treasury rates, which serves as the benchmark against which taxable, fixed-rate transactions are priced. The chart below tracks the 30-year MMD rate as well as the 30-year Treasury rate since 2000.

Both tax-exempt and taxable rates declined dramatically over the last few months with record lows in August 2020. The rates have since ticked up from their lowest levels. That said, the current market still provides a very favorable environment for borrowing. Investors have been flocking to safe investment options such as municipal bonds in the wake of the COVID-19 pandemic, uncertainty in economic recovery and the upcoming presidential election and related volatility. That coupled with a favorable supply-demand dynamics support continued municipal demand for both tax-exempt and taxable debt.
As shown in the chart below the tax-exempt interest rates are low with the 30-year MMD rate at 1.72%, 2.22% lower than its twenty-year average. The taxable rates are also low with the 30-year Treasury rate at 1.53%, 2.37% lower than its twenty-year average.
SANDAG’S OUTSTANDING DEBT OVERVIEW

SANDAG, serving as the San Diego County Regional Transportation Commission, has $2.315 billion of outstanding long term debt, including the Series 2018A Short Term Notes (Notes) issued in April 2018. Of the total debt portfolio, 17 percent consists of synthetic, fixed-rate bonds (variable rate bonds hedged with fixed-payer interest rate swaps), and the remaining 83 percent are fixed-rate bonds. Currently, the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan is undrawn and does not represent an obligation of SANDAG at this time. A summary of the outstanding bonds is tabulated and graphically presented below.

SANDAG has debt obligations on three separate lien levels, providing different priority of sales tax payment to investors based on their respective lien level. The Series 2008A through 2020A Bonds are senior lien obligations and are paid first. The 2018A Notes and commercial paper obligations are paid second as subordinate lien obligations. SANDAG’s TIFIA loan is a third lien, junior subordinate lien obligation.

SANDAG’s senior lien debt service is generally level in aggregate, in the range of $103.7 million to $106.7 million annually. The 2018A Notes are short-term obligations, with a final maturity in April 2021. Assuming SANDAG draws on the TIFIA loan as expected, to complete the Mid-Coast Corridor Transit Project, SANDAG’s aggregate debt service (including all three liens) will peak at $165 million in FY 2045. Senior lien debt service coverage, using sales tax receipts of $305.9 million for the 12 months ending June 30, 2020, is 2.86 times. Meaning, for every $1 of senior lien debt service, SANDAG received $2.86 of sales tax revenue providing ample coverage, supporting SANDAG senior lien triple-A ratings. Total coverage, when comparing the annual revenues for the 12 months ending

<table>
<thead>
<tr>
<th>Series</th>
<th>Tax Status</th>
<th>Coupon Type</th>
<th>Original Issue Size</th>
<th>Outstanding Par</th>
<th>Call Option</th>
<th>Final Maturity</th>
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<tbody>
<tr>
<td>2008A</td>
<td>Tax-Exempt</td>
<td>Variable Rate</td>
<td>$150,000,000</td>
<td>$100,575,000</td>
<td>Current</td>
<td>4/1/2038</td>
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<td>2008B</td>
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<td>Variable Rate</td>
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<td>2008D</td>
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<td>Variable Rate</td>
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<td>Current</td>
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<td>$2,315,415,000</td>
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**Summary of TIFIA Loan Commitment**

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<td>$0</td>
<td>Anytime</td>
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**Total with Loan Commitment** $2,315,419,439

*The TIFIA loan will be drawn upon in 2021 to retire the 2018A Notes. The simultaneous draw on the TIFIA loan and the retirement of the 2018A Notes will have an offsetting impact and will not increase the amount of total obligations outstanding.
June 30, 2020, to peak debt service (including assumed debt service on the undrawn TIFIA loan) in FY 2045, is 1.85 times.

REFUNDING THE EXISTING FEDERAL TIFIA LOAN

SANDAG currently has an outstanding TIFIA loan with the US DOT in the amount of $537,484,439. The loan was executed in 2017 and has an interest rate of 2.72%, which reflected the 30-year US Treasury rate at that time. Currently, the 30-year US Treasury rate is approximately 1.50%. SANDAG and the financing team have been working with the TIFIA Office to renegotiate a lower interest rate to take advantage of the lower rates in the current market. TIFIA is prepared to lower the rate and has accepted SANDAG’s Letter of Interest (LOI) to execute an amended TIFIA loan agreement to achieve this outcome. An estimated new loan repayment assuming a rate of 1.50 percent and the associated debt service savings is presented below.

### TIFIA Loan Repayment with Lower Interest Rate

1.5% Interest

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<tr>
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<td>22,859,114</td>
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<td>23,774,356</td>
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<td>7,438,840</td>
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<td>2030</td>
<td>18,310,000</td>
<td>7,380,001</td>
<td>25,690,001</td>
<td>7,441,210</td>
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<td>2031</td>
<td>19,590,000</td>
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<td>26,690,564</td>
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<td>2032</td>
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<td>6,810,950</td>
<td>27,725,950</td>
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<td>28,788,784</td>
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<td>31,011,072</td>
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<td>32,169,155</td>
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<td><strong>662,228,311</strong></td>
<td><strong>156,249,951</strong></td>
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By lowering the rate from 2.72% to 1.50%, SANDAG can lower total borrowing costs on the TIFIA loan by approximately $156 million: approximately $7.4 million annually through 2046. The TIFIA loan agreement does not have SANDAG beginning loan repayment until 2026. Consequently, these debt service savings will begin in 2026 and extend through the final repayment of the loan, in 2046.
To provide some context and a range to the potential savings, total borrowing costs on the TIFIA loan would be reduced by $112 million at a new rate of 1.75%. There is significant volatility in the market at present and interest rates are moving up and down on a weekly basis. Final savings will be dependent upon prevailing interest rates at the time the amended loan is executed.

NEXT STEPS

SANDAG staff and the financing team continue to work with the TIFIA office to renegotiate the existing loan agreement with the expectation of achieving the lower interest rate and closing on the amended loan in late 2020 or early 2021. SANDAG staff has submitted the letter of interest and TIFIA has provided clear indication that they expect to lower the rate and negotiate the amended loan agreement in the next several months. In anticipation of this, SANDAG’s legal team has prepared the following form of documents:

- Direct Agreement (the “SANDAG Direct Agreement”) with USDOT and the San Diego Association of Governments
- Direct Agreement (the “MTS Direct Agreement”) with USDOT and San Diego Metropolitan Transit System
- Tenth Supplemental Indenture (the “Tenth Supplemental Indenture”) supplementing and amending the Indenture and providing for the issuance of a junior subordinate sales tax revenue bond to be issued by the Commission, evidencing the Commission’s obligation to repay the TIFIA Loan (the “TIFIA Bond”)
- TIFIA Loan Agreement between the Commission and USDOT

Authorizing Resolutions have been prepared by outside legal counsel (Norton Rose Fulbright US LLP) for both the San Diego RTC and SANDAG authorizing approval, execution and delivery of the Direct Agreements and directing the Chair of the Board, the Executive Director of SANDAG, Chief Financial Officer of SANDAG, and each of their respective designees (each, an “Authorized Representative”), to execute and deliver the agreements described above, to which they are a party, in substantially such form, and with such additions thereto or changes therein, as they, with the advice of Norton Rose Fulbright US LLP, as the Commission’s Counsel, shall approve.

The Amended TIFIA Loan transaction is expected to close in late 2020 or early 2021 with the new interest rate set at that time.
North Coast Corridor Program: Status Update

Overview

The North Coast Corridor (NCC) program is a comprehensive set of transportation, environmental, and coastal access projects to reduce congestion, improve the quality of life for residents, create a stronger local and regional economy for the future, and enhance the coastal environment (Attachment 1).

Projects are being built using the Construction Manager/General Contractor (CM/GC) delivery method, which is a best value construction procurement method. The CM/GC contractor is a joint venture of Flatiron, Skanska, and Stacy Witbeck contractors. The project budget for construction currently is $869 million and includes federal, state, and TransNet funds.

This item provides an update on the status of project progress, schedule, cost, and risk.

Key Considerations

The first phase of construction of the NCC program, known as Build NCC, will extend through the cities of Solana Beach, Encinitas, and Carlsbad. Construction began in late 2016 and is scheduled to be completed in late 2022. The scope of Build NCC includes the extension of the High Occupancy Vehicle (HOV) Lanes from Manchester Avenue to State Route 78 (SR 78), replacement of the San Elijo Lagoon highway and rail bridges, restoration of the San Elijo Lagoon, and bicycle and pedestrian improvements. The HOV section between Manchester Avenue and Palomar Airport Drive is still on schedule to open to traffic by December 2021 and the section up to SR 78 is pending funding resolution.

Major accomplishments in the last three months include:

- Complete the drilling of the new, inner portion of the San Elijo highway bridge.
- Early outside landscape planting at San Elijo Lagoon highway bridge is complete.
- Completed the median widening and started the outside widening. Significant progress in clearing vegetation, earthwork, drainage, and electrical infrastructure for the HOV Lanes.
- Planting is complete at the San Elijo Lagoon Restoration Project. Phased opening of trail network.

Additional detailed information can be found in Attachment 2.
**Next Steps**

Next steps include completing the new inside San Elijo Lagoon highway bridge foundation and erecting falsework; completing all the vegetation clearing and continuing earthwork, drainage, and electrical infrastructure work on the outside freeway work for the HOV Lanes; continuing plant establishment at San Elijo Lagoon; and finalizing price negotiations for the HOV Lanes extension from Palomar Airport Road to SR 78. In addition, staff and California Transportation Commission staff will explore alternatives to accelerate funding for the HOV Lanes extension from Palomar Airport Road to SR 78 leading to a resolution in the next few months.

*John Haggerty, Director of Engineering and Construction*

Key Staff Contact: Allan Kosup, (619) 688-3611, allan.kosup@dot.ca.gov

Attachments:

1. Build NCC Project Fact Sheet
2. Discussion Memo: North Coast Corridor Program Update November 2020
About the Project

Build NCC is the first phase of construction of the Caltrans and SANDAG North Coast Corridor (NCC) Program in the cities of Solana Beach, Encinitas, and Carlsbad. Build NCC is part of a comprehensive set of transportation, environmental, and coastal access projects to improve the quality of life for residents, create a stronger local and regional economy for the future, and enhance the coastal environment.

Highway Improvements

Caltrans and SANDAG will extend a High Occupancy Vehicle (HOV) lane on Interstate 5 (I-5) - one in each direction - from Lomas Santa Fe Drive in Solana Beach to State Route 78 (SR 78) in Oceanside. Additional highway improvements include replacing and lengthening the San Elijo Lagoon highway bridge to accommodate the HOV lanes and help improve lagoon tidal flow; building several sound walls on private property; constructing a new Park & Ride/Multi-Use Facility at the I-5/Manchester Avenue interchange; and adding auxiliary lanes. The Park & Ride/Multi-Use Facility will provide parking for carpools, bike racks, electric vehicle charging stations, and recreational access to the San Elijo Lagoon and the new North Coast Bike Trail.

Rail Improvements

Improving the coastal rail line is a central component of Build NCC. The San Elijo Lagoon Double Track Project is part of a larger plan to improve the coastal rail system by adding a second track, allowing trains traveling in opposite directions to pass without slowing down or stopping, increasing efficiency and reliability. Other project features include the replacement and lengthening of the rail bridge spans over the San Elijo Lagoon. Additionally, at-grade rail crossing improvements will be made at Chesterfield Drive in Encinitas.

Lagoon/Bike/Pedestrian

Build NCC includes the restoration of the San Elijo Lagoon. The restoration project is made possible by the TransNet Environmental Mitigation Program (EMP), and coordinated with the Nature Collective (formerly San Elijo Lagoon Conservancy) and resource agencies. Restoration will enhance the lagoon's wetland and upland areas, improve tidal flushing, and includes beach sand replenishment.

Improving coastal access is a critical component of the NCC Program. Build NCC will include new east-west and north-south bicycle and pedestrian trails in and around the San Elijo Lagoon.

See inside map for details.

Project Schedule and Funding

<table>
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<tr>
<th>Construction Start Date</th>
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<tr>
<td>Completion Date</td>
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<tr>
<td>Funding Sources</td>
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<td>Contractor</td>
<td>Flatiron-Skanska-Stacy and Witbeck</td>
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<tr>
<td>Total Project Cost</td>
<td>Approximately $1.1 billion (Highway $871 million; Rail $80 million; Environment $130 million)</td>
</tr>
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</table>

The budgeted amounts are per the Draft FY19 budget provided to the SANDAG Board of Directors.

For more information:

KeepSanDiegoMoving.com/BuildNCC

Construction Hotline: (844) NCC-0050

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(619) 688-6654
mohammad.khatib@dot.ca.gov
dot.ca.gov/dist11

@BuildNCC | @SDCaltrans

SANDAGregion | CaltransDistrict11

SANDAGregion | CaltransDistrict11

As of November 2020
Integrating Transportation and Environmental Enhancements

The San Elijo Lagoon highway bridge will be replaced and lengthened to help improve tidal flow in the lagoon. The wider bridge will accommodate an additional HOV lane in each direction. In addition, a suspended bike and pedestrian bridge will be built underneath the San Elijo Lagoon highway bridge to further increase north-south and east-west connectivity, and create more travel choices. The North Coast Bike Trail will be constructed to expand the regional bike and pedestrian network.

Preserving Community Character and Improving Coastal Access

Build NCC includes local bike/pedestrian path improvements in Encinitas and Carlsbad. The interchanges at Encinitas Boulevard and Santa Fe Drive will be upgraded with new bike and pedestrian paths. The Build NCC project team is coordinating with the City of Encinitas to install local artwork into these improvements.

To help reduce freeway noise for nearby residents, Caltrans is proposing to construct several sound walls on private property. In areas with views, transparent sound walls will be offered to residents.
Discussion Memo: North Coast Corridor Program Update
November 2020

The first phase of construction of the North Coast Corridor (NCC) program, known as Build NCC, will extend through the cities of Solana Beach, Encinitas, and Carlsbad (Attachment 1). Construction began in late 2016 and is scheduled to be completed in late 2022 with High Occupancy Vehicle (HOV) Lane extension, up to Palomar Airport Drive, opening to public by the end of 2021.

Scope of Work

Highway Improvements
Extend HOV Lanes for 14 miles on Interstate 5 from Lomas Santa Fe Drive in Solana Beach to State Route 78 (SR 78) in Oceanside. Additional highway improvements include replacing and lengthening the San Elijo highway bridge; constructing sound walls; building a new Park & Ride facility; and adding auxiliary lanes.

Rail Improvements
The San Elijo Lagoon Double Track project is part of a larger plan to improve the coastal rail system by adding a second track. Other project features include the replacement and lengthening of the rail bridge, improvements to the Chesterfield at-grade rail crossing and installation of pedestrian undercrossing.

Lagoon Restoration
Build NCC includes the restoration of the San Elijo Lagoon. Restoration will enhance the lagoon’s wetland and upland areas, improve tidal flushing, facilitate beach sand replenishment, and includes new pedestrian trails. Improving coastal access is a critical component of the NCC program.

Active Transportation Improvements
Build NCC includes 7 miles of the 27-mile planned North Coast Bike Trail and 1.3 miles of the 44-mile planned Coastal Rail Trail.

Overall Capital Project Budget and Schedule
The construction capital and support budget for the projects currently in construction is $869 million. Actual expenditure through October 2020 is $426 million, or 58% of the capital budget.

Status of Work

Highway Improvements
The San Elijo Highway project, which includes the Santa Fe Drive and Encinitas Boulevard bicycle and pedestrian improvements, is 77% complete, with an anticipated completion date of December 2022. Traffic is utilizing the outer portion of the newly constructed San Elijo Lagoon highway bridge, demolition of the existing bridge is complete, the foundation for the inner portion of the new bridge is nearly complete, and the contractor initiated erecting falsework for work on the bridge deck. Majority of the landscape planting in the proximity of the San Elijo Lagoon highway bridge was completed a year and a half ahead of schedule. The pedestrian and bike improvements at Santa Fe Drive and Encinitas Boulevard are complete and open to public.
The 8-mile extension of the HOV Lanes project from Manchester Avenue to Palomar Airport Road, which includes sound walls on private property, culvert rehab, intelligent transportation systems, and bike trails, is 45% complete and is expected to be completed by the end of 2022. Median widening is complete and over the summer, the contractor shifted the crews to the outside widening. The majority of the outside vegetation clearing is complete and the earthwork, drainage, electrical infrastructure, and structural section operations are on-going.

The design for the last segment (Phase 4) of HOV Lanes from Palomar Airport Road to SR 78 is complete and the project is “shovel ready”. Funding is programmed in the State Transportation Improvement Program for FY 2022-2023. Caltrans, SANDAG, and the California Transportation Commission have been exploring alternatives to accelerate this funding so that construction can begin in a timely manner. This discussion has been complicated by the revenue uncertainties created by COVID-19, however, resolution is expected in the next few months.

**Rail Improvements**

The San Elijo Lagoon Double Track project and the Chesterfield Drive improvements are complete and were open to traffic on May 2019.

**Lagoon Restoration**

Construction is substantially complete and Caltrans, the Contractor, and the Nature Collective are working collaboratively to phase the reopening of the trails. Pedestrian bridges opened to public in October 2020. Planting within all the basins is complete and the project is in plant establishment.

**Coastal Rail Trail Construction**

The Coastal Rail Trail is complete and was opened to the public in May 2019.
Port of San Diego: Draft Port Master Plan Update

Overview
On October 20, 2020, the Port of San Diego (Port) released the Revised Draft Port Master Plan Update (PMPU) for a four-week public review period. This is the latest milestone in the PMPU process, which represents the first comprehensive update to the Port Master Plan in the Port’s history. The Revised Draft PMPU includes San Diego Bay-wide policies for topic-specific elements, such as Mobility, Environmental Justice, and Economics, as well as site-specific planned improvements and development standards in Port planning districts. The presentation to Transportation Committee will focus on the Revised Draft PMPU Mobility Element, as well as mobility-related planned improvements for people and goods identified in the planning districts around San Diego Bay.

Background
In 2013, the Port began the process to update its Port Master Plan, the first comprehensive update in the Port’s history. The PMPU is a comprehensive, integrated, bay-wide approach that will modernize the Port’s method for water and land planning and serve as a guide for future uses and development on the Port’s jurisdiction in and around San Diego Bay. Development of the PMPU has followed a phased approach, first starting with a visioning process, and followed by establishing a framework that would inform drafting of the PMPU.

Beginning in 2017 and continuing into 2020, the Board of Port Commissioners conducted a series of workshops focusing on goals, policy concepts, and draft water and land use maps for the bay-wide elements and planning districts. These discussions were intended to continue the district’s effort to proactively solicit Board of Port Commissioners and public input to better inform completion of a Draft PMPU. In turn, development of a publicly informed Draft PMPU would serve as the project description for a future Program Environmental Impact Report (PEIR) in accordance with the California Environmental Quality Act and coastal consistency review in accordance with the California Coastal Act. The environmental and coastal review process pursuant to these California laws include opportunities for public input, including without limitation a public comment period, Board of Port Commissioners hearings and California Coastal Commission (Coastal Commission) hearings.

Next Steps
Next steps after the Revised Draft PMPU comment period closes on November 17, 2020, include: considering and addressing comments received during the public review period; presenting the Draft PMPU to the Board of Port Commissioners; circulating a Draft PEIR for the PMPU for public review; requesting Port of San Diego certification of the PEIR and approval of the Draft PMPU; and finally, processing the Draft PMPU with the Coastal Commission to ultimately certify the PMPU.

Coleen Clementson, Director of Regional Planning
Key Staff Contact:  Lesley Nishihira, (619) 686-6469, Inishihira@portofsandiego.org

Fiscal Impact:
None.

Schedule/Scope Impact:
None.

Action: Discussion/Possible Action
An overview on the Port of San Diego’s Revised Draft Port Master Plan Update, its revised Draft Mobility Element, as well as mobility-related planning improvements identified in the planning districts around San Diego Bay will be presented.