

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

For Up to [Maximum Principal Amount of Loan]

With

[BORROWER]

For the

**[_____PROJECT]
(TIFIA – 20__)**

Dated as of _____

THIS FORM OF A TIFIA CREDIT AGREEMENT FOR A DIRECT LOAN SETS FORTH KEY TERMS AND CONDITIONS THAT ARE TYPICALLY REQUIRED FOR EXECUTION OF A TIFIA CREDIT AGREEMENT WHERE THE SENIOR DEBT IS A BANK DEBT FACILITY. THIS DOCUMENT CANNOT ANTICIPATE, HOWEVER, ALL TERMS THAT MUST BE NEGOTIATED BETWEEN THE PARTIES. IF A PROJECT IS APPROVED FOR TIFIA CREDIT ASSISTANCE, THE STRUCTURE OF THE TIFIA CREDIT ASSISTANCE AND THE LOAN AGREEMENT WILL BE BASED ON THE FINAL FINANCIAL PLAN AND NEGOTIATED TERMS AND CONDITIONS WITH THE BORROWER, AND IS SUBJECT TO FINAL APPROVAL BY USDOT.

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TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “Agreement”), dated as of [Effective Date], by and between [**BORROWER**], a [_____] created under the laws of [_____] with an address of [_____] (the “Borrower”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Federal Highway Administrator (the “Administrator”), with an address of 1200 New Jersey Avenue, S.E., Washington, DC 20590 (the “TIFIA Lender”),

RECITALS:

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

WHEREAS, on [_____] the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of a direct loan in an aggregate principal amount not to exceed \$[_____]; and

WHEREAS, the TIFIA Lender is prepared to extend credit upon the terms and conditions hereof; and

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

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, [the Traffic and Revenue Study (as defined herein)][*Insert name of any other report, such as a feasibility study or an independent engineer’s report, on which the TIFIA Lender is relying*] and the Base Case Projections (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

SECTION 1. Definitions.¹ Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement on the Effective Date, 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 Equity Letter of Credit or Qualified Hedge, ‘A+’, ‘A1’ or the equivalent rating from any Nationally Recognized Rating Agency, and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from any Nationally Recognized Rating Agency.

“Accreted Value” means, with respect to any Capital Appreciation Bonds, as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the [Supplemental Resolution] authorizing such Capital Appreciation Bonds.]²

“Act” means the Act as defined in the recitals hereto. In addition, the Act includes those sections of law which are codified in Title 23, United States Code.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument entered into by the Borrower after the execution and delivery of this Agreement, providing for the design, construction, testing, start-up, safety, financial services, operation or maintenance of the Project, or otherwise relating to the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (a) is entered into (i) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (ii) for necessary Project-related expenditures, (b) commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower in one contract or a series of related contracts of, no more than \$1,000,000 in the aggregate for any such contract or series of related contracts and (c) is for a term not exceeding two (2) years.

“Additional Senior Obligations” means any borrowings or indebtedness permitted, or not prohibited, under Section 17(a) of this Agreement and under the Senior Loan Agreement, other than the Initial Senior Obligations, which Additional Senior Obligations shall also comply with the following, as applicable:

(a) the proceeds thereof may be used to complete the construction of the Project or to comply with obligations under the Principal Project Contracts, so long as the Borrower certifies to the Senior Lender and the TIFIA Lender, and the Independent

¹ Definitions will be conformed to the structure of financing, the principal contract documents, and related parties on a project-by-project basis.

² To be used in transactions in which the Senior Debt includes Capital Appreciation Bonds.

Engineer confirms, that the additional investment is necessary and that the proceeds, together with other funds available to complete the Project, are expected to be sufficient to complete the construction of the Project; provided that the aggregate amount of Additional Senior Obligations incurred pursuant to this paragraph (a) may not, without the prior written consent of the TIFIA Lender, exceed [\$____] million] [five percent (5%) of the maximum principal amount of the Initial Senior Obligations];

(b) the proceeds thereof may be used to refurbish, upgrade, modify, expand or add to the Project, so long as such Additional Senior Obligations have an Investment Grade Rating and the Borrower certifies to the TIFIA Lender, and the Independent Engineer confirms, that (1) [there will be no fundamental change in the use of the Project,] (2) the proceeds of such Additional Senior Obligations, together with other funds available, shall be sufficient for the proposed purpose, (3) the additional investment is not expected to have a Material Adverse Effect, and (4) the Total Debt Service Coverage Ratio for each Calculation Period during the term of the TIFIA Loan is not less than [____] (based on a certified revenue forecast [prepared by the Traffic Consultant]);

(c) the proceeds thereof may be used to refinance the Senior Obligations, so long as (1) such Additional Senior Obligations have an Investment Grade Rating, (2) the net proceeds thereof (after deducting any deposits required to satisfy the Senior Debt Service Reserve Required Balance and costs of issuance not to exceed two percent (2%) of the principal amount of such Additional Senior Obligations) do not exceed the principal amount of the Senior Obligations outstanding and being refinanced and (3) Senior Debt Service, after the incurrence of such Additional Senior Obligations, in each year of the remaining term of the TIFIA Loan, is forecast to be less than the Senior Debt Service forecast for such year in the Base Case Projections; and

(d) the proceeds thereof may be used to add to, refinance or replace the existing Senior Obligations for purposes not covered in clauses (a), (b) and (c) above, so long as (1) at least fifty percent (50%) of the net proceeds (after repayment of any outstanding Senior Obligations refinanced with such Additional Senior Obligations and after any deposits required to satisfy the Senior Debt Service Reserve Required Balance, certain payments to the [applicable public entity] required under the Concession Agreement (other than concession payments), and costs of issuance not to exceed two percent (2%) of the principal amount of such Additional Senior Obligations) of each such Additional Senior Obligations is used to prepay the TIFIA Loan, (2) the Additional Senior Obligations have an Investment Grade Rating and (3) the Total Debt Service Coverage Ratio, after giving effect to such Additional Senior Obligations, is forecast to be [____] or more for each year of the remaining term of the TIFIA Loan (based on actual revenues for the prior twelve (12) month period and a certified revenue forecast [prepared by the Traffic Consultant]); [Subject to the above provisions, the remaining

balance of such net proceeds of any such Additional Senior Obligations may, at the option of the Borrower, be distributed to the Equity Sponsors;]³

provided that for each of clauses (a) through (d) above, (i) no Event of Default under the Senior Loan Agreement or this Agreement has occurred and is continuing, (ii) the Nationally Recognized Rating Agency that provided the most recent private ratings of the Senior Obligations and the TIFIA Loan in accordance with Section 16(j) shall have confirmed that the incurrence of such Additional Senior Obligations shall not result in a downgrade of the then-existing credit ratings of the Senior Obligations and the TIFIA Loan, respectively, and (iii) each lender of any such Additional Senior Obligations (or an agent or trustee acting on its behalf) at the time of execution of any documentation with respect thereto shall become a party to and be bound by the Intercreditor Agreement as a Senior Lender thereunder.

“Administrative Agent” means _____ in its capacity as administrative agent for the Senior Lenders under the Initial Senior Loan Agreement, and any successor administrative agent or trustee acting for the Senior Lenders and appointed pursuant to the terms of a Senior Loan Agreement.

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

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

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

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

“Appreciated Value” means, with respect to any Deferred Income Bond as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Resolution authorizing such Deferred Income Bond.]⁴

³ To be included on a case by case basis.

⁴ To be used in transactions in which the Senior Obligations include Deferred Income Bonds.

“Bank Lending Margin” means (a) in respect of the Initial Senior Loan Agreement, the “Applicable Margin” as defined in the Initial Senior Loan Agreement and (b) in respect of any Additional Senior Obligations, a comparable interest rate margin payable on such Additional Senior Obligations.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to any Person, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; (c) solely with respect to the Borrower, (i) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Collateral (other than Equity Interests) may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Collateral (other than the Equity Interests) may be sold or otherwise disposed of pursuant to a sale or disposition of such Collateral in lieu of foreclosure; (d) solely with respect to the Borrower, (i) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Equity Interests may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Equity Interests may be transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or (e) solely with respect to the Borrower, the Collateral Agent shall transfer, pursuant to directions issued by the Administrative Agent, funds on deposit in any of the Project Accounts upon the occurrence and during the continuation of an Event of Default under the Senior Loan

Documents for application to the prepayment or repayment of any principal amount of the Senior Obligations other than in accordance with the provisions of the Collateral Agency Agreement.

“Base Case Financial Model” means a financial model prepared by the Borrower forecasting the revenues and expenditures of the Project for time periods through the final maturity of the TIFIA Loan and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender which shall be provided to the TIFIA Lender as a fully functional Microsoft Excel – based financial model.

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

“Bond Resolution” means any trust agreement, trust indenture, bond resolution or similar document or set of documents, entered into in replacement of, or in substitution for, in whole or in part, the initial or any subsequent Senior Loan Agreement and pursuant to which Permitted Debt is issued to finance or refinance the Project.

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

“Borrower Fiscal Year” shall mean (a) as of the Effective Date, a fiscal year of the Borrower commencing on [_____] of any calendar year and ending on [_____] of [such year][the immediately succeeding calendar year] or (b) such other fiscal year as the Borrower may hereafter adopt with prior written notice to the TIFIA Lender.

“Borrower Related Party” means, individually or collectively, the Borrower, the Member[s], the Equity Sponsor[s] and [_____].

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

“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, [the city and state in which the Project is located] or [the city and state in which the Collateral Agent is located].

“Calculation Date” means each [_____] and [_____] occurring after the Effective Date.⁵

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

⁵ To be the same calendar dates used in the definition of “Semi-Annual Payment Date.”

[“**Capital Appreciation Bonds**” means any Permitted Debt hereafter incurred as to which interest is payable only at the maturity or prior redemption of such Permitted Debt.]⁶

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

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

“**Change of Control**” means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of any Borrower Related Party or a significant aspect of its business; provided, however, that the following shall not constitute a Change of Control:

(a) a change in possession of the power to direct or control the management of a Borrower Related Party or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) a change in possession of the power to Control the management of a Borrower Related Party or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of such Borrower Related Party, unless the transferee in such transaction is at the time of the transaction 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;

(c) an upstream reorganization or transfer of direct or indirect interests in a Borrower Related Party so long as there occurs no change in the entity with ultimate power to Control or cause the Control of the management of such person;

(d) the exercise of preferred or minority equity holder veto or voting rights (whether provided by applicable law or by a Borrower Related Party’s Organizational Documents) over major business decisions of such Borrower Related Party; or

(e) transfers of direct or indirect ownership interests in a Borrower Related Party between or among Persons that are under common Control.

⁶

To be used in transactions in which the Senior Debt includes Capital Appreciation Bonds.

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

[“Collateral” means (a) all real and personal property of any person that is subject to the security interests or Liens created pursuant to any of the Security Documents, including all of the assets and property of the Borrower (except as set forth below), real or personal, tangible or intangible, whether now existing or hereafter constructed or acquired, including the Borrower’s rights in and to the following: (i) all Project Revenues, (ii) all accounts, general intangibles and contract or other rights to receive Project Revenues whether existing at the Effective Date or thereafter acquired, and the proceeds thereof and all other general intangibles of the Borrower, including all rights under the Equity Funding Agreement and all Principal Project Contracts now existing or hereafter entered into, (iii) all assignable permits and other Governmental Approvals, (iv) any leasehold interest, subleasehold interest, license, concession, occupancy agreement or rental contract in, or other right to use or occupy, the Project or any real property used by or in connection with the Project, (v) proceeds of insurance policies to the extent not used to repair or rebuild the Project or compensate third party liability claims and proceeds of completion bonds and other guarantees of performance of contractors under the Construction Agreements and any other Principal Project Contract to the extent not used to complete the construction of the Project or to pay any amounts payable to the [public authority] under the Concession Agreement, and (vi) all revenues, funds and accounts under the Senior Loan Documents, including the proceeds of Additional Senior Obligations, including the investments thereof, together with any other collateral securing the Senior Obligations and all other deposit accounts of the Borrower, (b) all membership interests in the Borrower owned directly by Borrower Related Parties, and (c) all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the foregoing.]⁷

“Collateral Agency Agreement” means [_____].

“Collateral Agent” has the meaning provided in the Collateral Agency Agreement.

“Concession Agreement” means the agreement between *[the public authority granting the concession]* and the Borrower, dated as of [_____], which grants the Borrower the right to perform the design, construction, financing, operation and/or maintenance of the Project and the right to [collect tolls from the users of the Project][receive compensation for such work].

“Construction Account” has the meaning set forth in the Collateral Agency Agreement.

“Construction Agreements” means [_____].

⁷

This definition will be conformed to the final structure of the financing.

“Construction Contractors” means [_____].

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

“Construction Schedule” means [_____], as the same may be amended from time to time.

“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,” “Controlled by”** and **“under common Control with”** have meanings correlative to the foregoing.

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

“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 20__ as the base period.

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

“Debt Service Payment Commencement Date” means *[a date no later than the fifth (5th) anniversary of the Substantial Completion Date]*⁸ or, if such date does not fall on a Semi-Annual Payment Date, then the Debt Service Payment Commencement Date shall be the Semi-Annual Payment Date immediately preceding the [fifth (5th) anniversary of the Substantial Completion Date].

“Default Rate” means an interest rate of 200 basis points above the TIFIA Interest Rate.

“Deferred Income Bond” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Income Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately succeeding the Interest Commencement Date

⁸ To be designated by the TIFIA Lender.

and thereafter on the dates specified in or determined pursuant to the Supplemental Resolution authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Income Bond is redeemed prior to maturity, the principal amount of a Deferred Income Bond shall be deemed to be its Appreciated Value.]⁹

“Development Default” means (a) the Borrower fails to diligently prosecute the work related to the Project or (b) the Borrower fails to complete the Project in accordance with the Financial Plan as the same may be amended from time to time with the consent of the TIFIA Lender.

“Discretionary Capital Expenditures” means any Capital Expenditures set forth in any Financial Plan approved by the TIFIA Lender in accordance with Section 22(a) that are not Required Capital Expenditures or Major Maintenance Costs.

“Distribution Account” has the meaning set forth in the Collateral Agency Agreement.

“Distribution Lockup Account” has the meaning set forth in the Collateral Agency Agreement.

“Effective Date” means [the date of this Agreement].

“Eligible Project Costs” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including any payments made by the Borrower pursuant to the Concession Agreement and prior Project expenditures for the [_____] -year period preceding the application date, all of which shall arise from the following:

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

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

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

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

⁹

To be used in transactions in which the Senior Obligations include Deferred Income Bonds.

“Equity Commitment” means the binding commitment of the Equity Sponsor pursuant to the Equity Funding Agreement to make Equity Contributions at the times, in the amounts and in the manner set forth in the Equity Funding Agreement.

“Equity Contributions” means the contributions or subordinated loans made by the Equity Sponsor(s) pursuant to the Equity Funding Agreement.

“Equity Credit Support” means either (a) one or more Equity Letters of Credit or (b) cash collateral deposited into the Equity Support Account.

“Equity Funding Agreement” means [_____].

“Equity Interests” means the membership interests or other equity interests in the Borrower.

“Equity Letter of Credit” means an irrevocable standby letter of credit, denominated in dollars, issued in favor of the Collateral Agent by a Qualified Issuer, in form and substance satisfactory to the TIFIA Lender.

“Equity Sponsor” means [_____].

“Equity Support Account” has the meaning set forth in the Collateral Agency Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended 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.

[**“ERISA Event”** means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the thirty (30) day notice period is waived); (b) the failure to meet the minimum funding standard of Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA with respect to any Plan, whether or not waived, or the failure to make by its due date a required installment under Section 430(j) of the Code or Section 303(j) of ERISA with respect to any Plan; (c) the failure by Borrower or an ERISA Affiliate to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the imposition of a Lien pursuant to Section 430(k) of the Code or pursuant to Section 303(k) of ERISA or a violation of Section 436 of the Code with respect to any Plan; (f) the attainment of “at risk” status with respect to any Plan under Section 430 of the Code or “critical”, “endangered” or “seriously engaged” status of any Multiemployer Plan under Section 432 of the Code; (g) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (h) the receipt by the Borrower

or any ERISA Affiliate from the Pension Benefit Guaranty Corporation (PBGC) or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (i) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (j) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of withdrawal liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.]¹⁰

“Event of Default” has the meaning provided in Section 20.

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

“Extendible Maturity Bonds” means bonds the maturity of which may be extended in accordance with the applicable Bond Resolution.

“FHWA” means the Federal Highway Administration, an agency of USDOT.

["FHWA Division Office"] means [_____].¹¹

“Final Maturity Date” means [_____],¹² as the same may be adjusted in connection with an update to the Financial Plan pursuant to Section 22(a)(iii).

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

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

["Fixed Level Payment"] has the meaning provided in Section 9(d).¹³

["Floater/Inverse Floater Debt"] means Permitted Debt which bears interest at a Variable Interest Rate (or a multiple of a Variable Interest Rate) and with respect to which each of the following conditions is met: (a) such Permitted Debt is issued concurrently in two (2) halves of equal principal amount of floating interest rate Permitted Debt and inverse floating rate Permitted Debt, with each half bearing a

¹⁰ This definition may be removed if the Borrower is a public agency or other Governmental Authority.

¹¹ If appropriate, insert name of other applicable Department of Transportation agency.

¹² Insert date that is not later than the earlier to occur of (x) the 35th anniversary of the projected Substantial Completion Date and (y) the estimated expiration of the useful life of the Project, consistent with § 603(b)(5) of the Act.

¹³ To be included when applicable.

Variable Interest Rate (or multiple of a Variable Interest Rate), (b) such Permitted Debt and such other Permitted Debt, unless linked to bear a fixed rate of interest, are required to remain outstanding in equal principal amounts at all times, and (c) the net effect of such equal principal amounts and Variable Interest Rates (or multiples of Variable Interest Rates) is at all times a fixed interest rate to the Issuer or the Borrower.]¹⁴

“GAAP” means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.¹⁵

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

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

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including 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.

¹⁴ To be used in transactions in which the Senior Obligations include Variable Interest Rate Bonds.

¹⁵ If the Borrower is a Governmental Authority, all references to “GAAP” may (as appropriate) be changed to “GASB”, which shall mean “generally accepted accounting principles for state and local governments, which are the uniform minimum standards of and guidelines for financial accounting and reporting prescribed by the Governmental Accounting Standards Board.”

“Hedge Deposit” has the meaning provided in Section 16(o)(viii)(A).

“Hedging Acquisition Account” has the meaning set forth in the Collateral Agency Agreement.

“Hedging Agreement” means (a) the ISDA Master Agreement(s) and the related schedules and confirmations, to be entered into by the Borrower and a Hedging Bank prior to the first disbursement of funds hereunder, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, in each case either similar in form and substance in all material respects with the Hedging Agreement entered into with the initial Hedging Banks, or otherwise acceptable to the TIFIA Lender and (c) any other documentation directly relating to the foregoing.

“Hedging Banks” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors.

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

“Hedging Termination Obligations” means the aggregate amount payable to the Hedging Banks by the Borrower upon the early unwind of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

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

“Indemnatee” has the meaning provided in Section 18.

“Independent Engineer” means _____, or any replacement engineering firm selected by the Borrower and the Senior Lender, and approved by the TIFIA Lender.

“Initial Qualified Hedge” means the initial Qualified Hedge entered into on or prior to the Effective Date.

“Initial Senior Loan Agreement” means [_____].

“Initial Senior Obligations” means the obligations of the Borrower under the Initial Senior Loan Agreement.

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

“Insurance Advisor” means [_____] or any replacement insurance advisory firm which shall be selected by the Senior Lenders and the Borrower.

“Insurance Advisor Report” has the meaning provided in Section 13(a)(xxi).

“Intercreditor Agreement” means the Subordination and Intercreditor Agreement dated as of the Effective Date among the Administrative Agent, the TIFIA Lender and the Collateral Agent and any replacements, amendments or supplements thereto.

“Interest Commencement Date” means, with respect to any particular Deferred Income Bond, the date determined by the Supplemental Resolution after which interest accruing on such Deferred Income Bond shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Resolution.]¹⁶

“Interim Payment Date” means any day occurring during a Payment Period that (a) is a date on which interest on or principal of Senior Obligations or Pari Passu Obligations is scheduled to be paid and (b) is not a Semi-Annual Payment Date.

“Interim Payment Period” means, at any time that interest on or principal of any Senior Obligations or Pari Passu Obligations is scheduled to be paid on an Interim Payment Date, the period commencing on the immediately preceding Payment Date and ending on such Interim Payment Date.

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

“Issuer” means the Governmental Authority that issues, or provides for the issuance of, Permitted Debt pursuant to the Bond Resolution.

“Level Payment Commencement Date” means the Semi-Annual Payment Date following the end of the _____ (_____) consecutive Payment Period.]¹⁷

¹⁶ To be used in transactions in which the Senior Obligations include Deferred Income Bonds.

¹⁷ To be included when applicable.

["Level Payment Period"] means the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as the TIFIA Loan shall be paid in full).¹⁸

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

"Loan Amortization Schedule" means the Loan Amortization Schedule attached as Appendix Two to the Note, a copy of which is attached hereto as **Exhibit A**, delivered pursuant to Section 9(h), as amended from time to time in accordance with Section 7 and Section 9(h).

"Loan Underwriting Rate" means [____] percent ([____]%) per annum.¹⁹

"Long Dated Qualified Hedge" has the meaning provided in Section 16(o)(viii)(A).

"Loss Proceeds" means any proceeds of insurance resulting from any Event of Loss.

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

"Major Maintenance Costs" means all Capital Expenditures relating to Major Maintenance.

"Major Maintenance Reserve Account" has the meaning set forth in the Collateral Agency Agreement.

"Material Adverse Effect" means a material adverse change in (a) the Project, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, any [Member,][Equity Sponsor,][or other Borrower Related Party], (c) the legality, validity or enforceability of any material provision of a Senior Loan Document, TIFIA Loan Document or Principal Project Contract, (d) the ability of the Borrower, any

¹⁸ To be included when applicable.

¹⁹ To be calculated in respect of the period from the Effective Date through the Final Maturity Date based on the sum of (i) the long-term fixed swap rate (which will reflect any premium or margin payable thereon) on the Initial Qualified Hedges and (ii) the Bank Lending Margin.

[Member],[Equity Sponsor],[other Borrower Related Party] [or any other Principal Project Party] to perform or comply with any of its material obligations under any Senior Loan Document, TIFIA Loan Document or Principal Project Contract to which it is a party, (e) the validity, perfection or priority of the Liens provided under the Security Documents on the Collateral in favor of the Secured Parties or (f) the TIFIA Lender's rights or remedies available under any TIFIA Loan Document.

“Member” means [_____].

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

“Modal Oversight / Compliance Agreement” means the agreement between the [insert applicable Department of Transportation agency] and [insert applicable state or local transportation agency] attached as **Exhibit F** and incorporated herein.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA in respect of which the Borrower or any ERISA Affiliate has any liability.]²⁰

“Nationally Recognized Rating Agency” means Standard & Poor's Rating Group, Moody's Investors Service, Inc., Fitch Ratings or any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“Net Cash Flow” means, with respect to any period, an amount equal to (a) all Project Revenues received by the Borrower during such period (excluding Termination Compensation, liquidated damages (other than delay liquidated damages), Loss Proceeds, and other extraordinary non-recurring items) minus (b) the sum of the following (without duplication):

(i) all Operations and Maintenance Expenses paid during such period (solely to the extent such amounts are not included in Project Revenues received by the Borrower);

(ii) all Major Maintenance Costs (to the extent not funded from amounts deposited in the [Major Maintenance Reserve Account]) paid during such period;

(iii) all Capital Expenditures paid during such period (excluding Capital Expenditures paid with the proceeds of any Senior Obligations or Equity Contributions made during such period); and

(iv) deposits to the [Major Maintenance Reserve Account] during such period under the terms of the Collateral Agency Agreement.

²⁰

This definition may be removed if the Borrower is a public agency or other Governmental Authority.

“Net Loss Proceeds” means remaining Loss Proceeds after excluding any proceeds of business interruption insurance, delay-in-start-up insurance, proceeds covering liability of the Borrower to third parties, and Loss Proceeds used or to be used by the Borrower to repair or restore the Project in accordance with Section _____ of the Collateral Agency Agreement.

[**“Non-Federal Funds”** has the meaning provided in Section 9(i).]²¹

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

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

“Operations and Maintenance Expenses” means all actual cash maintenance and operation costs (excluding costs of Capital Expenditures) incurred and paid (or if applicable forecast to be incurred and paid) in connection with the operation and maintenance of the Project in any particular calendar year, Borrower Fiscal Year or other period to which said term is applicable, including payments made pursuant to the Concession Agreement, payments for taxes (excluding income taxes), insurance, consumables, advertising, marketing, payments under real property agreements pursuant to which the Borrower has rights in the Project, payments pursuant to the agreements for the management, operation or maintenance of the Project, reasonable legal fees and expenses paid by the Borrower in connection with the management, maintenance or operation of the Project, fees paid in connection with obtaining, transferring, maintaining or amending any approvals from any Governmental Authority, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Borrower, amounts required for the acquisition of any Qualified Hedge or for deposits into any account maintained in accordance with the Collateral Agency Agreement for such purposes and reasonable general and administrative expenses, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Organizational Documents” means, with respect to any Person, (a) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (b) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (c) 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.

²¹ To be used when the Loan Agreement includes the provision at Section 9(i).

“Other Loan Documents” has the meaning set forth in Section 20(a)(vi).

“Other Material Indebtedness” has the meaning set forth in Section 20(a)(v).

“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.

“Pari Passu Obligations” means any borrowing or indebtedness of the Borrower permitted, or not prohibited, under Section 17(a) of this Agreement and under the Senior Loan Agreement, other than any Senior Obligations, which ranks at least *pari passu* in right of payment with the TIFIA Loan.

“Partially Subordinated Hedge” means a Qualified Hedge, some or all of the Hedging Termination Obligations of which are subordinate to the payment of principal of and interest on Senior Obligations and, other than Hedging Termination Obligations described in clause _____ of paragraph (____) of Section _____ of the Collateral Agency Agreement, are subordinate to the payment of the principal of and interest on the TIFIA Loan and are paid in accordance with Section _____ of the Collateral Agency Agreement.

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

“Payment Date” means each Semi-Annual Payment Date or Interim Payment Date.

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

“Payment Period” means any period of six (6) months that ends on a Semi-Annual Payment Date, commencing with the six (6) month period ending on the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (a) the Senior Obligations;
- (b) the TIFIA Loan;
- (c) reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Principal Project Contracts or any other agreement executed by the Borrower in connection with the Project that are payable as Total Project Costs, Eligible Project Costs, or Operations and Maintenance Expenses and that do not in the aggregate have face amounts exceeding \$5,000,000;
- (d) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that are

payable as Operations and Maintenance Expenses and that do not in the aggregate have annual debt service or lease payment obligations exceeding \$500,000;

(e) trade accounts payable (other than for borrowed money) so long as such trade accounts payable are payable not later than ninety (90) days after the respective goods are delivered or the respective services are rendered;

(f) fully subordinated debt for Total Project Costs payable from monies released from the [Distribution Account] on terms and conditions acceptable to the TIFIA Lender;

(g) working capital loans that are payable as Operations and Maintenance Expenses; provided that the principal amount of such loans shall not exceed \$5,000,000 in the aggregate at any time and shall be repaid within three (3) years; and

(h) indebtedness incurred in respect of Qualified Hedges.

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

[“Permitted Investments” means (with respect to the investment of the proceeds of the TIFIA Loan or any construction or reserve account established and maintained pursuant to the Collateral Agency Agreement):

(a) Government Obligations;

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

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

(d) 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, at the time such agreement or contract is entered into, 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, 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;

provided, that with respect to any Permitted Investments maintained in any Reserve Accounts, such Permitted Investments shall mature not more than one (1) year from the date of the creation thereof.^{22]}

“Permitted Liens” means:

- (a) Liens imposed pursuant to the TIFIA Loan Documents;
- (b) Liens imposed pursuant to the Senior Loan Documents;
- (c) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 16(n);
- (d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 16(n);
- (e) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;
- (f) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (g) judgment liens in respect of judgments that do not constitute an Event of Default under Section 20(a)(vii);
- (h) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary of the Borrower;
- [(i) any Lien on any property or asset of the Borrower existing on the Effective Date; provided that (i) such Lien shall not apply to any other property or asset of the Borrower and (ii) such Lien shall secure only those obligations which it secures on

²² This definition will be revised (as necessary) (1) to the extent the Borrower is a Governmental Authority and is subject to statutory investment restrictions and (2) to include such additional investments as shall conform with Nationally Recognized Rating Agency guidelines.

the Effective Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;]²³

(j) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall not apply to any other property or assets of the Borrower and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(k) purchase money security interests in equipment hereafter acquired by the Borrower; provided that (i) such security interests secure indebtedness for borrowed money permitted by Section 17(a), (ii) such security interests are incurred, and the indebtedness secured thereby is created, within ninety (90) days after such acquisition, (iii) the indebtedness secured thereby does not exceed the fair market value of such equipment at the time of such acquisition and (iv) such security interests do not apply to any other property or assets (other than accessions to such equipment) of the Borrower.

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

[**“Plan”** means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.]²⁴

“Pledge Agreements” means [_____].

“Principal Project Contracts” means [*insert all relevant project contracts on a project-by-project basis*].

“Principal Project Party” means any Person (other than the Borrower) party to a Principal Project Contract and any surety or guarantor of such a Person with respect to such Person’s obligations under such Principal Project Contract, for so long as such Principal Project Contract remains in effect.

“Project” means [*insert description of the project*].

“Project Accounts” means the [Construction Account, Distribution Account, Distribution Lockup Account, Equity Support Account, Hedging Acquisition Account,

²³ For use primarily when the Borrower is a public agency or other Governmental Authority.

²⁴ This definition may be removed if the Borrower is a public agency or other Governmental Authority.

Major Maintenance Reserve Account, Revenue Account, TIFIA Debt Service Account and [_____].]

“Project Budget” means the budget for the Project in the aggregate amount of \$[insert Project budget amount] attached to this Agreement as **Schedule I** showing a summary of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time with the approval of the TIFIA Lender.

“Project Revenues” means (a) all income, tolls, revenues, rates, fees, charges, rentals, fares, availability payments, milestone payments, Termination Compensation, delay liquidated damages, proceeds from business interruption and delay in start-up insurance policies, Net Loss Proceeds, interest and other income earned on funds on deposit in any of the Project Accounts, or other receipts derived by or related to the operation or ownership of the Project including all amounts from joint development or leasing of air space lease rights, (b) any revenues assigned to the Borrower and proceeds of the sale or other disposition of all or any part of the Project, and (c) all income derived from Permitted Investments.

“Put Bonds” means Permitted Debt which by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof either (a) by the Issuer or the Borrower and by the Person and/or from the source specified in a Supplemental Resolution or (b) without recourse to the Issuer or the Borrower, by the Person and/or from the source specified in a Supplemental Resolution; provided, however, that such payment by the Issuer or the Borrower shall in any event be required to be supported by a Credit Facility.

“Qualified Hedge” means, to the extent from time-to-time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 16(o).

“Qualified Hedge Provider” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States or any state thereof that has an Acceptable Credit Rating.

“Qualified Issuer” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States or any state thereof that has an Acceptable Credit Rating.

“Rate Coverage Test” shall have the meaning set forth in Section 16(l).

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

“Related Documents” means the Senior Loan Documents, the TIFIA Loan Documents, the Intercreditor Agreement, the Hedging Agreements, the Equity Funding Agreement and the Principal Project Contracts.

“Required Capital Expenditures” means Capital Expenditures certified by the Borrower to the Collateral Agent to be required to be made under the Concession Agreement, but excluding any Major Maintenance Costs.

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

“Reserve Accounts” means the Senior Debt Service Reserve Account, the TIFIA Debt Service Reserve Account, the Major Maintenance Reserve Account and [_____].

“Restricted Payment” has the meaning provided in Section 17(d).

“Restricted Payment Conditions” has the meaning provided in Section 17(d).

“Revenue Account” has the meaning set forth in the Collateral Agency Agreement.

“Secretary” means the United States Secretary of Transportation.

“Secured Obligations” means the Senior Obligations, the obligations of the Borrower under this Agreement, the Hedging Obligations and the Hedging Termination Obligations.

“Secured Parties” means the Collateral Agent, the Administrative Agent, the Senior Lenders, the TIFIA Lender and the Hedging Banks.

“Security Agreement” means [_____].

“Security Documents” means [_____].

“Semi-Annual Payment Date” means each [July 1] and [January 1] or, if such date is not a Business Day, the next Business Day following such [July 1] or [January 1].

“Senior Debt Service” means, with respect to the Senior Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Senior Obligations accruing and payable during such period, as set forth in the Base Case Financial Model (as it may be updated pursuant to Section 22(a)(ii)). In determining the principal amount of Senior Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

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

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(b) to the extent the requirements of Section 16(o) have been waived so that paragraph (a) of this definition no longer applies, any Variable Interest Rate Bonds for which the interest rate payable thereon has not yet been determined shall be deemed to bear interest at all times prior to the maturity date thereof at a rate which is the highest twelve (12) month rolling average of one (1) month LIBOR over the past ten (10) years preceding the date of calculation plus the Bank Lending Margin; provided that if such index is no longer published, the index to be used shall be that index which the TIFIA Lender, in consultation with the Borrower, determines most closely replicates it;

(c) any Put Bonds outstanding during such period which by their terms are not required to be paid by the Issuer or the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(d) any Put Bonds outstanding during such period which by their terms are required to be paid by the Issuer or the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in an applicable Supplemental Resolution, or (iii) if the Credit Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Credit Facility;

(e) the principal amount of any Put Bonds tendered for payment by the Issuer or the Borrower which are required to be paid by the Issuer or the Borrower which have not yet been purchased in lieu of such payment by the Issuer or the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender;

(f) subject to the provisions of the Supplemental Resolution authorizing any Extendible Maturity Bonds, Extendible Maturity Bonds outstanding during such period shall be deemed to mature on the later of the stated maturity date or the date to which such stated maturity date has been extended; and

(g) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Income Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable during such period.

“Senior Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to Senior Debt Service for such Calculation Period.

“Senior Debt Service Reserve Account” has the meaning set forth in the Collateral Agency Agreement.

“Senior Debt Service Reserve Required Balance” means [_____].

“Senior Lender” means collectively the financial institution or institutions or Governmental Authority (or any agent or trustee acting on behalf of any of the foregoing) providing the senior loan under the Senior Loan Agreement, initially [_____]

“Senior Loan Agreement” means the Initial Senior Loan Agreement and any other loan agreement or similar document entered into by the Borrower in connection with the incurrence of Additional Senior Obligations incurred in addition to, in replacement of, in substitution for, or in connection with a refinancing of the indebtedness incurred pursuant to the Initial Senior Loan Agreement or any subsequent Senior Loan Agreement.

“Senior Loan Documents” means the Senior Loan Agreement, the Security Documents, any agreements and documents executed by the Borrower in connection with hedging arrangements entered into pursuant to or in connection with the Senior Loan Agreement, and all other agreements, instruments and documents executed and delivered pursuant to or in connection with any of the foregoing.

“Senior Obligations” means the Initial Senior Obligations and any Additional Senior Obligations.

“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.

“Short Term Qualified Hedge” has the meaning provided in Section 16(o)(viii)(A).

“State” means [_____].

“Subordinated Hedging Termination Obligations” means Hedging Termination Obligations under the Hedging Agreements other than those arising as a result of a Permitted Hedging Termination or as a result of a tax or illegality event or upon failure of the Borrower to pay any Hedging Obligations when due.

“Subsequent Qualified Hedge” has the meaning provided in Section 16(o)(iii).

“Subsidiary” means, with respect to any Person (herein referred to as the “parent”), any corporation, limited liability company, partnership association or other business entity of which more than fifty percent (50%) of the securities or other ownership interests having ordinary voting power is, or with respect to which rights to control management (pursuant to any contract or other agreement or otherwise) are, at the time as of which any determination is being made, owned, controlled, or held by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

“Substantial Completion” means the opening of the Project to vehicular or passenger traffic or a comparable event.²⁵

“Substantial Completion Date” means the date on which Substantial Completion occurs, as such date may be adjusted in connection with an update to the Financial Plan pursuant to Section 22(a)(iii).

“Supplemental Resolution” means any resolution, indenture, agreement or similar document that supplements or amends the Bond Resolution and that sets forth the pricing and other financial and related terms of Permitted Debt.

“Termination Compensation” has the meaning assigned to such term in the Concession Agreement.

“TIFIA Debt Service” means (a) with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date [and prior to the Level Payment Commencement Date]²⁶, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon, in each case, (i) as set forth on **Exhibit G** and (ii) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(c)(i), [and (b) with respect to any Semi-Annual Payment Date occurring on or after the Level Payment Commencement Date, the entire amount of each Fixed Level Payment required to be paid pursuant to Section 9(d), which shall be unconditionally required to be paid on such Semi-Annual Payment Date pursuant to Section 9(c)(ii)].²⁷

“TIFIA Debt Service Account” has the meaning set forth in the Collateral Agency Agreement.

“TIFIA Debt Service Reserve Account” has the meaning set forth in the Collateral Agency Agreement.

“TIFIA Debt Service Reserve Required Balance” means [_____].

“TIFIA Interest Rate” has the meaning provided in Section 6.

“TIFIA Lender” has the meaning provided in the preamble hereto.

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

²⁵ If applicable, this definition may be revised to describe any such “comparable event.”

²⁶ To be included when applicable.

²⁷ To be included when applicable.

“TIFIA Loan” means the secured loan made by the TIFIA Lender to the Borrower hereunder, pursuant to the Act, in a principal amount not to exceed [_____] (excluding capitalized interest), to be used to pay Eligible Project Costs.

“TIFIA Loan Documents” means this Agreement, the Note, [the Security Documents, the Intercreditor Agreement and the Equity Funding Agreement].

“TIFIA Loan Life Coverage Ratio” means, as of each applicable Semi-Annual Payment Date, the ratio of (a) the present value of all projected Net Cash Flow for each Semi-Annual Payment Date from and including such Semi-Annual Payment Date to the Final Maturity Date in each case discounted at the Weighted Average Interest Cost, using the most recently updated Base Case Financial Model, adjusted to take into account (i) actual results and updated revenue and traffic projections and (ii) additional projected Net Cash Flow and Senior Debt Service in connection with Additional Senior Obligations; to (b) the aggregate outstanding principal amount of all Senior Obligations and the TIFIA Loan on such Semi-Annual Payment Date.

“TIFIA Revenue Share Amount” has the meaning set forth in Section 10(a)(ii).

“Total Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to the sum of (a) Senior Debt Service for such Calculation Period and (b) TIFIA Debt Service for such Calculation Period.

“Total Project Costs” means (a) the costs paid or incurred (to the extent paid, such costs shall be reimbursed to the Person who paid such costs) or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing costs; (b) amounts, if any, required by the Senior Loan Agreement to be paid into any fund or account upon the incurrence of Senior Obligations; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) on any indebtedness of the Borrower (other than the TIFIA Loan) incurred for the Project, including capitalized interest on the Senior Obligation; (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower; and (e) the repayment of obligations incurred by the Borrower, the proceeds of which obligations were used to pay items (a) through (d) of this definition.

“Traffic Consultant” means initially [_____] and shall include any replacement traffic consultant firm which shall be selected from a list jointly maintained by the Senior Lender and the Borrower and approved by the TIFIA Lender.

“Traffic and Revenue Study” means the Final Traffic and Revenue Study for the Project, dated [_____], prepared by the Traffic Consultant, and any amendments, supplements or updates thereto.]

“Uncontrollable Force” means any cause beyond the control of the Borrower, including: (a) a tornado, flood or similar occurrence, landslide, earthquake, fire or other

casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

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

“USDOT” means the United States Department of Transportation.

[“Valuation Date” means (a) with respect to any Capital Appreciation Bonds, the date or dates set forth in the Supplemental Resolution authorizing such Capital Appreciation Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds and (b) with respect to any Deferred Income Bonds, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Resolution authorizing such Deferred Income Bonds on which specific Appreciated Values are assigned to the Deferred Income Bonds.]²⁸

“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 Senior Loan Agreement pursuant to which such Permitted Debt is incurred. Such Senior Loan Agreement shall also specify either (i) the particular period or periods of time for which each value of such variable interest rate shall remain in effect or (ii) the time or times upon which any change in such variable interest rate shall become effective.

[“Variable Interest Rate Bonds” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Bonds if (a) the Issuer or the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect, or (b) such Permitted Debt constitutes Floater/Inverse Floater Debt; provided, further, that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Bonds to the extent that the Issuer or the Borrower has entered into a Qualified Hedge pursuant to which the Borrower or Issuer is obligated to pay a floating

²⁸

To be used in transactions in which the Senior Obligations include Capital Appreciation Bonds or Deferred Income Bonds.

rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the lesser of the rate determined pursuant to clause (a) of the definition of the term Senior Debt Service or the maximum interest rate, if any, payable pursuant to such Qualified Hedge.]²⁹

“Variable Interest Rate Senior Obligation” means any Senior Obligations under a Senior Loan Agreement that accrue interest at a Variable Interest Rate.

“Weighted Average Interest Cost” means, for each Semi-Annual Payment Date, a rate calculated as follows: the sum of (a) the applicable true interest cost(s) for the Senior Obligations multiplied by the ratio of (i) the current Senior Obligations principal amount then outstanding to (ii) the aggregate principal amount of each of the Senior Obligations and the TIFIA Loan as of such Semi-Annual Payment Date; and (b) the interest rate on the TIFIA Loan multiplied by the ratio of (i) the current Outstanding TIFIA Loan Balance to (ii) the aggregate principal amount of each of the Senior Obligations and the TIFIA Loan as of such Semi-Annual Payment Date.

SECTION 2. Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to sections, subsections, schedules, exhibits, appendices and provisions are to the applicable sections, subsections, 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 and signed by a duly authorized representative of such party.

²⁹

To be used in transactions in which the Senior Obligations include Variable Interest Rate Bonds.

SECTION 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$[insert maximum principal amount of TIFIA loan]; provided, however, in no event shall the maximum principal amount of the TIFIA Loan disbursed by the TIFIA Lender, together with the amount (excluding any interest that is capitalized in accordance with the terms hereof) of any other credit assistance provided under the Act, exceed the lesser of [thirty-three percent (33%)] of Eligible Project Costs or, if the TIFIA Loan does not receive an Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, the amount of the Initial Senior Obligations. TIFIA Loan proceeds shall be disbursed from time-to-time in accordance with Section 4.³⁰

SECTION 4. Disbursement Conditions.

(a) TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs previously paid or incurred by or on behalf of the Borrower in connection with the Project. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a “Requisition”) in the form set forth in **Appendix One to Exhibit D** submitted by the Borrower to, and approved by, the TIFIA Lender, all in accordance with the procedures of **Exhibit D** and subject to (i) with respect to the initial disbursement, the conditions set forth in Section 13(a), and (ii) with respect to each subsequent disbursement, the conditions set forth in Section 13(b); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender, the FHWA TIFIA Joint Program Office (HITJ), the Servicer and the [appropriate USDOT field office] on or before the first day of each month for which a disbursement is requested, or the next succeeding Business Day if such first day is not a Business Day. If the TIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express 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. At the time of any disbursement, the sum of all prior disbursements of TIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current year set forth in the Anticipated TIFIA Loan Disbursement Schedule, as the same may be amended from time to time.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date thereof, together with a

³⁰ Consult Notice of Funding Availability for amounts above thirty-three percent (33%). If the TIFIA Loan does not receive an Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, the amount of the TIFIA Loan shall not exceed the amount of the Initial Senior Obligations, consistent with § 603(b)(2) of the Act.

detailed explanation of the reasons for such revisions. Such revised Anticipated TIFIA Loan Disbursement Schedule shall become effective upon the TIFIA Lender's approval thereof, which approval shall be granted in the TIFIA Lender's sole discretion.

As a condition to each disbursement of the TIFIA Loan, the Borrower shall provide to the TIFIA Lender evidence satisfactory to the TIFIA Lender that, prior thereto or simultaneously therewith, a disbursement of Senior Obligation proceeds [and Equity Contributions] has occurred such that as of any such TIFIA Loan disbursement, the aggregate amount of all disbursements of the TIFIA Loan (including such disbursement) shall not exceed [____] percent ([____]%) of the total amount of Eligible Project Costs.

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

SECTION 6. Interest Rate. The interest rate with respect to the TIFIA Loan (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 its due date to the date of actual payment at the Default Rate. Upon the occurrence of an Event of Default described in Section 20(a)(iii) or 20(a)(xii), the interest rate on the Outstanding TIFIA Loan Balance shall be the Default Rate and shall continue to bear interest at such rate until, with respect to (a) an Event of Default described in Section 20(a)(iii), such Development Default has been cured or (b) an Event of Default described in Section 20(a)(xii), the TIFIA Loan has been paid in full.

SECTION 7. Outstanding TIFIA Loan Balance and Revisions to Exhibit G and the 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) hereof, by the amount of interest so capitalized; (iii) increased on each occasion on which the interest portion of any TIFIA Debt Service is not paid by the Borrower on the applicable Semi-Annual Payment Date, by the amount of such unpaid interest, which shall be capitalized; and (iv) decreased upon each payment or prepayment of the principal amount of the TIFIA Loan, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time-to-time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error. Upon any determination of the Outstanding TIFIA Loan Balance, the TIFIA Lender may, but shall not be obligated to, make applicable revisions to **Exhibit G** and the Loan Amortization Schedule pursuant to Section 9 and in such event shall provide the Borrower with a copy of such **Exhibit G** and Loan Amortization Schedule as revised, but no failure to provide or delay in

providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents. The Loan Amortization Schedule, as of the Effective Date, has been determined based on the Anticipated TIFIA Loan Disbursement Schedule in effect on the Effective Date.

(b) The TIFIA Lender shall make applicable revisions to **Exhibit G** and the Loan Amortization Schedule pursuant to Section 9(h), (i) as of the Debt Service Payment Commencement Date and (ii) upon any prepayment of the TIFIA Loan; provided that in no event shall the TIFIA Debt Service due on the Debt Service Payment Commencement Date be revised or altered. Upon any such revisions, the TIFIA Lender shall provide the Borrower with copies of such **Exhibit G** and Loan Amortization Schedule as revised, but no failure to provide or delay in providing the Borrower with such copies shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents. Each of **Exhibit G** and the Loan Amortization Schedule, as of the Effective Date, has been determined based on the Anticipated TIFIA Loan Disbursement Schedule in effect on the Effective Date.

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 Collateral Agent, Liens on the Collateral in accordance with the provisions of the Security Documents. The TIFIA Loan shall be secured by the Liens on the Collateral subordinate, during any period when an Event of Default described in Section 20(a)(xi)(A) has not occurred, only (except as otherwise required by law) to the Lien on the Collateral of the Senior Obligations, Hedging Obligations and Hedging Termination Obligations (other than Subordinated Hedging Termination Obligations). Upon the occurrence of an Event of Default described in Section 20(a)(xi)(A), the TIFIA Loan shall be secured by a first priority security interest in the Collateral on a parity with the Senior Obligations, the Hedging Obligations and the Hedging Termination Obligations (other than Subordinated Hedging Termination Obligations).³¹

(b) Except (i) for Permitted Liens, (ii) to the extent otherwise provided in paragraph (a) of this Section, or (iii) as may be entitled to priority as a matter of law, the Collateral will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge of the Borrower created under the Security Documents, and all corporate action on the part of the Borrower to that end has been duly and validly taken.

(c) The Borrower shall not use Project Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 and the Collateral Agency Agreement and shall not apply any portion of the Project Revenues in contravention of this Agreement or the Senior Loan Documents.

³¹ To the extent that § 603(b)(6)(B) of the Act applies, the last sentence of clause (a) may be deleted.

(d) The _____ Agreement provides that all Project Revenues shall, subject to Section _____ of such Agreement, be deposited in the Revenue Account and applied substantially in the following order of priority, as more fully described, and in accordance with the requirements specified in Section _____ of the _____ Agreement:

- (i) to the payment of Operations and Maintenance Expenses;
- (ii) to the payment of Required Capital Expenditures;
- (iii) to the payment of fees, administrative costs and other expenses of the Senior Lenders, the Administrative Agent, the Collateral Agent and the TIFIA Lender;
- (iv) to the payment of the interest portion of Senior Debt Service and Hedging Obligations then due (or the accrual of appropriate amounts in advance thereof);
- (v) to the payment of the principal portion due of Senior Debt Service and Hedging Termination Obligations under Hedging Agreements incurred upon termination of any Hedging Agreements (other than any Partially Subordinated Hedge) or in respect of tax or illegality events or upon failure of the Borrower to pay any Hedging Obligations when due (or the accrual of appropriate amounts in advance thereof);
- (vi) to the payment of the interest portion of TIFIA Debt Service then due (or the accrual of appropriate amounts in advance thereof);
- (vii) to the payment of the principal portion of TIFIA Debt Service then due (or the accrual of appropriate amounts in advance thereof);
- (viii) to fund the Senior Debt Service Reserve Account (as necessary so that the balance thereof equals the Senior Debt Service Reserve Required Balance);
- (ix) to fund the TIFIA Debt Service Reserve Account (as necessary so that the balance thereof equals the TIFIA Debt Service Reserve Required Balance);
- (x) to fund the Major Maintenance Reserve Account (as necessary so that the balance thereof equals the requirement therefor);
- (xi) to fund the Hedging Acquisition Account, if any (as necessary so that the balance thereof equals the requirement therefor);
- (xii) to the payment of Discretionary Capital Expenditures;
- (xiii) all prepayments required pursuant to Section 10(a);

(xiv) for voluntary prepayments of the Senior Obligations and related Hedging Termination Obligations; and

(xv) to the Distribution Account for the making of Restricted Payments therefrom, to the extent the Restricted Payment Conditions have been satisfied, or to the Distribution Lockup Account, to the extent the Restricted Payment Conditions have not been satisfied.³²

SECTION 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Collateral Agency Agreement on each Semi-Annual Payment Date and on each other date (including the Final Maturity Date and any date on which payment thereof is due by reason of the acceleration of the maturity of the TIFIA Loan) on which payment thereof is required to be made hereunder. [Any payment of the TIFIA Bond shall be treated as a payment of the TIFIA Loan and any prepayment of the TIFIA Loan shall be treated as redemption of the TIFIA Bond.]³³

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

(c) Payment of TIFIA Debt Service.

(i) On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date [and prior to the Level Payment Commencement Date]³⁴, the Borrower shall pay TIFIA Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit G** hereto, which payments shall be made in accordance with Section 9(f)

(ii) [On each Semi-Annual Payment Date commencing on the Level Payment Commencement Date, the Borrower shall pay TIFIA Debt Service

³² While the priority of deposits and name of accounts in the flow of funds will be negotiated based on the specifics of each transaction, the priorities set out in this Section 8 reflect TIFIA's standard provisions.

³³ To be included where a bond is issued in lieu of a promissory note.

³⁴ To be included when applicable.

in the amount of one hundred percent (100%) of the Fixed Level Payment, which payments shall be made in accordance with Section 9(f).]³⁵

(d) [Fixed Level Payments. On each Semi-Annual Payment Date occurring during the Level Payment Period, the Borrower shall make level payments of principal and interest (each a “Fixed Level Payment”), each of which payments shall be approximately equal in amount. The amount of the Fixed Level Payment shall be calculated as of the Level Payment Commencement Date in such manner that the Outstanding TIFIA Loan Balance as of such date shall be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the principal balance of such TIFIA Loan at the rate per annum set forth in Section 6 in the absence of an Event of Default, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal of or interest on the TIFIA Loan are made during such period). Within thirty (30) days prior to the beginning of the Level Payment Period, the TIFIA Lender shall give written notice to the Borrower of the amount of the related Fixed Level Payment, which amount shall be deemed conclusive absent manifest error. To the extent that any prepayments of the TIFIA Loan shall be made during the Level Payment Period in addition to the Fixed Level Payments, such prepayments shall be applied to the remaining Outstanding TIFIA Loan Balance and the resulting Fixed Level Payments shall be recalculated as provided in Section 10(c) and reflected in a revised **Exhibit G.**]³⁶

(e) Accrual of Amounts on Interim Payment Dates.

(i) If any Senior Obligations or Pari Passu Obligations require the payment of principal or interest on any Interim Payment Date after the Debt Service Payment Commencement Date, the Borrower shall promptly notify the Servicer and the TIFIA Lender thereof in writing, identifying the period covered by such Interim Payment Period and the Interim Payment Date.

(ii) On any such Interim Payment Date during the period on and after the Debt Service Payment Commencement Date, the Borrower shall transfer or otherwise deposit, or cause to be transferred or otherwise deposited, into the TIFIA Debt Service Account an amount equal to the amount of TIFIA Debt Service due and payable on the next succeeding Semi-Annual Payment Date (as shown on **Exhibit G**, as the same may be revised as provided in Section 7(b)) multiplied by a fraction, the numerator of which is equal to the number of months contained in the Interim Payment Period ending on such Interim Payment Date and the denominator of which is equal to six (6); and

(iii) Notwithstanding the foregoing provisions of this Section 9(e) or any other provision of this Agreement, at any time when no Senior Obligations or Pari Passu Obligations are outstanding, or when no Senior

³⁵ To be included when applicable.

³⁶ To be included when applicable.

Obligations or Pari Passu Obligations are outstanding other than Senior Obligations or Pari Passu Obligations with respect to which principal and interest are payable on Semi-Annual Payment Dates, the TIFIA Debt Service hereunder shall be payable only on each Semi-Annual Payment Date (subject to any prepayments pursuant to Section 10). In the event that an Interim Payment Date is other than the first Business Day of a calendar month, the method for calculating any amount required to be transferred or deposited into the TIFIA Debt Service Account pursuant to this Section 9(e) shall be determined at such time by the parties hereto.

(f) Manner of Payment. Payments under this Agreement and the Note shall be made by wire transfer on or before each Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender's Authorized Representative pursuant to Section 37, as modified in writing from time-to-time by the TIFIA Lender's Authorized Representative. The Borrower may make, or caused to be made, any such payment (or portion thereof) with funds then on deposit in the TIFIA Debt Service Account.

(g) 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).

(h) Note; 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 Note substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of \$[insert maximum principal amount of TIFIA loan] (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6. The TIFIA Lender is hereby authorized to enter on the grid attached to such Note as **Appendix One** the amount of each disbursement made under this Agreement and to amend the Loan Amortization Schedule from time-to-time in accordance with Section 7. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Appendix One** to the Note and the Loan Amortization Schedule shall be conclusive evidence thereof.

(i) [Concession Agreement Payment Certificates. Pursuant to the Concession Agreement, [the public authority granting the concession] shall provide the following certificates to demonstrate to the Borrower and the TIFIA Lender the sufficiency of funds derived from a source other than the Government ("Non-Federal Funds") provided to the Borrower to repay the TIFIA Loan, which must be repaid exclusively with Non-Federal Funds:

(i) [Relevant certificates delivered pursuant to the Concession Agreement to be listed, including milestone payment certificates and/or annual/quarterly availability payment certificates (as applicable).]

Upon the failure of [*the public authority granting the concession*] to issue a [*insert relevant certificate*] as provided in the Concession Agreement, and until a [*insert relevant certificate*] has been issued that demonstrates the sufficiency of the Non-Federal Funds to pay the TIFIA Debt Service due on the next [____] Payment Dates, the priority in application of Project Revenues pursuant to Section 8 of this Agreement and Section [____] of the Collateral Agency Agreement shall be modified such that the Non-Federal Funds received by the Borrower under the Concession Agreement and deposited in the Revenue Account shall be applied first to the payment of the amounts due with respect to the TIFIA Debt Service in accordance with Section [____] of the Collateral Agency Agreement, and second, to the payment of the Non-Federal Funds of Operations and Maintenance Expenses in accordance with Section [____] of the Collateral Agency Agreement.]³⁷

SECTION 10. Prepayment.

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

(i) Upon the incurrence of any Additional Senior Obligations permitted to be incurred pursuant to clause (d) of the definition thereof, in an amount equal to fifty percent (50%) of the net proceeds of such Additional Senior Obligations (after (A) repayment of any outstanding Senior Obligations refinanced with such Additional Senior Obligations, (B) any deposits required to satisfy the Senior Debt Service Reserve Required Balance, (C) payments to the [*applicable public entity*] required under the Concession Agreement (other than concession payments), and (D) payment of costs related to the issuance of such Additional Senior Obligations not in excess of two percent (2%) of the principal amount thereof);

(ii) On each Semi-Annual Payment Date on and after the Debt Service Payment Commencement Date, in an amount equal to the lesser of (A) the amount remaining in the Revenue Account (as defined in the Collateral Agency Agreement) after giving effect to the payments in clauses FIRST through _____ of Section _____ of the Collateral Agency Agreement on such date, and (B) an amount equal to [fifty percent (50%)] of the amount by which the aggregate Net Cash Flow that is deposited in the Revenue Account during the immediately preceding calendar year exceeds the projected Net Cash Flow for such period as reflected in **Exhibit J** (“TIFIA Revenue Share Amount”);

(iii) Upon receipt of any Termination Compensation, in an amount equal to the proceeds thereof less the amount of such proceeds required to be used to prepay the Senior Obligations pursuant to the Collateral Agency Agreement; provided, however, that if the Termination Compensation is payable

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This provision is applicable when the Borrower receives availability payments pursuant to a Concession Agreement. Text to be revised as applicable.

during the pendency of a Bankruptcy Related Event, then such proceeds shall be applied pro rata to prepay Senior Obligations and the TIFIA Loan;

(iv) Following the determination thereof in accordance with the Collateral Agency Agreement, any Net Loss Proceeds;

(v) On each Semi-Annual Payment Date, if the Restricted Payment Conditions are not satisfied as of such Semi-Annual Payment Date and were not satisfied as of the most recent Semi-Annual Payment Date prior thereto, in an amount equal to all amounts then on deposit in the Distribution Lockup Account (but excluding any amounts deposited in the Distribution Lockup Account on such Semi-Annual Payment Date) less the amount of such funds required to be used to prepay the Senior Obligations pursuant to the Collateral Agency Agreement; provided, however, that if such prepayment is payable during the pendency of a Bankruptcy Related Event, then such proceeds shall be applied pro rata to prepay Senior Obligations and the TIFIA Loan; and

(vi) [*Other applicable mandatory prepayment requirements*].³⁸

Each prepayment pursuant to this Section 10(a) shall be effected pursuant to Sections [_____] of the Collateral Agency Agreement (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional. The Borrower may prepay the TIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1 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 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.

(c) General. Notice having been given as provided in Section 10(b), the principal amount of the TIFIA Loan stated in such notice or the whole thereof, as the case may be, shall become due and payable on the prepayment date stated in such notice, together with interest accrued and unpaid to the prepayment date on the principal amount then being prepaid. The amount of principal and interest due and payable as a result of a mandatory or optional prepayment shall be paid (i) in case the entire unpaid balance of

³⁸ Additional prepayment events to be determined by the TIFIA Lender on a transaction-specific basis (*e.g.*, prepayment with excess construction proceeds available upon completion of the Project).

the principal of the Note is to be prepaid, upon presentation and surrender of such Note evidencing the obligation to repay such TIFIA Loan to the Borrower or its representative at the principal office of the TIFIA Lender, and (ii) in case only part of the unpaid balance of principal of such Note is to be prepaid, the TIFIA Lender may make a notation on the Note indicating the amount of principal of and interest on such Note then being prepaid. All such partial prepayments of principal shall be applied to reduce future payments due on the TIFIA Loan in inverse order of maturity or as otherwise agreed to by the TIFIA Lender, in its sole discretion. If said monies shall not have been so paid on the prepayment date, such principal amount of such Note shall continue to bear interest until payment thereof at the rate provided for in Section 6.

SECTION 11. Compliance With Concession Agreement. [To be drafted as applicable]

SECTION 12. Compliance with Laws. The Borrower shall, and shall require its contractors and subcontractors to, abide by all applicable federal and state laws. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The [FHWA Division Office] has oversight responsibility for ensuring compliance with all applicable provisions of federal law. [Pursuant to 23 U.S.C. § 106(c) and the Modal Oversight / Compliance Agreement, [insert responsible party] will be responsible for certain Project oversight activities.]³⁹ The Borrower acknowledges receipt of the Modal Oversight / Compliance Agreement and hereby agrees to cooperate with [[insert responsible party] and]⁴⁰ the [FHWA Division Office] in carrying out their duties under the Modal Oversight / Compliance Agreement. The Borrower agrees that there will be no irreversible or irretrievable commitment of resources, including physical construction, before all state and/or federal environmental permits required for commencement of construction of the relevant portion of the Project are finalized and approved by the appropriate resource agencies. In the event that an environmental permit that has not been obtained is required after construction has begun, the Borrower shall take immediate steps to acquire that permit. If the Borrower begins construction before all required permits have been obtained, the Borrower shall assume the risk of any loss associated therewith.

SECTION 13. Conditions Precedent.

(a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective and the TIFIA Lender shall have no obligation to make the initial disbursement of loan proceeds to the Borrower 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 Collateral Agent each of the Security Documents to which the Borrower is a party and the Note, each in form and substance satisfactory to the TIFIA Lender

³⁹ To be included where State has assumed oversight responsibilities in accordance with §106(c).

⁴⁰ To be included where State has assumed oversight responsibilities in accordance with §106(c).

and the Collateral Agent. Each of the [Equity Sponsors][Members] shall have duly executed and delivered to the Collateral Agent a Pledge Agreement with respect to its ownership interest in the Borrower, together with the stock certificates or other certificates (if any) evidencing such ownership interests and appropriate stock powers or other transfer documents duly executed in blank, in each case in form and substance satisfactory to the TIFIA Lender and the Collateral Agent.

(ii) Counsel to the Borrower and [each Member] shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion that include those opinions set forth on **Exhibit H** and swap counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions in substantially the form attached hereto as **Exhibit I**.

(iii) The Borrower shall have provided a certificate as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to each Borrower Related Party and each Principal Project Party.

(iv) The Borrower shall have provided to the TIFIA Lender evidence satisfactory to the TIFIA Lender that the Project has satisfied the applicable planning and programmatic requirements of 23 U.S.C. §§ 134 and 135.

(v) 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 an Investment Grade Rating to the Initial Senior Obligations and a rating on the TIFIA Loan.⁴¹

(vi) The Borrower shall have delivered to the TIFIA Lender a certificate designating the Borrower's Authorized Representative and such person's position and incumbency.

(vii) The Initial Senior Loan Agreement, the Intercreditor Agreement, the other Senior Loan Documents and the initial Hedging Agreements shall have been executed by each of the parties thereto and delivered to the TIFIA Lender, each in form and substance satisfactory to the TIFIA Lender, and all

⁴¹ If the total principal amount of the Initial Senior Obligations and the TIFIA Loan is less than \$75,000,000, one rating agency opinion for each of the Initial Senior Obligations and the TIFIA Loan shall be sufficient. If the TIFIA Loan is the Borrower's senior debt obligation for the Project, or if the aggregate principal amount of the TIFIA Loan is greater than the aggregate principal amount of the Borrower's senior debt obligation for the Project, this condition will reflect that the TIFIA Loan shall be required to receive an Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies (unless the principal amount of the TIFIA Loan is less than \$75,000,000, in which case one opinion from a Nationally Recognized Rating Agency shall be sufficient).

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)(vii), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(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 complete the Project.

(ix) The Borrower shall have delivered to the TIFIA Lender an original fully executed counterpart (or a certified copy) of the Traffic and Revenue Study in form and substance acceptable to the TIFIA Lender [and the Traffic Consultant].

(x) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(xi) The Borrower shall have provided to the TIFIA Lender executed copies of the Equity Funding Agreement and any documentation evidencing Equity Credit Support. The Equity Funding Agreement and any Equity Credit Support arrangements (including any Equity Letter of Credit) shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(xii) The Borrower shall have provided certified copies of all available agreements related to the acquisition or control of any Project right-of-way to be acquired with the proceeds of the TIFIA Loan.

(xiii) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that it has all permits and Governmental Approvals necessary to commence construction.

(xiv) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model acceptable to the TIFIA Lender on or prior to the Effective Date demonstrating that the projected Project Revenues shall be sufficient to meet the Loan Amortization Schedule and satisfy the Rate Coverage Test contained in Section 16(l) hereof.

(xv) The Borrower shall have delivered to the Collateral Agent copies of UCC-1 financing statements covering the Collateral, satisfactory to the TIFIA Lender and the Collateral Agent in form and substance, that have been filed with the Secretary of State of the State and with the [Secretary of State of the State of Borrower Incorporation], which the parties intend shall notify third parties of Collateral Agent's interest in the Collateral.

(xvi) The Borrower shall have made arrangements satisfactory to the TIFIA Lender to pay to the TIFIA Lender, within thirty (30) Business Days after the Effective Date, 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.

(xvii) The Borrower shall have provided evidence of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.).

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

(xix) 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 and evidence of the closing of the Senior Obligations).

(xx) The Borrower shall have obtained a Data Universal Number System number, a number from the Federal System for Award Management (formerly the federal Central Contractor Registry), and a Federal Employer Identification Number.

(xxi) The Borrower shall have delivered to the TIFIA Lender (A) certificates of insurance evidencing that the Borrower has obtained the insurance policies required by the Concession Agreement and the Senior Loan Documents, in each case (other than workers' compensation insurance) reflecting the TIFIA Lender as an additional insured and (B) at the TIFIA Lender's request, copies of such insurance policies. The Borrower shall have provided to the TIFIA Lender a copy of the Insurance Advisor's report (the "Insurance Advisor Report") delivered to the Senior Lenders pursuant to Section [____] of the Senior Loan Agreement, together with a reliance letter, duly executed by the Insurance Advisor and in form and substance reasonably satisfactory to the TIFIA Lender, authorizing the TIFIA Lender's reliance thereon.⁴²

(xxii) The Borrower shall have provided to the TIFIA Lender evidence that each of the Borrower and [Member][Equity Sponsor][each other Borrower Related Party] 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 as now conducted, including [(i) a good

⁴² In the event the Borrower does not incur Senior Obligations or incurs Senior Obligations that do not require delivery of an insurance advisor's report, the TIFIA Lender may require the Borrower to retain an insurance advisor and obtain such a report.

standing certificate in its jurisdiction of formation, and a certificate of foreign qualification in each jurisdiction necessary for such Person to perform its obligations under the Related Documents to which it is a party]⁴³ and (ii) a copy of its Organizational Documents, as in effect on the Effective Date, certified, if applicable, by the Secretary of State of its jurisdiction of formation and which shall have not been amended since the date of the last amendment thereto shown on the certificate.

(xxiii) 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 TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and [the FHWA Division Office] to audit such costs.

(xxiv) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction that the performance security instruments to be delivered or received by the Borrower under any Principal Project Contract have been obtained and delivered and that each such instrument is in full force and effect.

(xxv) The representations and warranties of the Borrower set forth in this Agreement (including Section 14) and in each other Related Document shall be true and correct, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxvi) Each of the conditions set forth in Section 13(b) shall have been satisfied or waived in writing by the TIFIA Lender.

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

(i) Any portion of the Equity Commitment that is required to be funded on or prior to the disbursement date under the TIFIA Loan has been, or will be, fully funded through an Equity Contribution and the Borrower has provided to the TIFIA Lender evidence reasonably satisfactory thereto of all such Equity Contributions. Each such Equity Contribution was, or will be, applied towards payment of Total Project Costs and, after the making of any such Equity Contribution, the outstanding portion of the Equity Commitment shall be fully supported by Equity Credit Support.

(ii) The Borrower shall have provided to the TIFIA Lender evidence satisfactory to the TIFIA Lender that prior thereto, or simultaneously

⁴³ Applicable to private borrowers only.

therewith, a disbursement of Senior Obligation proceeds [and Equity Contributions] has occurred such that as of such TIFIA Loan disbursement, the aggregate amount of all disbursements of the TIFIA Loan (including the requested disbursement) shall not exceed [____] percent ([____]%) of the total amount of Eligible Project Costs.

(iii) The Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 22(a), which Financial Plan (or update thereto) reflects that amortization of the principal amount of any Senior Obligations shall not commence until after the end of the Capitalized Interest Period and on or after the Debt Service Payment Commencement Date.

(iv) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all available agreements related to the acquisition or control of any Project right-of-way to be acquired with the proceeds of the TIFIA Loan, all Principal Project Contracts and all Additional Project Contracts (including, in each case, any amendment, modification or supplement thereto).

(v) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that it has all permits and Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project.

(vi) Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 13(a)(xxi) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vii) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Event of Default or event of default under any other Related Document and (B) no event which 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, shall have occurred and be continuing.

(viii) The representations and warranties of the Borrower set forth in this Agreement (including Section 14) and in each other Related Document shall be true and correct in all material respects (except to the extent any representation and warranty itself is qualified by "materiality," "Material Adverse Effect" or a similar qualifier, in which case, it shall be true and correct in all respects) 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 in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality," "Material Adverse Effect" or a

similar qualifier, in which case, it shall be true and correct in all respects) as of such earlier date).

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

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

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

(xii) As required pursuant to Section 603(b)(9) of the Act, evidence satisfactory to the TIFIA Lender that the total federal assistance provided to the Project shall not exceed eighty percent (80%) of Eligible Project Costs.

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 clauses (b) and (l) of this Section, 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 [] duly organized, validly existing and in good standing under the laws of [], has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the Note, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents. [The Borrower is qualified to do business in the State and in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary or desirable.]⁴⁴

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing the Related Documents to which the Borrower is a party are duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the TIFIA Loan Documents has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in

⁴⁴ Applicable to private borrowers only.

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, or (ii) conflict in any material respect with, or constitute a violation, breach or default (with due notice or the passage of time or both) by the Borrower of or under, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(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. There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower after reasonable inquiry and investigation, threatened against or affecting the 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 or, 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 which 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 Security Documents establish, in favor of the Collateral Agent for the benefit of the TIFIA Lender, the valid and perfected Liens on the Collateral which they purport to create; such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Collateral except as

provided in the Intercreditor Agreement or to the extent such other Liens are entitled to priority as a matter of law and the Borrower is not in breach of any covenants set forth in Section 16(a) of this Agreement and the Security Documents with respect thereto. From and after the initial disbursement hereunder, (i) all documents and instruments, including all applicable UCC-1 financing statements, have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish and perfect the Collateral Agent's Lien in and to the Collateral (for the benefit of the Secured Parties) to the extent contemplated by the Security Documents and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Security Documents or UCC-1 financing statements have been paid.

(h) No Debarment. Neither the Borrower, any other Borrower Related Party, any Principal Project Party, nor any of their respective 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 in substantially the form of **Exhibit C**.

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

(j) Compliance with NEPA. The Borrower has complied, with respect to the Project, with all applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.).

(k) Transportation Improvement Program. The Project has been included in the metropolitan transportation improvement program for [_____], in the State transportation plan, and in the approved State transportation improvement program, in each case to the extent required by 23 U.S.C. § 602(a)(3).

(l) Credit Ratings. The obligations of the Borrower under the Senior Loan Agreement have received an Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, the obligations of the Borrower under this Agreement have received a credit 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.⁴⁵

⁴⁵ If the total principal amount of the Initial Senior Obligations and the TIFIA Loan is less than \$75,000,000, one rating agency opinion for each of the Initial Senior Obligations and the TIFIA Loan shall be sufficient. If the TIFIA Loan is the Borrower's senior debt obligation for the Project, or if the aggregate principal

(m) No Defaults. The Borrower is not in default under the terms of any Related Document, and no event has occurred or condition exists which, with due notice or lapse of time or both, would constitute an Event of Default.

(n) Permits. All authorizations, consents, approvals, licenses, permits and reviews required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project have been obtained or effected and are in full force and effect and there is no basis for the revocation of any such authorization, consent, commitments or approval.

(o) Principal Project Contracts. Each Principal Project Contract is in full force and effect and all conditions precedent to the obligations of the respective parties under each Principal Project Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed and complete copy of each such Principal Project Contract (including all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. The Borrower is not in breach of any material term in or in default under any of such agreements or contracts, and to the knowledge of the Borrower no party to any of such agreements or contracts is in 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 and the assumptions therein) except that the assumptions in the Base Case Financial Model were reasonable in all material respects when made.

(q) OFAC. None of the Borrower, any other Borrower Related Party, nor, to the knowledge of the Borrower, any Principal Project Party (i) is in violation of: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder; (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 (1) that is charged with, or has reason

amount of the TIFIA Loan is greater than the aggregate principal amount of the Borrower's senior debt obligation for the Project, this condition will reflect that the TIFIA Loan shall be required to receive an Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies (unless the principal amount of the TIFIA Loan is less than \$75,000,000, in which case one opinion from a Nationally Recognized Rating Agency shall be sufficient).

to believe that he, she or it is under investigation for, any violation of any such laws; (2) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws; (3) that is named on the list of “Special Designated Nationals or Blocked Persons” maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list); (4) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law; (5) that is owned, controlled by, or affiliated with any Person identified in clause (1), (2), (3) or (4) of this clause (ii); or (6) 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, laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

(r) Capitalization. As of the Effective Date, (i) the only member(s) of the Borrower [is][are] the [Member(s)], (ii) [_____] owns [_____] percent ([_____]%) of the [Equity Interests] in the Borrower [and [_____] owns [_____] percent ([_____]%) of the [Equity Interests] in the Borrower], and (iii) all of the [Equity Interests] in the [Member(s)] are [directly][indirectly] all beneficially owned and controlled by the [Equity Sponsor(s)], have been duly and validly authorized and issued, and there are no outstanding options, warrants, calls or other rights to subscribe for or otherwise acquire any of such membership interests.

(s) Compliance with Law. The Borrower and each other Borrower Related Party is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and operations and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in clause (t) of this Section 14). To the Borrower’s knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**. No notices of violation of any applicable law have been issued, entered or received by the Borrower, any other Borrower Related Party or, to the Borrower’s knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, that in each case could reasonably be expected to result in a Material Adverse Effect.

(t) Environmental Matters. Except as set forth in Schedule 14(t), the Borrower, each other Borrower Related Party and, to the Borrower’s knowledge, each Principal Project Party is in compliance with all applicable laws 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) or (vii) other environmental, health or safety matters

(collectively, “Environmental Laws”), in each case to the extent related to the Project. All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Neither the Borrower nor any other Borrower Related Party has received any communication or notice (written or oral), whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower or such other Borrower Related Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future. Schedule [] lists all Governmental Approvals relating to Environmental Laws for the Project. The Borrower has provided to the TIFIA Lender all assessments, reports, data, results of investigations or audits, and other information in the possession of or reasonably available to the Borrower or any other Borrower Related Party regarding environmental matters pertaining to the Project.

(u) Sufficient Rights and Utilities. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient for the construction, operation, maintenance and repair of the Project. The Principal Project Contracts and the Governmental Approvals listed in Schedule 14(u) create rights in the Borrower sufficient to enable the Borrower to [own,] construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(v) Insurance. Schedule 14(v) lists all insurance policies of any nature maintained by the Borrower with respect to the Project as of the Effective Date, as well as a summary of the terms of each such policy. The Borrower is in compliance with all insurance obligations required under each Principal Project Contract and has implemented all insurance requirements recommended in the Insurance Advisor Report.

(w) Title. The Borrower and each other Borrower Related Party has valid legal and beneficial title to, or a valid leasehold interest in, the personal property and other assets and revenues thereof on which it purports to grant Liens pursuant to the Security Documents, in each case free and clear of any Lien of any kind, except for Permitted Liens.

(x) 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 upon the Project or any of its revenues, properties or assets in relation to the Project. There are no Liens on the Equity Interests, except for Liens imposed pursuant to the TIFIA Loan Documents or the Senior Loan Documents.

(y) Intellectual Property. Except as set forth in Schedule 14(y), the Borrower owns, or has adequate licenses or other valid rights to use, all material 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 necessary for the Project and the operation of its business as currently contemplated without, to the Borrower's knowledge, any conflict with the rights of others. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(z) 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.

(aa) Financial Statements. Each income statement, balance sheet and statement of operations, changes in member capital and cash flow (collectively, "Financial Statements") delivered to the TIFIA Lender pursuant to Section 22(d) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of such Person as of the respective dates of the balance sheets included therein and the results of operations of such Person for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of such Person of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(bb) Taxes. The Borrower has filed all tax returns required by applicable laws to be filed by it and has paid (i) all income taxes payable by it that have become due pursuant to such tax returns and (ii) all other material taxes and assessments payable by it that have become due (other than those Taxes that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP).]⁴⁶

(cc) ERISA. [No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material

⁴⁶ Text to be revised as appropriate in the event Borrower is a public agency or other Governmental Authority.

Adverse Effect. The minimum funding standards of ERISA and the Code with respect to each Plan have been satisfied.]⁴⁷

(dd) Transactions with Affiliates. Other than as set forth on Schedule 14(dd) hereto, the Borrower is not engaged in any transaction or series of transactions with any Affiliate of the Borrower unless such transaction or series of transactions is on terms that are no less favorable to the Borrower than would be available in a comparable transaction with an unrelated third party.

(ee) Sufficient Funds. The aggregate of all funds that are (i) undrawn but committed, or reasonably expected to be available, under the Senior Loan Agreements, this Agreement and the Equity Funding Agreement, (ii) received or receivable delay payments and insurance proceeds in respect of any casualty loss (other than any proceeds of business interruption insurance, delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) and (iii) available under any other unused equity funding that is committed or reasonably expected to be available, will be sufficient to pay all Eligible Project Costs and other amounts necessary to achieve Substantial Completion.

(ff) Federal Involvement. As required pursuant to Section 603(b)(9) of the Act, the total federal assistance provided to the Project does not exceed eighty percent (80%) of Eligible Project Costs.

(gg) Patriot Act. To the extent the Patriot Act is applicable to any Borrower Related Party, the Borrower and, to the Borrower's knowledge, each such other Borrower Related Party, has established an anti-money laundering compliance program as required by the Patriot Act.

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 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 is duly

⁴⁷ Where the Borrower is a public agency or other Governmental Authority, this representation will be replaced with the following provision: "Neither 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."

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 all Secured Obligations (other than contingent indemnity obligations) are paid in full 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 for the better assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Collateral (whether now existing or hereafter arising) granted to the Collateral Agent for the benefit of the TIFIA Lender pursuant to the Security Documents, or intended so to be granted pursuant to the Security Documents, or which the Borrower may become bound to grant, and the Collateral is and will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Security Documents, other than as permitted by such documents or by this Agreement, and all corporate action on the part of the Borrower to that end shall be duly and validly taken at such times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Collateral granted pursuant to the Security Documents and all the rights of the Collateral Agent for the benefit of the TIFIA Lender under the Security Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(b) Copies of Documents. The Borrower shall furnish to the TIFIA Lender a copy of any offering document and cash flow projections prepared in connection with the incurrence of any Permitted Debt, prior to the incurrence of any such Permitted Debt, as well as copies of any continuing disclosure documents, 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 to the TIFIA Lender, promptly after execution thereof, a copy of each Additional Project Contract that commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower of, more than \$2,500,000.

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

(d) Prosecution of Work. The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of Borrower's industry, using its best efforts at all times.

(e) Operations and Maintenance.

(i) The Borrower shall (A) operate and maintain the Project (1) in a reasonable and prudent manner and (2) substantially in accordance with the Financial Plan (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Project) and (B) maintain the Project in good repair, working order and condition and in accordance with the requirements of the Concession Agreement. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises and authorizations material to the conduct of its business, and comply in all material respects with all applicable federal, state and local laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over the Borrower or its assets or operations.

(ii) Following the Substantial Completion Date, the Borrower shall have the right to incur Operations and Maintenance Expenses or Capital Expenditures without any consent or approval of the TIFIA Lender, the Independent Engineer or any other person if such costs do not exceed an amount equal to [one hundred ten percent (110%)] of the amount budgeted therefor in the applicable Financial Plan. Any Operations and Maintenance Expenses or Capital Expenditures in excess of such amounts will require the approval of the TIFIA Lender (in consultation with the Independent Engineer).

(f) Insurance.

(i) The Borrower shall at all times maintain insurance on the Project in accordance with the requirements set forth in the Insurance Advisor Report and, otherwise, with responsible insurers, as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties in accordance with the requirements of the Concession Agreement and the Senior Loan Documents, as applicable.

(ii) The Borrower shall deliver to the TIFIA Lender (A) certifications, notices and reports of the Insurance Advisor, (B) insurance brokers' letters and (C) certificates of insurance, in each case, as and when such materials are required to be delivered to the [Senior Lenders] pursuant to the Senior Loan Agreement and, upon the request of the TIFIA Lender, copies of underlying insurance policies obtained by or on behalf of the Borrower.

(g) Notice. The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events, setting forth details of such event:

(i) Events of Default: any Event of Default or any event that, given notice or the passage of time or both, would constitute an Event of Default;

(ii) **Litigation:** the filing of any actual litigation, suit or action, or the delivery to the Borrower of any written claim, that could reasonably be expected to have a Material Adverse Effect;

(iii) **Insurance Claim:** any insurance claims in excess of \$1,000,000 either individually or in the aggregate;

(iv) **Amendments:** any amendments delivered to, received from or entered into with any counterparty under a Principal Project Contract;

(v) **Defaults:** any material breach or default or event of default on the part of the Borrower or any other party under any Principal Project Contract;

(vi) **Uncontrollable Force:** the occurrence of any Uncontrollable Force;

(vii) **Project Changes:** any (A) change to the Total Project Cost forecasts [in excess of [] percent ([]%) of total forecasted Total Project Costs] or (B) material change to the Construction Schedule; and

(viii) **Other Adverse Events:** the occurrence of any other event or condition that could reasonably be expected to result in a Material Adverse Effect.

(h) **Remedied Action.** Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 16(g), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) **Maintain Legal Structure.** The Borrower shall maintain its existence as [], a [] under the laws of [].

(j) **Annual Rating.** The Borrower shall, commencing in [], no later than the last Business Day of June of each year during the term of the TIFIA Loan, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the Senior Obligations and on the TIFIA Loan by a Nationally Recognized Rating Agency, together with the rating report or letter delivered by such Nationally Recognized Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.

(k) **Project Accounts.**

(i) The Borrower shall maintain the Senior Debt Service Reserve Account in an amount equal to the Senior Debt Service Reserve Required Balance and the TIFIA Debt Service Reserve Account in an amount equal to the TIFIA Debt Service Reserve Required Balance, in each case in accordance with the provisions of the Collateral Agency Agreement. Amounts in the Senior Debt Service Reserve Account shall be made available to ensure the timely payment of

Senior Debt Service on the Senior Obligations and amounts in the TIFIA Debt Service Reserve Account shall be made available to ensure the timely payment of TIFIA Debt Service on the TIFIA Loan. The Borrower may replace all or a portion of the required balance of each such account, in accordance with the terms of the Collateral Agency Agreement, with an irrevocable letter of credit, insurance policy or similar instrument provided by a financial institution with a long-term credit rating in one of the top two (2) Rating Categories.

(ii) The Borrower shall cause the other Reserve Accounts to be funded in such amounts and under such conditions as are required by the Collateral Agency Agreement.

(iii) Amounts on deposit in the Project Accounts shall be held uninvested or invested in Permitted Investments. Any such Permitted Investments must mature or be redeemable at the election of the holder on or prior to the date on which the funds invested in such Permitted Investments are needed for any payment from the applicable Project Account.

(l) Rate Coverage.⁴⁸ The Borrower shall, subject to the remainder of this paragraph, fix, charge and collect rates and charges such that Net Cash Flow in any Calculation Period shall be projected to produce (i) a Senior Debt Service Coverage Ratio at least equal to [____] in such Calculation Period and (ii) a Total Debt Service Coverage Ratio at least equal to [____] in such Calculation Period (clauses (i) and (ii) collectively, the “Rate Coverage Test”). If the forecast furnished by the Borrower pursuant hereto demonstrates that projected Net Cash Flow may be inadequate to satisfy the Rate Coverage Test for any Calculation Period until the Final Maturity Date, or if the Borrower fails to satisfy the Rate Coverage Test in respect of any Calculation Period then ended, the Borrower shall (A) within [thirty (30)] days after request by the TIFIA Lender, engage the Traffic Consultant to review and analyze the operations of the Project and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Cash Flow so as to satisfy the Rate Coverage Test, (B) cause the Traffic Consultant to issue its report, including any such recommended actions, no later than [ninety (90)] days following such engagement, and (C) either (1) implement the Traffic Consultant’s recommendation or (2) undertake an alternative course of action after demonstrating to the TIFIA Lender’s satisfaction the manifest errors contained in the Traffic Consultant’s recommended actions, or to the extent agreed upon by the TIFIA Lender, undertake an alternative course of action that will ensure the Borrower’s ability to meet its payment obligations under this Agreement; provided, that the Borrower shall not be required to take any action that may result in a breach by the Borrower of its obligations under the Concession Agreement.

(m) [Equity Contributions and Related Provisions].

⁴⁸ Covenant to be modified to be a Rate Coverage Test or comparable provision depending on the tolling provisions under the Concession Agreement.

(i) The Equity Sponsor has provided the Equity Commitment in an aggregate amount of up to \$[_____]. The Equity Contributions shall be payable no later than the dates required by the applicable Equity Funding Agreement. Such Equity Contributions will be used for the purposes specified in the Equity Funding Agreement and the Collateral Agency Agreement.

(ii) If at any time an issuer of an Equity Letter of Credit ceases to be a Qualified Issuer, the Borrower shall cause such Equity Letter of Credit to be replaced by a new Equity Letter of Credit issued by a Qualified Issuer within ten (10) Business Days of the date on which the current issuer ceased to be a Qualified Issuer, which replacement Equity Letter of Credit shall satisfy the requirements of the Equity Funding Agreement and shall have the same terms and conditions (including maturity date and drawable amount) as the Equity Letter of Credit being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender.

(iii) Each Equity Letter of Credit shall provide that if the Borrower fails to deliver a replacement Equity Letter of Credit from a Qualified Issuer and on terms and conditions satisfactory to the TIFIA Lender at least [___] days prior to the stated expiration date of the current Equity Letter of Credit, the Collateral Agent shall be entitled to draw the full amount of the existing Equity Letter of Credit and hold the proceeds of such draw in an account subject to the Collateral Agency Agreement until such time as the Borrower delivers a replacement Equity Letter of Credit from a Qualified Issuer on terms and conditions satisfactory to the TIFIA Lender.]⁴⁹

(n) Material Obligations. 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 Project Revenues or its 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; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(o) Hedging.

(i) To protect against fluctuations in interest rates, the Borrower shall make arrangements for a Qualified Hedge to be in place and

⁴⁹ To be used where applicable, subject to modification based on the terms of applicable Equity Funding Agreements or other applicable equity arrangements.

maintained at all times with respect to the Senior Obligations during any period in which the Senior Obligations bear interest at a Variable Interest Rate. The initial Qualified Hedge must have an aggregate stated notional amount of not less than ninety-eight percent (98%) (and not more than one hundred two percent (102%)) of the aggregate principal amount of the Variable Interest Rate Senior Obligations projected to be outstanding during the term of the Qualified Hedges and have a stated maturity or termination date not earlier than [the final maturity date] of the Initial Senior Obligations. The Borrower, at all times when the TIFIA Loan is outstanding, shall have in full force and effect Qualified Hedges with an aggregate notional amount of not less than ninety-eight percent (98%) (and not more than one hundred two percent (102%)) of the aggregate principal amount of the Variable Interest Rate Senior Obligations projected by the Borrower from time to time to be outstanding during the term of the TIFIA Loan, and such Qualified Hedges shall have a stated maturity or termination date not earlier than the final maturity date of the TIFIA Loan.

(ii) Each Qualified Hedge shall provide for a fixed interest rate or interest rate cap resulting in fixed payment amounts payable by the Borrower that, when taken together with the Bank Lending Margin and any premium or margin payable on such Qualified Hedge, represents a rate that is less than or equal to the Loan Underwriting Rate. The Borrower's obligations to pay (A) any payments required in connection with the acquisition of a Qualified Hedge to assure that the fixed interest rate to be paid by the Borrower or interest rate cap provided to the Borrower under the Qualified Hedge, together with the Bank Lending Margin, is at or below the Loan Underwriting Rate, (B) Hedging Obligations and (C) Hedging Termination Obligations shall be from the sources and in the priority specified in the Collateral Agency Agreement. Each Qualified Hedge shall be secured and documented on terms and conditions substantially similar to the terms and conditions of the Initial Qualified Hedge unless otherwise approved by the TIFIA Lender. The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge, either (I) a Subsequent Qualified Hedge (as defined below) is in full force and effect to the extent the Senior Obligations bear interest at a Variable Interest Rate or (II) the Variable Interest Rate Senior Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Senior Loan Agreement.

(iii) Any Qualified Hedge entered into subsequent to the Initial Qualified Hedge (a "Subsequent Qualified Hedge") shall (A) commence no later than the termination date of the Qualified Hedge which is terminating and terminate no earlier than the date which is the first (1st) anniversary of the effective date of such Subsequent Qualified Hedge or (B) commence no later than the termination date of the existing Qualified Hedge and terminate no earlier than the final maturity date of the Variable Interest Rate Senior Obligations.

(iv) The Borrower shall not commence seeking any bids from any Qualified Hedge Provider for a Subsequent Qualified Hedge unless, at least thirty (30) days prior thereto, the Borrower has delivered to the TIFIA Lender

evidence satisfactory to the TIFIA Lender and certified by the Borrower's Authorized Representative that the process to be utilized by the Borrower for selecting such Subsequent Qualified Hedge is a competitive process designed to obtain a fair market price and to avoid conflicts of interest. At the time the Subsequent Qualified Hedge is priced, the Borrower shall provide to the TIFIA Lender a certificate from a qualified third party acceptable to the TIFIA Lender to the effect that either the underlying LIBOR based fixed rate or the price of acquiring such Subsequent Qualified Hedge is a fair price based on the interest rate market at the time such Qualified Hedge is priced.

(v) The Collateral Agent shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower's obligations to the TIFIA Lender under this Agreement. The Hedging Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Collateral Agent for deposit and disbursement in accordance with the Collateral Agency Agreement.

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

(vii) If at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider within ten (10) Business Days of the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank's Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank's Hedging Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of this Section 16(o).

(viii) Hedge Deposits.

(A) The Borrower is required to make payments to the Collateral Agent (each a "Hedge Deposit") for deposit into the Hedging Acquisition Account established under the Collateral Agency Agreement (1) on the Semi-Annual Payment Date occurring twelve (12) months prior to entering into each Subsequent Qualified Hedge with a term of one (1) year or less (a "Short Term Qualified Hedge") and (2) on each of the Semi-Annual Payment Dates occurring twelve (12) and six (6) months prior to entering into each Subsequent Qualified Hedge with a term greater than one (1) year (a "Long Dated Qualified Hedge").

(B) The Hedge Deposit for a Short Term Qualified Hedge shall be the mid-market amount estimated by the Borrower at that

time to be necessary to purchase, at the scheduled termination of the then existing Qualified Hedge, a Subsequent Qualified Hedge obligating the Borrower to make payments based on a fixed rate of interest or interest rate cap equal to or less than the Loan Underwriting Rate minus the Bank Lending Margin for a period of one (1) year or less having a notional amount equal to the principal amount of the Variable Interest Rate Senior Obligations projected to be outstanding during the term of such Qualified Hedge.

(C) The first Hedge Deposit for a Long Dated Qualified Hedge shall be the mid-market amount estimated by the Borrower at that time to be necessary to provide one-half of the funds needed to purchase, at the scheduled termination of the then existing Qualified Hedge, a Subsequent Qualified Hedge obligating the Borrower to make payments based on a fixed rate of interest or interest rate cap equal to or less than the Loan Underwriting Rate minus the Bank Lending Margin for a period of greater than one (1) year having a notional amount equal to the principal amount of the Variable Interest Rate Senior Obligations projected to be outstanding during the term of such Qualified Hedge. The second Hedge Deposit for a Long Dated Qualified Hedge shall be the mid-market amount, if any, estimated by the Borrower at that time to be necessary, when added to the amount deposited for the first Hedge Deposit for a Long Dated Qualified Hedge, to purchase, at the scheduled termination date of the then existing Qualified Hedge, a Subsequent Qualified Hedge obligating the Borrower to make payments based on a fixed rate of interest or interest rate cap equal to or less than the Loan Underwriting Rate minus the Bank Lending Margin for a period of greater than one (1) year, having a notional amount equal to the principal amount of the Variable Interest Rate Senior Obligations projected to be outstanding during the term of such Qualified Hedge.

(D) For the purpose of determining the required Hedge Deposits, the Borrower shall provide the anticipated notional amounts of the Subsequent Qualified Hedge to a qualified third party who shall in turn calculate the amount of the Hedge Deposit in accordance with (vii) (B) and (C) above. The Borrower shall select, subject to the TIFIA Lender's approval, the qualified third party at least fifteen (15) days prior to the applicable Semi-Annual Payment Date.

(E) The Borrower's obligation to make any Hedge Deposit payments shall be from the sources and in the priority specified in Sections [_____] of the Collateral Agency Agreement.

(F) Provided that no Event of Default has occurred and is continuing, funds on deposit in the Hedging Acquisition Account shall be applied towards the purchase of a Subsequent Qualified Hedges. Any remaining balance in the Hedging Acquisition Account after such

purchase which exceeds the amount required to satisfy the Hedge Deposit requirements in this clause (vii) shall be transferred to the Revenue Account, as provided in the Collateral Agency Agreement.

(p) OFAC Compliance. None of the Borrower, the Equity Sponsors, [the Principal Project Parties,] nor, to the Borrower's knowledge, any Person owning (excluding Persons owning securities effected on a recognized public stock exchange, unless such securities were acquired in a transaction involving an initial public offering) or Controlling any of them, in each case, if the OFAC regulations are applicable to such entity, (i) shall violate (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy 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) shall be a Person (A) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws, (B) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws, (C) that is named on the list of "Special Designated Nationals or Blocked Persons" maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list), (D) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, 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 clause (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 and the jurisdiction where the Person resides, is domiciled or has its principal place of business. The Borrower shall not knowingly make a payment to any Principal Project Party that has violated any of the laws referenced in clause (i) of the preceding sentence or that is a Person described in clause (ii) of the preceding sentence.

(q) Concession Agreement. The Borrower (i) shall use the proceeds of the TIFIA Loan only for Eligible Project Costs, (ii) shall comply with the Concession Agreement in all material respects and (iii) shall not terminate the Concession Agreement without the TIFIA Lender's consent.

(r) Events of Loss; Loss Proceeds.

(i) If an Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all Loss

Proceeds stemming from such event in accordance with Section 10(a)(iv) and Section 16(r)(ii).

(ii) All Loss Proceeds shall be applied as provided in Section _____ of the Collateral Agency Agreement. Loss Proceeds shall be paid by the relevant insurers, reinsurers and Governmental Authorities, as applicable, directly to the Collateral Agent as loss payee and, if paid to the Borrower, shall be received in trust and for the benefit of the Collateral Agent segregated from other funds of the Borrower, and shall be paid over to the Collateral Agent in the same form as received (with any necessary endorsement).

SECTION 17. Negative Covenants. The Borrower covenants and agrees as follows until the date all Secured Obligations (other than contingent indemnity obligations) are paid in full and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Permitted Indebtedness. Except for Permitted Debt, the Borrower shall not without the prior written consent of the TIFIA Lender issue or incur indebtedness of any kind. Prior to the incurrence of Permitted Debt described in clauses (a) and (d) of the definition thereof, the Borrower shall provide a certificate to the TIFIA Lender certifying that such proposed Additional Senior Obligations, purchase money obligations or capitalized leases, as applicable, are authorized pursuant to this Section 17(a).

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, without the prior written consent of the TIFIA Lender, either (i) extinguish the Liens on the Collateral, except as provided under the Collateral Agency Agreement and other Security Documents, (ii) amend, modify or supplement any Related Document in a manner that could adversely affect the TIFIA Lender 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 connection with the TIFIA Loan, or (iv) terminate, assign, amend or modify, or waive timely performance by _____ [Concession grantor] or any other party of material covenants under, the Concession Agreement or any other Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender copies of any proposed amendments to any Related Document at least thirty (30) days prior to the effective date thereof.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof.

(d) Distributions. Except in accordance with this Section 17(d), the Borrower shall not at any time make (x) any distribution or other payment in respect of an outstanding equity interest in the Borrower, or in respect of any redemption,

repurchase or other acquisition thereof (or otherwise permit the withdrawal of capital from the Borrower), (y) any payment of, interest on or other amounts in respect of any debt for borrowed money owed by the Borrower to any holder of an outstanding equity interest in the Borrower, or (z) any payment to any Affiliate of the Borrower or of any holder of an equity interest in the Borrower (other than the reimbursement of out-of-pocket expenses incurred for the benefit of the Borrower in the ordinary course of business, and other than payments permitted pursuant to the provisions of Section 17(g)) (collectively, “Restricted Payments”). The Borrower may make Restricted Payments from monies on deposit in the Distribution Account or the Distribution Lockup Account on any Semi-Annual Payment Date if all of the following conditions (the “Restricted Payment Conditions”) have been satisfied:

(i) the Debt Service Payment Commencement Date has occurred; and

(ii) the Borrower has certified that, as of the relevant distribution date, after giving effect of such distribution:

(A) no Event of Default, or Event of Default which may exist with due notice or the passage of time or both, has occurred and is continuing, and no event of default under the Senior Loan Agreement, or an event of default which may exist with due notice or the passage of time or both under the Senior Loan Agreement, has occurred and is continuing;

(B) no Payment Default or default in respect of the payment of Senior Debt Service shall have occurred and be continuing, and all TIFIA Debt Service and Senior Debt Service for all Payment Dates occurring during the twenty-four (24) month period ending on such Semi-Annual Payment Date shall have been paid;

(C) each Reserve Account is fully funded;

(D) the Borrower is not insolvent and would not be rendered insolvent by the making of such proposed distribution;

(E) the Total Debt Service Coverage Ratio (1) for each Calculation Date occurring during the period of twenty-four (24) months ending on (and including) the most recent Calculation Date to occur (which may occur on such Semi-Annual Payment Date) in each case is or was, as applicable, equal to at least [____] (taking into account the proposed distribution and any distributions made during such period) and (2) for each Calculation Date occurring during the period of twenty-four (24) months ending on the second anniversary of such Semi-Annual Payment Date is, in each case, projected to equal at least [____] (taking into account the proposed distribution);

(F) the Senior Debt Service Coverage Ratio (1) for each Calculation Date occurring during the period of twenty-four (24) months

ending on (and including) the most recent Calculation Date to occur (which may occur on such Semi-Annual Payment Date) in each case is or was, as applicable, equal to at least [____] (taking into account the proposed distribution and any distributions made during such period) and (2) for each Calculation Date occurring during the period of twenty-four (24) months ending on the second anniversary of such Semi-Annual Payment Date is, in each case, projected to equal at least [____] (taking into account the proposed distribution);

(G) the TIFIA Loan Life Coverage Ratio, as of such Semi-Annual Payment Date, is equal to at least [____]; and

(H) solely with respect to any Restricted Payment (or portion thereof) to be made from monies on deposit in the Distribution Lockup Account, the Restricted Payment Conditions were satisfied in full on the most recent Semi-Annual Payment Date prior thereto.

(e) Additional Project Contracts. The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts or agreements) that commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower of, more than \$10,000,000.

(f) No Prohibited Sale or Assignment. The Borrower shall not sell 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, unless such sale or assignment could not reasonably be expected to result in a Material Adverse Effect and is made by the Borrower in the ordinary course of business.

(g) Transactions With Affiliates. The Borrower shall not sell or transfer any property or assets to, or purchase or acquire any property or assets of, or otherwise engage in any other material transactions with, any of its Affiliates, except transactions at prices and on terms and conditions not less favorable to the Borrower than fair market prices and on terms and conditions not less favorable to the Borrower than could be reasonably obtained on an arm's-length basis from unrelated third parties.

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

(i) No Prohibited Business. The Borrower will not at any time engage in any business or activity other than the design, construction, operation and maintenance of the Project and activities incidental or related thereto.

(j) Change of Control. The Borrower shall not permit a Change of Control to occur without the prior written consent of the TIFIA Lender, provided that, (x)

after the date that is two (2) years after Substantial Completion, and (y) as long as no Event of Default or an Event of Default which may exist with due notice or the passage of time or both, has occurred and is continuing, and no event of default under the Senior Loan Agreement, or an event of default which may exist with due notice or the passage of time or both under the Senior Loan Agreement, has occurred and is continuing, the TIFIA Lender may withhold such consent only if (A) the proposed transfer is prohibited by applicable law or (B) the Person to whom Control is proposed to be transferred is, in the judgment of the TIFIA Lender, not capable of performing the obligations and covenants of the Borrower under the Concession Agreement, which determination may be based upon, or take into account, one or more of the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (2) the capitalization of the proposed transferee; (3) the experience of the proposed transferee or the operations and maintenance contractor proposed to be engaged by such transferee in operating assets and facilities of the same type as, and otherwise comparable in size and nature to, the Project and performing other projects; and (4) the background and reputation of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects).

(k) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, (i) enter into any transaction of merger or consolidation or (ii) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person, other than purchases or other acquisitions of inventory or materials or spare parts or Capital Expenditures, each in the ordinary course of business in compliance with the applicable budget.

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 "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the

defense thereof; provided that such Indemnatee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 18 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 18. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnatee, 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 TIFIA Loan and the other transactions contemplated hereby and thereby, or the use of the proceeds thereof. All amounts due to any Indemnatee under this Section shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section shall survive the payment or prepayment in full or transfer of the Note, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section) 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. Such sale or reoffering shall be on such terms as the TIFIA Lender shall deem advisable. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower, which consent shall not be unreasonably withheld. The TIFIA Lender shall provide (a) at least sixty (60) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower to the effect that the TIFIA Lender is considering the sale or reoffering of the TIFIA Loan and (b) at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower confirming TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section shall not (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. The TIFIA Lender and the Borrower agree that for so long as any Senior Obligations or Hedging Agreements remain outstanding, the provisions contained in Section 8(a) hereof and in the Collateral Agency Agreement with respect to the TIFIA Lender's right to a first priority security interest in the Collateral upon the occurrence of a Bankruptcy Related Event with respect to the Borrower shall be of no force or effect following the complete sale of the TIFIA Loan to a commercial entity. However, should an assignment or sale be made to a federal government agency or instrumentality, the federal government shall retain the right to a first priority security interest in the Collateral upon the occurrence of any Bankruptcy Related Event with respect to the Borrower.

SECTION 20. Events of Default and Remedies.

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

(i) Payment Default. The Borrower shall fail to pay any of the principal amount of or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9, and any mandatory prepayment required pursuant to the provisions of Section 10(a)), when and as the payment thereof shall be required under this Agreement or the Note or on the Final Maturity Date (each such failure, a “Payment Default”);

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the Note or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after receipt by the Borrower from the TIFIA Lender of written notice thereof; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii) if and so long as within such thirty (30) day period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured; provided such failure is cured within one hundred eighty (180) days of the first occurrence of such failure;

(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. If so requested 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 the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made;

(v) Acceleration of Senior Obligations or Other Material Indebtedness. Any acceleration shall occur of the maturity of the Senior Obligations or of any other indebtedness of the Borrower 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 such Senior Obligations or Other Material Indebtedness shall not be paid in full upon the final maturity thereof;

(vi) Cross Default. (A) Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the Senior Loan

Documents, or made in or delivered pursuant to the documents (the “Other Loan Documents”) under which any Other Material Indebtedness shall be created or incurred, shall prove to be false or misleading in any material respect (each a “Misrepresentation Default”), or any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Senior Loan 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 Senior Loan Documents or the Other Loan Documents (as the case may be) with respect to such default (each a “Covenant Default”), if the effect of such Misrepresentation Default or Covenant Default shall be to permit the immediate acceleration of the maturity of any or all of the Senior Obligations or the Other Material Indebtedness (as the case may be), and, in the case of any such Misrepresentation Default or Covenant Default, the Borrower shall have failed to cure such Misrepresentation Default or Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of such Senior Obligations or Other Material Indebtedness;

(B) The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Related Document 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 Borrower shall have failed to cure such default or to obtain an effective written waiver thereof prior to the expiration of the applicable grace period specified in any such 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 clause if, in the case of any termination of a Principal Project Contract (other than the Concession Agreement), the Borrower replaces such Principal Project Contract (other than the Concession Agreement) with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness and experience as the counterparty being replaced (or otherwise reasonably acceptable to the TIFIA Lender) and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (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;

(vii) Judgments. One or more judgments for the payment of money in an aggregate amount in excess of \$1,000,000 and not otherwise covered by insurance shall be rendered against the Borrower and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment

creditor to attach or levy upon any assets of the Borrower to enforce any such judgment;

(viii) Change of Control. A Change of Control shall occur other than a Change of Control for which the TIFIA Lender has given its consent in accordance with Section 17(j);

(ix) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a [] under the laws of [];

(x) Failure to Make An Equity Contribution. Any Equity Contribution required to be made under the provisions of Section 16(m) or pursuant to the Equity Funding Agreement shall fail to be made at the time and in the amount so required;

(xi) 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;

(xii) Project Abandonment. The Borrower shall abandon the Project;

(xiii) Expiration or Termination of Concession Agreement or Project Lease. The Concession Agreement shall expire or be terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall cease to be in full force and effect; or the real property lease for the Project, if any, shall expire or be terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall cease to be in full force and effect; or

(xiv) 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 and the Borrower shall have in force an insurance policy or policies under which the Borrower is entitled to recover substantially all Senior Debt Service, TIFIA Debt Service and costs and expenses of the Borrower during such cessation of operations.

(b) Upon the occurrence of an Event of Default described in clause (iii) of Section 20(a), 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 an Event of Default described in clause (x) of Section 20(a), the TIFIA Lender may direct the Collateral Agent to immediately draw on or make a demand under any Equity Credit Support provided pursuant to

Section 16(m) at the absolute and sole discretion of the TIFIA Lender in such amounts as is deemed necessary.

(d) (i) Upon the occurrence of any Event of Default described in clause (xi)(A) of Section 20(a), all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and the unpaid principal amount of the TIFIA Loan, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the Note or the other TIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

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

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

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section shall relieve Borrower from its obligations pursuant to this Agreement, the Note or the other TIFIA Loan Documents, all of which shall survive any such action.

(h) Whenever any Event of Default hereunder shall have occurred and be continuing, the Borrower hereby confesses judgment in favor of the TIFIA Lender, absolutely and unconditionally, whereupon the TIFIA Lender may apply to any court of competent jurisdiction to render such judgment in favor of the TIFIA Lender, where permissible under applicable law.

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

(a) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Project Revenues, and any other revenues attributable to the Project, 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) 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 the officers and employees of the Equity Sponsor) and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 21(b) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 21(b) at any time when an Event of Default shall have occurred and be continuing.

(c) The Borrower shall maintain and retain all files relating to the Project and the TIFIA Loan until five (5) years after the later of the date on which (i) all rights and duties hereunder and under the Note (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, 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 that the TIFIA Lender may reasonably request from time to time.

(d) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) all reports or other written materials, other

than those that are ministerial in nature, sent to, or received from, any Nationally Recognized Rating Agency that has provided, or is being requested to provide, a rating on any indebtedness of the Borrower, (ii) all notices and other written communications, other than those that are non-substantive or ministerial in nature, received by it from the Senior Lender, (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 Senior Lender under the Senior Loan Agreement, 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) The TIFIA Lender shall have the right to conduct from time to time independent financial and compliance audits of the Borrower in accordance with the Single Audit Act of 1984, as amended, and Office of Management and Budget Circular A 133, “Audits of State and Local Governments” (as applicable), or as otherwise requested by the TIFIA Lender. Upon reasonable notice, the Borrower shall cooperate fully in conducting audits and shall provide full access to any books, documents, papers or other records which are pertinent to the Project or the TIFIA Loan, to the Secretary of the United States Department of Transportation, or the designee thereof, for necessary project or programmatic audits pursuant to 23 U.S.C. § 603, 49 C.F.R. § 80.19, 31 U.S.C. § 6503(h) and 31 U.S.C. § 7503(b).

SECTION 22. Financial Plan, Statements, and Reports.

(a) The Borrower shall provide to the TIFIA Lender and the FHWA Division Office, within sixty (60) days after the Effective Date and annually thereafter not later than ninety (90) days after the beginning of each Borrower Fiscal Year, 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, the FHWA Division Office and, for the period through the Substantial Completion Date, FHWA’s Office of Innovative Program Delivery. The FHWA Division Office’s approval of such Financial Plan, which consolidates all prior financial plans, is required prior to physical commencement of construction of the Project.

(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 FHWA’s Major Project Financial Plan requirements, as amended from time to time, and shall be in form and substance satisfactory to the TIFIA Lender.

(ii) The Financial Plan shall include: (A) a certificate signed by the Borrower’s Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower’s knowledge and belief; (B) a certificate

signed by the Borrower's Authorized Representative demonstrating that annual projected Project Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Rate Coverage Test established pursuant to Section 16(l), and (C) an electronic copy of the updated Base Case Financial Model for the period from inception thereof through the Final Maturity Date, in substantially the form heretofore provided to the TIFIA Lender, based upon assumptions and projections with respect to the Project Revenues, expenses and other financial aspects of the Project which shall reflect the prior experience and current status of the Project, and the expectations of management with respect to the Project, as of the most recent practicable date prior to the delivery of such model.

(iii) For the period through Substantial Completion, the Financial Plan shall: (A) provide the current estimate of the total cost of the Project 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 since the Base Case Financial Model delivered as of the Effective Date and since the preceding Financial Plan; (B) provide the current schedule and implementation plan for completing the Project, including the projected Substantial Completion Date; (C) identify major milestones for each phase of the Project and compare current milestone dates with milestone dates in the Base Case Financial Model delivered as of the Effective Date and since 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 since the Base Case Financial Model as of the Effective Date and since 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) based on the updated cash flow schedule, provide projected debt service coverage ratios for any Senior Obligations and the TIFIA Loan through the Final Maturity Date; (G) 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; (H) 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; (I) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative report on the progress of design, permitting, acquisition and construction of the Project since the Base Case Financial Model as of the Effective Date and since the preceding Financial Plan, describing in reasonable detail all significant activities concerning Project status including any material matters that may affect the future performance of the Borrower's obligations under this Agreement and

the causes thereof; and (J) comply in all respects with FHWA's Major Project Financial Plan requirements.

(iv) For the period following Substantial Completion until repayment of the TIFIA Loan in full, the Financial Plan shall: (A) provide an updated cash flow schedule showing annual cash inflows (Project Revenues, interest and other income) and outflows (Operations and Maintenance Expenses, Capital Expenditures, Senior Debt Service, TIFIA Debt Service (whether or not required to be paid pursuant to the provisions of Section 9), replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls; (B) provide current and estimated amounts of Project Revenues received and the amounts deposited into each of the accounts and subaccounts established under the Collateral Agency Agreement 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 Project Revenues, showing actual and projected debt service coverage ratios for the Senior Obligations and the TIFIA Loan; [(D) provide a schedule of then current toll rates and planned increases;] and (E) include a written narrative report explaining any variances in costs or 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 to include traffic and revenue reports, operational contracts, and third-party transactions.

(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 Total Debt Service Coverage Ratios for all Borrower Fiscal Years during the term of the TIFIA Loan. For the avoidance of doubt, the Borrower must comply with the continued reporting requirements of the FHWA Major Projects Financial Plan Guidance, as amended from time to time.

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

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

(i) As soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations and changes in member capital and of cash flow of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, 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

(ii) As soon as available, but no later than one hundred twenty (120) days after the end of each fiscal year of the Borrower, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations, changes in member capital and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the TIFIA Lender.

All such financial statements with respect to the Borrower 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) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(f) 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), 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 which, with notice or lapse of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such

period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

SECTION 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) development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. [Applicable state agency] shall be responsible for administering construction oversight of the Project in accordance with the Concession Agreement. [Applicable state agency's] oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the Modal Oversight / Compliance Agreement, which may be amended from time to time upon mutual agreement of [applicable state agency] and [the FHWA Division Office], or when so required by federal statute or otherwise required by the United States Congress. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation or other information as shall be requested by the TIFIA Lender, or its agents, including any independent engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender:

(i) Monthly Construction Progress Report. On or before the last Business Day of any calendar month during the Construction Period, a report executed by a Borrower's Authorized Representative (A) of 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) providing 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, (C) specifying the projected Substantial Completion Date, (D) providing 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, (E) specifying 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, (F) specifying any proposed or pending change orders, (G) specifying any material changes or deviations from the Borrower's land procurement plans or schedule, and (H) a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause the Construction Contractors to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any

Construction Contractor's performance of its obligations under the Construction Agreement to which it is a party.

(ii) Construction Contractor Reports. During the Construction Period, promptly after receipt thereof, a copy of each report delivered by each Construction Contractor to the Borrower pursuant to the Construction Agreement to which it is a party.

(iii) Traffic and Operating Report. For the period commencing after the Substantial Completion Date, deliver to the TIFIA Lender, not later than ninety (90) days after the end of each financial quarter, a traffic and operating report showing (A) the operating data for the Project for the previous financial quarter, including total Project Revenues received and total Operations and Maintenance Expenses and Capital Expenditures incurred, (B) the variances for such period between the Project Revenues actually received and the budgeted Project Revenues as shown in the Financial Plan, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more, and (C) the variances for such period between the actual Operations and Maintenance Expenses incurred and the budgeted Operations and Maintenance Expenses as shown in the Financial Plan, together with a brief narrative explanation of the reasons for any such variance of [ten percent (10%)] or more.

(iv) Permits. Promptly after the receipt or filing thereof, as the case may be (but in no event later than thirty (30) days after such receipt or filing), a copy of (A) each Governmental Approval or other consent or approval obtained by the Borrower, or obtained by any Construction Contractor and delivered to the Borrower pursuant to any Construction Agreement after the Effective Date, and (B) each filing made by the Borrower with any Governmental Authority (including [*the counterparty to the Concession Agreement*]) with respect to a Governmental Approval, except such as are routine or ministerial in nature.

(c) Project Operations. For the period following Substantial Completion, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and to require reporting on the operation and management of the Project and to provide copies of any contracts relating to the operation, maintenance and safety services for the Project as may be required from time to time. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation, or other information as shall be requested by the TIFIA Lender. In the event that the TIFIA Lender retains a financial oversight advisor under contract with the TIFIA Lender, which decision shall be within the sole discretion of the TIFIA Lender, to carry out the provisions of this Section, the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

SECTION 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, except that nothing in this Section shall be construed to relieve any Equity Sponsor of the Borrower from any liability it may incur under this Agreement or any of the other TIFIA Loan Document by reason of its status as the Equity Sponsor.

SECTION 25. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the United States or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the above Federal parties harmless, to the extent permitted by law and in accordance with Section 18, 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 a Delegation of Authority dated July 24, 2003, the Administrator delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. This authority was delegated to the Associate Administrator for Administration who in turn delegated such authority to the Director of the Office of Innovative Program Delivery on June 15, 2009. Pursuant to these delegations the above named officers, any of whom alone may act, serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Administrator for the purposes set forth herein.

SECTION 28. Servicer. The TIFIA Lender has designated [_____], as the initial Servicer hereunder and under the Note. 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 Note. The TIFIA Lender shall give the Borrower written notice of the appointment of any

successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the Note.

SECTION 29. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (FFY) [____] 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 [Servicer][TIFIA Lender] 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 [____] calculation, the TIFIA Lender will use the FFY [____] base amount of \$[____] 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 shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

(d) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time-to-time on and after the Effective Date for any and all fees, costs, charges and expenses incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys', engineers', and planning fees and professional costs, including all such fees, costs and expenses incurred as a result of or in connection with:

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

(ii) any amendment, 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 any Collateral, or advice in connection with the administration, preservation in full force and effect and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder; and

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

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

SECTION 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 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.

SECTION 37. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective upon receipt (except as otherwise provided herein) and (c) given by (i) nationally recognized courier service, (ii) hand delivery or (iii) solely with respect to ministerial or non-substantive notices, email, in each case to:

If to TIFIA Lender	TIFIA Joint Program Office (HITJ) Federal Highway Administration Room E64-301 1200 New Jersey Avenue, SE Washington, DC 20590 Attention: Director Email: [_____]
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with copies to:	Federal Highway Administration [State] Division Office [Address] Attention: Division Administrator
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Servicer (at address provided below)

<u>If to Borrower:</u>	[Name] [Address] Attention: [_____] Email: [_____]
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If to Servicer:

With copies to:	[Insert relevant parties]
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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 Note in accordance with the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time-to-time by the TIFIA Lender's Authorized Representative. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 37 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 37 (or in accordance with the latest unrevoked written direction from the receiving party) and all necessary confirmations have been

received in accordance herewith; 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 payment in full by the Borrower of the TIFIA Loan, provided, however, that the indemnification requirements of Section 18, the reporting and record keeping requirements of Section 21(b) and (c) and the payment requirements of Section 29 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.

[BORROWER]

By: _____

Name: _____

Title: _____

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and through the
Federal Highway Administrator

By: _____

Name: _____

Title: _____

SCHEDULE I

PROJECT BUDGET

[To be provided by Borrower]

EXHIBIT A

FORM OF PROMISSORY NOTE

[BORROWER NAME]

[_____]PROJECT

(TIFIA Project Number)

PROMISSORY NOTE

Maximum Principal Amount: \$ [Maximum Amount of TIFIA Loan]

Effective Date: _____

Due: _____

[BORROWER], a limited _____ under the laws of the State of [_____] (the “Borrower”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Federal Highway Administrator, or its assigns (the “TIFIA Lender”), the 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 referred to 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 below-referenced TIFIA Loan Agreement. Each Disbursement made by the TIFIA Lender to the Borrower pursuant to the TIFIA Loan Agreement and each prepayment made on account of the Outstanding Principal Sum, shall be recorded by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as **Appendix One** in accordance with the terms of the TIFIA Loan Agreement, which is hereby made a part hereof. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Appendix Two**, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. Such **Appendix Two** shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement. Payments hereon are to be made in accordance with Section 37 of the TIFIA Loan Agreement as the same become due. Principal of and interest on this Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America which 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 pursuant to Section 22(a)(iii) of the TIFIA Loan Agreement, the due date of this Note 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 Note without the prior written agreement of the TIFIA Lender.

This Note has been executed under and pursuant to the 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 Note and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

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

This Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple 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 Note in accordance with the TIFIA Loan Agreement.

Payment of the obligations of the Borrower under this Note is secured pursuant to a Security Agreement and certain Pledge Agreements and other Security Documents referred to in the TIFIA Loan Agreement.

[The obligations of the Borrower under this Note, 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 an [Intercreditor Agreement] of even date herewith among the TIFIA Lender, the Administrative Agent and the Collateral Agent and *[insert other parties as relevant]*.]

On each payment due date, payments hereon are to be made in the manner and at the place specified by the TIFIA Lender.

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 of New York to happen, exist, and be performed precedent to and in the issuance of this Note have happened, exist and have been performed as so required. This Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the state of New York shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, [BORROWER] has caused this Note to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

[BORROWER]

(SEAL)

By _____

Name: _____

Title: _____

ATTEST:

Secretary

(FORM OF ASSIGNMENT)

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

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

the within note and all rights thereunder.

Dated: _____

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

Appendix Two

Loan Amortization Schedule

Initial Principal: \$0

Effective Date:

Interest rate:

[illegible]

Semiannual P&I
Semiannual compounding
Interest calculated based upon actual days over actual days

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

Borrower Fiscal Year

Amount

\$

EXHIBIT C

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

The undersigned on behalf of [INSERT NAME OF PARTY], hereby certifies, to the best of the undersigned's knowledge and belief, that [INSERT NAME OF PARTY] 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.

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], between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

**[BORROWER / OTHER BORROWER RELATED
PARTY / PRINCIPAL PROJECT PARTY]]**

By: _____

EXHIBIT D

REQUISITION PROCEDURES

This Exhibit D sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds to pay directly for, or reimburse the Borrower for, Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 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 of the Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by a duly authorized representative of the Borrower. 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 of the 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 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.

Section 2. Rejection. A Requisition may be rejected 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 the Independent Engineer.

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) or (b) 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 notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount. The TIFIA Lender will confirm correction of the error, to the Borrower, in writing.

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

(a) the Borrower

(i) fails to pay any principal or interest on the TIFIA Loan when the same is due and payable; or

(ii) applies TIFIA Loan proceeds for purposes other than payment of, or reimbursement for, Eligible Project Costs which have been the subject of an approved disbursement request hereunder; or

(iii) 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

(iv) An Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing;

(b) the Borrower

(i) fails to construct the Project in a manner consistent with plans, specifications, engineering reports or facilities plans previously submitted to and approved by the TIFIA Lender, 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 with applicable federal or local law pertaining to the Project, or with the terms and conditions of the TIFIA Loan Agreement; or

(ii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or

(iii) fails to deliver documentation evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; and such failure continues for a period of more than thirty (30) days following written notice from the TIFIA Lender to the Borrower, the TIFIA Lender shall be entitled to withhold, from any Requisition received after such thirty (30) day period has expired, and until such failure is cured or corrected, an amount determined by the TIFIA Lender (in its sole discretion) to be adequate for the cure or correction of such failure, which amount shall be stated in such notice; provided, that if the nature of the failure is such that it cannot reasonably be cured or corrected within such thirty (30) day period, the TIFIA Lender shall not withhold any disbursement by reason of such failure if the Borrower commences cure or correction within such thirty (30) day period and thereafter diligently completes such cure or correction within a further reasonable time period.

The foregoing notwithstanding, if, as of the date of such notice from the TIFIA Lender, the balance of the TIFIA Loan proceeds remaining to be disbursed is less than the amount determined by the TIFIA Lender to be adequate for the cure or correction of such failure, the TIFIA Lender may immediately withhold all further disbursement of TIFIA Loan proceeds until such failure is cured or corrected within the time period specified by the preceding paragraph.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

United States Department of Transportation
c/o Director, TIFIA Joint Program Office (HITJ)
Federal Highway Administration
Room E64-301
1200 New Jersey Avenue, SE,
Washington, DC 20590

Federal Highway Administration
[State] Division Office
[Address]
Attention: Division Administrator

[Loan Servicer]
[Address]
[Attention]

Re: [] PROJECT (TIFIA # [])

Ladies and Gentlemen:

Pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [Dated Date] (the “TIFIA Loan Agreement”), by and between [BORROWER](the “Borrower”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Federal Highway Administrator (the “TIFIA Lender”), we hereby request disbursement in the amount of \$_____ for Eligible Project Costs. 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, ____][the “Disbursement Date”), which is the first Business Day following _____ 15, ____].
3. The amounts previously disbursed under the TIFIA Loan Agreement aggregate \$_____, the amounts previously disbursed under the Senior Loan Agreement aggregate \$_____ and the amount of Equity Contributions previously made under the Equity Funding Agreement aggregate \$_____. Prior to or simultaneously herewith (a) the undersigned has requisitioned a pro rata amount of senior

loan proceeds (in the amount of \$_____) under the Senior Loan Agreement and (b) the Equity Sponsor(s) will contribute a pro rata amount as an Equity Contribution (in the amount of \$_____) under the Equity Funding Agreement.

4. The amounts hereby requisitioned have been incurred by or on behalf of the Borrower for Eligible Project Costs, and such amounts, together with the amounts set forth in paragraph 3 above, will not exceed as of the requested disbursement date [thirty-three percent (33%)] of reasonably anticipated Eligible Project Costs.
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.
6. All amounts requisitioned hereunder are for Eligible Project Costs which have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
7. All documentation evidencing the Eligible Project Costs to be paid for or reimbursed by the disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
8. Each Equity Contribution made on or prior to the Disbursement Date was, or will be, applied towards payment of Eligible Project Costs and, after the making of any such Equity Contribution, the outstanding portion of the Equity Commitment was, or will be, fully supported by Equity Credit Support.
9. The Borrower has all permits and Governmental Approvals necessary as of the date hereof and on 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.
10. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 13(a)(xxi) 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.
11. 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 with good engineering practices.
12. The Borrower is in compliance with all of the terms and conditions of the TIFIA Loan Agreement and the Senior Loan Agreement and there does not currently exist an Event of Default under the TIFIA Loan Agreement or an event of default under the Senior Loan Agreement or any event which with the giving of notice or the passage of time or both would constitute such an Event of Default or event of default.
13. [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).]⁵¹ [The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct in all material respects (except to the extent any representation and warranty itself is qualified by “materiality,” “Material Adverse Effect” or a similar qualifier, in which case, it shall be true and correct in all respects) 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 in all material respects (except to the extent any such representation and warranty itself is qualified by “materiality,” “Material Adverse Effect” or a similar qualifier, in which case, it shall be true and correct in all respects) as of such earlier date).]⁵²

14. 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 which 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.
15. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), the total federal assistance provided to the Project shall not exceed eighty percent (80%) of Eligible Project Costs (as required pursuant to Section 603(b)(9) of the Act).
16. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [_____, 20___].⁵³
17. A copy of the most recent certificate of the Borrower regarding the required equity contribution pursuant to any Senior Obligations has been delivered to each of the above named addressees.
18. A copy of the most recent certificate of the Independent Engineer delivered pursuant to Section [_____] of the Initial Senior Loan Agreement has been delivered to each of the above named addressees.
19. A copy of the monthly construction progress report pursuant to Section 23(b)(i) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.

⁵¹ Insert only in the Requisition delivered in respect of the initial disbursement of the TIFIA Loan.

⁵² Insert in all Requisitions delivered subsequent to the initial disbursement of the TIFIA Loan.

⁵³ Insert the date on which the Borrower submitted the Application to the TIFIA Lender.

20. 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. § 5307(n)(1), to the extent the Government deems appropriate.
21. A copy of this requisition has been delivered to each of the above named addressees.
22. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.
23. [Add wire instructions for Collateral Agent.]

Date: _____

Borrower's Authorized Representative

Name: _____

Title: _____

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 of the TIFIA Loan Agreement, dated as of [Dated Date], by and between [Borrower] (the “Borrower”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Federal Highway Administrator (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. 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:

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] [approved in part]⁵⁴ [not approved]⁵⁵ by the TIFIA Lender (as defined herein) pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [Dated Date], by and between [Borrower] (the “Borrower”) and the United States Department of Transportation, acting by and through the Federal Highway Administrator (the “TIFIA Lender”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including the 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
Federal Highway Administrator

By: _____
TIFIA Lender’s Authorized Representative

Name: _____

Title: _____

Dated: _____

⁵⁴ Those portions of the requisitions that are approved and those portions that are not approved are described in Schedule A attached hereto, with explanations for items not approved.

⁵⁵ Attached hereto as Exhibit A are reasons for denial of approval.

EXHIBIT E

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

COMPLIANCE WITH LAWS

The Borrower agrees to abide by 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. The Borrower shall require that its contractors and subcontractors comply with applicable laws:

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 35; 29 C.F.R. § 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.) and United States Department of Transportation regulation, 49 C.F.R. § 21;
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 et seq.), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
- (v) Restrictions governing the use of Federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. § 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. §§ 1857 et seq., as amended by Pub. L. 91-604);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.);
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq., as amended by Pub. L. 92-500);
- (ix) The environmental mitigation requirements and commitments made by the Borrower that result in TIFIA Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. § 4332(2)(C)) and issuance of the Record of Decision for the Project;
- (x) The Endangered Species Act, 16 U.S.C. § 1531, et seq.
- (xi) 23 U.S.C. §138

- (xii) The health and safety requirements set forth in 23 C.F.R. § 635.108;
- (xiii) 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), 635.118 and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- (xiv) The Buy America requirements set forth in 23 U.S.C. 313 and implementing regulations (23 C.F.R. § 635.410);
- (xv) The requirements of 23 U.S.C. §§ 101 et seq. and 23 C.F.R.; and
- (xvi) The applicable requirements of 49 C.F.R. § 26 relating to the Disadvantaged Business Enterprise program.

EXHIBIT F

MODAL OVERSIGHT / COMPLIANCE AGREEMENT

EXHIBIT G

TIFIA DEBT SERVICE

EXHIBIT H

OPINIONS REQUIRED OF COUNSEL TO BORROWER AND EACH MEMBER

An opinion of the counsel of the Borrower, dated the Effective Date, to the effect that: (a) the Borrower and each [Member] is duly formed, validly existing and in good standing under the laws of _____; (b) the Borrower and each [Member] has all requisite corporate power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Security Documents to which it is a party; (c) the execution and delivery by the Borrower and each [Member] of, and the performance of their respective obligations under, the Security Documents to which it is a party, have been duly authorized by all necessary corporate action; (d) the Borrower and each [Member] has duly executed and delivered each Security Document to which it is a party and each such Security 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 or of the State of New York or [States where Project is located] is required on the part of the Borrower or any [Member] for the execution and delivery by such party of, and the performance of such party, for the operating and maintenance of the Project; (f) the execution and delivery by the Borrower and each [Member] of, and compliance with the provisions of the Security Documents do not (i) violate the articles or certificate of incorporation or by-laws, (ii) violate the law of the United States of America or the state of New York or [State where Project is located] 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 or any [Member] 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 or any [Member] presently is subject; (g) [customary opinions regarding the creation and perfection of security interests under all federal and state laws applicable to the Collateral]; (h) none of the Borrower or any [Member] is an investment company required to register under the Investment Company Act of 1940, as amended; and (i) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower or any [Member] by or before any court, arbitrator or any other governmental authority in connection with the Security Documents that are pending.

EXHIBIT I

OPINIONS REQUIRED OF SWAP COUNSEL TO BORROWER

An opinion of swap counsel to the Borrower, dated as of the effective date of any Hedging Agreement, to the effect that: (a) the Borrower is duly formed, validly existing and in good standing under the laws of _____; (b) the Borrower has all requisite corporate power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Hedging Agreement and the confirmation; (c) the execution and delivery by the Borrower of, and the performance of its obligations under, the Hedging Agreement and the confirmation have been duly authorized by all necessary corporate action; (d) the Borrower has duly executed and delivered the Hedging Agreement and the confirmation and the Hedging Agreement and confirmation constitute the legal, valid and binding obligations of the Borrower; enforceable against the Borrower 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 or of the State of New York or [States where Project is located] is required on the part of the Borrower for the execution and delivery by the Borrower of, and the performance of such party, for the execution, performance and delivery of the Hedging Agreement and confirmation or its obligations thereunder; and (f) the execution and delivery by the Borrower of, and compliance with the provisions of the Hedging Agreement and confirmation do not (i) violate its articles or certificate of incorporation or by-laws, (ii) violate the law of the United States of America or the state of New York or [State where Project is located] 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 presently is subject.