

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 8  
FOR THE MEETING OF:** December 10, 2009

## **TRANSBAY JOINT POWERS AUTHORITY**

### **BRIEF DESCRIPTION:**

Approve a \$171,000,000 loan from the U.S. Department of Transportation to finance a portion of the costs of the construction of Phase 1 of the Transbay Transit Center Program.

### **SUMMARY:**

The Transbay Joint Powers Authority (“TJPA”) has received credit approval for a loan in an amount up to \$171,000,000 for project costs and additional amounts for capitalized interest from the United States Department of Transportation, acting by and through the Federal Highway Administrator (the “TIFIA Lender”) under the Transportation Infrastructure Finance and Innovation Act of 1998, §§ 1501 et seq. of Public Law 105-178 (as amended by the Public Law 105-206 and Public Law 109-59) (the “TIFIA Loan”), to finance a portion of the costs of Phase 1 of the Transbay Transit Center Program as described below (“Phase 1”). The loan proceeds will not be made available until FY 2013 and only when conditions precedent to draw are met. As such, the loan is similar to a line of credit.

The TJPA intends to repay the TIFIA Loan with tax increment revenues generated by certain State-owned parcels in the Transbay Redevelopment Area and passenger facility charges (“PFCs”) related to use by Alameda-Contra Costa Transit District (“AC Transit”) of the new Transit Center. The current schedule calls for loan repayment to begin in FY 2017.

### **Phase 1 Funding Plan**

Phase 1 of the Transbay Program includes the design and construction of a Temporary Terminal and the new Transit Center, including bus ramps and a bus storage facility. Phase 2 of the Transbay Program includes the extension of Caltrain commuter rail service from its current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center.

The TJPA’s Phase 1 funding plan (the “Phase 1 Funding Plan”) identifies revenue sources such as grants, land sales proceeds, lease income from acquired property, and other onetime revenue generation opportunities. The Phase 1 Funding Plan also identifies long-term revenue sources, such as tax increment funds generated by certain State-owned parcels in the Transbay Redevelopment Area, and PFCs and other commitments from transit operators using the new Transit Center.

The bulk of the revenue from the long-term funding sources is anticipated to arrive after the TJPA completes construction of the new Transit Center (that is, after the TJPA incurs the costs of construction). Thus, the Phase 1 Funding Plan includes a construction period loan to bridge that gap. The TIFIA Lender has approved a construction period loan for Phase 1 in the amount of up to \$171 million.

The following table summarizes the Phase 1 Funding Plan.

## Transbay Transit Center Phase 1 Funding Plan

Source	Amount (in millions, YOY \$s)
San Francisco Prop K	\$98
San Mateo Sales Tax	\$7
AC Transit Capital Contribution	\$39
Miscellaneous Local	\$8
Regional Measure 1	\$54
Regional Measure 2	\$142
AB 1171	\$150
RTIP	\$28
Land Sales	\$429
Federal Earmarks	\$64
<i>TIFIA Loan (repaid with tax increment revenue and PFCs)</i>	<i>\$171</i>
<b>Total Phase 1 Revenues</b>	<b>\$1,189 +</b>

### TJPA's TIFIA Loan

TJPA staff has negotiated a loan agreement by and between the TIFIA Lender and the TJPA (the "Loan Agreement") and related documents, all of which are attached hereto. In summary, the terms of the TIFIA Loan are as follows:

- The TIFIA Loan would provide up to \$171 million to fund Phase 1 in FY 2013 and FY 2014.
- The interest rate will be set upon the execution and delivery of the Loan Agreement. As of December 3, 2009, the applicable interest rate was 4.3%. The TJPA has requested that interest be capitalized on the TIFIA Loan two years after substantial completion of Phase 1 and that principal amortization commence in 2023.
- The term of the TIFIA loan will extend not later than 35 years after substantial project completion. The final TIFIA Loan payment is estimated to be February 1, 2049.
- The TJPA would repay the TIFIA Loan with net tax increment revenues generated by the State-owned parcels in the Redevelopment Area and PFCs related to AC Transit's use of the new Transit Center. The net tax increment funds have been pledged to the Transbay Program through the January 31, 2008 Tax Increment Allocation and Sales Proceeds Pledge Agreement between the City and County of San Francisco, the San Francisco Redevelopment Agency, and the TJPA. PFCs have been pledged to the Transbay Program through the September 10, 2008 Lease and Use Agreement between AC Transit and the TJPA for the Temporary Terminal and new Transit Center.
- The net tax increment revenues and PFCs will be deposited when received by TJPA directly with Deutsche Bank National Trust Company, as Collateral Agent (the "Collateral Agent"), under a Collateral Agency Agreement (the "Collateral Agency Agreement"), by and among the TJPA, the TIFIA Lender and the Collateral Agent, for purposes of securing the TJPA's obligations under the TIFIA Loan.

The Loan Agreement does not become effective until certain conditions are met. Several of the conditions require the execution and delivery of documents attached to the Loan Agreement such as legal opinions and certificates. Other requirements include delivery of copies of agreements and reports, many

of which were submitted with the TIFIA loan application. Other key conditions precedent to loan closure are:

- Evidence to the TIFIA Lender's satisfaction, not later than 14 days prior to the effective date, of the assignment by a Nationally Recognized Rating Agency of an Investment Grade Rating to the TIFIA loan.
- Demonstration to the TIFIA Lender's satisfaction that the funds forecasted to be available will be sufficient to complete the project.
- Arrangements satisfactory to the TIFIA Lender to pay reasonable fees and expenses of the TIFIA Lender's counsel and financial advisor and any auditors or other consultants employed by the TIFIA Lender.

If the TJPA Board approves the TIFIA Loan in substantially the forms enclosed herewith, and the conditions precedent in Section 13 of the Loan Agreement are met, the loan is expected to close by mid-January 2010.

TIFIA Loan disbursement is subject to several conditions which are summarized as follows:

- Evidence that land sales of State-owned Parcels have closed with gross sales proceeds aggregating not less than \$429 million or an allocation of alternative funding acceptable to the TIFIA Lender.
- Evidence that arranged financing has been secured for the development of all State-owned Parcels that have been sold.
- Updated land sales revenue forecasts.
- Updated tax increment projections, financing schedules, and project cash flows.
- Assignment of an investment grade rating to the TIFIA loan by a Nationally Recognized Rating Agency within 30 days of the requisition for disbursement.

Based on the current schedule these conditions will need to be met by FY 2013.

The TJPA Board is also requested to approve the execution and delivery of the FTA Compliance Agreement that provides procedures for compliance with the TIFIA Loan and an Acknowledgement Agreement by and between the TJPA and AC Transit that provides for AC Transit acknowledgement of the Collateral Agency Agreement deposit procedures.

**RECOMMENDATION:**

Staff recommends that the Board of Directors approve the TIFIA Loan, and authorize the Executive Director to execute the Loan Agreement, the Note, the Collateral Agency Agreement, the FTA Compliance Agreement, and the Acknowledgement Agreement, in substantially the forms enclosed herewith, for the purposes of obtaining the TIFIA Loan to finance a portion of the costs of Phase 1.

**ENCLOSURES:**

Resolution  
Loan Agreement  
Note  
Collateral Agency Agreement  
Form FTA Compliance Agreement  
Acknowledgement Agreement

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The City and County of San Francisco (the "City"), the Alameda-Contra Costa Transit District ("AC Transit") and the Peninsula Corridor Joint Powers Board-Caltrain have heretofore executed a Joint Powers Agreement, dated as of April 4, 2001 (the "Joint Powers Agreement"), which Joint Powers Agreement creates and establishes the Transbay Joint Powers Authority (the "TJPA"); and

WHEREAS, The Joint Powers Agreement charges the TJPA with development, design, construction, operation, management, and maintenance of the Transbay Transit Center Program (the "Transbay Program"), which includes: (1) the design and construction of a temporary terminal and then the permanent Transbay Transit Center, including bus ramps and bus storage facility ("Phase 1"); (2) the extension of Caltrain commuter rail service from its current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center ("Phase 2"); and (3) activities related to implementation of the Redevelopment Plan for the Transbay Redevelopment Project Area; and

WHEREAS, The TJPA has received credit approval for a loan in an amount up to \$171,000,000 for project costs and additional amounts for capitalized interest from the United States Department of Transportation, acting by and through the Federal Highway Administrator (the TIFIA Lender") under the Transportation Infrastructure Finance and Innovation Act of 1998, §§ 1501 et seq. of Public Law 105-178 (as amended by the Public Law 105-206 and Public Law 109-59) (the "TIFIA Loan"), to finance a portion of the costs of Phase 1; and

WHEREAS, The TJPA intends to repay the TIFIA Loan with tax increment revenues generated by certain State-owned parcels in the Transbay Redevelopment Area and payments received from AC Transit related to AC Transit's use of the new Transit Center; and

WHEREAS, The TIFIA Loan is to be executed pursuant to the Marks-Roos Local Bond Pooling Act of 1985, (the "Act") constituting Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, and pursuant to the TIFIA Loan Agreement, by and between the TIFIA Lender and the TJPA; and

WHEREAS, In accordance with the Act, following published notice, a public hearing regarding the proposed financing was conducted by the City on November 24, 2009, and, following such hearing, the City made certain findings under the Act and approved the financing on November 24, 2009; and

WHEREAS, The Board has duly considered the proposed financing and hereby determines there are significant public benefits to the financing and wishes at this time to approve such financing;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transbay Joint Powers Authority, as follows

RESOLVED, That the foregoing recitals are true and correct and the TJPA hereby so finds and determines; and be it further

RESOLVED, That the Board approves the TIFIA Loan, under and pursuant to the Act, in order to provide for project costs in the aggregate principal amount of not to exceed \$171,000,000 and to provide additional funding of capitalized interest for the Transbay Program; and be it further

RESOLVED, That the Board approves the Loan Agreement and the Note, by and among the TJPA and the TIFIA Lender, in substantially the form on file with the Secretary, together with any additions thereto or changes therein deemed necessary or advisable by the Executive Director, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. The Executive Director is hereby authorized and directed to execute, and the Secretary is hereby authorized and directed to attest the final form of the Loan Agreement and the Note for and in the name and on behalf of the TJPA. Such changes and additions shall include, without limitation, the insertion in the Loan Agreement of the annual maturities and maximum aggregate principal amount of the TIFIA Loan and the final annual interest rates payable with respect to the TIFIA Loan and the Note. The Board hereby authorizes the delivery and performance of the Loan Agreement and the Note; and be it further

RESOLVED, That the Board hereby approves the Collateral Agency Agreement, by and among the TJPA, the TIFIA Lender and Deutsche Bank National Trust Company, as collateral agent (the "Collateral Agent"), in substantially the form on file with the Secretary, together with any additions thereto or changes therein deemed necessary or advisable by the Executive Director, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. The Executive Director is hereby authorized and directed to execute, and the Secretary is hereby authorized and directed to attest the final form of the Collateral Agency Agreement for and in the name and on behalf of the TJPA; and be it further

RESOLVED, That the Board hereby approves the FTA Compliance Agreement, in substantially the form on file with the Secretary, together with any additions thereto or changes therein deemed necessary or advisable by the Executive Director, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. The Executive Director is hereby authorized and directed to execute, and the Secretary is hereby authorized and directed to attest the final form of the FTA Compliance Agreement for and in the name and on behalf of the TJPA; and be it further

RESOLVED, That the Board hereby approves the Acknowledgement Agreement, by and between the TJPA and AC Transit, in substantially the form on file with the Secretary, together with any additions thereto or changes therein deemed necessary or advisable by the Executive Director, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. The Executive Director is hereby authorized and directed to execute, and the Secretary is hereby authorized and directed to attest the final form of the Acknowledgement Agreement for and in the name and on behalf of the TJPA; and be it further

RESOLVED, That the Board authorizes and directs the Executive Director, the Secretary, and any and all other officers of the TJPA, for and in the name and on behalf of the TJPA, to do any and all things and take any and all actions, including payment of closing costs and expenses and execution and delivery of any and all assignments, certificates, requisitions, agreements (including additional acknowledgements or letter agreements between AC Transit, the City or the Redevelopment Agency of the City and County of San Francisco), notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful execution of or the performance of the TJPA under the TIFIA Loan as described herein.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 10, 2009.

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Secretary, Transbay Joint Powers Authority

**UNITED STATES  
DEPARTMENT OF TRANSPORTATION**

**TIFIA LOAN AGREEMENT**

**For Up to \$171,000,000**

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**With**

**TRANSBAY JOINT POWERS AUTHORITY**

**For the**

**TRANSBAY TRANSIT CENTER PROJECT  
(TIFIA – 2008-CA-01007A)**

**Dated as of January 1, 2010**

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**EXHIBIT B** – TIFIA Loan Disbursement Schedule

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**EXHIBIT D** – Requisition Procedures

**EXHIBIT E** – FTA Compliance Agreement

**EXHIBIT F** – TIFIA Debt Service

**EXHIBIT G** – Form of Opinion of Counsel to Borrower



## TIFIA LOAN AGREEMENT

**THIS TIFIA LOAN AGREEMENT** (this “Agreement”), dated as of January 1, 2010, by and between **TRANSBAY JOINT POWERS AUTHORITY**, a joint powers authority created and organized under California Government Code Section 6500 *et seq.*, with an address of 201 Mission Street, Suite 2100, San Francisco, California 94105 (the “Borrower”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Federal Highway Administrator, an agency of the United States of America, with an address of 1200 New Jersey Avenue, S.E., Washington, DC 20590 (the “TIFIA Lender”),

### PREAMBLE:

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

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

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$171,000,000 (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 an application for TIFIA credit assistance dated October 15, 2008 and entitled Transbay Joint Powers Authority (TJPA) application for Federal Credit Assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA) (the “Application”); 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 Application, the written responses of February 2, 2009, the presentation of February 5, 2009, and subsequently provided materials including but not limited to cost and tax increment revenue data and the Concord Group Report (as defined herein), the 2008 update of the same and the 2009 peer review thereof of the Concord Group report prepared by Jones Lang LaSalle, the Seifel Report (as defined herein), the Northcross Report (as defined herein), the URS Report (as defined herein) 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. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement which is defined by reference to any other agreement shall continue to have the meaning specified in such agreement on the date hereof whether or not such agreement remains in effect.

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

“**AC Transit**” means Alameda-Contra Costa Transit District, a special transit district created under California law.

“**AC Transit Acknowledgement Agreement**” means the Acknowledgement Agreement dated as of January \_\_, 2010 by and between AC Transit and the Borrower.

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

“**Administrator**” means the Administrator of the FHWA.

“**Agency**” means the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic of the State.

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

“**Amortization Commencement Date**” means the earlier of (i) the first Payment Date that is 24 months after the completion of Phase 2 of the Transbay Transit Center Program or (ii) February 1, 2023.

“**Amortization Payment**” has the meaning provided in Section 9(d).

“**Amortization Period**” means the period commencing on the Amortization Commencement Date and ending on the Final Maturity Date (or on such earlier date as the TIFIA Loan shall be paid in full).

“**Annual Capital Contributions**” means the annual capital contributions required to be made by AC Transit pursuant to Section 5.1 of the Lease and Use Agreement using “Passenger Facility Charges” which shall include all passengers facility charges imposed by AC Transit on all passengers riding AC Transit originating and terminating from the Transbay Transit Center upon AC Transit’s commencement of

service at the Transbay Transit Center or other sources of funding; provided, however, that the use of federal grant funds for this purpose shall be prohibited.

**“Bankruptcy Related Event”** means (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets of the Borrower, under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower for a substantial part of the assets of the Borrower, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets of the Borrower, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing.

**“Base Case Financial Model”** means a financial model prepared by the Borrower that includes (a) a detailed budget for the Project, including a schedule of total Project Costs and Eligible Project Costs, (b) annual sources and uses of funds to design and construct the Project, (c) construction schedule acceptable to the TIFIA Lender for the Project, and (d) projected annual cash flow through the final maturity of the TIFIA Loan including 1) projected annual Net Tax Increment Revenues from each of the State-owned Parcels, 2) projected Annual Capital Contributions, 3) projected annual investment earnings on the Collateral, 4) projected semi-annual TIFIA Debt Service, 5) projected annual deposits of Net Tax Increment Revenues for Capital Repairs, and 6) projected other uses of Pledged Revenues, including to pay fees and expenses of the TIFIA Lender and the Collateral Agent. The projections are all as based on 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 Financial Plan”** has the meaning set forth in Section 21(a).

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

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

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

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

**“Borrower’s Consultant”** means the Concord Group, Seifel Consulting, Northcross, URS Corporation and such other consultants that are approved in writing by the TIFIA Lender.

**“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, San Francisco, California or the city and state in which the Collateral Agent is located.

**“Capitalized Interest Period”** means the period beginning on the Effective Date and ending on the day prior to the Debt Service Payment Commencement Date.

**“Capital Repairs”** means all reasonably necessary periodic major overhaul and repair (excluding any maintenance or repair of a routine or ordinary course nature) of the Project that is eligible to be funded with Net Tax Incremental Revenues.

**“City”** means the City and County of San Francisco, California and its permitted successors and assigns.

**“Collateral”** means the Borrower’s rights, title and interests in and to the following: (a) all Pledged Revenues, (b) all accounts, general intangibles and contract or other rights to receive Pledged Revenues whether existing at the Effective Date or thereafter acquired, and the proceeds thereof and all rights under the Security Documents, including without limitation, (i) all rights to receive Pledged Revenues due and to become due under or pursuant to the Security Documents; and (ii) all rights to terminate, amend, supplement, modify, or waive the Security Documents or consent to the same, to the extent that such termination, amendment, supplemental, modification or waiver has a Material Adverse Effect on the TIFIA Lender; and (iii) all rights to compel performance under the Security Documents and to otherwise exercise all remedies thereunder; (c) the Collateral Agency Agreement, including all of its rights and interest to the funds, money and securities held thereunder; and (d) all assignable permits and other governmental approvals.

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

**“Collateral Agency Agreement”** means the Collateral Agency and Account Agreement dated as of January 1, 2010 by and among the Borrower, the TIFIA Lender

and Deutsche Bank National Trust Company, as Collateral Agent, as amended and supplemented.

**“Community Redevelopment Law”** means the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 *et seq.*).

**“Concord Group”** means The Concord Group located in San Francisco, California.

**“Concord Group Report”** means the Residential, Office Retail and Hotel Market Analysis, Product Programming and Land Pricing for the State Owned Parcels in the Transbay Redevelopment Area in San Francisco, California dated October 2008 prepared by the Concord Group.

**“Construction Period”** means the period set forth in the Construction Schedule as the same may be extended from time to time.

**“Construction Schedule”** means the schedule attached to this Agreement as **Schedule 2** as the same may be amended from time to time [with the approval of the TIFIA Lender].

**“Cooperative Agreement”** means the Cooperative Agreement dated as of July 11, 2003 by and among the State, the City and the Borrower, as may be amended and supplemented from time to time.

**“Covenant Default”** has the meaning set forth in Section 19(a)(ii).

**“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 2009 as the base period.

**“Debt Service Payment Commencement Date”** means the second (2<sup>nd</sup>) anniversary of the Substantial Completion Date or, if such date does not fall on a Semi-Annual Payment Date, then the Debt Service Payment Commencement Date shall be the first Semi-Annual Payment Date to occur prior to the second (2<sup>nd</sup>) anniversary of the Substantial Completion Date.

**“Debt Service Reserve Account”** means the Debt Service Reserve Account established and maintained pursuant to the Collateral Agency Agreement for purposes of complying with Section 16(n) hereof.

**“Debt Service Reserve Required Balance”** means [\$16,964,232].

**“Default Rate”** has the meaning set forth in Section 6.

**“Developer Disposition Agreement”** means each agreement entered into by the Agency and a private entity in connection with the sale and private development of a State-owned Parcel or portion thereof in furtherance of the Redevelopment Plan.

**“Development Default”** shall have the meaning set forth in Section 19(a)(iii).

**“Effective Date”** means the date of this Agreement.

**“Eligible Project Costs”** means amounts in the Project Budget conforming to the definition of 49 USC 5302(a)(1), substantially all of which are paid by or for the account of the Borrower in connection with the Project (excluding all costs associated with the construction of the commercial space and rooftop park at the Transbay Transit Center), prior Project expenditures for the three-year period preceding the application date, and the costs set forth below:

(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; and

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

**“Event of Default”** shall have the meaning set forth in Section 19.

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

**“FTA Compliance Agreement”** means the FTA Compliance Agreement attached hereto as **Exhibit E**.

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

**“Final Maturity Date”** means February 1, 2049 or the last Payment Date occurring no later than 35 years after the Substantial Completion Date, whichever date is earlier.

**“Financial Plan”** means (i) the updated financial plan to be delivered within 30 days after the Effective Date in accordance with Section 21(a) and (ii) any updates thereto required pursuant to such Section.

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

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

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

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

**“Governmental Authority”** means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including, without limitation, the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

**“Implementation Agreement”** means the Transbay Redevelopment Project Implementation Agreement dated as of January 20, 2005 by and between the Agency and the Borrower, as may be amended and supplemented from time to time.

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

**“Investment Grade Rating”** means a rating assigned by a Nationally Recognized Rating Agency which is no lower than BBB minus or Baa3.

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

any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or comparable law.

**“Lease and Use Agreement”** means the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal dated September 10, 2008 by and between the Borrower and AC Transit, as may be amended and supplemented from time to time.

**“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(f), as amended from time to time in accordance with Section 7 and Section 9(f).

**“Material Adverse Effect”** means a material adverse change in (a) the Project, the business, property or financial condition of the Borrower, (b) the ability of the Borrower to perform or comply with any of its material obligations under the Project Documents to which it is a party, (c) the validity or priority of the Liens on the Collateral in favor of the Collateral Agent or (d) the TIFIA Lender’s rights or benefits available under this Agreement.

**“Misrepresentation Default”** has the meaning provided in Section 19(a)(iv).

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

**“Net Tax Increment Revenues”** shall include all property tax increment revenues attributable to the State-owned Parcels, allocated to and received by the Agency and pledged under the TIF Pledge Agreement as indebtedness to the Borrower, but specifically excluding therefrom the following: (a) charges for County administrative charges, fees, or costs; (b) the portion of the tax increment revenues that Agency is required by law to set-aside in the Agency's Affordable Housing Fund, pursuant to the Community Redevelopment Law; (c) a portion of the tax increment revenues equal to the percentage of such revenue that the Agency is required to pay to all governmental entities as required by the Community Redevelopment Law; and (d) the portion of the tax increment revenues equal to the percentage of such revenues that the State may mandate the Agency to pay from time to time in the future, including, for example, any payments which the Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681 et seq. of the Community Redevelopment Law

**“Northcross”** means Northcross, Hill & Ach, Inc. located in San Rafael, California.

**“Northcross Report”** means the Microsoft Excel-based financial model providing a TIFIA Loan Analysis-Phase 1 as of January \_\_, 2010 prepared by Northcross.



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

**“Operations and Maintenance Expenses”** means all actual and reasonable cash maintenance and operation costs (excluding Capital Repairs) 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 or Borrower Fiscal Year or period to which said term is applicable, payments for 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 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.

**“Option Agreement”** means the Option Agreement for the Purchase and Sale of Real Estate Property dated as of January 31, 2008 by and among the City, the Agency and the Borrower, as may be amended and supplemented from time to time.

**“Other Loan Documents”** has the meaning set forth in Section 19(a)(vi).

**“Other Material Indebtedness”** has the meaning set forth in Section 19(a)(v).

**“Outstanding TIFIA Loan Balance”** means the aggregate principal amount drawn by the Borrower and then outstanding with respect to the TIFIA Loan, as determined in accordance with Section 7.

**“Payment Date”** means each Semi-Annual Payment Date.

**“Payment Default”** has the meaning set forth in Section 19(a)(i).

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

**“Permitted Debt”** means:

- (a) the TIFIA Loan;
- (b) 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 Project Costs, Eligible Project Costs, or Operations and Maintenance Expenses and that do not in the aggregate have face amounts exceeding \$5,000,000 (inflated annually by CPI);

- (c) trade accounts payable (other than for borrowed money) so long as such trade accounts payable are payable not later than 90 days after the respective goods are delivered or the respective services are rendered;
- (d) special assessment or special revenue debt that is not secured by any Pledged Revenues or Program Income; and
- (e) parity or subordinated debt for Project Costs consented to in writing by the TIFIA Lender.

**“Permitted Investments”** means (with respect to the investment of the proceeds of the TIFIA Loan or any revenue or reserve accounts 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 item (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 item (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;
- (d) money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, and having a rating by S&P of AAAM-G or AAA-m or if rated by Moody’s having a rating of Aaa;
- (e) collateralized investment agreements or other contractual agreements with corporations, financial institutions or national associations within the United States, provided that the senior long term debt of such corporations, institutions or associations is rated AAA by a National Recognized Rating Agency; and
- (f) any other investment which may from time to time be expressly approved in writing by the TIFIA Lender.

**“Permitted Liens”** means:

- (a) Liens imposed pursuant to the Security Documents;

(b) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 16(t);

(c) 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 30 days or are being contested in compliance with Section 16(t);

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

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

(f) judgment liens in respect of judgments that do not constitute an Event of Default under Section 19(a)(vii);

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

(h) purchase money security interests in real property, improvements thereto or equipment hereafter acquired (or, in the case of improvements, constructed) by the Borrower, provided that (i) such security interests secure indebtedness for borrowed money permitted by Section 16(a), (ii) such security interests are incurred, and the indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (iii) the indebtedness secured thereby does not exceed the fair market value of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets (other than accessions to such real property, improvements or equipment) of the Borrower.

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

**“Phase 1”** means the Project.

**“Phase 2”** means the extension of the Caltrain commuter rail service approximately 1.3 miles north from its current San Francisco terminus at Fourth and Townsend streets to a new underground terminal beneath the Transbay Transit Center and the construction at such terminal of no more than six rail tracks and three rail platforms for use by the Caltrain commuter rail service and the proposed high-speed rail service.

**“Plan Documents”** has the meaning set forth in the Redevelopment Plan.

**“Pledged Revenues”** means (i) Net Tax Increment Revenues, (ii) Annual Capital Contributions and (iii) all income from (i) and (ii) derived from Permitted Investments.

**“Principal Project Contracts”** means contracts for Program Management/Program Controls, Design Services for New Bus Storage Facilities, Design Services for New Temporary Terminal, Architecture & Engineering for New Transit Center and Related Structures, Temporary Terminal Construction, Construction Manager/General Contractor for Transit Center & Related Structures, Demolition of Existing Terminal & Associated Structures, Construction of New Bus Storage Facilities and any Additional Project Contracts.

**“Program Income”** means all income, revenues, rates, fees, charges, rentals, including joint development revenues, or other receipts derived by or related to the operation or ownership of the Project.

**“Project”** means the design and construction of a temporary terminal, the design of the below-grade rail facilities of the Transbay Transit Center and the design and construction of the Transbay Transit Center’s bus facilities, bus ramps to the Bay Bridge, and bus storage facilities to be located underneath Interstate 80. The Project is Phase 1 of the Transbay Transit Center Program. The Project will serve bus passengers from Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo and Sonoma counties. Greyhound passengers from around the country will also be served by the new Transbay Transit Center.

**“Project Budget”** means the budget for the Project in the aggregate amount of \$[1,189,000,000] attached to this Agreement as **Schedule 1** showing all Project Costs and a summary of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as may be amended from time to time with the approval of the TIFIA Lender.

**“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 during construction and financing costs, provided such costs were expended no earlier than October 15, 2005; (b) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower other than to the extent such amounts constitute direct or indirect costs unallowable to the Borrower under 49 C.F.R. Part 18 and its contractors under 18 C.F.R. Part 31; and (c) the repayment of obligations incurred by the Borrower, the proceeds of which obligations were used to pay items (a) and (b) of this definition.

**“Project Documents”** means the Security Documents and the Principal Project Contracts.

**“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.

**“Redevelopment Plan”** means the Redevelopment Plan for the Transbay Redevelopment Project Area approved by Ordinance No. 124-05, adopted by The Board of Supervisors of the City and County of San Francisco on June 21, 2005 and Ordinance No. 99-06 adopted by The Board of Supervisors of the City and County of San Francisco on May 9, 2006, as may be amended from time to time in accordance with the provisions of Section 6.4 thereof.

**“Requisition”** has the meaning provided in Section 4.

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

**“Security Documents”** means this Agreement, the Note, the Collateral Agency Agreement, the Lease and Use Agreement (but for the purposes hereof shall not include any provisions relating solely to the Lump Sum Payments as described in Section 5.1 thereof), the Implementation Agreement, the TIF Pledge Agreement (but for the purposes hereof shall not include any provisions relating solely to the Gross Sales Proceeds defined therein), the Cooperative Agreement, the Option Agreement, [and] the AC Transit Acknowledgement Agreement [and any and all agreements, instruments, government approvals or other documents evidencing, securing, governing or otherwise executed in connection with the Pledged Revenues], including, without limitation all amendments and/or restatements of the foregoing.

**“Seifel Consulting”** means Seifel Consulting Inc. located in San Francisco, California.

**“Seifel Report”** means the Tax Increment Projections State Owned Parcels Transbay Redevelopment Project Area dated September 2008 and prepared by Seifel Consulting.

**“Semi-Annual Payment Date”** means each February 1 and August 1 or if such day is not a Business Day, then the Business Day preceding such February 1 or August 1.

**“Servicer”** means the TIFIA Lender or 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.

**“State”** means the State of California.

**“State-owned Parcels”** means those parcels identified as “State-owned Parcels” under the Cooperative Agreement less those parcels that are the subject of a “Notice of Termination” under the Cooperative Agreement.

**“Substantial Completion”** means the opening of the Project (excluding the temporary terminal) to any public transportation as defined at 49 USC 5302(a)(10).

**“Substantial Completion Date”** means the earlier of (i) [March 31, 2014] or such later date approved by the TIFIA Lender and (ii) the date on which Substantial Completion occurs.

**“TIFIA Debt Service”** means (a) with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date and on or prior to the Amortization Commencement Date, the interest unconditionally required to be paid on the TIFIA Loan on such Payment Date pursuant to Section 9(c), and (b) with respect to any Payment Date occurring during the Amortization Period, the entire amount of each Amortization Payment required to be paid pursuant to Section 9(d) in each case as shown on Exhibit F, as adjusted from time to time in accordance with the provisions of Section 9(c), Section 9(d) and Section 10(c).

**“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 any individual who shall be designated as such pursuant to Section 26 and the Administrator.

**“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 \$171,000,000 (excluding capitalized interest), to be used to pay Eligible Project Costs.

**“TIFIA Loan Disbursement Schedule”** means the schedule set forth as **Exhibit B** to this Agreement, as such schedule may be amended from time to time pursuant to Section 4.

**“TIF Pledge Agreement”** means the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement dated as of January 31, 2008 by and among the City, the Agency and the Borrower, as may be amended and supplemented from time to time.

**“Transbay Transit Center”** means the new multimodal regional transit facility to be located in downtown San Francisco, California on First and Mission Streets.

**“Transbay Transit Center Program”** means (i) the Project, (ii) Phase 2, (iii) the implementation of the Redevelopment Plan.

**“Uncontrollable Force”** means any cause beyond the control of the Borrower, including but not limited to: (a) a tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage, or act of God provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and

the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

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

**“URS Corporation”** means URS Corporation located in San Francisco, California.

**“URS Report”** means the Transbay Transit Center Program Phase 1 Baseline Budget and Schedule dated January 2008 prepared by URS Corporation.

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

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

SECTION 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$171,000,000 (excluding capitalized interest); provided, however, in no event shall the maximum principal amount of the TIFIA Loan disbursed by the TIFIA Lender, together with the amount of any other credit assistance provided under the Act, exceed 33% of Eligible Project Costs. TIFIA Loan proceeds shall be disbursed from time-to-time in accordance with Section 4.

SECTION 4. Disbursement Conditions. TIFIA Loan proceeds shall be disbursed solely to pay directly for, or to reimburse the Borrower for its prior payment of, Eligible Project Costs incurred 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 the conditions set forth therein and the additional conditions set forth below in this Section 4. No disbursements of TIFIA Loan proceeds shall be made on or after the date that is one year after the Substantial Completion Date. In addition to the other conditions set forth herein, the initial TIFIA Loan disbursement shall be subject to the following conditions:

(i) the Borrower shall have provided evidence to the TIFIA Lender's reasonable satisfaction that land sales of State-owned Parcels have closed with gross sales proceeds aggregating not less than \$429 million or an allocation of alternative funding acceptable to the TIFIA Lender;

(ii) the Borrower shall have provided evidence acceptable to the TIFIA Lender's reasonable satisfaction that arranged financing has been secured for the development of all State-owned Parcels that have been sold;

(iii) the TIFIA Lender has received an updated Concord Report which is reasonably acceptable to the TIFIA Lender and is prepared by a Borrower Consultant;

(iv) the TIFIA Lender has received an updated Seifel Report, Northcross Report and URS Report, each of which is reasonably acceptable to the TIFIA Lender and is prepared by a Borrower Consultant; and

(v) the Borrower shall have provided evidence to the TIFIA Lender's satisfaction of the assignment within 30 days of the initial Requisition by a Nationally Recognized Rating Agency of an Investment Grade Rating to the TIFIA Loan.

Subject to the last paragraph of this Section 4, copies of each Requisition shall be delivered to the TIFIA Joint Program Office (HCFT-1), the Servicer, the FTA's Office of Budget and Policy, and the FTA's Region IX 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 15<sup>th</sup> day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such 15<sup>th</sup> day is not a Business Day. Express TIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix 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 TIFIA Loan Disbursement Schedule, as the same may be amended from time to time.

The Borrower may amend the TIFIA Loan Disbursement Schedule by submitting revisions to the TIFIA Lender and to the FTA's Office of Policy Review and Development and the FTA's Region IX Office no later than thirty days prior to the proposed effective date thereof, a revised TIFIA Loan Disbursement Schedule, together with a detailed explanation of the reasons for such revisions. Such revised TIFIA Loan Disbursement Schedule shall become effective upon the TIFIA Lender's approval thereof, which approval shall not be unreasonably withheld.



As a condition to each disbursement of the TIFIA Loan, the Borrower shall provide the TIFIA Lender with evidence satisfactory to the TIFIA Lender that prior thereto, all committed sources of funds described in the Application to pay the capital costs of the Project have been fully and completely allocated to the Borrower by the provider thereof or other funds in substitution thereof that are acceptable to the TIFIA Lender are available to the Borrower.

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 [\_\_\_\_\_] % per annum, except that, upon the occurrence and during the continuance of a Payment Default, the interest rate with respect to any overdue principal amount of the TIFIA Loan shall bear interest at an interest rate of [\_\_\_\_\_] % per annum (the "Default Rate"). Upon the occurrence of an Event of Default described in Section 19 (a)(iii) or (x) hereof, the interest rate on the Outstanding TIFIA Loan Balance shall be the greater of (i) the Default Rate or (ii) the interest rate that would be applicable pursuant to Section 603(b)(4) of the Act, as of the date of the Development Default, and shall continue to bear interest at such rate until, with respect to (a) an Event of Default described in Section 19 (a)(iii), the Development Default has been cured and (b) an Event of Default described in Section 19 (a)(x), the TIFIA Loan has been paid in full. Interest (including interest at the Default Rate, if applicable) 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- or 366-day year, as appropriate, for the actual number of days elapsed.

SECTION 7. Outstanding TIFIA Loan Balance and Revisions to Exhibit F and the Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender shall disburse 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 hereof, by the amount of interest so capitalized and (iii) 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 F and the Loan Amortization Schedule pursuant to Section 9 and in such event shall provide the Borrower with a copy of such Exhibit F 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 Security Documents. The Loan Amortization Schedule, as of the date hereof, has been determined based on, among other things, the TIFIA Loan Disbursement Schedule in effect on the Effective Date.

(b) The TIFIA Lender shall make applicable revisions to Exhibit F and the Loan Amortization Schedule pursuant to Section 9 as follows: (i) as of the Debt Service Payment Commencement Date, (ii) upon any prepayment of the TIFIA Loan and (iii) on the date not later than thirty days prior to the Amortization Commencement Date. Upon any such revisions the TIFIA Lender shall provide the Borrower with copies of such Exhibit F 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 Security Documents; provided that, if any such revision results in an adjustment to one or more prior TIFIA Loan payment amounts, then the Borrower agrees to pay any deficiency to the TIFIA Lender and the TIFIA Lender agrees to remit or credit any overage to the Borrower, as applicable, within a commercially reasonable time. Each of Exhibit F and the Loan Amortization Schedule, as of the Effective Date, has been determined based on the TIFIA Loan Disbursement Schedule in effect on the Effective Date.

SECTION 8. Security and Priority; Flow of Funds.

(a) As security for the payment of the TIFIA Loan and the other Borrower obligations hereunder, the Borrower hereby pledges, assigns and grants, a security interest in and to Borrower's right, title and interest in the Collateral, subject solely to the Permitted Liens. Nothing contained herein shall obligate or be construed to obligate the TIFIA Lender to perform any of the terms, covenants or conditions contained in the Security Documents or otherwise to impose any obligation upon the TIFIA Lender with respect to the Security Documents. Notwithstanding anything herein to the contrary, the Borrower shall remain liable in respect of the Security Documents to the extent set forth therein to perform and satisfy all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, and the TIFIA Lender's exercise of any rights or remedies hereunder shall not release the Borrower from any of the Borrower's duties, obligations or liabilities under the Security Documents.

(b) Except for the Permitted Liens, the Collateral will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto 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 Pledged 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 Pledged Revenues in contravention of this Agreement.

(d) Amounts on deposit in all of the accounts established under the Collateral Agency Agreement shall be held uninvested or invested in Permitted Investments. Any investments will mature or be redeemable at the election of the holder on or prior to the related Payment Date in amounts sufficient to make such payment.

(e) The Collateral Agency Agreement provides that all Pledged Revenues shall be applied substantially in the following order of priority, as more fully described, and in accordance with the requirements specified, in Section 5 of the Collateral Agency Agreement:

- (i) fees, administrative costs and other expenses of the Collateral Agent and the TIFIA Lender;
- (ii) The interest portion of TIFIA Debt Service
- (iii) The principal portion of TIFIA Debt Service;
- (iv) Debt Service Reserve Amount (to the extent necessary to fund so that the balance therein equals the requirement therefor);
- (v) Capital Replacement Reserve Account (as defined in the Collateral Agency Agreement) (to the extent necessary to fund so that the balance therein equals the requirement therefor);
- (vi) Voluntary prepayments of the TIFIA Loan; and
- (vii) Deposits into the Surplus Revenue Account (as defined in the Collateral Agency Agreement).

(f) (i) Prior to the date of final completion of Phase 2, Annual Capital Contributions and investment earnings thereon, prior to Net Tax Increment Revenues, shall be applied to make the payments required by (e)(i) through (vi) above. Any Net Tax Increment Revenues not needed for scheduled payments and that are deposited into the Surplus Revenue Account shall be remitted to the Borrower at the direction of the TIFIA Lender upon the presentation of a plan which evidences to the TIFIA Lender's satisfaction that the Borrower has available to it sufficient funds to complete the design and construction of Phase 2 of the Transbay Transit Center Program.

(ii) From the date of final completion of Phase 2, until the fifth anniversary date thereof, Annual Capital Contributions and investment earnings, prior to Net Tax Increment Revenues, shall be applied to make the payments required by (e)(i) through (vi) above and any Net Tax Increment Revenues amount that are deposited into the Surplus Revenue Account shall be applied to prepay the TIFIA Loan or, with the consent of the TIFIA Lender, to make payments on other indebtedness that was previously approved by the TIFIA Lender.

(iii) From and after the fifth anniversary of the date of final completion of Phase 2, Net Tax Increment Revenues and investment earnings, prior to Annual Capital Contributions, shall be applied to make the payments in (e)(i) through (vi) above and any Net Tax Increment Revenues amount deposited into the Surplus Revenue Account will be applied to prepay the TIFIA Loan or, with the consent of the TIFIA Lender, to make payments on other indebtedness that was previously approved by the TIFIA Lender and any remaining Annual Capital Contributions deposited into the Surplus Revenue Account shall be remitted to AC Transit.

(iv) Notwithstanding the foregoing, any prepayment of the Annual Capital Contributions prior to the completion of construction of the Transbay Transit Center will reduce the amount that can be drawn under the TIFIA Loan and any such

prepayments received after said completion will be applied as a prepayment of the TIFIA Loan.

SECTION 9. Payment of Principal and Interest.

(a) 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 Payment Date and on each other date (including, without limitation, 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.

(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 February 1 and August 1 occurring during the Capitalized Interest Period, interest accrued in the six month period ending immediately prior to such date on the TIFIA Loan shall be capitalized and added to the Outstanding TIFIA Loan Balance. Within 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 Security Documents; provided further that, if any such revision results in an adjustment to one or more prior TIFIA Loan payment amounts, then the Borrower agrees to pay any deficiency to the TIFIA Lender and the TIFIA Lender agrees to remit or credit any overage to the Borrower, as applicable, within a commercially reasonable time.

(c) Payment of TIFIA Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date and on or prior to the Amortization Commencement Date, the Borrower shall pay TIFIA Debt Service in the amount of interest on the TIFIA Loan equal to the amount set forth on Exhibit F hereto. On each Payment Date commencing on the Amortization Commencement Date, the Borrower shall pay TIFIA Debt Service in the amount of principal of and interest on the TIFIA Loan due and payable as of such date as set forth on Exhibit F. If there is any variation from the draw down schedule set forth in the Base Case Financial Model, the amount of the TIFIA Debt Service scheduled to be paid on each Payment Date shall be reduced or increased, as applicable, to reflect such variation in such a manner that the Outstanding TIFIA Loan Balance shall be reduced to \$0 on the Final Maturity Date and the Amortization Payments shall increase or decrease to be in the same proportion, to the extent reasonably practicable, as the amortization schedule established in the Base Case Financial Model.

(d) Amortization Payments. On each Payment Date occurring during the Amortization Period for the TIFIA Loan, the Borrower shall make payments of principal and interest (each an "Amortization Payment"), as set forth in Exhibit F or as the same may be revised as set forth below. If the Amortization Commencement Date is different from the estimated Amortization Commencement Date that appears in Exhibit F then the amount of the Amortization Payment shall be calculated as of the first day of the Amortization Commencement

Date in such manner that the Outstanding TIFIA Loan Balance of the TIFIA Loan as of such date shall be reduced to \$0 on the Final Maturity Date and the Amortization Payments shall increase or decrease (i) to be proportional to the amortization schedule established in the Base Case Financial Model or (ii) on such other basis as is requested by the Borrower and approved by the TIFIA Lender using the actual Amortization Commencement 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 Amortization Payments are made in a timely manner during such period, and that no additional payments of principal or interest on the TIFIA Loan are made during such period); provided that (i) the amount payable on the first Payment Date occurring during an Amortization Period shall be appropriately adjusted in the event that the duration of the period from the commencement of the Amortization Period to such first Payment Date shall be less than six months, and (ii) there shall be due and payable on the Final Maturity Date of the TIFIA Loan (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 19) all amounts of principal and interest not otherwise paid pursuant to the provisions of this Agreement. Within 30 days prior to the beginning of the Amortization Period for the TIFIA Loan, the TIFIA Lender shall give written notice to the Borrower of the amount of the related Amortization Payment (including any adjustment in respect of the first such payment), which amount shall be deemed conclusive absent manifest error and a revised Exhibit F. To the extent that any prepayments of the TIFIA Loan shall be made during the Amortization Period in addition to the Amortization Payments, such prepayments shall be applied to the remaining Outstanding TIFIA Loan Balance and the resulting Amortization Payments shall be recalculated as provided in Section 10(c) and reflected in a revised Exhibit F.

(e) 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 a TIFIA Lender's Authorized Representative pursuant to Section 36, as modified in writing from time-to-time by a TIFIA Lender's Authorized Representative.

(f) 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**, attached hereto and incorporated herein by reference, having a maximum principal amount of \$171,000,000 (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**, attached hereto and incorporated herein by reference, 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 hereof. 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.

#### SECTION 10. Prepayment.

(a) Mandatory. The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium, in the amounts and at the times required pursuant to the provisions of Section 8(f) in the amount provided for in the Collateral Agency Agreement with

the proceeds of any prepayment of the Annual Capital Contribution prior to the Substantial Completion Date and the available Net Tax Increment Revenues. Each such prepayment shall be accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement and the Collateral Agency 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 \$5,000 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 partial prepayment, such written notice shall be delivered to the TIFIA Lender not less than 10 days or more than 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 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 the remaining Outstanding TIFIA Loan Balance and the remaining Amortization Payments will be recalculated by reducing the latest scheduled principal Amortization Payments in the amount of the prepayment and the resulting Amortization Payments will be reflected in a revised Exhibit F, and the TIFIA Lender shall, and is hereby authorized by the Borrower to, make the appropriate notations thereof on **Appendix One** to the Note and to revise the Loan Amortization Schedule in accordance herewith. Absent manifest error such TIFIA Lender notations and revisions shall be conclusive. If said moneys 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. [Reserved]

SECTION 12. Compliance with Laws. The Borrower covenants to require its contractors and subcontractors to abide by all applicable Federal and State laws applicable to the Project in addition to the terms and conditions of the FTA Compliance Agreement attached hereto as Exhibit E. The FTA Region IX Office has oversight responsibility for ensuring compliance with all applicable provisions of Federal law during construction and will be responsible for certain Project oversight activities prior to Substantial Completion. The

Borrower agrees to cooperate with the FTA Region IX Office, its agents and representatives in carrying out their oversight duties. The Borrower agrees that there will be no irreversible or irretrievable commitment of resources, including but not limited to 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. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied:

(a) The Borrower shall have duly executed (if the Borrower is a party thereto) and delivered to the TIFIA Lender each of [identified the Security Documents] and the Principal Project Contracts [existing on the date hereof], each in form and substance satisfactory to the TIFIA Lender.

(b) Counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions in substantially the form attached hereto as Exhibit G.

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

(d) The Borrower shall have provided to the TIFIA Lender's satisfactory evidence that the Project is included in the metropolitan transportation improvement program for San Francisco, California and in the State of California's long range transportation plan and the FHWA and FTA-approved state transportation improvement program.

(e) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, not later than 14 days prior to Effective Date, of the assignment by a Nationally Recognized Rating Agency of an Investment Grade Rating to the TIFIA Loan.

(f) The Borrower shall have delivered to the TIFIA Lender a certificate designating the Borrower's Authorized Representative and such person's position and incumbency and a certificate of the Borrower to the effect that the insurance requirements of Section 16(h) have been satisfied as of the Effective Date.

(g) 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.

(h) The Borrower shall have provided evidence of its compliance with 49 U.S.C. 5333(b) and regulations promulgated thereunder, such evidence being a certification letter from the United States Department of Labor acceptable to the TIFIA Lender.

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

(j) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that it has all necessary permits and governmental approvals required as of the date hereof necessary to commence construction.

(k) The Borrower shall have delivered to the TIFIA Lender a certified schedule acceptable to the TIFIA Lender demonstrating that the projected Pledged Revenues shall be sufficient to meet the Loan Amortization Schedule.

(l) The Borrower shall have made arrangements satisfactory to the TIFIA Lender to pay to the TIFIA Lender, within 30 Business Days after the Effective Date, the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisor and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof.

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

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

(o) The Borrower shall have executed and delivered to the TIFIA Lender a direction letter in accordance with Section 5 of the TIF Pledge Agreement to the Agency to pay the Net Tax Increment Revenues to the Collateral Agent in form and substance acceptable to the TIFIA Lender.

(p) The Borrower shall have delivered to the TIFIA Lender [The AC Transit Acknowledgement Agreement].

(q) The Borrower shall have obtained a Data Universal Number System and a number from the federal Central Contractor Registry.

(r) The Borrower shall have provided a certification to the TIFIA Lender that [none of the Security Documents] or the Redevelopment Plan have been amended, supplemented, restated or terminated.

(s) The Borrower shall have delivered to the TIFIA Lender each of the Concord Report, the Seifel Report, the Northcross Report and the URS Report, each in form and substance acceptable to the TIFIA Lender.

(t) [Covenant to monitor assessment appeals to be inserted.]

(u) The Borrower shall also have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including, but not limited to, evidence that all other



Project funding requirements have been met (including evidence of other funding sources or funding commitments).

SECTION 14. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that as of the date of the execution of this Agreement and, as to each of the representations and warranties below other than those contained in clauses (b) and (i) of this Section, as of each date on which any disbursement of the TIFIA Loan is made:

(a) The Borrower is a joint powers authority duly created and organized under California Government Code Section 6500 *et seq*, has full legal right, power and authority to enter into this Agreement and the other Security Documents [to which the Borrower is a party and are now existing] then in existence, to execute 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 Security Documents [to which the Borrower is a party and are now existing].

(b) As of the Effective Date, the officers of the Borrower executing the [Security Documents] to which the Borrower is a party [and are now existing], are [or were at the time of execution] duly and properly in office and fully authorized to execute the same.

(c) Each of the Security Documents to which the Borrower is a party [and are now existing] has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, (B) may be subject to general principles of equity (regardless of whether enforceability is considered in equity or at law), and (C) subject to the exercise of judicial discretion and the limitations on legal remedies against joint power authorities in the State.

(d) The execution and delivery of the Security Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Security Documents [to which the Borrower is a party] and the fulfillment of or compliance with the terms and conditions of the Security Documents [to which the Borrower is a party] will not, in any material respect, conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) by the Borrower of any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(e) No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority required as of the date hereof is necessary in connection with the execution and delivery by the Borrower of the [existing] Security Documents [to which the Borrower is a party], the consummation of any transaction contemplated by the [existing] Security Documents [to which the Borrower is a party], or the

fulfillment of or compliance with the Borrower of the terms and conditions of the [existing] Security Documents [to which the Borrower is a party], except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending, or to the knowledge of the Borrower after reasonable inquiry and investigation, threatened against or affecting the Borrower or the assets, properties or operations of the Borrower which are likely to have a Material Adverse Effect. The Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any other Governmental Authority, which default would be reasonably likely to have a Material Adverse Effect.

(g) The Security Documents establish, in favor of the Collateral Agent for the benefit of the TIFIA Lender, the valid 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 to the extent such Permitted 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(b) of this Agreement and the Security Documents with respect thereto.

(h) The Borrower is not debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered in substantially the form of **Exhibit C**.

(i) As of the Effective Date, the representations, warranties and certifications of the Borrower set forth in this Agreement and the Principal Project Contracts and all the information provided by the Borrower to the TIFIA Lender when taken as a whole and after giving effect to any updates, remain true and accurate.

(j) With respect to the Project the Borrower has complied and will continue to comply with all applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.).

(k) The Project has been included in the metropolitan transportation improvement program for San Francisco, in the State transportation plan and the approved State transportation improvement program as required by 23 U.S.C. §602(a)(1).

(l) To the knowledge of the Borrower, the rating referenced in Section 13(e) has not been reduced below Investment Grade, withdrawn or suspended as of the Effective Date.

(m) Upon execution and delivery of this Agreement and the Note, the Borrower is not in default in any material respect under the terms hereof or thereof and no event has occurred or condition exists which, with due notice or lapse of time or both, would constitute an Event of Default.

(n) All authorizations, consents, approvals, licenses, permits and reviews required as of the Effective Date 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) The Principal Project Contracts which have been executed and delivered are all in full force and effect, the Borrower is not in default under any of such agreements or contracts, and to the knowledge of the Borrower no party to any of such agreements or contracts is in default thereunder, except as, in either case, could not reasonably be expected to have a Material Adverse Effect.

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

(a) The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by this Agreement and the Collateral Agency Agreement.

(b) This Agreement and the Collateral Agency Agreement 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) [Each of] the officers of the TIFIA Lender executing this Agreement and the Collateral Agency Agreement is duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

SECTION 16. Borrower Covenants. The Borrower hereby covenants and agrees that:

(a) Permitted Indebtedness. Except for Permitted Debt, the Borrower shall not issue or incur indebtedness of any kind.

(b) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Collateral (whether now existing or hereafter arising) granted to the 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 prior to, or of equal rank with the Liens created by the Security Documents, other than as permitted 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.

(c) Copies of Documents. The Borrower shall furnish to the TIFIA Lender a copy of any offering document and cash flow projections prepared in connection with the incurrence of any Permitted Debt, prior to the incurrence of any such Permitted Debt, as well as

copies of any continuing disclosure documents, in each case prepared or filed in connection with the applicable rules of the Securities and Exchange Commission, in each case promptly following the preparation or filing thereof.

(d) Use of Proceeds and Program Income. The Borrower shall use the proceeds of the TIFIA Loan only to pay, or to reimburse the Borrower for, Eligible Project Costs. The Borrower shall use all income, revenues, rates, fees, charges, rentals, including joint development revenues, or other receipts derived by or related to the operation or ownership of the Project and remaining after the payment of any Pledged Revenues to the Collateral Agent exclusively for transit capital and/or operating expenses.

(e) Prosecution of Work. The Borrower shall cause the work relating to the Project to be diligently prosecuted and the Project to be completed in accordance with the Construction Schedule, including, without limitation, the provisions of Section 19(a)(iii) hereof, and in accordance with the highest standards of Borrower's industry, using its best efforts at all times.

(f) Operations and Maintenance. The Borrower shall operate and maintain the Project, or cause the Project to be operated and maintained, in a reasonable and prudent manner and shall maintain the Project, or cause the Project to be maintained, in good repair, working order and condition. The Borrower shall enter into lease and use agreement with additional transit tenants with substantially similar terms relating to the funding of operation, maintenance and repair of the Project as the terms in the Lease and Use Agreement. The Borrower shall not enter into any lease and use agreement with a party debarred by any Federal agency or department. The Borrower shall prepare for FTA review and approval an asset management plan for the Project and implement the same upon Substantial Completion. 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 or cause compliance in all material respects with all applicable laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over the Borrower or its assets or operations (including, without limitation, the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.) and all other federal, state and local laws, rules, regulations, orders, decrees, judgments and administrative decisions relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters).

(g) Public Transportation Purposes. The Borrower shall lease the Transbay Transit Center solely for public transportation purposes except for the rooftop park and up to 59,000 square feet of commercial space therein both such exceptions having been excluded from Eligible Project Costs.

(h) Insurance. The Borrower shall at all times maintain, or cause to be maintained, insurance on and with respect to the Project, 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.

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

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

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

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

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

(k) No Lien Extinguishment or Adverse Amendments. Borrower shall not, without the prior written consent of the TIFIA Lender, either (i) extinguish the Liens on the Collateral, except as provided under the Collateral Agency Agreement and other Security Documents, (ii) amend, modify or supplement any Principal Project Contract in a manner that could materially adversely affect the TIFIA Lender in connection with the TIFIA Loan (iii) amend, modify or supplement any Security 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 any party of material covenants under the Project Documents 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 Project Document at least 30 days prior to the effective date thereof.

(l) Maintain Legal Structure. The Borrower shall maintain its existence as a joint powers authority under the laws of California Government Code Sections 6500 *et seq.*

(m) Annual Rating. The Borrower shall, no later than the last Business Day of [February] of each year over the term of the TIFIA Loan, commencing on [February 28, 2011] at no cost to the TIFIA Lender, provide to the TIFIA Lender a confirmation of the rating referenced in Section 13(e) hereof or, if such confirmation is not available, a private rating on the TIFIA Loan by a Nationally Recognized Rating Agency.

(n) Debt Service Reserve Account. The Borrower shall maintain the Debt Service Reserve Account in an amount equal to the Debt Service Reserve Required Balance in accordance with the provisions of the Collateral Agency Agreement. Amounts in the Debt Service Reserve Account shall be made available to ensure the timely payment of TIFIA Debt Service on the TIFIA Loan.

(o) Labor Protection Agreements. The Borrower shall abide by any and all applicable Federal and state laws, including, within limitation, all Federal labor protection agreements, including 49 U.S.C. 5333(b) and the regulations promulgated thereunder .and any letter of certification issued pursuant thereto.

(p) No Prohibited Liens. The Borrower will not create, incur, assume or permit to exist any Lien on the Project, except Permitted Liens, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof.

(q) Distributions from Surplus Revenue Account. There shall be no distribution of any kind of funds to the Borrower from the Surplus Revenue Account established under the Collateral Agency Agreement unless and until all of the conditions stated therein have been satisfied.

No distributions of any kind shall be made unless the Borrower certifies as of the relevant distribution date that:

(i) 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;

(ii) no breach of the covenants and agreements contained in Sections 16(f) then exists;

(iii) no Payment Default shall have occurred and be continuing, and all TIFIA Debt Service for all Payment Dates occurring during the six-month period ending on the anticipated distribution date shall have been paid;

(iv) the Debt Service Reserve Account is fully funded; and

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

(r) Copies of Additional Project Contracts and Developer Disposition Agreement. The Borrower shall provide a copy of each Additional Project Contract, together with evidence of any required FTA approval associated therewith and Developer Disposition Agreement to the TIFIA Lender promptly after execution thereof.

(s) No Prohibited Sale or Assignment. The Borrower shall not sell or assign its rights in and to the Project or its rights and obligations under this Agreement unless such sale or assignment is not expected to result in a Material Adverse Effect and is upon terms and conditions which are acceptable to the TIFIA Lender in its sole discretion.

(t) Material Obligations. The Borrower will pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of 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 or claim so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall, to the extent required by GAAP on a consistent basis, set aside on its books adequate reserves with respect thereto.

(u) Fiscal Year. The Borrower will not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with the prior written notice to the TIFIA Lender.

(v) 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 Transbay Transit Center Program and activities incidental or related thereto.

(w) Capital Replacement Reserve. The Borrower shall cause the Capital Replacement Reserve Account (as defined in the Collateral Agency Agreement) to be funded in such amounts and under such conditions as are required by the Collateral Agency Agreement.

(x) No Deliberate Adverse Acts. [The Borrower shall not take any action, fail to take any action or consent to any action, modification, waiver or amendment to any agreement relating to the Project, including, without limitation, any amendment to the Redevelopment Plan, that results in a material, adverse change to one or more of the financial assumptions used in the Base Case Financial Plan, without the prior written consent of the TIFIA Lender.]

(y) Diligently Prosecute Redevelopment Plan. The Borrower shall use its best efforts to cause the Agency to diligently prosecute the work relating to the Redevelopment Plan, including, without limitation, sale and private development of the State-owned Parcels and the exercise of remedies against a property owner upon the occurrence and continuation of a default under an Developer Disposition Agreement that has, or is likely to result in a material reduction of the real estate tax assessment and the amount of Net Tax Increment Revenues to be collected with respect to such property.

(z) Application of Insurance Proceeds. The Borrower shall use its best efforts to cause the Agency to include in each Developer Disposition Agreement the obligation to apply fire and casualty property insurance proceeds to the restoration of the subject property if, in the reasonable judgment of the Agency, the funds available to the subject property owner are sufficient to restore the property to its prior use and condition.

(aa) No Real Estate Tax Exempt Use. The Borrower shall use its best efforts to cause the Agency to record a deed restriction for the term of the TIFIA Loan on each property that is the subject of an Developer Disposition Agreement that such property will not be used, in whole or in part, by an entity or for a purpose that will result in an exemption from the payment of real estates taxes being granted in any amount, without the prior written consent of the TIFIA Lender [with the exception of the following: 1) property that is used for infrastructure and other public facilities and 2) property that is used for the production of affordable housing].

(bb) Remittance of Pledged Revenues. The Borrower shall maintain a written direction or other agreement, each in scope and substance satisfactory to the TIFIA Lender, for the remittance of the Pledged Revenues to the Collateral Agent or as otherwise directed by the TIFIA Lender.

(cc) No State Mandated Reallocation. [Borrower shall use its best efforts to cause] the Net Tax Incremental Revenues [to] not be reduced through a State mandate to the Agency pursuant to clause (d) of the definition thereof. [To the extent the Borrower has any remedy to prevent such reduction, the Borrower shall take action to implement such remedy or use its best efforts to cause the Agency to take action to implement such remedy.]

SECTION 17. Indemnification. The Borrower to the extent permitted by law 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, without limitation, 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 (i) the execution, delivery and performance of this Agreement or any of the Project Documents, (ii) the TIFIA Loan or the use of the proceeds thereof, or (iii) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any 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 upon notice from such Indemnatee shall defend the same and such Indemnatee shall cooperate with the Borrower at the expense of the Borrower in connection therewith. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any 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 Project 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 Project 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 18. 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 (i) at least 60 days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower to the effect that the TIFIA Lender is considering the sale or reoffering of the TIFIA Loan and (ii) at least 30 days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower confirming TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section shall not (i) obligate the TIFIA Lender to sell nor (ii) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

SECTION 19. 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, without limitation, TIFIA Debt Service, if any, 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 a "Payment Default"); or

(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 30 days after receipt by the Borrower from the TIFIA Lender of written notice thereof; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii) if and so long as within such 30-day period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured; or

(iii) Development Default. If (1) the Borrower fails to reasonably prosecute the work relating to the Project or (2) the Borrower fails to complete the Project in accordance with the Construction Schedule, unless in all such cases the Borrower demonstrates to the TIFIA Lender's reasonable satisfaction that the Borrower is proceeding with the construction of the Project with due diligence toward Substantial Completion by [March 31, 2014] (a "Development Default"). In each such case the TIFIA Lender may: (i) suspend the disbursement of TIFIA Loan proceeds under this Agreement; and (ii) pursue such other remedies as provided in this Section 19 including declaring the default rate in effect. If so requested in connection with a Development Default, the Borrower shall immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower which have not been paid to or for the account of the Borrower.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the Security Documents shall prove to have been false or misleading in any material respect when made; or

(v) Acceleration of Other Material Indebtedness. Any acceleration shall occur of the maturity of any other indebtedness of the Borrower in an aggregate principal amount equal to or greater than \$500,000 (inflated annually by CPI) that is in parity with, the TIFIA Loan in right of payment or in right of security (“Other Material Indebtedness”), or any such Other Material Indebtedness shall not be paid in full upon the final maturity thereof; or

(vi) Cross Default. (A) Any of the representations, warranties or certifications of the Borrower 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 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 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 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 within 30 days after receipt of written notice thereof from the TIFIA Lender; provided, however, that if such cure or waiver of such Misrepresentation Default or Covenant Default cannot reasonably be obtained within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (vi) if and so long as within such 30-day period the Borrower shall commence actions reasonably designed to obtain a cure or waiver thereof and shall diligently pursue such actions until such cure or waiver is obtained; or

(B) The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Project Document or any Project 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, or to obtain an effective revocation of such termination (as the case may be), within 30 days after receipt of written notice thereof from the TIFIA Lender; provided, however, that if such cure or waiver or revocation (as the case may be) cannot reasonably be obtained within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause if and so long as within such 30-day period the Borrower shall commence actions reasonably designed to obtain a cure or waiver of such default or a revocation of such termination (as the case may be) and shall diligently pursue such actions until such cure or waiver or revocation is obtained; or

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

not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment; or

(viii) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a joint powers authority under the laws of the State of California; or

(ix) Occurrence of A Bankruptcy Related Event. A Bankruptcy Related Event shall occur; or

(x) Project Abandonment. The Borrower shall abandon the Project; or

(xi) Cessation of Operations. Operation of the Project shall cease for a continuous period of not less than 180 days unless such cessation of operations shall occur by reason of an Uncontrollable Force.

(b) Upon the occurrence of an Event of Default described in clause (iii) of Section 19(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) (i) Upon the occurrence of any Event of Default described in clause (xi) of Section 19(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 [by the Borrower to the TIFIA Lender] under this Agreement, the Note or [the other Security 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 (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan and (ii) declare the unpaid principal amount of the 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 [by the Borrower to the TIFIA Lender] under this Agreement, the Note [or the other Security Documents], all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

(d) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the Note or the other Security 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 Security 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 Security Documents.

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

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

SECTION 20. 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 Pledged 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 years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this 20(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 20(b) at any time when an Event of Default shall have occurred and be continuing.

(c) The Borrower shall maintain and retain all files relating to the Project and the TIFIA Loan until five years after the later of the date on which (1) all rights and duties hereunder and under the Note (including payments) have been fulfilled and necessary audits have been performed and (2) any litigation relating to the Project, the TIFIA Loan or this Agreement is finally resolved. The Borrower shall provide the TIFIA Lender in a timely manner all records and documentation relating to the Project that the TIFIA Lender may reasonably request from time to time.

(d) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of all reports or other written materials sent to any Nationally Recognized Rating Agency that has provided, or is being requested to provide, a rating on any indebtedness of the Borrower.

SECTION 21. Financial Plan, Statements, and Reports.

(a) The Borrower shall provide to the TIFIA Lender, within 30 days after the Effective Date and annually thereafter not later than 60 days after the beginning of each Borrower Fiscal Year, a Financial Plan. The Financial Plan submitted within 30 days after the Effective Date (the “Base Case Financial Plan”) should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model. 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, and shall be in form and substance satisfactory to the TIFIA Lender.

(i) The Financial Plan shall include: (1) a Certificate signed by the Borrower’s Authorized Representative demonstrating that annual projected Pledged Revenues shall be sufficient to meet the Loan Amortization Schedule, and (2) an electronic copy of the updated “base case” financial models for the sale and development of the State-owned Parcels and the projection of Pledged Revenues 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 sale and development of the State-owned Parcels, projected gross tax increment, projected Pledged Revenues and other financial aspects of the Redevelopment Plan, which shall reflect the prior experience and current status of the Project and the Redevelopment Plan, and the expectations of the Borrower’s and the Agency’s management with respect to the Project and the Redevelopment Plan, as of the most recent practicable date prior to the delivery of such models.

(ii) For the period through Substantial Completion, the Financial Plan shall: (1) 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 Project Costs by major activity or category since the Base Case Financial Plan and the preceding Financial Plan; (2) provide the current schedule and implementation plan for completing the Project, including a date on which Substantial Completion is expected to occur, identify major milestones for each phase of the Project and compare current milestone dates with milestone dates in the Base Case Financial Plan and the preceding Financial Plan, and discuss reasons for changes in Project milestones; (3) provide actual and current estimates of future annual 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 annual Project funding since the Base Case Financial Plan and the preceding Financial Plan; (4) provide an updated schedule showing projected monthly uses of funds versus projected monthly available sources of

funds to complete the Project and identify any potential monthly funding shortfalls, addressing contingency measures that will or may be taken to address any shortfalls; (5) 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; (6) provide the total value of approved changes in project design or scope, and provide a listing of each individual change valued at \$1,000,000 or more, setting forth the rationale or need for the proposed change and describing the impact of such change on the Project; (7) provide an updated schedule of actual and projected annual sales and development of each State-Owned Parcel; (8) provide projected annual Pledged Revenues (as prepared by the Borrower and/or a Borrower Consultant), TIFIA Debt Service and debt service coverage ratios for the TIFIA Loan through the Final Maturity Date; and (9) 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 and the implementation of the Redevelopment Plan since the Base Case Financial Plan and the preceding Financial Plan, describing in reasonable detail all significant activities concerning status of the Project and the Redevelopment Plan, including any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof.

(iii) For the period following Substantial Completion until repayment of the TIFIA Loan in full, the Financial Plan shall: (1) provide an updated schedule of actual and projected annual sales and development of each State-Owned Parcel; (2) provide an updated cash flow schedule showing historical and projected annual cash inflows (Pledged Revenues, interest and other income) and outflows (operating costs, capital costs, TIFIA Loan repayments, 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; (3) provide a schedule of annual amounts of Pledged Revenues received and the amounts deposited into each fund and account held under the Collateral Agency Agreement and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts during the most recent Borrower Fiscal Year; (4) provide an updated schedule of actual and projected annual Pledged Revenues, showing actual and projected coverage ratios for the TIFIA Loan; and (5) include a written narrative report explaining any variances in costs or revenues since the Base Case Financial Plan 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, but not be limited to, reports by a Borrower's Consultant, operational contracts, and third-party transactions.

(b) Not later than ninety (90) days following the Substantial Completion Date, the Borrower shall provide the TIFIA Lender with a final written narrative report, summarizing all significant activities and events, since the initial Financial Plan, affecting the operation, maintenance, financing, or management of the Project and the implementation of the Redevelopment Plan in a form reasonably satisfactory to the TIFIA Lender. Such report shall include an updated annual cash flow schedule and currently projected debt service coverage ratios for the TIFIA Loan.

(c) For the period through Substantial Completion, the Borrower shall provide the TIFIA Lender with written notification, before instituting any increase or decrease of the overall Project Costs in an amount equal to or greater than \$2,500,000, setting forth the nature of the proposed increase or decrease and estimating the impact of such increase or decrease on the capital costs, operating costs, Project Budget 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.

(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 each semi-annual period of each Borrower Fiscal Year, an unaudited income statement and balance sheet as of the end of such period and the related unaudited statements of operations and changes in 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; and

(ii) as soon as available, but no later than 180 days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations, changes in 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 of national standing selected by the Borrower, 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 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) 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 21(d), a certificate signed by the Borrower's Authorized Representative stating whether or not, during the annual or semi-annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event which, with notice or lapse of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

## SECTION 22. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender acting through the Federal Transit Administration (FTA) shall have the right in its sole discretion to monitor (or direct its agents to monitor) Project development, including but not limited to

environmental mitigation compliance, design, right-of-way acquisition, construction, and testing. Oversight of Project development, environmental mitigation compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to FTA's Project Management Oversight statutory authority found at 49 USC 5327 and its implementing regulation found at 49 CFR Part 633, and related published guidance, all as may be amended from time to time. The Borrower agrees to cooperate in good faith with the TIFIA Lender and FTA in the conduct of such monitoring by promptly providing the TIFIA Lender and FTA with such reports, documentation or other information as shall be reasonably requested by the TIFIA Lender and/or FTA or its agents, including any independent engineer reports, documentation or information. The conduct of such monitoring by the TIFIA Lender and/or FTA shall not interfere in an unreasonable manner with the day-to-day operation of the Borrower and the conduct of the Project by the Borrower.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender and FTA during the Construction Period the following:

(i) Construction Progress Report. On or before the last Business Day of the month succeeding any calendar quarter during the Construction Period and in connection with each Requisition, Borrower shall provide to the TIFIA Lender and to FTA a report executed by a Borrower's Authorized Representative: (A) of the amount of Project Costs expended (since the Effective Date as well as during the preceding calendar quarter and any full month subsequent thereto) and the amount of Project Costs estimated to be required to complete the Project, including costs expended and remaining to be expended for allocated and unallocated contingency. The reporting of allocated and unallocated contingency shall be made in such a format that it compares easily to percent of project complete; (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. This narrative information shall also be depicted by utilization of a standard construction S curve. The assessment should also include a detailed description of the status of contracts and of the disadvantaged business enterprise goal and progress towards its achievement; (C) specifying the projected Substantial Completion Date, and any impediments to its achievement; (D) providing a detailed description of all material problems (including but not limited to actual and anticipated cost, incurred by the Borrower and not passed down to the construction contractors, 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 meeting its critical path 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 have on the overall Construction Schedule; (F) specifying any proposed or pending change orders greater than \$1,000,000 in value and any potential or pending claims greater than \$250,000 in value; (G) specifying any material changes or deviations from the Borrower's real estate acquisition and management plans and schedule; (H) specifying any proposed or pending modifications to the original Project scope as outlined in the TIFIA Application dated October 15,



2008; and, (I) including a discussion or analysis of such other matters related to the Project as the TIFIA Lender or FTA may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause a Construction Contractor to respond to the TIFIA Lender's and to FTA's inquiries regarding such report, the construction of the Project, and any Construction Contractor's performance.

(ii) Construction Contractor Reports. During the Construction Period, promptly after receipt thereof, Borrower shall provide to the TIFIA Lender and to FTA a copy of each report delivered by each Construction Contractor to the Borrower pursuant to any Construction Agreement related to the Project.

(iii) 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), Borrower shall provide to the TIFIA Lender and to FTA a copy of (A) except such as are routine or ministerial in nature, each Governmental Approval or other consent or approval obtained by the Borrower, or pursuant to any Principal Project Contracts and delivered to the Borrower after the Effective Date, and (B) each filing made by the Borrower with any Governmental Authority with respect to a Governmental Approval, except such as are routine or ministerial in nature. No environmental permit shall be deemed routine or ministerial in nature.

(c) Project Operations. For the period following Substantial Completion until repayment in full of the TIFIA Loan, 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 reasonably incurred by the TIFIA Lender for such monitoring shall be promptly reimbursed by the Borrower upon demand made in the form of an invoice reasonably acceptable to the Borrower.

SECTION 23. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower executing this Agreement or any of the other Security Documents shall be personally liable on this Agreement or such other Security Documents by reason of the issuance, delivery or execution hereof or thereof.

SECTION 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the 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 17, from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

SECTION 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such individual or individuals from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by the Borrower.

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

SECTION 27. Servicer. The TIFIA Lender may from time to time designate an entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the 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.

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SECTION 28. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (FFY) 2011 and continuing thereafter each year throughout the term of the TIFIA Loan Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the [15<sup>th</sup> of November]. The TIFIA Lender shall establish the amount of this annual fee, and the Servicer shall notify the Borrower of the amount, at least 30 days before payment is due. For the avoidance of doubt, the final and the full amount of the loan servicing fee shall be payable in the [Federal Fiscal Year ("FFY")] that the note is paid or prepaid in full.

In establishing the amount of the fee, the TIFIA Lender will adjust the previous year's base amount utilizing the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, or its successor(s), published by the Bureau of Labor Statistics, or its successor(s). For the FFY 2011 calculation, the TIFIA Lender will use the FFY 2010 base amount of \$11,500 which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI-U, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

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.

(b) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time-to-time on and after the date hereof for any and all fees, costs, charges and expenses incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other Security Documents and the transactions hereby and thereby contemplated, including without limitation, reasonable attorneys', engineers', and planning fees and professional costs, including all such fees, costs and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other Security Documents [to which Borrower is a party];

(ii) any amendment or requested amendment of, or waiver or consent or requested waiver or consent under or with respect to, this Agreement or any of the other Security Documents [to which Borrower is a party], or advice in connection with the administration of this Agreement or any of the other Security Documents or the rights of the TIFIA Lender thereunder; and

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

The obligations of the Borrower under this Section 28 shall survive the payment or prepayment in full or transfer of the Note, the enforcement of any provision of this Agreement or the other Security Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring or similar arrangement.

SECTION 29. Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

SECTION 30. Governing Law. This Agreement shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State of California, if and to the extent such federal laws are not applicable; provided, however, that the capacity, power and authority of the Borrower to enter into this Agreement is governed by the laws of the State of California.

SECTION 31. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit

of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender.

SECTION 33. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 34. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

SECTION 35. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 36. Notices; Payment Instructions. Notices hereunder shall be effective upon receipt and shall be given by certified mail, return receipt requested, or by other delivery service providing evidence of receipt to:

If to TIFIA Lender: TIFIA Joint Program Office (HCFT-1)  
Federal Highway Administration  
Room E64-301  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
Attention: Chief of TIFIA Joint Program Officer

with copies to: Federal Transit Administration  
Office of Policy Development and Review—TIFIA  
Room E52-328  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
Attention: Kristine Leiphart

Office of the Chief Counsel—TIFIA  
Federal Transit Administration  
Room E56-314  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Attention: Paula L. Schwach, Esq.

If to Borrower:

Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105  
Attention: Executive Director

Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative with respect to notices to the Borrower or by a TIFIA Lender's Authorized Representative with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the Note in accordance with the payment instructions hereafter provided by a TIFIA Lender's Authorized Representative, as modified from time-to-time by a TIFIA Lender's Authorized Representative.

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

SECTION 38. Termination. This Agreement shall terminate upon payment in full by the Borrower of the TIFIA Loan, provided, however, that the indemnification requirements of Section 17, the reporting and record keeping requirements of Section 20(b) and (c) and the payment requirements of Section 28 shall survive the termination of this Agreement as provided in such sections.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**TRANSBAY JOINT POWERS AUTHORITY**

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

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

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

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**SCHEDULE 1**

**PROJECT BUDGET**

[To be provided by Borrower]



TTC Baseline Budget Phase 1

Summary

Based on Commitments

All amounts in thousands (000), YOE \$\$

**DRAFT**

Subject to Revision

Project Costs	TOTAL	FY07 & Prev	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Temporary Terminal	\$27,103	\$159	\$1,741	\$18,698	\$6,497	\$7	\$6,260		
Bus Storage	\$40,034	\$52	\$265	\$2,103	\$2,334	\$29,020			\$1,312
Demolition (Exist and Temp Term)	\$27,877			\$1,463	\$25,102	\$26,089	\$109		\$2,639
Utility Relocation	\$68,090		\$835	\$5,193	\$35,863	\$23,094	\$15,275	\$7,711	\$100,501
Transit Center Building Design	\$119,749		\$1,350	\$40,490	\$29,190	\$163,801	\$118,040	\$132,662	
Transit Center Building Construction	\$520,003			\$200	\$5,000	\$12,100	\$20,038	\$12,246	
Bus Ramps	\$45,484			\$27,002	\$899				
ROW Acquisition	\$76,825	\$29,025	\$20,645	\$2,687	\$1,450	\$95			\$6,833
ROW Support	\$5,022	\$298	\$491	\$2,644	\$31,980	\$27,886	\$15,808	\$16,163	
Programwide	\$167,103	\$31,850	\$10,145	\$6,000	\$18,630	\$18,828	\$15,000	\$20,000	\$13,253
Program Reserve	\$91,711								
<b>TOTAL</b>	<b>\$1,189,000</b>	<b>\$61,385</b>	<b>\$35,473</b>	<b>\$130,275</b>	<b>\$157,098</b>	<b>\$300,920</b>	<b>\$190,531</b>	<b>\$188,782</b>	<b>\$124,537</b>
<b>Funding Plan</b>	<b>TOTAL</b>	<b>FY07 &amp; Prev</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
TIFIA	\$171,000								
SF Prop K Sales Tax	\$97,749	\$15,759	\$17,482	\$38,714	\$7,329	\$13,465	\$5,000	\$61,584	\$109,416
San Mateo Sales Tax	\$7,280	\$4,638	\$2,642						
AC Transit Capital Contribution	\$38,546								
Lease and Interest Income	\$2,738	\$58	\$307	\$617	\$522	\$16,119	\$8,676	\$8,472	\$5,279
Transferable Development Rights	\$4,040								\$1,234
Other Local	\$799	\$799							\$4,040
Regional Measure 1	\$54,400	\$1,400			\$21,100	\$3,180	\$17,425	\$8,880	\$2,415
Regional Measure 2	\$142,045	\$44,005	\$53,223	\$33,095	\$11,722	\$226	\$40,168	\$109,607	
AB 1171 (Other Bridge Tolls)	\$150,000					\$15,990	\$4,960		
RTIP	\$28,341		\$7,391		\$81,831	\$234,591	\$113,098		
Land Sales	\$429,521								
FTA Section 1601	\$8,795	\$8,795							
High Priority - Bus (#403)	\$11,615	\$2,665		\$5,679	\$208	\$255	\$416	\$238	\$2,154
High Priority - Bus (#459)	\$17,367	\$3,985		\$1,826	\$11,556				
PNRS	\$24,765				\$8,350	\$15,627	\$788		
<b>GRAND TOTAL</b>	<b>\$1,189,000</b>	<b>\$82,104</b>	<b>\$81,045</b>	<b>\$79,931</b>	<b>\$142,618</b>	<b>\$299,452</b>	<b>\$190,530</b>	<b>\$188,781</b>	<b>\$124,538</b>
<b>Annual Surplus (Shortfall)</b>	<b>\$0</b>	<b>\$20,720</b>	<b>\$45,572</b>	<b>(\$50,344)</b>	<b>(\$14,480)</b>	<b>(\$1,468)</b>	<b>(\$0)</b>	<b>(\$1)</b>	<b>\$0</b>
<b>Cumulative Surplus (Shortfall)</b>		<b>\$20,720</b>	<b>\$66,292</b>	<b>\$15,948</b>	<b>\$1,468</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$0)</b>	<b>\$0</b>



**SCHEDULE 2**  
**CONSTRUCTION SCHEDULE**

ID	Task Name	Duration	Start	Finish
1	Transbay Transit Center (TTC) Program - Phase 1 Milestones	1971 d	6/2/06	3/31/14
7	Issue NTP - TC Building A/E	0 d	5/19/08	5/19/08
8	Bus Operations commence in Temporary Terminal	0 d	8/28/09	8/28/09
9	Start TC Building Construction	0 d	8/2/10	8/2/10
10	Complete TC Building Construction (44 months)	0 d	12/31/13	12/31/13
11	Bus Operations commence in Transit Center Building	0 d	3/31/14	3/31/14
12	<b>Transit Center Project</b>	2422 d	12/20/04	7/31/14
13	<b>Temporary Terminal</b>	870 d	6/2/06	11/11/09
14	A/E Selection, Design, and Agency Coordination and Permitting	611 d	6/2/06	10/31/08
15	Bid & Award Construction	94 d	6/20/08	10/31/08
16	Construction - Phase 1	207 d	11/3/08	8/28/09
17	Construction - Phase 2 after Ramps are demolished	40 d	9/17/09	11/11/09
18	<b>Bus Storage</b>	1402 d	6/2/06	12/23/11
19	A/E Selection, Design, Bid & Award Construction	1109 d	6/2/06	10/25/10
20	Construction	293 d	10/26/10	12/23/11
21	<b>As-needed Environmental Assessment Services</b>	692 d	11/1/06	7/31/09
23	Environmental Site Assessment Reports for TC Project Facilities	336 d	8/1/07	11/26/08
24	Environmental Site Assessment Reports for Real Estate Transactions (as needed)	505 d	8/1/07	7/31/09
25	<b>Relocation of Utilities</b>	1090 d	11/16/06	3/18/11
26	Consultant Selection, Design, Bid & Award Construction	778 d	11/16/06	12/18/09
27	Construction	312 d	12/21/09	3/18/11
28	<b>Existing Terminal and Ramps Demolition</b>	567 d	3/3/08	5/28/10
29	Demolition Bid Package, Bid & Award Construction	269 d	3/3/08	3/25/09
30	Contractor Demolition Plan and Approval	111 d	3/26/09	8/31/09
31	Existing Terminal and Ramps - Abatement & Demolition	187 d	9/1/09	5/28/10
32	<b>Transit Center Building</b>	1910 d	6/2/06	12/31/13
33	A/E Selection, Award and Issue NTP	495 d	6/2/06	5/19/08
34	Concept Validation	72 d	5/20/08	8/29/08
35	Schematic Design	123 d	9/1/08	2/27/09
36	Design Development	150 d	3/2/09	9/30/09
37	Final Design - Early Packages	293 d	10/1/09	11/30/10
38	Final Design - Late Packages	252 d	12/1/10	11/30/11
39	Bid & Award Construction	523 d	1/4/10	1/31/12
40	Foundations	188 d	8/2/10	4/29/11
41	Grade Slab, Superstructure and Finishes	736 d	2/1/11	12/31/13
42	<b>Bus Ramps</b>	1260 d	9/2/08	8/30/13
43	Design, Bid & Award Construction	626 d	9/2/08	2/28/11
44	Construction	634 d	3/1/11	8/30/13
45	<b>Testing &amp; Commissioning</b>	61 d	1/2/14	3/31/14
46	<b>Temporary Terminal Demolition</b>	86 d	4/1/14	7/31/14
47	<b>Right of Way</b>	1163 d	12/20/04	7/31/09
49	Acquire Balance of Parcels	798 d	6/2/06	7/31/09
50	<b>Downtown Extension (DTX) Project</b>	1356 d	2/14/05	6/30/10
51	Preliminary Engineering - Phase 1	852 d	2/14/05	6/30/08
52	Preliminary Engineering - Term 2	504 d	7/1/08	6/30/10
54	Loop EIS/EIR Supplemental Process	251 d	2/2/09	1/29/10
55	Right of Way - Early Acquisition of Properties	573 d	9/22/06	12/31/08

## Transbay Transit Center Program Schedule Summary



FORM OF PROMISSORY NOTE

TRANSBAY JOINT POWERS AUTHORITY

TRANSBAY TRANSIT CENTER PROJECT

(TIFIA Project Number)

PROMISSORY NOTE

**Maximum Principal Amount: \$171,000,000**

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

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

**TRANSBAY JOINT POWERS AUTHORITY**, a joint powers authority [created pursuant to agreement among the City and County of San Francisco, the Alameda-Contra Costa Transit District and the Peninsula Corridor Joint Powers Board (Caltrain)], organized and created under the California Government Code Section 6500 *et seq.* (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 [36] 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.

This Note has been executed under and pursuant to a 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 Security 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 of \$5,000 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the Note in accordance with the TIFIA Loan Agreement.

Payment of the obligations of the Borrower under this Note is secured pursuant to the Security Documents referred to in the TIFIA Loan Agreement.

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.

The full faith and credit of the Borrower and any member of the Borrower are not pledged for the payment of the interest or premium, if any, on or principal of this Note. No tax of the Borrower shall ever be levied or collected to pay the interest on or principal of this Note. The Borrower has no taxing power. This Note is not secured by a legal or equitable pledge of or charge or lien upon any property of the Borrower or any of its income or receipts except the Collateral, and neither the payment of the interest on nor principal of the this Note is a debt, liability or general obligation of any members of the Borrower.

All acts, conditions and things required by the Constitution and laws of the State of California 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 California shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, TRANSBAY JOINT POWERS AUTHORITY 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.

**TRANSBAY JOINT POWERS AUTHORITY**

(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 One**

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

Maximum Principal Sum: \$171,000,000      Borrower: Transbay Joint Powers Authority

TIFIA Lender: The United States Department of Transportation

**DISBURSEMENTS AND PAYMENTS OF PRINCIPAL<sup>1</sup>**

<b>Date</b>	<b>Amount of Disbursement</b>	<b>Amount of Principal Paid</b>	<b>Unpaid Principal Sum</b>	<b>Notation Made By</b>

<sup>1</sup> This Grid may be extended if the number of Disbursements, payments and extensions so requires.





**EXHIBIT B**

**TIFIA LOAN DISBURSEMENT SCHEDULE**

<u>Borrower Fiscal Year</u>	<u>Amount</u>
	\$

**EXHIBIT C**

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

The Borrower certifies, to the best of its knowledge and belief, that it and its principals:

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

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

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

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

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the 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: \_\_\_\_\_

**TRANSBAY JOINT POWERS AUTHORITY**

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, but not limited to, administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 36 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. Such documentation shall include invoices for costs incurred or paid.

The TIFIA Lender agrees to promptly send to the Borrower in accordance with Section 36 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 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;

(d) submitted without adequate documentation of Eligible Project Costs incurred or paid; or

(e) the failure to receive the approval of the FTA Regional Office for the costs incurred.

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 (HCFT-1)  
Federal Highway Administration  
Room E64-458  
1200 New Jersey Avenue, SE,  
Washington, DC 20590  
Oscar.Beddla@dot.gov  
Jorianne.Jernberg@dot.gov

Federal Transit Administration  
Office of Budget and Policy  
E52-314  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
Attention: Financial Analyst  
Tom.Yedinak@dot.gov

Federal Transit Administration  
Region IX Office  
201 Mission Street  
Suite 1650  
San Francisco, CA 94105-1926  
Attention: Regional Administrator Leslie Rogers  
Leslie.Rogers@dot.gov

Re: TRANSBAY TRANSIT CENTER 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 TRANSBAY JOINT POWERS AUTHORITY (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, \_\_\_\_ ] [ \_\_\_\_\_ , \_\_\_\_ ], which is the first Business Day following \_\_\_\_\_ 15, \_\_\_\_].
3. The amounts previously disbursed under the TIFIA Loan Agreement aggregate \$ \_\_\_\_\_ .
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 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 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. 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.
9. The Borrower is in compliance with all of the terms and conditions of the TIFIA Loan Agreement including the FTA Compliance Agreement and there does not currently exist an Event of Default under the TIFIA 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.
10. A copy of the monthly construction progress report pursuant to Section 22 (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.
11. 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.
12. A copy of this requisition has been delivered to each of the above named addressees.
13. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

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**

Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, California 94105

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 TRANSBAY JOINT POWERS AUTHORITY (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]<sup>2</sup> [not approved]<sup>3</sup> by the TIFIA Lender (as defined herein) pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [Dated Date], by and between Transbay Joint Powers Authority (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 but not limited to 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: \_\_\_\_\_

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<sup>2</sup> 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.

<sup>3</sup> Attached hereto as Exhibit A are reasons for denial of approval.

**EXHIBIT E**

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

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**COMPLIANCE AGREEMENT**

**EXHIBIT F**

**TIFIA DEBT SERVICE**

**Base Case Financial Model  
Estimated TIFIA Loan--Phase I  
as of 11/30/09**

**Estimated Debt Service Schedule**

Date	Principal	Interest Rate	Interest	Total Debt Service	Fiscal Year Debt Service
2/1/2016					
8/1/2016		4.50%	4,251,540.09	\$ 4,251,540.09	
2/1/2017		4.50%	4,298,260.31	4,298,260.31	\$ 8,549,800.41
8/1/2017		4.50%	4,239,764.04	4,239,764.04	
2/1/2018		4.50%	4,310,036.37	4,310,036.37	\$ 8,549,800.41
8/1/2018		4.50%	4,239,764.04	4,239,764.04	
2/1/2019		4.50%	4,310,036.37	4,310,036.37	\$ 8,549,800.41
8/1/2019		4.50%	4,239,764.04	4,239,764.04	
2/1/2020		4.50%	4,310,036.37	4,310,036.37	\$ 8,549,800.41
8/1/2020		4.50%	4,251,540.09	4,251,540.09	
2/1/2021		4.50%	4,298,260.31	4,298,260.31	\$ 8,549,800.41
8/1/2021		4.50%	4,239,764.04	4,239,764.04	
2/1/2022		4.50%	4,310,036.37	4,310,036.37	\$ 8,549,800.41
8/1/2022	137,611.90	4.50%	4,239,764.04	4,377,375.94	
2/1/2023	140,630.70	4.50%	4,306,914.65	4,447,545.35	\$ 8,824,921.29
8/1/2023	493,239.40	4.50%	4,233,555.04	4,726,794.44	
2/1/2024	504,059.60	4.50%	4,292,535.35	4,796,594.95	\$ 9,523,389.39
8/1/2024	635,467.90	4.50%	4,222,997.24	4,858,465.14	
2/1/2025	649,528.10	4.50%	4,255,027.64	4,904,555.74	\$ 9,763,020.88
8/1/2025	822,012.00	4.50%	4,182,625.47	5,004,637.47	
2/1/2026	840,044.50	4.50%	4,233,303.46	5,073,347.96	\$ 10,077,985.43
8/1/2026	982,051.70	4.50%	4,145,536.56	5,127,588.26	
2/1/2027	1,003,595.10	4.50%	4,191,969.34	5,195,564.44	\$ 10,323,152.70
8/1/2027	1,154,871.00	4.50%	4,101,226.72	5,256,097.72	
2/1/2028	1,180,205.00	4.50%	4,143,004.68	5,323,209.68	\$ 10,579,307.40
8/1/2028	1,338,590.20	4.50%	4,060,365.87	5,398,956.07	
2/1/2029	1,368,207.40	4.50%	4,074,702.42	5,442,909.82	\$ 10,841,865.89
8/1/2029	1,534,295.20	4.50%	3,988,716.96	5,523,012.16	
2/1/2030	1,567,953.20	4.50%	4,020,022.91	5,587,976.11	\$ 11,110,988.27
8/1/2030	1,742,098.80	4.50%	3,919,490.08	5,661,588.88	
2/1/2031	1,780,315.30	4.50%	3,944,934.61	5,725,249.91	\$ 11,386,838.79
8/1/2031	1,962,809.00	4.50%	3,840,887.17	5,803,696.17	
2/1/2032	2,005,867.40	4.50%	3,860,022.09	5,865,889.49	\$ 11,669,585.66
8/1/2032	2,196,824.20	4.50%	3,762,748.06	5,959,572.26	
2/1/2033	2,245,430.50	4.50%	3,754,398.30	5,999,828.80	\$ 11,959,401.06
8/1/2033	2,445,673.70	4.50%	3,653,196.66	6,098,870.36	
2/1/2034	2,499,324.60	4.50%	3,658,266.94	6,157,591.54	\$ 12,256,461.90
8/1/2034	2,709,278.40	4.50%	3,542,848.69	6,252,127.09	
2/1/2035	2,768,712.00	4.50%	3,540,110.14	6,308,822.14	\$ 12,560,949.23
8/1/2035	2,988,687.40	4.50%	3,420,606.95	6,409,294.35	
2/1/2036	3,054,250.50	4.50%	3,409,503.93	6,463,754.43	\$ 12,873,048.78
8/1/2036	3,284,303.60	4.50%	3,294,884.66	6,579,188.26	
2/1/2037	3,356,971.00	4.50%	3,256,791.55	6,613,762.55	\$ 13,192,950.81
8/1/2037	3,595,082.30	4.50%	3,137,557.88	6,732,640.18	

**Base Case Financial Model  
Estimated TIFIA Loan--Phase I  
as of 11/30/09**

**Estimated Debt Service Schedule**

Date	Principal	Interest Rate	Interest	Total Debt Service	Fiscal Year Debt Service
2/1/2038	3,673,948.00	4.50%	3,108,007.41	6,781,955.41	\$ 13,514,595.59
8/1/2038	3,923,601.40	4.50%	2,975,348.97	6,898,950.37	
2/1/2039	4,009,673.70	4.50%	2,935,657.52	6,945,331.22	\$ 13,844,281.60
8/1/2039	4,271,194.00	4.50%	2,798,317.40	7,069,511.40	
2/1/2040	4,364,891.60	4.50%	2,747,806.61	7,112,698.21	\$ 14,182,209.60
8/1/2040	4,638,250.20	4.50%	2,612,839.69	7,251,089.89	
2/1/2041	4,740,874.70	4.50%	2,536,621.30	7,277,496.00	\$ 14,528,585.89
8/1/2041	5,027,525.00	4.50%	2,396,306.74	7,423,831.74	
2/1/2042	5,137,814.30	4.50%	2,321,975.47	7,459,789.77	\$ 14,883,621.51
8/1/2042	5,438,354.50	4.50%	2,169,466.50	7,607,821.00	
2/1/2043	5,557,656.30	4.50%	2,082,055.81	7,639,712.11	\$ 15,247,533.11
8/1/2043	5,872,431.80	4.50%	1,924,089.76	7,796,521.56	
2/1/2044	6,001,255.80	4.50%	1,822,765.04	7,824,020.84	\$ 15,620,542.41
8/1/2044	6,330,135.00	4.50%	1,663,735.88	7,993,870.88	
2/1/2045	6,470,193.80	4.50%	1,538,812.36	8,009,006.16	\$ 16,002,877.05
8/1/2045	6,815,063.40	4.50%	1,373,487.40	8,188,550.80	
2/1/2046	6,964,566.00	4.50%	1,241,653.14	8,206,219.14	\$ 16,394,769.94
8/1/2046	7,326,141.30	4.50%	1,065,994.02	8,392,135.32	
2/1/2047	7,486,855.50	4.50%	917,469.42	8,404,324.92	\$ 16,796,460.25
8/1/2047	7,865,501.60	4.50%	735,440.99	8,600,942.59	
2/1/2048	8,038,047.90	4.50%	569,202.25	8,607,250.15	\$ 17,208,192.74
8/1/2048	8,433,500.10	4.50%	381,609.18	8,815,109.28	
2/1/2049	8,620,097.13	4.50%	195,012.03	8,815,109.16	\$ 17,630,218.45
	\$ 189,995,564.63		\$ 214,100,993.41	\$ 404,096,558.04	\$ 404,096,558.04

## EXHIBIT G

### FORM OF OPINION OF COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated the Effective Date, to the effect that: (a) the Borrower is duly organized and created under the laws of the State of California; (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 Security Documents to which it is a party; (c) the execution and delivery by the Borrower 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 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 the Borrower; enforceable against the Borrower in accordance with their respective terms [add any applicable limitations on remedies] (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 California is required on the part of the Borrower for the execution and delivery by the Borrower of, and the performance of the Borrower, for the construction, operation and maintenance of the Project; (f) the execution and delivery by the Borrower of, and compliance with the provisions of the Security Documents do not (i) violate its joint powers agreement or by-laws, (ii) violate the law of the United States of America or California 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; (g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended and (h) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other governmental authority in connection with the Security Documents that are pending.



**COLLATERAL AGENCY AND ACCOUNT AGREEMENT**

**By and Among**

**DEUTSCHE BANK NATIONAL TRUST COMPANY,  
as Collateral Agent**

**TRANSBAY JOINT POWERS AUTHORITY,  
as Borrower**

**And**

**THE UNITED STATES DEPARTMENT OF  
TRANSPORTATION, acting through the  
Federal Highway Administrator,  
as the TIFIA Lender**

**Dated as of January 1, 2010**

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## COLLATERAL AGENCY AND ACCOUNT AGREEMENT

This Collateral Agency and Account Agreement (this “Agreement”) is made and entered into as of January 1, 2010, by and among Deutsche Bank National Trust Company, as the collateral agent (the “Collateral Agent”), the Transbay Joint Powers Authority (the “Borrower”) and the United States Department of Transportation, acting through the Federal Highway Administrator (the “TIFIA Lender”). In consideration of the mutual covenants and agreements herein set forth, the parties hereto do hereby covenant and agree as follows:

1. Definitions.

**“Account”** means an account established under Section 4 hereof.

**“AC Transit”** means Alameda-Contra Costa Transit District, a special transit district created under California law.

**“Agency”** means the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic of the State.

**“Amortization Commencement Date”** means the earlier of (i) the first Payment Date that is 24 months after the completion of Phase 2 of the Transbay Transit Center Program or (ii) February 1, 2023.

**“Amortization Payment”** has the meaning provided in Section 9(d) of the TIFIA Loan Agreement.

**“Amortization Period”** means the period commencing on the Amortization Commencement Date and ending on the Final Maturity Date (or on such earlier date as the TIFIA Loan shall be paid in full).

**“Annual Capital Contributions”** means the annual capital contributions required to be made by AC Transit pursuant to Section 5.1 of the Lease and Use Agreement using “Passenger Facility Charges” which shall include all passengers facility charges imposed by AC Transit on all passengers riding AC Transit originating and terminating from the Transbay Transit Center upon AC Transit’s commencement of service at the Transbay Transit Center or other sources of funding; provided, however, that the use of federal grant funds for this purpose shall be prohibited.

**“Annual Capital Contributions Account”** means the Annual Capital Contributions Account established and maintained pursuant to this Agreement.

**“Asset Management Plan”** means the asset management plan to be prepared by the Borrower as required by FTA Circular 5010.1D or any successor circular or promulgation thereto.

**“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, San Francisco, California or the city and state in which the Collateral Agent is located.

**“Capital Repairs”** means all reasonably necessary periodic major overhaul and repair (excluding any maintenance or repair of a routine or ordinary course nature) of the Project that is eligible to be funded with Net Tax Increment Revenues in accordance with the Redevelopment Plan.

**“Capital Replacement Reserve Account”** means the Capital Replacement Reserve Account established and maintained pursuant to this Agreement.

**“Community Redevelopment Law”** means the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 et seq.).

**“Cooperative Agreement”** means the Cooperative Agreement dated as of June 11, 2003 by and among the State, the City and the Borrower.

**“Debt Service Payment Commencement Date”** means the second (2nd) anniversary of the Substantial Completion Date or, if such date does not fall on a Semi-Annual Payment Date, then the Debt Service Payment Commencement Date shall be the first Semi-Annual Payment Date to occur prior to the second (2nd) anniversary of the Substantial Completion Date.

**“Debt Service Reserve Account”** means the Debt Service Reserve Account established and maintained pursuant to this Agreement.

**“Final Maturity Date”** means February 1, 2049 or the last Payment Date occurring no later than 35 years after the Substantial Completion Date, whichever date is earlier.

**“Financial Plan”** means the Borrower’s financial plan to be delivered annually in accordance with Section 21(a) of the TIFIA Loan Agreement.

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

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

**“Lease and Use Agreement”** means the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal dated September 10, 2008 by and between the Borrower and AC Transit, as amended and supplemented from time to time.

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

**“Net Tax Increment Revenues”** shall include all property tax increment revenues attributable to the State-owned Parcels, allocated to and received by the Agency and pledged under the TIF Pledge Agreement as indebtedness to the Borrower, but specifically excluding therefrom the following: (a) charges for County administrative charges, fees, or costs; (b) the portion of the tax increment revenues that Agency is required by law to set-aside in the Agency’s Affordable Housing Fund, pursuant to the Community Redevelopment Law; (c) a portion of the tax increment revenues equal to the percentage of such revenue that Agency is required to pay to all governmental entities as required by the Community Redevelopment Law; (d) the portion of the tax increment revenues equal to the percentage of such revenues that the State may mandate Agency to pay from time to time in the future, including, for example, any payments which Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681 et seq. of the Community Redevelopment Law.

**“Net Tax Increment Revenues Account”** means the Net Tax Increment Revenues Account established and maintained pursuant to this Agreement.

**“Permitted Investments”** means:

- (a) Government Obligations;
- (b) certificates of deposit where the certificates are collaterally secured by securities of the type described in item (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 item (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;
- (d) money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, and having a rating by Standard & Poor’s Rating Group of AAAM-G or AAA-m or if rated by Moody’s Investors Service, Inc. having a rating of Aaa;
- (e) collateralized investment agreements or other contractual agreements with corporations, financial institutions or national associations within the United States, provided that the senior long term debt of such corporations, institutions or associations is rated AAA by a National Recognized Rating Agency; and

(f) any other investment which may from time to time be expressly approved in writing by the TIFIA Lender.

**“Phase 2”** means the extension of the Caltrain commuter rail service approximately 1.3 miles north from its current San Francisco terminus at Fourth and Townsend streets to a new underground terminal beneath the Transbay Transit Center and the construction at such terminal of no more than six rail tracks and two underground rail platform levels for use by the Caltrain commuter rail service and the proposed high-speed rail service.

**“Pledged Revenues”** means (i) Net Tax Increment Revenues, (ii) Annual Capital Contributions and (iii) all income from (i) and (ii) derived from Permitted Investments.

**“Project”** means the design and construction of a temporary terminal, the design of the below-grade rail facilities of the Transbay Transit Center and the design and construction of the Transbay Transit Center’s bus facilities, bus ramps to the Bay Bridge, and bus storage facilities to be located underneath Interstate 80. The Project is Phase 1 of the Transbay Transit Center Program. The Project will serve bus passengers from Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo and Sonoma counties. Greyhound passengers from around the country will also be served by the new Transbay Transit Center.

**“Redevelopment Plan”** means the Redevelopment Plan for the Transbay Redevelopment Project approved by Ordinance No. 124-05, adopted by The Board of Supervisors of the City and County of San Francisco on June 21, 2005 and Ordinance No. 99-06 adopted by The Board of Supervisors of the City and County of San Francisco on May 9, 2006, as amended in accordance with the provisions of Section 6.4 thereof.

**“Semi-Annual Payment Date”** means each February 1 and August 1 or if such day is not a Business Day, then the Business Day preceding such February 1 or August 1.

**“State-owned Parcels”** means those parcels identified as “State-owned Parcels” under the Cooperative Agreement less those parcels that are the subject of a “Notice of Termination” under the Cooperative Agreement.

**“Substantial Completion”** means the opening of the Project (excluding the temporary terminal) to any public transportation as defined at 49 USC 5302(a)(10).

**“Substantial Completion Date”** means the earlier of (i) March 31, 2014 or such later date approved by the TIFIA Lender and (ii) the date on which Substantial Completion occurs.

**“Surplus Revenue Account”** means the Surplus Revenue Account established and maintained pursuant to this Agreement.

**“TIFIA Debt Service”** means (a) with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date and on or prior to the Amortization Commencement Date, the interest unconditionally required to be paid on the TIFIA Loan on

such Payment Date pursuant to Section 9(c) of the TIFIA Loan Agreement, and (b) with respect to any Payment Date occurring during the Amortization Period, the entire amount of each Amortization Payment required to be paid pursuant to Section 9(d) of the TIFIA Loan Agreement in each case as shown on Exhibit F thereto, as adjusted from time to time in accordance with the provisions of Section 9(c), Section 9(d) and Section 10(c) of the TIFIA Loan Agreement. The TIFIA Debt Service schedule as of the date of this Agreement is attached as Exhibit E hereto.

**“TIFIA Debt Service Account”** means the TIFIA Debt Service Account established and maintained pursuant to this Agreement.

**“TIFIA Lender’s Authorized Representative”** has the meaning assigned thereto in the TIFIA Loan Agreement.

**“TIFIA Loan”** means the secured loan made by the TIFIA Lender to the Borrower under the TIFIA Loan Agreement.

**“TIFIA Loan Agreement”** means the TIFIA Loan Agreement dated as of November 1, 2009 by and between the Borrower and the TIFIA Lender, as amended and supplemented from time to time.

**“TIF Pledge Agreement”** means the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement dated as of January 31, 2008 by and among the City, the Agency and the Borrower, as amended and supplemented.

**“Transbay Transit Center”** means the new multimodal regional transit facility to be located in downtown San Francisco, California on First and Mission Streets.

**“Transbay Transit Center Program”** means (i) the Project, (ii) Phase 2, (iii) the implementation of the Redevelopment Plan.

2. Purpose. The Borrower and TIFIA Lender desire to establish a collateral agent arrangement in accordance with the laws of the State of California for the deposit and investment of Net Tax Increment Revenues and Annual Capital Contributions in collateral accounts, together with the establishment of and investment of funds held in all of the accounts hereunder, for the purposes set forth herein, including, the payment of the TIFIA Debt Service and the approved disbursements to the Borrower. This Agreement relates to and is hereby made a part of the Borrower's financing of the Transbay Transit Center Program pursuant to the Cooperative Agreement and the TIF Pledge Agreement. Except as otherwise defined herein, all terms defined in the Cooperative Agreement and TIF Agreement shall have the same meaning for the purposes of this Agreement as in the Cooperative Agreement and TIF Agreement:

3. Appointment.

(a) Deutsche Bank National Trust Company, is hereby appointed as the collateral agent for the benefit of the TIFIA Lender with respect to the Lien on the Pledged Revenues.

(b) The Collateral Agent accepts such appointment and agrees to act as the Collateral Agent in accordance herewith.

(c) Each of the TIFIA Lender and the Borrower hereby authorizes and directs the Collateral Agent to act in strict accordance with the terms of this Agreement.

4. Establishment of Accounts. There is hereby established in the custody of the Collateral Agent the following accounts to be held and administered by the Collateral Agent for the benefit of the TIFIA Lender in accordance with this Agreement:

- (i) the Net Tax Increment Revenues Account;
- (ii) the Annual Capital Contributions Account;
- (iii) the TIFIA Debt Service Account;
- (iv) the Debt Service Reserve Account;
- (v) the Capital Replacement Reserve Account; and
- (vi) the Surplus Revenue Account.

5. Application of Pledged Revenues and Other Amounts.

(a) Upon receipt, the Collateral Agent shall immediately deposit (i) all Net Tax Increment Revenues into the Net Tax Increment Revenues Account, together with any investment earnings thereon and (ii) all Annual Capital Contributions into the Annual Capital Contributions Account, together with any investment earnings thereon.

(b) The Collateral Agent shall make the following withdrawals, transfers and payments from the Accounts in the amounts, at the times and for the purposes specified below and in the following order or priority (it being agreed that no amount shall be withdrawn on any date pursuant to any clause below until amounts sufficient as of that date for all purposes specified under the prior clauses shall have been withdrawn or set aside):

First, on each date on which the following shall be payable, the fees, administrative costs and other expenses of the Collateral Agent and the TIFIA Lender which the Collateral Agent shall pay to the appropriate party;

Second, on each Semi-Annual Payment Date, to the TIFIA Debt Service Account the interest portion of TIFIA Debt Service which the Collateral Agent shall immediately pay to the TIFIA Lender;

Third, on each Semi-Annual Payment Date, to the TIFIA Debt Service Account the principal portion of TIFIA Debt Service which the Collateral Agent shall immediately pay to the TIFIA Lender;



Fourth, on each Semi-Annual Payment Date, to the Debt Service Reserve Account, an amount necessary so that the balance therein equals [\$16,964,232];

Fifth, on each Semi-Annual Payment Date, to the Capital Replacement Reserve Account, an amount necessary so that the balance therein equals the amount for Capital Repairs set forth in the then current Asset Management Plan as reflected in the then current Financial Plan, less the aggregate amount previously disbursed for such Capital Repairs;

Sixth, on any date, at the direction of the Borrower, any voluntary prepayments of the TIFIA Loan which the Collateral Agent shall immediately pay to the TIFIA Lender; and

Seventh, on each Semi-Annual Payment Date, to the Surplus Revenue Account, the amount of any remainder in the Net Tax Increment Revenues Account and the Annual Capital Contributions Account, to be disbursed in accordance with (c) below.

(c) (i) Prior to the date of final completion of Phase 2, amounts held in the Annual Capital Contributions Account, prior to amounts held in the Net Tax Increment Revenues Account, shall be applied to make the payments required by (b) First through Sixth above. Any amount held in the Net Tax Increment Revenues Account that is not needed for scheduled payments and is deposited into the Surplus Revenue Account shall be remitted to the Borrower at the direction of the [Federal Transit Administration (“FTA”)] upon the presentation of a plan which evidences [to FTA’s satisfaction] that the Borrower has available to it sufficient funds to complete the design and construction of Phase 2.

(ii) From the date of final completion of Phase 2, until the fifth anniversary date thereof, amounts held in the Annual Capital Contributions Account, prior to amounts held in the Net Tax Increment Revenues Account, shall be applied to make the payments required by (b) First through Sixth above and any amount transferred from the Net Tax Increment Revenues Account to the Surplus Revenue Account shall be applied to prepay the TIFIA Loan or, with the consent of the TIFIA Lender, to make payments on other indebtedness that was previously approved by the TIFIA Lender.

(iii) From and after the fifth anniversary of the date of final completion of Phase 2, amounts held in the Net Tax Increment Revenues Account, prior to amounts held in the Annual Capital Contributions Account, shall be applied to make the payments in (b) First through Sixth above and any amount transferred from the Net Tax Increment Revenues Account to the Surplus Revenue Account will be applied to prepay the TIFIA Loan or, with the consent of the TIFIA Lender, to make payments on other indebtedness that was previously approved by the TIFIA Lender and any remaining Annual Capital Contributions deposited into the Surplus Revenue Account shall be remitted to AC Transit.

(iv) On each Semi-Annual Payment Date, in the event a deficiency exists in the TIFIA Debt Service Account to pay the due and payable TIFIA Debt Service, the Collateral Agent shall transfer the amount of such deficiency first from amounts on deposit in the Debt

Service Reserve Account, then from amounts on deposit in the Capital Replacement Reserve Account and lastly from amounts on deposit in the Surplus Revenue Account; and

(v) The Collateral Agent shall disburse amounts from the Capital Replacement Reserve Account to, or at the direction of the Borrower, upon (i) a certificate signed by an officer of the Borrower stating that the amounts requisitioned are necessary and appropriate to pay or reimburse the Borrower for Capital Repairs identified in the then current Asset Management Plan and Financial Plan or (ii) the written approval of the TIFIA Lender in the exercise of its absolute discretion.

(vi) Moneys in the Surplus Revenue Account that is disbursed to the Borrower shall be used to pay for the costs associated with the construction and design of the new Transbay Transit Center. Payment shall be made from the Surplus Revenue Account upon presentation to the Collateral Agent of evidence that the TIFIA Lender has approved such disbursement and one or more properly executed original Payment Request and Acceptance Certificates, a form of which is attached hereto as Exhibit A, executed by the Borrower, for which payment is requested. Authorized signatories for the Payment Request and Acceptance Certificates are listed in Exhibit B, attached hereto.

(d) The Borrower agrees to deliver to the Collateral Agent (i) any revisions to the TIFIA Debt Service schedule pursuant to the TIFIA Loan Agreement promptly upon receipt thereof from the TIFIA Lender which shall be substituted for the then existing Exhibit E hereto and (ii) notification of the amount to be deposited into the Capital Replacement Reserve Account as set forth in its current Asset Management Plan and Financial Plan promptly upon delivery of the Financial Plan to the TIFIA Lender.

(e) Payments under (b) Second and Third above shall be made by wire transfer in immediately available funds in accordance with payment instructions provided by a TIFIA Lender's Authorized Representative, as modified in writing from time-to-time by a TIFIA Lender's Authorized Representative.

6. Investments. Moneys held by Collateral Agent hereunder shall be invested and reinvested by Collateral Agent solely at the direction of the Borrower in Permitted Investments; provided that amounts in the Debt Service Reserve Account shall only be invested in those Permitted Investments described in clauses (a) provided that the remaining term to maturity of each Government Obligation shall not exceed three years, (b), (c), (d) and (e). Such investments shall be held by the Collateral Agent in the Account for which the investment is made and interest earned thereon will be deposited to such Account; provided that on the second Business Day prior to each Semi-Annual Payment Date, the investment earnings on amounts held in the Debt Service Reserve Account shall be deposited in the Net Tax Increment Revenues Account. Any loss or expense incurred from an investment will be borne by the Account for which the investment is made. In computing for any purpose hereunder, the amount in any account on any date, obligations so purchased shall be valued at the lower of cost or par, exclusive of accrued interest. The Collateral Agent is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations. The Collateral Agent understands and acknowledges that any investments and reinvestments shall be made after giving full consideration to the time at which funds are required to be available for payments

hereunder and shall be structured to obtain the highest yield practicable giving due regard to the safety of such funds and the dates upon which such funds are required to be available for the uses and purposes described in this Agreement. The Collateral Agent shall not invest any moneys held hereunder in Permitted Investments offered by or through the Collateral Agent or any of its affiliates unless (i) the Collateral Agent determines such investment is consistent with the investment requirements contained herein, (ii) all fees charged are reasonable and (iii) the Borrower consents in writing to the specific investment at issue.

7. Statements. The Collateral Agent shall furnish monthly statements to the Borrower and, upon written request, to the TIFIA Lender at the address specified in the Section entitled “Notices to the Parties”, cut off as of the end of each calendar month, no later than the fifth day of the following calendar month. The Collateral Agent shall also furnish statements of the Borrower investments marked to market, no less than monthly.

8. Compensation. The Collateral Agent's fees shall be paid in accordance with the Fee Schedule attached hereto as Exhibit C. The Collateral Agent shall submit invoices to the Borrower at the address specified in the Section entitled “Notices to the Parties”. Fees shall not be deducted from the Net Tax Increment Revenues Account. The Borrower shall submit payment to the Collateral Agent at the address specified in the Section entitled “Notices to the Parties”.

9. Termination. This Agreement shall terminate upon the payment in full of the TIFIA Loan. Upon termination any amount remaining in the Accounts shall immediately be paid to Borrower or its assignees.

10. Resignation. The Collateral Agent may at any time resign by giving at least thirty (30) days written notice to the Borrower and the TIFIA Lender, but such resignation shall not take effect until the appointment of a successor Collateral Agent. In the event of any resignation of the Collateral Agent, a successor Collateral Agent shall be appointed by an instrument in writing executed by Collateral Agent, the Borrower and the TIFIA Lender. Such successor Collateral Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to the Borrower, the Collateral Agent and the TIFIA Lender. Thereupon such successor Collateral Agent shall, without any further act or deed, be fully vested with all the trust, powers, rights, duties and obligations of the Collateral Agent hereunder and the predecessor the Collateral Agent shall deliver all moneys and securities held by it hereunder to such successor Collateral Agent.

11. Assignment. The services to be performed by the Collateral Agent are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Collateral Agent unless first approved by the Borrower and the TIFIA Lender by written instrument executed and approved in the same manner as this Agreement.

12. Dispute Resolution. If any controversy arises between the Borrower and any party other than the Collateral Agent, concerning the subject matter of this Agreement, its terms or conditions, and the third party files an action in a court with jurisdiction over the Borrower, the Collateral Agent, third party, and the subject matter of the controversy, whether the Collateral Agent is a party or non-party to the lawsuit, the Collateral Agent will not be required

to determine the controversy or to take any action regarding it. The Collateral Agent may hold the documents and funds relevant to the controversy and may wait for final resolution of the legal proceedings, despite what may be set forth elsewhere in this Agreement. The Collateral Agent is also authorized to deposit with the appropriate Clerk of the Court in which the litigation is pending any and all funds, securities or other property held by it under this Agreement that are at issue in the litigation and thereupon shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement with respect to any of the funds, securities or other property relevant to the litigation. Furthermore, the Collateral Agent may at its option, file an action of interpleader requiring Borrower and a third party to answer and litigate any claims and rights among themselves. In such event, the Collateral Agent is authorized to deposit with the appropriate Clerk of the Court in which litigation is pending, the funds, securities or other property that are at issue in the controversy. Upon filing an action of interpleader, the Collateral Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement with respect to the funds, securities, or other property at issue in the interpleader action.

13. Liability of the Collateral Agent. Subject to the Collateral Agent's obligation to indemnify the Borrower and the TIFIA Lender in Section 14, the Collateral Agent incurs no liability to make any disbursements pursuant to this Agreement except from funds held in the Accounts.

14. Indemnity. Subject to the Collateral Agent's rights under Section 12, the Collateral Agent, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless the Borrower and the TIFIA Lender, their agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from the Collateral Agent's failure to carry out its duties pursuant to this Agreement. The foregoing indemnity includes, without limitation, costs (both direct and consequential) incurred by the Borrower or the TIFIA Lender in connection with any failure by the Collateral Agent to distribute funds from the Accounts in accordance with the Borrower's or the TIFIA Lender's instructions or the terms of this Agreement (e.g., failure to distribute the correct amount, failure to direct payment to the correct recipient, failure to take due consideration of the timing of the Borrower's payment needs in investing funds).

15. Consequential Damages. The Collateral Agent shall be liable for consequential damages (including without limitation lost profits, losses or expenses) in the event of the Collateral Agent's failure to carry out its duties pursuant to this Agreement.

16. Audit and Inspection of Records. An independent accounting firm retained by the Borrower shall conduct a semi-annual audit covering all business transactions related to the Accounts. The Collateral Agent agrees to maintain and make available to the Borrower and its auditor, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Collateral Agent will permit the Borrower and the TIFIA Lender to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all deposits, payments, invoices, records and other data related to all other matters covered by this Agreement. The Collateral Agent shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment

under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon the Borrower and the TIFIA Lender by this Section 16.

17. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, email, or fax, and shall be addressed as follows:

To TIFIA Lender: TIFIA Joint Program Office (HCFT-1)  
Federal Highway Administration  
Room E64-302  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
Attention: Chief of TIFIA Joint Program Officer

with copies to: Federal Transit Administration  
Office of Policy Development and Review—TIFIA  
Room E52-328  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
Attention: Kristine Leiphart

Office of the Chief Counsel—TIFIA  
Federal Transit Administration  
Room E56-314  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
Attention: Paula L. Schwach, Esq.

To Borrower: Ms. Maria Ayerdi, Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 1960  
San Francisco, CA 94105  
(415) 597-4615 fax  
(415) 597-4620 phone  
[MAyerdi@TransbayCenter.org](mailto:MAyerdi@TransbayCenter.org)

To Collateral Agent: Mr. Raafat Sarkis, Vice President  
Deutsche Bank National Trust Company  
Global Transaction Banking/  
Trust & Securities Services  
101 California Street, 47<sup>th</sup> Floor  
San Francisco, CA 94111  
(415) 617-4280 fax  
(415) 617-2801 phone

[Raafat.sarkis@db.com](mailto:Raafat.sarkis@db.com)

Ms. Sonia Flores, Vice President  
Deutsche Bank National Trust Company  
Global Transaction Banking/  
Trust & Securities Services  
101 California Street, 46<sup>th</sup> Floor  
San Francisco, CA 94111  
(415) 617-4280 fax  
(415) 617-3203 phone  
[Sonia.flores@db.com](mailto:Sonia.flores@db.com)

Any notice of default must be sent by registered mail.

18. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

19. Merger of Prior Agreements. The parties to this Agreement intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

20. Interpretation of this Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

21. Attorneys' Fees. In the event that any party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the Borrower's attorney shall be based on the fees

regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Borrower attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Borrower attorney's law firm. The term "Attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "Costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

22. Conflicts of Interest. Through its execution of this Agreement, the Collateral Agent acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the Borrower; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions, and agrees that if the Collateral Agent becomes aware of any such fact during the term of this Agreement, the Collateral Agent shall immediately notify the Borrower.

23. Non-Liability of Borrower Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no Board member, officer, employee or agent of the Borrower shall be personally liable to the Collateral Agent, its successors and assigns, in the event of any default or breach by Borrower or for any amount which may become due to the Collateral Agent, its successors and assigns, or for any obligation of the Borrower under this Agreement.

24. Limitations on Contributions. Through execution of this Agreement, the Collateral Agent acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Borrower for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a Borrower elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Collateral Agent acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Collateral Agent further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Collateral Agent's board of directors; the Collateral Agent's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Collateral Agent; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Collateral Agent. Additionally, the Collateral Agent acknowledges that the Collateral Agent

must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

25. Equal Employment Opportunity/Non-Discrimination.

(a) The Collateral Agent Shall Not Discriminate. In the performance of this Agreement, the Collateral Agent agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Borrower employee working with, or applicant for employment with the Collateral Agent in any of the Collateral Agent's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social, or other establishments or organizations operated by the Collateral Agent.

(b) Subcontracts. The Collateral Agent shall incorporate by reference in all subcontracts made in fulfillment of its obligations hereunder the provisions of Section 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. The Collateral Agent's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. The Collateral Agent does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the Borrower or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. The Collateral Agent shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and file the form with the Borrower Contracts Compliance Manager.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Collateral Agent shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Collateral Agent understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Collateral Agent and/or deducted from any payments due the Collateral Agent; provided,



however, that such penalty shall not be set off against the payment of rental or other amounts under any lease or other contract related to bonds, certificates of participation or other debt obligations of the Collateral Agent.

26. Compliance with Americans with Disabilities Act. Without limiting any other provisions of this Agreement, the Collateral Agent shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act (ADA) Title 24, and any and all other applicable federal, state and local disability rights legislation. The Collateral Agent agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Collateral Agent, its employees, agents or assigns shall constitute a material breach of this Agreement.

27. FTA Requirements. The Transbay Transit Center Program is federally funded and complies with all requirements of the Federal Transit Administration (“FTA”) in order to be eligible for federal funding. The provisions contained in “FTA Requirements” attached hereto as Exhibit D, are incorporated into this Agreement, and the Collateral Agent agrees to abide by such provisions. Such provisions supplement the provisions in this Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, in the TIFIA Lender’s sole determination, the FTA terms and conditions shall take precedence.

28. Resource Conservation. Chapter 21A of the San Francisco Administrative Code (“Resource Conservation”) is incorporated herein by reference. Failure by the Collateral Agent to comply with any of the requirements of Chapter 21A shall be deemed a material breach of this Agreement. In the event the Collateral Agent fails to comply in good faith with any of the provisions of Chapter 21A, the Collateral Agent shall be liable for liquidated damages in an amount equal to the Collateral Agent’s net profit under the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. The Collateral Agent acknowledges and agrees that liquidated damages assessed shall be payable to the Borrower upon demand and may be set off against any moneys due to the Collateral Agent from any agreement with the Borrower; provided, however, that such damages shall not be set off against the payment of any obligations of the Borrower under Section 5 of this Agreement.

29. Tropical Hardwood Ban. Pursuant to San Francisco Administrative Code Section 12I.5(b), the Borrower urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product or any virgin redwood or virgin redwood product.

30. MacBride Principles—Northern Ireland. The Borrower urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The Borrower urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

31. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

32. Amendment. This Agreement may not be amended except by a written instrument executed by the parties hereto.

33. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

34. Counterparts. This Agreement may be executed in several counterparts, each one of which shall constitute an original and all collectively shall constitute but one instrument.

**[Remainder of page intentionally left blank.]**

IN WITNESS WHEREOF, The Borrower, the TIFIA Lender and the Collateral Agent have caused this Agreement to be executed by their duly authorized representatives.

Transbay Joint Powers Authority

Deutsche Bank National Trust Company,  
as the Collateral Agent

\_\_\_\_\_  
Maria Ayerdi, Executive Director

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

Approved as to Form:

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

\_\_\_\_\_  
Borrower Legal Counsel

Federal EIN: 13-3347003

United States Department Of Transportation,  
acting by and through the Federal Highway Administrator

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

**EXHIBIT A**  
**Form of**  
**Payment Request and Acceptance Certificate**

Collateral Agent: Deutsche Bank National Trust Company  
101 California Street, 47<sup>th</sup> Floor  
San Francisco, CA 94111

Trustor: Transbay Joint Powers Authority  
201 Mission St., Ste. 2100  
San Francisco, CA 94105

Trust Acct. No.: [insert acct #]

RE: Collateral Agency and Account Agreement dated as of January 1, 2010, by and between the Transbay Joint Powers Authority (“Borrower”), Deutsche Bank National Trust Company, and the United States Department of Transportation acting through the Federal Highway Administrator.

Date: [insert date]

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Payment Request and Acceptance Certificate No. \_\_\_\_\_

Deutsche Bank National Trust Company is hereby requested to pay from the Surplus Revenue Account to the person or corporation designated below as Payee, the sum set forth below in payment of the cost described below. The amount shown below is due and payable under the invoice of the Payee with respect to Eligible Project Costs (as defined in the TIFIA Loan Agreement) through the first anniversary of the Substantial Completion Date or for costs or approved debt associated with the construction and design of Phase 2 and has not formed the basis of any prior request for payment.

Amount: \$ \_\_\_\_\_ Payee: \_\_\_\_\_ Federal EIN: \_\_\_\_\_

Invoice No: \_\_\_\_\_ Description of Cost: \_\_\_\_\_

Remit to: [Payee Address]

Remit via wire transfer

\_\_\_\_\_

Payee Bank Name: \_\_\_\_\_

\_\_\_\_\_

Routing (ABA) Number: \_\_\_\_\_

\_\_\_\_\_

Payee Account Number: \_\_\_\_\_

The Borrower hereby certifies and represents the following:

- (1) The invoice referenced above has been reviewed and accepted on the date hereof.
- (2) The payment requested is solely for Eligible Project Costs (as defined in the TIFIA Loan Agreement) through the first anniversary of the Substantial Completion Date or for costs or approved debt associated with the construction and design of Phase 2 and has not formed the basis of any prior request for payment.

Request Prepared By (Print & Sign Name): \_\_\_\_\_ Date: \_\_\_\_\_

Finance Review Certification (Print & Sign Name): \_\_\_\_\_ Date: \_\_\_\_\_

Executive Director Payment Authorization (Print & Sign Name): \_\_\_\_\_ Date: \_\_\_\_\_

EXHIBIT B

**Authorized Signatories**

The following individuals are authorized to sign Payment Request and Acceptance Certificates:

<u>Name</u>	<u>Title</u>	<u>Phone</u>
<b>Finance Review Certification</b>		
Sara Gigliotti	Finance Coordinator/Contracts Compliance Manager	(415) 597-4039
Nila Gonzales	Office Manager	(415) 597-4032
<b>Executive Director Payment Authorization</b>		
Maria Ayerdi	Executive Director	(415) 597-4620

EXHIBIT C

**Fee Schedule**

<b>Service Category</b>	<b>Fee</b>
Initial Setup/Acceptance Fee	<b>\$0</b>
Collateral Agent Annual Fee	<b>\$250</b>
Investment Fees	<b>\$0</b>
Transaction Fees	<b>\$0</b>
Legal Counsel	<b>\$0</b>

Fees shall not be deducted from the Tax Increment Account. All fees shall be invoiced to the Borrower. All fees above are guaranteed for the life of the Tax Increment Account.

The above fees shall include all incidental expenses of the Collateral Agent, including the costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, in- and out-of-house photocopying, charges for sending facsimiles, transportation, automobile rental, taxicab fares, parking, meals, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Collateral Agent.

Upon prior written approval of the Borrower, the Collateral Agent may invoice for extraordinary expenses and fees for the performance of services not contemplated at the time of the execution of this Agreement. Such extraordinary expenses and fees may include activities relating to default and workout situations, travel and travel-related expenses, amendments and releases. Extraordinary services shall be billed on an hourly basis at \$250 per hour, or actual travel costs as allowable under the "Borrower Travel Policy for Consultants and Subconsultants". All extraordinary expenses and fees must be approved by the Borrower prior to the expense being incurred.

## EXHIBIT D

### **FTA Requirements**

*The FTA's requirements for agreements between the Borrower and a third party are summarized below. Certain FTA provisions described below may not be applicable to all agreements with the Borrower. The italicized text is intended to assist the Contractor in understanding which Federal requirements may be applicable to an agreement. The FTA and the Borrower have sole discretion to apply any particular provision described below.*

*These provisions supplement the provisions in the Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the FTA requirements and any other terms and conditions of the Agreement, in the Borrower's sole determination, the FTA requirements shall take precedence.*

#### **1. DEFINITIONS**

*\*\* The Definitions apply to all Agreements.*

- (a). **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the Borrower is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- (b). **Contractor** means the individual or entity awarded an Agreement financed in whole or in part with Federal assistance originally derived from FTA.
- (c). **Federal Assistance Agreement** means the TIFIA Loan Agreement dated as of January 1, 2010 by and between the Borrower and the United States Department of Transportation, acting through the Federal Highway Administrator, by which FTA awards Federal assistance to the Borrower to support the particular Project, and in which FTA takes an active role or retains substantial control.
- (d). **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT.
- (e). **FTA Directive** includes any FTA regulation, policy, procedure, directive, circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines, including the Master Agreement between FTA and the Borrower. In addition to FTA Directives, certain U.S. DOT directives also apply to the Project.
- (f). **Grant Agreement** means the instrument by which FTA awards Federal assistance to the Borrower to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. Section 6304.
- (g). **Government** means the United States of America and any executive department thereof.
- (h). **Project** means the project, identified in the Federal Assistance Agreement, as well as any modifications stated in the Conditions to the Grant Agreement or Federal Assistance Agreement applicable to the Project. In the case of the formula assistance programs for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. sections 5307, 5310, and 5311, respectively, the term "Project" encompasses both a program and each project within a



program, as the context may require, to effectuate the requirements of the Grant Agreement or Federal Assistance Agreement.

- (i). **Recipient** means the Borrower.
- (j). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (k). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the Borrower to a Contractor, financed in whole or in part with Federal assistance awarded by FTA.
- (l). **Subcontract** means a subcontract at any tier entered into by Contractor or its subcontractor relating to the Agreement, financed in whole or in part with Federal assistance originally derived from FTA. Unless otherwise specified, the Contractor must include each of these Federal provisions in any Subcontract related to this Agreement.
- (m). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## **2. FLY AMERICA REQUIREMENTS**

**\*\*** *This provision applies to all Agreements for more than \$2,500 that involve the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S.*

- (a). The Contractor agrees to comply with 49 U.S.C. Section 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- (b). The Contractor shall submit the “Fly America Certification” if the regulation is applicable to the particular Agreement.
- (c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.
- (d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier’s designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

## **3. BUY AMERICA REQUIREMENTS**

**\*\*** *This provision applies only to the following types of Agreements: construction agreements of any value; agreements for the acquisition of goods valued at more than \$100,000; and agreements for the acquisition of rolling stock valued at more than \$100,000.*

- (a). The Contractor agrees to comply with 49 U.S.C. Section 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products

used in FTA-funded projects, such as the Transbay Transit Center Program that is the subject of this Agreement, are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR Section 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. Section 5323(j)(2)(C) and 49 CFR Section 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

- (b). The Prime Contractor shall submit the “Buy America Certification” at the time of bid/offer if the regulation is applicable to the particular agreement. The Prime Contractor is responsible for ensuring that lower tier subcontractors are in compliance.

#### **4. CARGO PREFERENCE REQUIREMENTS**

**\*\*** *This provision applies to all Agreements for more than \$2,500 involving equipment, materials, or commodities which may be transported by ocean vessels.*

- (a). The Contractor agrees to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
- (b). The Contractor agrees to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-landing in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Borrower (through the Contractor in the case of a subcontractor's bill-of-landing).

#### **5. SEISMIC SAFETY REQUIREMENTS**

**\*\*** *This provision applies only to Agreements for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building that is the subject of this Agreement will be designed and constructed in accordance with the standards for Seismic Safety required in U.S. DOT Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance with such regulations to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Agreement, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

#### **6. ENERGY CONSERVATION REQUIREMENTS**

**\*\*** *This provision applies to all Agreements.*

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Section 6201 et seq.

#### **7. CLEAN WATER REQUIREMENTS**

**\*\*** *This provision applies to all Agreements greater than \$100,000.*

- (a). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The Contractor agrees to report each violation to the Borrower and understands and agrees that the Borrower will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b). The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **8. LOBBYING**

*\*\* This provision applies to the following types of Agreements, if the Agreement is equal to or greater than \$100,000: construction, architectural and engineering; acquisition of rolling stock; professional services; operational services; and Turnkey.*

*\*\* Please be aware that the requirements in the Agreement regarding limitations on contributions may be more restrictive than the FTA Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). The Prime Contractor shall submit the “New Restrictions on Lobbying Certification” if the regulation is applicable to the particular agreement.
- (b). The Contractor and each subcontractor shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. Section 1352. The Contractor and each subcontractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to a Federal contract, grant or award covered by 31 U.S.C. Section 1352. Such disclosures are forwarded from tier to tier up to the Borrower.

## **9. ACCESS TO DOCUMENTS**

*\*\* This requirement applies to all Agreements. FTA does not require the inclusion of these requirements in Subcontracts.*

*\*\* Please be aware that the requirements in the Agreement section entitled “Audit and Inspection of Records” may require the Contractor to maintain files relating to this Agreement for a longer period of time than described in the FTA Requirement below. Please also be aware that, as described in the Agreement section entitled “San Francisco Sunshine Ordinance”, the Borrower follows the provisions of the City and County of San Francisco Sunshine Ordinance regarding responses to public requests for certain bid documents. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). Where the Borrower is considered a “local government” and is a Recipient or a subgrantee of a Recipient, in accordance with 49 CFR Section 18.36(i), the Contractor agrees to provide the Borrower, the FTA Administrator, the Comptroller General of the United States and/or any of their authorized representatives access to any books, documents, accounts papers and records of the Contractor which are directly pertinent to this Agreement (“Documents”) for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Section 633.17, to provide the FTA Administrator or its authorized representatives, including any project management oversight Contractor, access to Contractor’s Documents and

construction sites pertaining to a major capital project, defined at 49 U.S.C. Section 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309 or 5311.

- (b). Where the Borrower is a Recipient or a subgrantee of a Recipient, in accordance with 49 U.S.C. Section 5325(a), and enters into a contract for a capital project or improvement (defined at 49 U.S.C. Section 5302[a]1) through other than competitive bidding, the Contractor agrees to provide the Borrower, the Secretary and the Comptroller General, or any authorized officer or employee of any of them, access to any Documents for the purposes of conducting an audit and inspection.
- (c). The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, or to copy excerpts and transcriptions, as reasonably needed, of any Documents.
- (d). The Contractor agrees to maintain all Documents required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the Borrower, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (See 49 CFR Section 18.39[i][11]).

**10. FEDERAL CHANGES**

\*\* *This requirement applies to all Agreements.*

Contractor shall at all times comply with all applicable federal laws and regulations, and all FTA Directives and U.S. DOT Directives applicable to the Project, as they may be amended or promulgated from time to time during the term of this Agreement. It is Contractor's responsibility to be aware of any amendments or changes to such federal requirements and directives. Contractor's failure to so comply shall constitute a material breach of this Agreement.

**11. RESERVED**

**12. CLEAN AIR**

\*\* *This provision applies to all Agreements greater than \$100,000 and to subcontracts greater than \$100,000.*

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The Contractor agrees to report each violation to the Borrower and understands and agrees that the Borrower will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000.

**13. RECYCLED PRODUCTS**

\*\* *This provision applies to all Agreements to procure \$10,000 or more of any one item designated by the EPA under 40 CFR Part 247, Subpart B in a single fiscal year, and to all Agreements to procure any items designated in 40 CFR Part 247, Subpart B where the Borrower or the Contractor has used Federal funds to procure \$10,000 or more of any one item in the previous fiscal year.*

*\*\* Please be aware that the requirements in the Agreement regarding resource conservation may be more restrictive than the FTA Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

The Contractor agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Section 6962 et seq.), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in 40 CFR Part 247, Subpart B.

**14. RESERVED**

**15. RESERVED**

**16. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

*\*\* This requirement applies to all Agreements.*

The Borrower and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Borrower, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the Agreement.

**17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

*\*\* This provision applies to all Agreements.*

- (a). The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions under the Agreement. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Agreement or the FTA-assisted Project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (b). The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

**18. TERMINATION**

*\*\* This requirement applies to all Agreements in excess of \$10,000, except when the Contractor is a nonprofit organization or institution of higher education. When the Contractor is a nonprofit organization or institution of higher education, this requirement applies to all Agreements greater than \$100,000.*

*\*\* Please be aware that the requirements in the Agreement regarding termination for convenience are more broadly applicable than the FTA Requirements described below. Both the requirements described below and the provisions in the Agreement are applicable to the Agreement.*

- (a). **Termination for Convenience (General Provision)** - The Borrower may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Borrower. If the Contractor has any property in its possession belonging to the Borrower, the Contractor will account for the same, and dispose of it in the manner the Borrower directs.
- (b). **Termination for Default [Breach or Cause] (General Provision)** - If the Contractor (1) does not deliver supplies in accordance with the Agreement delivery schedule, or (2) if the Agreement is for services the Contractor fails to perform in the manner called for in the Agreement, or (3) if the Contractor fails to comply with any other provisions of the Agreement, the Borrower may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by the Borrower that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Borrower, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- (c). **Opportunity to Cure (General Provision)** - The Borrower in its sole discretion may, in the case of a termination for breach or default, allow the Contractor a period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the Borrower's satisfaction the breach or default of any of the terms, covenants, or conditions of this within ten (10) days after receipt by Contractor of written notice from the Borrower setting forth the nature of said breach or default, the Borrower shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Borrower from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- (d). **Waiver of Remedies for any Breach** - In the event that Borrower elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by the Borrower shall not limit the Borrower's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.
- (e). **Termination for Convenience (Professional or Transit Service Agreements)** - The Borrower, by written notice, may terminate this Agreement, in whole or in part, when it is in the Government's interest. If this Agreement is terminated, the Borrower shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.
- (f). **Termination for Default (Supplies and Service)** - If the Contractor fails to deliver supplies or to perform the services within the time specified in this Agreement or any extension or if the

Contractor fails to comply with any other provisions of this Agreement, the Borrower may terminate this Agreement for default. The Borrower shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this Agreement.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Borrower.

- (g). **Termination for Default (Transportation Services)** - If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this Agreement or any extension or if the Contractor fails to comply with any other provisions of this Agreement, the Borrower may terminate this Agreement for default. The Borrower shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in this Agreement.

If this Agreement is terminated while the Contractor has possession of Borrower goods, the Contractor shall, upon direction of the Borrower, protect and preserve the goods until surrendered to the Borrower or its agent. The Contractor and the Borrower shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Borrower.

- (h). **Termination for Default (Construction)** - If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this Agreement or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this Agreement, the Borrower may terminate this Agreement for default. The Borrower shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Borrower may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Borrower resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Borrower in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

- (1). The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, acts of the Borrower, acts of another Contractor in the performance of a Agreement with the Borrower, epidemics, quarantine restrictions, strikes, freight embargoes; and
- (2). The Contractor, within ten (10) days from the beginning of any delay, notifies the Borrower in writing of the causes of delay. If in the judgment of the Borrower, the delay

is excusable, the time for completing the work shall be extended. The judgment of the Borrower shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Borrower.

- (i) **Termination for Convenience or Default (Architect and Engineering)** - The Borrower may terminate this Agreement in whole or in part, for the Borrower's convenience or because of the failure of the Contractor to fulfill the Agreement obligations. The Borrower shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

If the termination is for the convenience of the Borrower, the contracting officer shall make an equitable adjustment in the Agreement price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the Agreement obligations, the Borrower may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Borrower.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Borrower.

- (j). **Termination for Convenience or Default (Cost-Type Agreements)** - The Borrower may terminate this Agreement, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the Borrower or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the Agreement. The Contractor shall account for any property in its possession paid for from funds received from the Borrower, or property supplied to the Contractor by the Borrower. If the termination is for default, the Borrower may fix the fee, if the Agreement provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Borrower and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Borrower, the Contractor shall be paid its Agreement close-out costs, and a fee, if the Agreement provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Borrower determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the Borrower, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.



**19. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

\*\* *This requirement applies to all Agreements and Subcontracts greater than or equal to \$25,000, and to any Agreement for auditing services at any dollar value.*

- (a). This Agreement is a “covered transaction” for purposes of 49 CFR Part 29, and the Contractor is required to comply with 49 CFR Section 29, Subpart C. In particular, the Contractor is required to verify that the Contractor, its “principals,” as defined at 49 CFR Section 29.995, and its “affiliates,” as defined at 49 CFR Section 29.905, are not “excluded” or “disqualified,” as defined at 49 CFR sections 29.940 and 29.945.
- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters” if the regulation is applicable to the particular agreement.

**20. CIVIL RIGHTS REQUIREMENT**

\*\* *This requirement applies to all Agreements.*

\*\* *Please be aware that the requirements in the Agreement regarding nondiscrimination are broader than the FTA Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:
  - (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## **21. BREACHES AND DISPUTE RESOLUTION**

\*\* *This requirement applies to all Agreements in excess of \$100,000.*

- (a). **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Borrower's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- (b). **Performance During Dispute** - Unless otherwise directed by the Borrower, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- (c). **Claims for Damages** - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of the party's employees, agents or others for whose acts the party is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the Borrower and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the Borrower is located.
- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Borrower or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **22. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

\*\* *The specific provisions checked below apply to this Agreement.*

- (a). This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance*

*Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent. The Borrower FY2007-08 Annual Anticipated DBE Participation Level is 15.1 percent.

A separate Agreement goal of \_\_\_\_\_ percent DBE participation has been established for this Agreement.

A separate Agreement goal **has not** been established for this Agreement.

(b). The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Borrower deems appropriate. Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR Section 26.13[b]).

(c). (*Checked box is applicable to this Agreement.*)

(*If a separate Agreement goal has been established, use the following*)

The Contractor was required to document sufficient DBE participation to meet the separate Agreement goal established for this Agreement or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR Section 26.53.

(*If no separate Agreement goal has been established, use the following*)

The Contractor is required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor's receipt of payment for that work from the Borrower. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the Borrower and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

(e). The Contractor must promptly notify the Borrower whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Borrower.

### **23. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

\*\* *This requirement applies to all Agreements.*

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT of the Borrower's agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The

Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Borrower requests which would cause the Borrower to be in violation of the FTA terms and conditions.

**FLY AMERICA CERTIFICATION**

49 U.S.C. Section 40118  
41 CFR Part 301-10

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT E

**TIFIA Debt Service**

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

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**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
COMPLIANCE AGREEMENT**

This is the official Compliance Agreement containing standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a loan, loan guarantee, or line of credit provided by FTA as authorized by Sections 1501 through 1504 of the Transportation Equity Act for the 21<sup>st</sup> Century, as amended by the TEA-21 Restoration Act, Pub. L. 105-206, codified at 23 U.S.C. §§181-189, and 23 U.S.C. § 101 note.

This Compliance Agreement has no expiration date. Nevertheless, the provisions of this Compliance Agreement may be modified or superseded by subsequent Federal requirements. Thus, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

**Section 1. Definitions.**

a. Application means the signed and dated request for Federal TIFIA Transportation Infrastructure Financing Implementation Act financial assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with and accepted or approved by the FTA by or on behalf of the Recipient.

b. Approval, Authorization, Concurrence, Waiver means a written statement (whether transmitted by paper or electronically) by an authorized official of the Federal Government granting permission to the Recipient to perform or omit an action required pursuant to the Loan Agreement or Guarantee Agreement and Borrower's Certificate, Compliance and Loan Agreement, which action may not be performed or omitted without such permission. Unless clearly stated otherwise, an approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. Oral permission or interpretations have no legal force or effect.

c. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the Recipient is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

d. Federal Government means the United States of America and any executive department or agency thereof.

e. Federal Transit Administration is the current designation for the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration shall be deemed a reference to the Federal Transit Administration.

f. Federal Transit Administrator is the designation for the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator shall be deemed a reference to the Federal Transit Administrator.

g. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). FTA replaces the acronym UMTA.

h. FTA Directive includes any FTA circular, notice, order, or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines, and other similar matters. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

i. Financial Assistance Agreement means the instrument, whether the Loan Agreement or Guarantee Agreement and Borrower's Certificate, Compliance and Loan Agreement by which Federal Government represented by the Department of Transportation and acting through the Federal Transit Administration's Administrator provides a credit facility to support a particular Project.

j. Local Government includes a public transit authority as well as a county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, or any agency or instrumentality thereof.

k. Project means the activity or activities (task or tasks), listed in Project Description, the Approved Project Budget, and stated in the Financial Assistance Agreement. For FTA funding in the form of a loan, loan guarantee, or line of credit awarded under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. § 181 *et seq.*, the "Project" means the transportation activities financed by that loan, loan guarantee, or line of credit support.

l. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. Unless expressly stated otherwise, in the case of a Recipient that is a consortium, partnership, or similar multi-party entity, each participant in, member of, or party to that consortium, partnership, or multi-party entity is treated as a "Recipient" for purposes of compliance with applicable requirements of any Financial Assistance Agreement.

m. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

n. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

o. Third Party Subcontract means a subcontract at any tier entered into by the Third Party contractor or Third Party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

p. Transit means transportation by a conveyance, either publicly or privately owned, that provides regular and continuing general or special public transportation to the public, but does not include school bus, charter, or sightseeing transportation. The term "transit" also includes "mass transportation" and "public transportation."

q. U.S. DOT is the acronym for the United States Department of Transportation, including its operating administrations.

## **Section 2. Project Implementation.**

a. Recipient's Capacity. The Recipient agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to plan, manage, and complete the Project, and provide for the use of Project facilities and equipment, to comply with the terms of the Financial Assistance Agreement, the Approved Project Budget, the Project schedules, the Recipient's representations and warranties to FTA, and all applicable Federal laws, executive orders, regulations, directives, and published policies governing this Project.

b. U.S. DOT Administrative Requirements. The Recipient acknowledges that Federal administrative requirements differ based on the type of entity receiving Federal assistance:

(1) A Recipient that is a State, local or Indian tribal government agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18.

(2) A Recipient that is an institution of higher education or a nonprofit organization agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19.

c. Application of Federal, State, and Local Laws and Regulations.

- (1) Federal Laws and Regulations. Federal law or laws authorizing Project approval control Project implementation. The Recipient acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date the authorized FTA official signs the Financial Assistance Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Recipient executes the Financial Assistance Agreement, and might apply to that Financial Assistance Agreement. The Recipient agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued by a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of this Compliance Agreement. To accommodate changing Federal requirements, the Recipient agrees to include notice in each agreement with each Third Party contractor under the Project that Federal requirements may change and the changed requirements will apply to the project as required, unless the Federal Government determines otherwise. All standards or limits within this Compliance Agreement are minimum requirements, unless modified by FTA.
- (2) State or Territorial Law and Local Law. Except when a Federal statute or regulation preempts State, territorial or local law, no provision of any Financial Assistance Agreement, including this Compliance Agreement, shall require the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial law or local law. Thus if any provision or compliance with any provision of any Financial Assistance Agreement, including this Compliance Agreement, violates State, territorial, or local law, or would require the Recipient to violate State, territorial, or local law, the Recipient agrees to notify FTA immediately in writing. Should this occur, FTA and the Recipient agree to make appropriate arrangements to proceed with or, if necessary, terminate the Project as quickly as possible in compliance with such laws.

d. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of participation of other parties in the Project, the Recipient continues to remain responsible to FTA for compliance with all Federal requirements imposed by Federal statute, regulations, executive orders, directives, published policies, this Compliance Agreement, and the Financial Assistance Agreement for the Project.

(1) Significant Participation by a Third Party Contractor. Although the Recipient may enter into a Third Party contract in which the Third Party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient continues to remain responsible to FTA for compliance.

(2) Exceptions. The Recipient, however, is relieved of compliance with Federal responsibilities when the Government, through appropriate official action, relieves the Recipient of a portion of or all responsibility to the Federal Government.

e. Recipient's Responsibility to Extend Federal Requirements to Other Entities.

(1) Entities Affected. Only the entities that are signatories to the Financial Assistance Agreement for the Project are parties to that agreement. To achieve compliance with certain Federal laws, regulations, or directives, however, other Project participants, such as Third Party contractors, will necessarily be affected. Accordingly, the Recipient agrees to take appropriate measures necessary to ensure all Project participants comply with applicable Federal requirements affecting their performance.

(2) Documents Affected. Applicable provisions of the Federal statutes, regulations, and directives establishing a particular Federal requirement determine the extent to which such Federal requirement affects a Project participant. Accordingly, the Recipient agrees to include provisions adequate to ensure that Project participants comply with applicable Federal requirements, and require their Third Party contractors to include in each lower tier subcontract financed in whole or in part with financial assistance provided by FTA under the Financial Assistance Agreement adequate provisions imposing applicable Federal requirements.

Because Project activities performed by a Third Party contractor must be carried out in accordance with Federal requirements, the Recipient agrees to include appropriate clauses in each Third Party Contract stating the Third Party contractor's responsibilities under Federal law, regulation, or directive, including any necessary provisions requiring the Third Party contractor to extend applicable requirements to its subcontractors to the lowest tier necessary. When the Third Party Contract requires the Third Party contractor to undertake primary responsibilities for the Project usually performed by the Recipient directly, the requirements applicable to the Recipient imposed by this Compliance Agreement and Financial Assistance Agreement for the Project must be included in that Third Party Contract and extended throughout each tier to the extent appropriate. Additional guidance on third party contracting is contained in the FTA Best Practices Procurement Manual. Be aware, however, that the FTA Best Practices



Procurement Manual focuses mainly on the procurement process and may omit certain Federal requirements applicable to the work to be performed.

f. No Federal Government Obligations to Third Parties. The Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to, any Third Party contractor, or any other person not a party to the Financial Assistance Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or Third Party Contract, the Federal Government continues to have no obligations or liabilities to any party, including the Third Party contractor.

g. Changes in Project Performance (including Disputes, Breaches, Defaults or Litigation). The Recipient agrees to notify FTA immediately of any change in local law, conditions (such as its legal, financial, or technical capacity), or any other event that may significantly affect the Recipient's ability to perform the Project in accordance with the terms of the Financial Assistance Agreement. In addition, the Recipient agrees to notify FTA immediately of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The Recipient agrees to inform FTA before naming the Federal Government as a party to litigation for any reason, in any forum.

### **Section 3. Ethics.**

a. Code of Ethics. The Recipient agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award or administration of Third Party Contracts supported by Federal assistance. This code or standards shall provide that the Recipient's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential contractor. The Recipient may, however, set minimum amounts where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. This code or standards shall also prohibit the Recipient's officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or agents, or by contractors or their agents.

(1) Personal Conflicts of Interest. The Recipient's code or standards of conduct shall prohibit the Recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of any Third Party Contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties

has a financial or other interest in the entity selected for award: (a) an employee, officer, board member, or agent; (b) any member of his or her immediate family; (c) his or her partner; or (d) an organization that employs, or intends to employ, any of the above.

(2) Organizational Conflicts of Interest. The Recipient's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed Third Party Contract may, without some restrictions on future activities, result in an unfair competitive advantage to the Third Party contractor or impair its objectivity in performing the contract work.

b. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance by each of its Third Party contractors at any tier, with the provisions of Executive Orders No. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations on Debarment and Suspension at 49 C.F.R. Part 29.

c. Bonus or Commission. The Recipient affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.

d. Lobbying Restrictions. The Recipient agrees to:

(1) Refrain from using Federal assistance funds to support lobbying, and

(2) Comply, and assure the compliance by each Third Party contractor at any tier, with applicable requirements, of U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

e. Employee Political Activity. To the extent applicable, the Recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 - 1508, 7324 - 7326, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement. Nevertheless, in accordance with 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

f. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Financial Assistance Agreement, the Recipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make in connection with the Project covered by the Financial Assistance Agreement. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(2) If it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

#### **Section 4. Approved Project Budget.**

The Recipient agrees to prepare a Project budget and submit said budget to FTA for approval. Said budget, upon approval by FTA, is referred to as the Approved Project Budget. The Recipient agrees to incur obligations and make disbursements of Project funds only as authorized in the latest Approved Project Budget. The latest Approved Project Budget is incorporated herein by reference and made part of this Compliance Agreement.

#### **Section 5. Accounting Records.**

a. Project Accounts. The Recipient agrees to establish and maintain for the Project either a separate set of accounts, or separate accounts within the framework of an established accounting system that can be identified with the Project, in accordance with applicable Federal regulations and other requirements that FTA may impose ("Project Account"). The Recipient agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project shall be clearly identified, readily accessible and available to FTA upon its request, and, to the extent feasible, kept separate from documents not related to the Project.

b. Funds Received or Made Available for the Project. The Recipient agrees to record in the Project Account and deposit in a financial institution, all Project payments it receives from the Federal Government in support of the Financial Assistance Agreement and all other funds provided for, accruing to, or otherwise received on account of the Project in accordance with applicable Federal regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.

c. Documentation of Project Costs and Program Income. All costs charged to the Project, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Recipient also agrees to maintain accurate records of all program income derived from implementation of the Project; this requirement, however, does not apply to certain Recipient income determined by FTA to be exempt from the general program income requirements.

d. Checks, Orders, and Vouchers. The Recipient agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the Project Account until the Recipient has received and filed in its records a properly signed voucher describing in proper detail the purpose for the expenditure.

## **Section 6. Reporting, Record Retention, and Access.**

a. Types of Reports. The Recipient agrees to submit to FTA the reports required by the Financial Assistance Agreement and any other reports the Federal Government may require.

b. Format Requirements for Reports. The Recipient agrees that all reports and other documents or information intended for public availability developed under the Project and required to be submitted to FTA must be prepared and submitted in electronic and/or paper forms in accordance with requirements that FTA may specify and Section 6 of this Compliance Agreement. FTA reserves the right to require records to be submitted in other forms.

c. Record Retention. The Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require during the course of the Project and (i) for three years after all rights and duties under the Financial Assistance Agreement have been fulfilled or terminated, or (ii) three years after the final resolution of any litigation related to the Financial Assistance Agreement, whichever is later.

d. Access to Records of Recipients. Upon request, the Recipient agrees to permit the Secretary of Transportation, the Comptroller General of the United States, and, if appropriate, the State, or any of their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient pertaining to the Project.

## **Section 7. Payments.**

The Recipient agrees to refrain from seeking payment from FTA for Project costs until it has executed the Financial Assistance Agreement and fulfilled all conditions precedent described therein.

a. Recipient's Request for Payment. To obtain a Federal assistance payment for the Project from FTA, the Recipient agrees to:

(1) Demonstrate or certify that it will provide adequate other debt proceeds or equity ("Other Funds") to cover, when combined with Federal payments, all costs to be incurred for the Project. Unless the Federal Government has expressly permitted the Recipient to defer provision of the Other Funds, a Recipient agrees to refrain from:

(a) Requesting or obtaining Federal funds exceeding the amount justified by the Other Funds previously provided, and

(b) Taking any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized by the Financial Assistance Agreement

(2) Submit to FTA all financial and progress reports required to date by this Compliance Agreement or the Financial Assistance Agreement; and

(3) Identify the source(s) of financial assistance provided for the Project from which the payment is to be derived.

b. Payment by FTA. The Recipient agrees that FTA will make all payments pursuant to the terms of the Financial Assistance Agreement.

c. Costs Reimbursed. The Recipient understands and agrees that Project costs eligible for Federal participation must comply with the following requirements:

(1) Conform with the Project Description, the Approved Project Budget, and all other terms of the Financial Assistance Agreement;

(2) Are necessary in order to accomplish the Project;

(3) Are reasonable for the goods or services purchased;

(4) Are actual net costs to the Recipient (i.e., the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred, excluding program income);

(5) Are incurred for work performed after the Effective Date of the Financial Assistance Agreement or Cooperative Agreement, unless the Federal Government has provided specific authorization to the contrary;

(6) Are satisfactorily documented;

(7) Are treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Recipient, and with accounting principles and procedures approved by the Recipient for its contractors;

(8) Are eligible under Federal law, regulation, or guidelines for Federal participation; and

(9) Unless permitted otherwise by Federal statute or regulation, conform to the U.S. Office of Management and Budget ("OMB") Circular or Federal regulation applicable to the Recipient as listed below:

(a) For a Recipient that is a State, local, or Indian tribal government, the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments," apply;

(b) For a Recipient that is a private nonprofit organization, the standards of OMB Circular A-122, Revised, "Cost Principles for Non-Profit Organizations" apply;

(c) For a Recipient that is a for-profit organization, the standards of the Federal Acquisition Regulation, 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" apply.

d. Bond Interest and Other Financing Costs. To the extent permitted in writing by FTA, bond interest and other financing costs are allowable. The Recipient understands and agrees that FTA's participation in interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing.

e. Excluded Costs. The Recipient understands and agrees as follows:

(1) In determining the amount of Federal assistance FTA will provide, FTA will exclude:

(a) Any Project costs incurred by the Recipient before the Effective Date of the Financial Assistance Agreement or Amendment thereto, unless otherwise permitted by Federal law or regulation, or unless an authorized FTA official states in writing to the contrary;

(b) Any costs incurred by the Recipient that are not included in the latest Approved Project Budget;

(c) Any costs for goods or services received under a Third Party contract or other arrangement required to be, but not yet, concurred in or approved in writing by the Federal Government;

(d) Any ordinary governmental or nonproject operating costs, consistent with the prohibitions of 49 U.S.C. § 5323(h)(1); and

(e) Any costs ineligible for FTA participation as required by Federal law, regulation, or guidelines for Federal participation.

(2) The Recipient agrees that any disbursement of proceeds made by the Government does not constitute a final decision of the Federal Government about the whether that cost is eligible and does not constitute a waiver of any violation by the Recipient of the terms of the Financial Assistance Agreement. The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until an audit of the Project has been completed. If the Federal Government determines that the Recipient is not entitled to receive any portion of the Federal funds requested, the Federal Government will notify the Recipient stating its reasons. Repayment of all loan proceeds and/or termination of any Guarantee Agreement will not alter the Recipient's obligation to return any funds due to the Federal Government as a result of later refunds, corrections, or other transactions. Nor will repayment or termination alter the Federal Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, the Federal Government may recoup any Federal assistance made available for the Project as needed to satisfy any outstanding monetary claims that the Federal Government may have against the Recipient. Exceptions pertaining to disallowed costs are contained in FTA directives or in other written Federal guidance.

f. Federal Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Recipient's Obligation to Pay. Upon notification to the Recipient that specific amounts are owing to the Federal Government, whether for Federal claims for funds recovered from third parties or elsewhere, for excess payments, or for disallowed costs, the Recipient agrees to remit to the Federal Government promptly the amounts owed, including any interest due.

(2) Amount of Interest Due. The Recipient agrees that the amount of interest due depends on whether the Federal Government treats the principal portion of the debt as a Federal claim or as a debt owed to the Federal Government. Thus, Recipient agrees to pay interest calculated as follows:

(a) Federal Claims against the Recipient. The Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720, exempts State governments and units of general local government from the obligation to

pay interest on claims pursued by the Federal Government under that Act, 31 U.S.C. §§ 3701 and 3717. Interest on claims against other parties will be calculated in accordance with the interest provisions of U.S. Government Accounting Office and U.S. Department of Justice regulations, "Federal Claims Collection Standards," at 4 C.F.R. § 102.13.

(b) Excess Payments. The Recipient agrees that a debt for any excess payment does not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720; thus the interest exemption for State governments and units of general local government provided by that Act will not apply to interest on the debt for excess payments. Accordingly, a Recipient that is a State government or a unit of general local government agrees that interest on any debt for excess payments does not qualify for the interest exemption for State and local governments at 31 U.S.C. §§ 3701 and 3717. Thus, irrespective of whether the Recipient is a State government, a unit of general local government, a public organization, a private nonprofit organization, an institution of higher education, an individual, or any other party, the Recipient agrees to pay common law prejudgment interest and related charges for excess payments made by the Federal Government, as permitted by 4 C.F.R. § 102.13(i)(2).

(c) Disallowed Costs. The Recipient agrees that a debt for any disallowed cost does not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720; thus the interest exemption for State governments and units of general local government provided by that Act will not apply to interest on the debt for the disallowed cost. Accordingly, a Recipient that is a State government or a unit of general local government agrees that interest on any debt for a disallowed cost does not qualify for the interest exemption for State and local governments at 31 U.S.C. §§ 3701 and 3717. Thus, irrespective of whether the Recipient is a State government, a unit of general local government, a public organization, a private nonprofit organization, an institution of higher education, an individual, or any other party, the Recipient agrees to pay common law prejudgment interest and related charges for excess payments made by the Federal Government, as permitted by 4 C.F.R. § 102.13(i)(2).

## **Section 8. Project Completion, Audit, Settlement, and Close-out.**

a. Project Completion. Within ninety (90) days of the Project completion date or termination by the Federal Government, the Recipient agrees to submit a final Financial Status Report (Standard Form 269A), a certification or summary of Project expenses, and Third Party audit reports, as applicable.



b. Audit of Recipients. The Recipient acknowledges and agrees as follows:

(1) Audit Requirements. Each Recipient agrees to have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.*, in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," and OMB A-133 Compliance Supplement provisions for the Department of Transportation, April, 1999, and any further revision or supplement thereto. In addition, the Recipient agrees to obtain any other audits required by the Federal Government. Repayment of all loan proceeds and/or termination of any Guarantee Agreement will not alter the Recipient's audit responsibilities.

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by OMB Circular A-87, Revised; OMB Circular A-122, Revised; or 48 C.F.R. Chapter I, Subpart 31.2, as applicable.

c. Funds Due the Federal Government. The Recipient agrees to remit to the Federal Government any excess payments made to the Recipient, any costs disallowed by the Federal Government, as well as interest required by Subsection 7.f(2)(b) and (c) of this Compliance Agreement.

## **Section 9. Civil Rights.**

The Recipient agrees to comply with all applicable civil rights statutes, and implementing regulations including, but not limited to the following:

a. Nondiscrimination in Federal Transit Programs. The Recipient agrees to comply, and assures compliance by each Third Party contractor at any tier under the Project, with the provisions of 49 U.S.C. § 5332, which provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination -- Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures compliance by each Third Party contractor at any tier under the Project, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance by each Third Party contractor at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity ("EEO") requirements include, but are not limited to, the following:

(1) General Requirements. The Recipient agrees as follows:

(a) The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient also agrees to comply with any implementing requirements FTA may issue.

(b) If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Financial Assistance Agreement. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Financial Assistance Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal financial assistance or other measures that may affect the Recipient's eligibility to obtain future Federal financial assistance for transportation projects.

(2) Equal Employment Opportunity Requirements for Construction Activities. With respect to construction activities, the Recipient agrees to comply, and assures the compliance by each Third Party contractor at any tier, with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.* (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity"), 42 U.S.C. § 2000(e) note, and any Federal statutes, executive orders, regulations, and Federal policies pertaining to construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. The Recipient agrees to take the following measures to facilitate participation by disadvantaged business enterprises ("DBE") in the Project:

(1) The Recipient agrees to comply with section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged

Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any Third Party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all Third Party contracts supported with Federal assistance derived from the U.S. DOT. The Recipient's DBE program, as required by 49 C.F.R. Part 26 and approved by the U.S. DOT, is incorporated by reference and made part of the Financial Assistance Agreement. Implementation of this DBE program is a legal obligation, and failure to carry out its terms shall be treated as a violation of the Financial Assistance Agreement and this Compliance Agreement. Upon notification to the Recipient of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

e. Nondiscrimination on the Basis of Sex. To the extent applicable, the Recipient agrees to comply with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1680 *et seq.*, which title prohibits discrimination on the basis of sex, and any subsequent Federal requirements.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and implementing regulations, which requirements prohibit discrimination on the basis of age.

g. Access Requirements for Persons with Disabilities. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5301(d) which requirements express the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which requirements prohibit discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(10) Any implementing requirements FTA may issue.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and the Public Health Service Act of 1912, 42 U.S.C. §§ 290dd-3 and 290ee-3, including any amendments to these acts.

i. Other Nondiscrimination Statutes. The Recipient agrees to comply with any other nondiscrimination statute(s) that may apply to the Project.

## **Section 10. Planning and Private Enterprise.**

a. FTA Requirements. The Recipient agrees to implement each Project financed under the Financial Assistance Agreement in a manner consistent with the plans developed

in compliance with applicable planning and private enterprise provisions of 49 U.S.C. §§ 5303 through 5306, and 5323(i), and joint Federal Highway Administration (FHWA)/FTA regulations, "Planning Assistance and Standards," 23 C.F.R. Part 450 and 49 C.F.R. Part 613.

b. Governmental and Private Nonprofit Providers of Non-emergency Transportation. In addition to the opportunities to participate in planning in Subsection 10.(a), to the extent feasible, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive assistance for non-emergency transportation from Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

c. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

## **Section 11. Preference for United States Products and Services.**

To the extent applicable, the Recipient agrees to comply with the following U.S. preference requirements:

a. Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j), FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any implementing guidance FTA may issue.

b. Cargo Preference--Use of United States-Flag Vessels. The Recipient agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference--U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Project.

c. Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-131 through 301.143.

## **Section 12. Procurement.**

To the extent applicable, the Recipient agrees to comply with the following third party procurement requirements:

a. Federal Standards. The Recipient agrees to comply with FTA Circular 4220.1D, "Third Party Contracting Requirements" any revision or replacement thereof, and applicable Federal regulations or requirements, including FTA Third Party contracting regulations when promulgated. The FTA Best Practices Procurement Manual provides additional procurement guidance. Be aware that the FTA Best Practices Procurement Manual is focused on procurement processes and may omit certain Federal requirements applicable to the work to be performed.

b. Project Approval/Third Party Contract Approval. Unless stated otherwise in writing, the Recipient agrees that FTA's approval of the Project does not constitute pre-approval of any non-competitive Third Party Contract awards associated therewith.

c. FTA Technical Review. If determined necessary for proper Project administration, the Recipient agrees to permit FTA to review and approve the Recipient's technical specifications and requirements.

d. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

e. Bus Seat Specifications. A State or local government recipient may use specifications conforming with the requirements of 49 U.S.C. § 5323(e) to acquire bus seats.

f. Clean Air and Clean Water. The Recipient agrees to include in Third Party Contracts, exceeding \$100,000 adequate provisions requiring Project participants to report the use of facilities considered to be placed on EPA's "List of Violating Facilities," refrain from using violating facilities, report violations to FTA and the Regional EPA Office, and comply with the inspection and other requirements of:

(1) Section 114 of the Clean Air Act, as amended, 42 U.S.C. § 7414, as well as other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*; and

(2) Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1318, as well as other provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*

g. Preference for Recycled Products. To the extent practicable and economically feasible, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R.

Parts 247-253, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962.

h. Geographic Restrictions. The Recipient agrees to refrain from using any State or local geographic preference, except those expressly mandated or encouraged by Federal statute, such as those set forth in Subsection 12.i of this Compliance Agreement below, or as permitted by FTA.

i. Architectural, Engineering, Design, or Related Services. When procuring architectural, engineering, or related services, the Recipient agrees to comply with the provisions of 49 U.S.C. § 5325(b), either by negotiating for those services in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 541 *et seq.*, or by using an equivalent qualifications-based requirement of the State. Provided a sufficient number of qualified firms are eligible to compete for the Third Party Contract, the contractor's geographic location may be a selection criterion. When awarding contracts for architectural, engineering, or related services, the Recipient agrees to accept undisputed audits conducted by other governmental agencies, consistent with the provisions of 23 U.S.C. § 112(b)(2) (C) through (F). To the extent a State has adopted or adopts by law formal procedures for procuring architectural, engineering, or related services, this Subsection 12(I). of this Compliance Agreement does not apply.

j. Force Account. The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

k. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a Third Party Contract to other than the lowest bidder, when such an award furthers objectives consistent with the purposes of 49 U.S.C. chapter 53 and any implementing regulations, circulars, manuals, or other guidance FTA may issue.

l. Rolling Stock. In acquiring rolling stock, the Recipient agrees as follows:

(1) Method of Acquisition. The Recipient may award a Third Party Contract for rolling stock based on initial capital costs, performance, standardization, life cycle costs, and other factors, or based on a competitive procurement process, in accordance with 49 U.S.C. § 5326(c).

(2) Multi-year Options. A Recipient may procure rolling stock using Transportation Infrastructure Financing Implementation Act financial assistance pursuant to a contract including an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract, in accordance with 49 U.S.C. 5326(b)(1).

(3) Pre-Award and Post-Delivery Requirements. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any revision thereto.

(4) Bus Testing. To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any revision thereto.

m. Bonding. The Recipient agrees to comply with the following bonding requirements.

(1) Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonding to the extent deemed adequate by FTA and applicable Federal regulations, and comply with any other bonding requirements FTA may issue.

(2) Other Activities. The Recipient agrees to comply with any other bonding requirements or restrictions FTA may impose.

n. Notification of Federal Participation. In the announcement of any Third Party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Recipient agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that Third Party Contract.

o. Access to Third Party Contract Records. The Recipient agrees to require its Third Party contractors and Third Party subcontractors at as many tiers as required to provide the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives access to all Third Party records as they request for audits and inspections related to any Third Party Contract not awarded on the basis of competitive bidding for a capital or improvement project, as needed for compliance with 49 U.S.C. § 5325(a). The Recipient further agrees to require its Third Party contractors and Third Party subcontractors at as many tiers as required to provide sufficient access to Third Party procurement records as needed for compliance with Federal regulations or to assure proper project management as determined by FTA.

p. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Standards architecture in compliance with section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and FHWA/FTA's "Transportation Equity Act for the 21<sup>st</sup> Century; Interim Guidance on Conformity with the National Intelligent Transportation Systems (ITS) Architecture and Standards," 63 Fed. Reg. 70443 *et seq.*, December 21, 1998, and any other applicable subsequent Federal guidance.



q. Federal Supply Schedules. Only to the extent permitted by U.S. GSA, U.S. DOT, or FTA regulations or guidance may State, local, or nonprofit Recipients use Federal Supply Schedules in making third party acquisitions.

### **Section 13. Leases.**

a. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

b. Leases Involving Certificates of Participation. The Recipient agrees to obtain FTA concurrence before entering into a leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

c. Cross-Border Leases. To the extent applicable, the Recipient agrees to comply with FTA Circular 7020.1, "Cross-Border Leasing Guidelines," April 26, 1990, in connection with the acquisition of capital assets involving a cross-border lease.

### **Section 14. Patent Rights.**

a. General. If any invention, improvement, or discovery of the Recipient or any of its Third Party contractors is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report.

b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each Third Party contractor at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that Third Party Contract as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, (implementing the Presidential Memorandum [Statement] on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, 19 Weekly Comp. Pres. Doc. 252-253, Feb. 28, 1983) irrespective of the status of the Recipient, or any Third Party contractor at any tier (*i.e.*, a large business, small business, State government or State instrumentality, local government, nonprofit organization, institution of higher education, individual, *etc.*).

## Section 15. Rights in Data and Copyrights.

a. Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Financial Assistance Agreement. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, or similar information used for Project administration.

b. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Financial Assistance Agreement. Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the "subject data" described in the following Subsections 15.c(1) and 15.c(2) of this Compliance Agreement. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Financial Assistance Agreement , or under a Third Party Contract financed by the Financial Assistance Agreement , whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient or a Third Party contractor purchases ownership with Federal assistance.

d. Hold Harmless. Except as prohibited or otherwise limited by State law, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of employees or agents of the Federal Government.

e. Restrictions on Access to Patent Rights. Nothing in this Section 15 on rights in data shall imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

f. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide to the Federal Government data developed without any Federal funding or support. Provided that data is so identified when delivered to the Federal Government, the requirements of Subsections 15.b and 15.c of this Compliance Agreement do not apply to that data, even though such data are used in connection with the Project. The Recipient understands and agrees that the Federal Government will not be able to protect any data from unauthorized disclosure unless they are clearly marked "Proprietary" or "Confidential."

g. Statutory Requirements to Release Data. The Recipient understands and agrees that information and data submitted to the Federal Government may be required to be made available for dissemination under the Freedom of Information Act, or other Federal statute(s) in accordance with implementation instructions issued by U.S. OMB, either as an amendment to OMB Circular A-110 or otherwise.

## **Section 16. Use of Real Property, Equipment, and Supplies.**

Unless otherwise approved by FTA, the following requirements apply to real property, equipment, and supplies financed by the Financial Assistance Agreement :

a. Use of Property. The Recipient agrees to use Project real property, equipment, and supplies for appropriate Project purposes (including joint development purposes that generate program income, both during and after the award period to support transit activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any Project property is withdrawn from Project use or when Project property is used in a manner substantially different from the representations the Recipient has made in its Application or the Project Description for the Financial Assistance Agreement for the Project.

b. General Federal Requirements. A Recipient that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and other applicable guidelines or regulations the Federal Government may issue. A Recipient that is a private nonprofit organization, agrees to comply with 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and other applicable guidelines or regulations the Federal Government may issue. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, and to 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the

Federal Government. A Recipient that is a for-profit organization agrees to comply with property management standards satisfactory to FTA. Nevertheless, FTA has established specific reimbursement requirements for premature dispositions of certain Project equipment (*i.e.*, when Project equipment is withdrawn from appropriate use before the expiration of the equipment's useful life established by FTA), as explained further in Subsection 16.g of this Compliance Agreement.

c. Maintenance. The Recipient agrees to maintain Project real property and equipment in good operating order, and in compliance with any guidelines, directives, or regulations FTA may issue.

d. Records. The Recipient agrees to keep satisfactory records with regard to the use of Project real property, equipment, and supplies, and submit to the FTA upon request such information as may be required to assure compliance with Section 16 of this Compliance Agreement.

e. Encumbrance of Project Property. The Recipient agrees to maintain satisfactory continuing control of Project real property or equipment. Thus, absent written authorization by FTA permitting otherwise:

(1) Written Transactions. Except as explicitly authorized by the Financial Assistance Agreement the Recipient agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, Third Party Contract, grant anticipation note, alienation, or other obligation that in any way would affect the Federal interest in any Project real property or equipment.

(2) Oral Transactions. The Recipient agrees to refrain from obligating itself in any manner to any Third Party with respect to Project real property or equipment.

(3) Other Actions. The Recipient agrees to refrain from taking any action that would either adversely affect the Federal interest or impair the Recipient's continuing control of the use of Project real property or equipment.

f. Transfer of Project Property. The Recipient understands and agrees as follows:

(1) Recipient Request. The Recipient may transfer TIFIA financed assets to a public body to be used for any public purpose with no further obligation to the Federal Government, provided that transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(g)(1) or(2).

(2) Federal Government Direction. The Recipient agrees that the Federal Government may require the Recipient to transfer title to any real property, equipment, or supplies financed with funds made available by the Financial Assistance Agreement. The Recipient also agrees that the Federal Government

may direct the disposition of real property or equipment financed with funds made available by the Financial Assistance Agreement.

(3) Leasing Project Property to Another Party. If the Recipient leases any Project asset to another party, the Recipient agrees to retain ownership of the leased asset, and assure that the lessee will use the Project asset appropriately, either through a "Lease and Supervisory Agreement" between the Recipient and lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

g. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other FTA eligible capital transit projects in accordance with 49 U.S.C. § 5334(g)(4). Nevertheless, the Recipient agrees that FTA may establish the useful life for Project property, and that the Recipient will use Project property continuously and appropriately throughout the period of time of the property's useful life.

(1) Project Property Whose Useful Life Expired. For property whose useful has expired, the Recipient agrees to comply with property disposition requirements as directed by FTA.

(2) Project Property Prematurely Withdrawn from Use. For property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

(a) Notification Requirement. The Recipient agrees to notify FTA immediately when any Project real property, equipment, or supplies are prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Federal Interest in Prematurely Withdrawn Project Property. Unless otherwise approved by the Federal Government, the Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of Project real property, equipment, or supplies prematurely withdrawn from appropriate use. The amount of Federal interest shall be determined on the basis of the ratio of the assistance awarded by the Federal Government for the property to the actual cost of the property. The Recipient agrees that the fair market value of property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by FTA, fair market value shall be calculated by straight-line depreciation of the equipment or supplies, based on the useful life of the equipment or supplies established or approved by FTA. The fair market value of equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of

that property from use. In the case of equipment or supplies lost or damaged by casualty or fire, the fair market value shall be calculated on the basis of the condition of that property immediately before the casualty or fire, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that the State's procedures comply with the laws governing that State.

2. Real Property. The Recipient agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date as approved by the Federal Government, in accordance with 49 C.F.R. Part 24, or by straight line depreciation, whichever is greater.

3. Exceptional Circumstances. The Federal Government reserves the right to require the use of another method of determining the fair market value of property. In unusual circumstances, the Recipient may request that another reasonable method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient with respect to the preservation or conservation of Project property withdrawn from appropriate use.

h. Transportation - Hazardous Materials. The requirements of Research and Special Programs Administration, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, apply to the transportation of hazardous materials.

i. Misused or Damaged Property. If any damage to Project real property, equipment, or supplies results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore that real property or equipment to its original condition or refund the value of the Federal interest in such damaged property, as the Federal Government may require.

j. Obligations After Loan Repayment or Termination of Guarantee. The obligations of this Section 16 are terminated after loan is repaid in full and/or the Guarantee or Line of Credit has terminated.

## **Section 17. Insurance.**

In addition to other insurance requirements that may apply, the Recipient agrees as follows:

a. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance requirements normally imposed by its State and local governments.

b. Flood Hazards. To the extent applicable, the Recipient agrees to comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster

Protection Act of 1973, 42 U.S.C. § 4012a(a), as amended, with respect any Project activity involving construction or acquisition having an insurable cost of \$10,000 or more.

### **Section 18. Relocation.**

When relocation of individuals or businesses is required, the Recipient agrees to comply with the following requirements:

a. Relocation Protections. The Recipient agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in purchases.

b. Nondiscrimination in Housing. The Recipient agrees to comply with title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 *et seq.* and Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note, in the course of arranging any housing required for relocation.

c. Prohibition Against Use of Lead-Based Paint. Should the Recipient undertake the construction or rehabilitation of residential structures for individuals affected by the land acquisition, the Recipient agrees to refrain from using lead-based paint in accordance with Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b).

### **Section 19. Real Property.**

For projects involving real property, the Recipient agrees as follows:

a. Land Acquisition. The Recipient agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in purchases.

b. Covenant Assuring Nondiscrimination. The Recipient agrees to include a covenant in the title of the real property to assure nondiscrimination during the useful life of the Project.

c. Recording Title to Real Property. To the extent required by FTA, the Recipient agrees to record the Federal interest in the title of real property.

d. FTA Approval of Changes in Real Property Ownership. The Recipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from FTA.

## **Section 20. Construction.**

For activities involving construction, the Recipient agrees as follows:

a. Drafting, Review, and Approval of Construction Plans and Specifications. To the extent required by FTA, the Recipient agrees to comply with FTA requests pertaining to the drafting, review and approval of construction plans and specifications.

b. Supervision of Construction. The Recipient agrees to provide and maintain competent and adequate architectural or engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications.

c. Construction Reports. The Recipient agrees to provide progress reports and such other information as may be required by FTA or the State.

d. Project Management for Major Capital Projects. The Recipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any revision thereto, applicable to a Major Capital Project.

e. Seismic Safety. The Recipient agrees to comply with the requirements of U.S. DOT regulations at 49 C.F.R. Part 41, Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, pursuant to the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, (specifically, 49 C.F.R. § 41.117), pertaining to seismic safety requirements for U.S. DOT assisted construction projects, and with any implementing guidelines FTA may issue.

## **Section 21. Employee Protections.**

a. Construction Activities. The Recipient agrees to comply, and assures the compliance by each Third Party contractor at any tier with, the following employee protection requirements for construction employees:

(1) Davis-Bacon Act, as amended, 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a - 276a(7), and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction



Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

(2) Contract Work Hours and Safety Standards Act, as amended, in particular with the requirements of section 102 of the Act, 40 U.S.C. §§ 327 - 332; and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and with section 107 of the Act, 40 U.S.C. § 333, and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

(3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

b. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance by each Third Party contractor at any tier with any applicable employee protection requirements for nonconstruction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 - 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions

Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

c. State and Local Government Employees. The Recipient agrees that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, apply to employees performing work involving commerce, and apply to any State or local government employees that are public transit authority employees. The Recipient, including a State or local government, agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for such employees performing work in connection with the Project.

d. Standard Transit Employee Protective Arrangements. To the extent that transit operations are involved in the Project, the Recipient agrees to implement the Project in compliance with terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of any employees affected by the Project and meet the requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which appears in the Financial Assistance Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in

that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Financial Assistance Agreement.

## **Section 22. Environmental Requirements.**

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* and scattered sections of 29 U.S.C.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.* The Recipient also recognizes that U.S. EPA, FHWA and other agencies of the Federal Government have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, the Recipient agrees to comply, and assures the compliance by each each Third Party contractor, with all such requirements as the Federal Government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and the Recipient. The Recipient agrees that this list does not constitute the Recipient's entire obligation to meet all Federal environmental and resource conservation requirements.

a. Environmental Protection. The Recipient agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

b. Air Quality. The Recipient agrees to comply with all applicable regulations, standards, or orders implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* as follows:

(1) The Recipient agrees to comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation and control measure incorporated in the Project. The Recipient agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the Recipient should be aware that the following U.S. EPA regulations may apply to its Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) The Recipient agrees to comply with the notification of violating facilities provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. The Recipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* Among other things:

(1) The Recipient agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300h *et seq.*

(2) The Recipient agrees to comply with the notification of violating facilities provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Use of Public Lands. The Recipient agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national, State, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 U.S.C. § 303.

e. Wild and Scenic Rivers. The Recipient agrees to comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 *et seq.* relating to protecting components of the national wild and scenic rivers system.

f. Coastal Zone Management. The Recipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 *et seq.*

g. Wetlands. The Recipient agrees to comply with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.

h. Floodplains. The Recipient agrees to comply with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.

i. Endangered Species. The Recipient agrees to comply with protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 *et seq.*

j. Historic Preservation. The Recipient agrees to facilitate compliance with Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a-1 *et seq.* as follows:

(1) In accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of any such properties that will be affected.

(2) The Recipient agrees to comply with all Federal requirements to avoid or mitigate adverse effects on those historic properties.

k. Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

l. Mitigation of Adverse Environmental Effects. Should the Project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable steps to minimize those effects as required by 49 U.S.C. § 5324(b), and any other applicable Federal laws and regulations, including 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Recipient agrees to implement all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and documents required by 49 U.S.C. § 303) and agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or a record of decision. The Recipient agrees that those mitigation measures are incorporated by reference and made part of the Financial Assistance Agreement. As soon as the Federal Government and

the Recipient reach agreement on any deferred mitigation measures, the Recipient agrees that those measures will then be incorporated by reference and made part of the Financial Assistance Agreement. The Recipient agrees that any mitigation measures agreed upon by it and the Federal Government may not be modified or withdrawn without the express written approval of the Federal Government.

### **Section 23. Energy Conservation.**

The Recipient agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

### **Section 24. State Management and Monitoring Systems.**

To the extent applicable, the Recipient agrees to comply with applicable requirements of joint FHWA/FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Parts 500 and 49 C.F.R. Part 614.

### **Section 25. Charter Service Operations.**

The Recipient agrees that neither it nor any transit operator performing work in connection with the Project will engage in charter service operations, except as permitted by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any amendments thereto that may be issued. Any charter service agreement permitted by these regulations is incorporated by reference and made part of this Compliance Agreement.

### **Section 26. School Transportation Operations.**

The Recipient agrees that neither it nor any transit operator performing work in connection with the Project will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as permitted by 49 U.S.C. § 5323(f) and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued. Any school transportation agreement permitted by these regulations is incorporated by reference and made part of this Compliance Agreement.

### **Section 27. Metric System.**

As required by U.S. DOT or FTA, the Recipient agrees to use the metric system of measurement in its Project activities, as may be required by Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Recipient agrees to accept products and services with dimensions expressed in the metric system of measurement.

## **Section 28. Substance Abuse.**

a. Drug Abuse. The Recipient agrees:

(1) To comply with U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 *et seq.*

(2) To comply with FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653, and any guidance on the drug abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

b. Alcohol Abuse. To comply with FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654, and any guidance on the alcohol abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

## **Section 29. State Safety Oversight of Rail Fixed Guideway Public Systems.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 5330, and FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 C.F.R. Part 659, and any guidance that FTA or U.S. DOT may issue to implement 49 U.S.C. § 5330.

## **Section 30. Fares and Services.**

Before raising fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.

## **Section 31. Half-Fare Requirements.**

The Recipient agrees that the rates charged the elderly and persons with disabilities during nonpeak hours for transportation using or involving Project facilities and equipment will not exceed one-half of the rates generally applicable to other persons at peak hours, whether the operation of such facilities and equipment is by the Recipient or is by another entity under lease or otherwise. The Recipient agrees to give the rate required herein to any person presenting a Medicare card duly issued to that individual pursuant to title II or title XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, and 42 U.S.C. §§ 1395 *et. seq.* respectively.

## **Section 32. Procurement of an Associated Capital Maintenance Product.**

In accordance with 49 U.S.C. § 5326(d), the Recipient may, without prior Federal approval, procure an eligible associated capital maintenance product by contract directly with the original supplier or manufacturer of the item to be replaced, provided that the Recipient: (1) first certifies in writing that such manufacturer or supplier is the only source of that item and the price

of that item is no higher than the price paid for that item by like customers, and (2) complies with applicable Buy America statutory and regulatory requirements.

**Section 33. Severability.**

If any provision of the Financial Assistance Agreement or this Compliance Agreement is held invalid, the remainder of said Agreements shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable law.

**EXHIBIT C**

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

(1) The Borrower certifies, to the best of its knowledge and belief, that it and its principals:

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

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

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

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

[(2) Where the Borrower is unable to certify to any of the statements in this certification, the Borrower shall attach an explanation to this certificate.]

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the Loan Agreement, dated as of August 4, 2000, between the Lender and the Borrower, as the same may be amended from time to time.

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

**PUERTO RICO HIGHWAYS AND  
TRANSPORTATION AUTHORITY**

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



## **EXHIBIT D**

### **REQUISITION PROCEDURES**

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

Section 1. General Requirements. All requests by the Borrower for the disbursement of Loan proceeds shall be made by submission to the Lender (Attention: Chief, Federal-aid Financial Management Division (HABF-40), Room 4310, Federal Highway Administration, 400 Seventh Street, SW, Washington, D.C. 20590) of a requisition and certification, in form and substance satisfactory to the Lender and in each case completed and executed by a duly authorized representative of the Borrower. The form of requisition and certification is attached as Appendix One to this **Exhibit D**.

The Lender agrees to promptly send to the Borrower by hand delivery, by telecopy, by first class mail, by electronic mail, or by overnight delivery service (the choice of method of delivery to be at the discretion of the Lender), an acknowledgement of receipt of each such disbursement request in the form attached as Appendix Two to this Exhibit D setting forth the date of receipt by the Lender of such disbursement request and setting forth the Business Day on which disbursement will be made absent denial by the Lender. All disbursement requests must be received by the 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 day of such calendar month or if such day is not a Business Day, the next succeeding Business Day. If a disbursement request is approved by the Lender, the Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A disbursement request may be rejected by the Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a person other than the Borrower's duly authorized representative; or
- (c) submitted after prior disbursement of all proceeds of the Loan.

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

Section 3. Correction. A disbursement request containing an apparent mathematical error will be corrected by the Lender, after telephonic notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount. The Lender will confirm correction of the error, to the Borrower, in writing.

Section 4. Withholding.

- (a) If the Borrower
  - (i) fails to pay any principal or interest on the Loan when the same is due and payable; or
  - (ii) applies 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
- (b) An Event of Default under the Loan Agreement shall have occurred and be continuing,

the Lender shall be entitled to immediately withhold approval of all pending and subsequent requests for the disbursement of Loan proceeds.

(c) If 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 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 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 Loan Agreement;

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

and such failure continues for a period of more than thirty (30) days following written notice from the Lender to the Borrower, the Lender shall be entitled to withhold, from any requests for the disbursement of Loan proceeds received after such thirty (30) day period has expired, and until such failure is cured or corrected, an amount determined by the 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 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 Lender, the balance of the Loan proceeds remaining to be disbursed is less than the amount determined by the Lender to be adequate for the cure or correction of such failure, the Lender may immediately withhold all further disbursement of 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**

Federal Transit Administrator  
400 7<sup>th</sup> Street, SW  
Room 9328  
Washington, D.C. 20590

Chief, Federal-aid Financial Management Division (HABF-40)  
Federal Highway Administration  
400 7th Street, SW  
Room 4310  
Washington, D.C. 20590

MK Centennial  
215 Sherman Ave.  
Hamden, CT 06518  
Attention: Jim Quirk

Riggs & Co.  
Sovereign Trust Services  
808 17th St. N.W.  
7th Floor  
Washington, D.C. 20006-3944  
Attention: O. Clinton Jones, III

Re: Tren Urbano Project (PR-TIFIA-19991006)

Ladies and Gentlemen:

Pursuant to Section 4 of the Loan Agreement, dated as of August 4, 2000 (the "Loan Agreement"), by and between Puerto Rico Highways and Transportation Authority (the "Borrower") and The United States of America, as represented by the Department of Transportation, acting by and through the Federal Transit Administrator (the "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 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, \_\_\_\_ (or the following Business Day if such day is not a Business Day).
3. The amounts previously drawn under the Loan Agreement aggregate \$ \_\_\_\_\_.
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 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 Loan, and such amount together with the sum of all disbursements of Loan proceeds made and to be made for the current year will not exceed the cumulative disbursements through the end of the current year set forth in the Anticipated Loan Disbursement Schedule.
6. A copy of this requisition has been delivered to each of the above named addressees.
7. All amounts requisitioned hereunder are for Eligible Project Costs which have not been included in any previous disbursement from Loan proceeds.
8. There does not currently exist an Event of Default or Development Default under the 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.
9. 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.
10. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

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

\_\_\_\_\_  
Borrower's Authorized Representative

**APPENDIX TWO TO EXHIBIT D**

**FORM OF ACKNOWLEDGMENT OF RECEIPT OF  
REQUISITION FOR DISBURSEMENT OF LOAN PROCEEDS**

Puerto Rico Highways and Transportation Authority  
Minillas Government Center  
De Diego Avenue, Stop 22  
San Juan, PR 00940-2007  
Attention: [Executive Director]

Re: Receipt of Requisition for Disbursement of Loan Proceeds

Ladies and Gentlemen:

Pursuant to Section 4 of the Loan Agreement, dated as of August 4, 2000, by and between Puerto Rico Highways and Transportation Authority (the "Borrower") and The United States of America, as represented by the Department of Transportation, acting by and through the Federal Transit Administrator (the "Lender"), the undersigned authorized officer of the Lender hereby acknowledges receipt of the attached Requisition for Disbursement of Loan Proceeds from the Borrower. In connection therewith, we hereby represent and certify the following:

1. The date of receipt of the attached Requisition of Disbursement of Loan Proceeds is \_\_\_\_\_.
2. Unless this requisition is denied, disbursement shall be made on or before \_\_\_\_\_.

Date:

\_\_\_\_\_  
Lender's Authorized Representative

**EXHIBIT E**

**APPROVAL OF THE LENDER**

(To be delivered to the Borrower)

Requisition Number \_\_\_\_\_ is [approved] [approved in part]<sup>2</sup> [not approved]<sup>3</sup> by the Lender (as defined herein) pursuant to Section 4 of the Loan Agreement, dated as of August 4, 2000, by and between Puerto Rico Highways and Transportation Authority (the "Borrower") and The United States of America, as represented by the Department of Transportation, acting by and through the Federal Transit Administrator (the "Lender").

Any determination, action or failure to act by the Lender with respect to the Requisition set forth above, including but not limited to the withholding of a disbursement, shall be at the Lender's sole discretion, and in no event shall the Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**THE UNITED STATES OF AMERICA**, as represented by the Department of Transportation, acting by and through the Federal Transit Administrator

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

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

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<sup>2</sup> 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.

<sup>3</sup> Attached hereto as Exhibit A are reasons for denial of approval.

**EXHIBIT F**

**ANTICIPATED LOAN DISBURSEMENT SCHEDULE**

Date	Amount
August 7, 2000	\$300,000,000



## **ACKNOWLEDGEMENT AGREEMENT**

This ACKNOWLEDGEMENT AGREEMENT (this "Acknowledgement"), dated as of \_\_\_\_\_, 2009, is executed and agreed to by TRANSBAY JOINT POWERS AUTHORITY (the "Authority") and the ALAMEDA-CONTRA COSTA TRANSIT DISTRICT ("AC Transit").

### RECITALS

A. Pursuant to the Transbay Transit Center Program Lease and Use Agreement for Temporary Terminal and Terminal, dated September 10, 2008 (the "Lease and Use Agreement"), by and between the Authority and AC Transit, AC Transit has agreed to make annual capital contributions (the "Annual Contribution") relating to the Transbay Terminal project (the "Project") by using "Passenger Facility Charges" to the Terminal Construction Fund (as that term is defined in the Lease and Use Agreement).

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

C. The Authority has requested that the United States Department of Transportation, acting by and through the Federal Transit Administration, an agency of the United States of America (the "TIFIA Lender") make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$171,000,000 (the "TIFIA Loan") pursuant to an application for TIFIA credit assistance dated October 15, 2008 and entitled Transbay Joint Powers Authority (TJPA) application for Federal Credit Assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA).

D. Pursuant to the TIFIA Loan Agreement dated \_\_\_\_\_, 2009 (as amended, modified and supplemented from time to time, the "Loan Agreement"), between the Authority and the TIFIA Lender, the TIFIA Lender is making the TIFIA Loan to the Authority to be used to pay a portion of the Eligible Project Costs (as defined in the Loan Agreement), such TIFIA Loan is secured in part by the Annual Contribution.

E. The Authority and the Lender desire that the Annual Contribution, rather than being deposited in the Terminal Construction Fund, be deposited with Deutsche Bank National Trust Company, as collateral agent for purposes of the TIFIA Loan (the "Collateral Agent"), pursuant to the Collateral Agency and Account Agreement, dated as of November 1, 2009 (the "Collateral Agency and Account Agreement"), by and among the TIFIA Lender, the Authority and the Collateral Agent.

## AGREEMENT

NOW THEREFORE, THE AUTHORITY AND AC TRANSIT hereby agree as follows:

Section 1. Pledge. The Authority will pledge the Annual Contribution to the TIFIA Lender in consideration of the TIFIA Lender making the TIFIA Loan to the Authority.

Section 2. Payment of Annual Contribution. AC Transit and the Authority agree that all payments of the Annual Contribution shall be made directly to the Collateral Agent, rather than deposited in the Terminal Construction Fund, pursuant to Section 5 of the Collateral Agency Agreement. Such payments by AC Transit of the Annual Contribution shall be made to the Collateral Agent commencing [June 30, 20\_\_].

Section 3. Successors and Assigns. This Acknowledgement shall be binding upon and benefit the successors and assigns of the Authority and AC Transit and their respective successors, transferees and assigns (including, without limitation, any entity that refinances all or any portion of the TIFIA Loan). No termination, amendment, variation or waiver of any provisions of this Acknowledgement shall be effective unless in writing and signed by the Authority and AC Transit. This Acknowledgement shall be governed by the laws of the State of California.

Section 4. Counterparts. This Acknowledgement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

IN WITNESS WHEREOF, the AUTHORITY and AC TRANSIT, by their respective officers have duly executed this agreement on the date set forth in the first paragraph hereof.

TRANSBAY JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Maria Ayerdi-Kaplan, Executive Director

[Approved as to form:

\_\_\_\_\_ ]

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

By: \_\_\_\_\_  
General Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Kenneth C. Scheidig, General Counsel



# TIFIA Loan Approval

December 10, 2009

# Transbay Transit Center

**TJPA**





# TIFIA Program Overview

- Authorized by the Transportation Infrastructure Finance and Innovation Act of 1998
- Loans provided for surface transportation projects larger than \$50 million
- Loan amount cannot exceed 33% of the eligible capital cost of the project
- Flexible repayment terms
- Administered by USDOT through FHWA



# TJPA's TIFIA Loan Milestones

October 14, 2008	Initial investment grade shadow rating
Oct. 15, 2008	Loan application submitted
Feb. 18, 2009	Presentation and TIFIA site visit
Aug. 25, 2009	Credit Council review and response on project selection
Sept. - Dec. 2009	Draft and negotiate loan agreement and required documents
Nov. 24, 2009	San Francisco Board of Supervisors approves financing
Dec. 10, 2009	TJPA Board considers approval of loan
Jan. 2010	Loan agreement executed and loan closes



## TJPA's TIFIA Loan

- \$171 million for construction
- \$19 million in capitalized interest
- Interest rate set on loan closing; yesterday's rate was 4.35%
- Pledged revenues are tax increment and AC Transit PFCs
- First interest-only payment due 2 years after substantial completion of project
- Payments sized to available pledged revenues
- Loan repaid by 2049



## Requirements to Close Loan (on about 1/15/10)

- Final investment grade rating, not later than 14 days prior to the effective date; rating expected Dec. 14, 2009.
- Demonstration that the funds forecasted to be available will be sufficient to complete the project.
- Arrangements to pay reasonable fees and expenses.





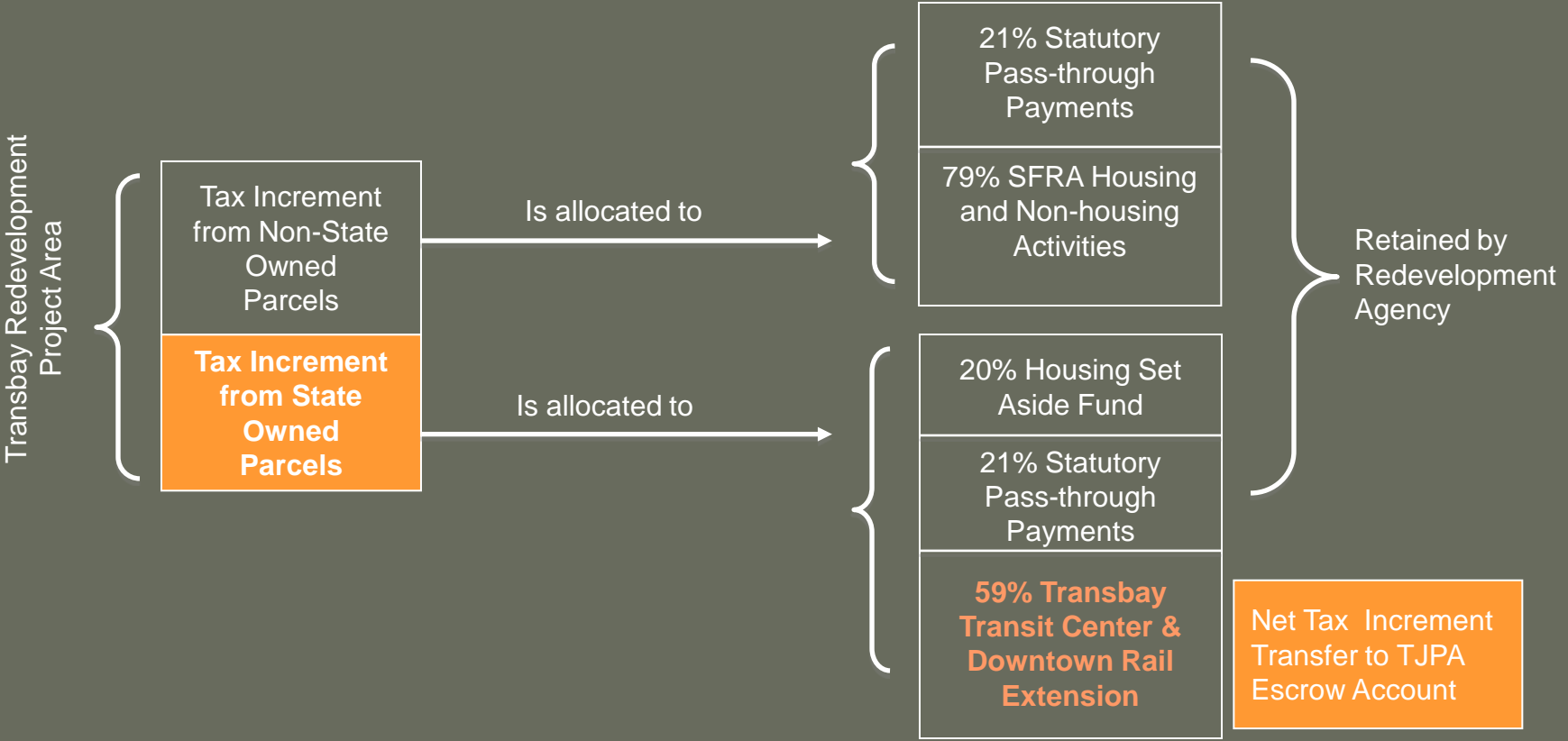
# Requirements to Draw from Loan Proceeds (about Dec. 2013)

- Evidence that land sales of State-owned Parcels have closed with gross sales proceeds aggregating not less than \$429 million or an allocation of alternative funding.
- Evidence that arranged financing has been secured for the development of all State-owned Parcels that have been sold.
- Updated land sales revenue forecasts.
- Updated tax increment projections, financing schedules, and project cash flows.
- Assignment of an investment grade rating within 30 days of the requisition for disbursement.



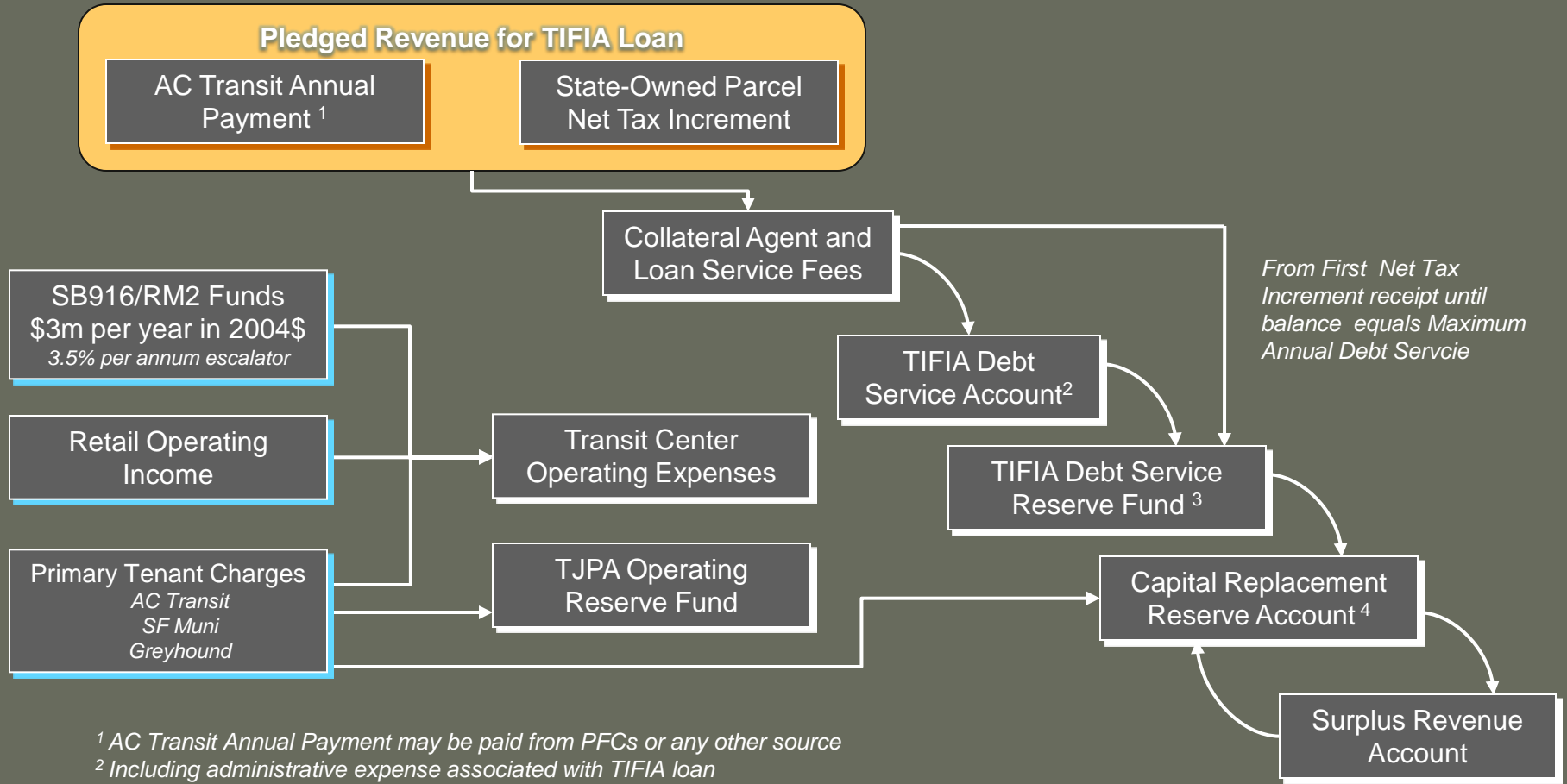
Transbay Transit Center

# Allocation of Project Area Tax Increment





# Flow of Funds On-going Revenue



*From First Net Tax Increment receipt until balance equals Maximum Annual Debt Service*

<sup>1</sup> AC Transit Annual Payment may be paid from PFCs or any other source

<sup>2</sup> Including administrative expense associated with TIFIA loan

<sup>3</sup> Replenish Reserve Fund, if needed

<sup>4</sup> Details on the funding of Capital Replacement Reserve Account to be outlined in Capital Asset Management Plan which will be developed at or near Substantial Completion of Phase 1



## TJPA Approval Required

- Loan Agreement
- Note (included as an attachment to the Loan)
- Collateral Agency Agreement
- FTA Compliance Agreement
- Acknowledgement Agreement between AC Transit and TJPA for deposits to the Collateral Agency