



RTA BOARD AGENDA

***** VIA TELECONFERENCE *****

Wednesday, July 8, 2020 at 8:30 AM

The *AGENDA* is available/posted at: <http://www.slorta.org>

President: Fred Strong

Board Members:

John Peschong (First District – SLO County)
Bruce Gibson (Second District – SLO County)
Adam Hill (Third District – SLO County)
Lynn Compton (Fourth District – SLO County)
Debbie Arnold (Fifth District – SLO County)
Jimmy Paulding (Arroyo Grande)

Vice President: John Peschong

Heather Moreno (Atascadero)
Karen Bright (Grover Beach)
Robert Davis (Morro Bay)
Fred Strong (Paso Robles)
Ed Waage (Pismo Beach)
Andy Pease (San Luis Obispo)

Individuals wishing accessibility accommodations at this meeting under the Americans with Disabilities Act (ADA) may request such accommodations to aid hearing, visual, or mobility impairment (including Limited English Proficiency [LEP]) by contacting the RTA offices at 781-4833. Please note that 48 hours advance notice will be necessary to honor a request.

Important Notice Regarding COVID-19

GUIDANCE FOR PUBLIC ACCESS:

On March 12, 2020 and March 18, 2020, Governor Gavin Newsom enacted Executive Orders N-25-20 and N-29-20 authorizing a local legislative body to hold public meetings via teleconferencing and make public meetings accessible telephonically or electronically to all members of the public to promote social distancing due to the state and local State of Emergency resulting from the threat of Novel Coronavirus (COVID-19).

In accordance with Executive Order N-29-20, and to ensure the safety of the San Luis Obispo Regional Transit Authority (RTA) Board of Directors and staff, and for the purposes of limiting the risk of COVID-19, **in-person public participation at public meetings of RTA will not be allowed** during the time period covered by the above-referenced Executive Orders. **Below are instructions on how to view the meeting remotely and how to leave public comments.**

Members of the public are encouraged to participate and provide comments in the following ways:

HOW TO PARTICIPATE:

Members of the public can watch the meeting via:

- Livestream online at www.slo-span.org, or
- Cable TV Public Access Channel 21

HOW TO COMMENT:

The RTA is accepting general public comments for items on the RTA Board June agenda as well as items of interest not on the agenda within the jurisdiction of the RTA Board. *****Note:** Every effort will be made to include your comments into the record, but due to time limitations, some comments may not be included. Members of the public can submit comments by:

Phone – Verbal Public Comments – Call: (805) 781-4833

- When leaving a message, state and spell your name, state the agenda item number you are calling about and leave your comment/s.
- **Verbal comments must be received no later than 8:00 a.m. on July 8, 2020** (the day of the meeting) and will be limited to **three (3) minutes**.

Email – Written Public Comments to: info@slorta.org with the subject line “public comment.”

- Include the agenda item number your are referencing or type “general comment,” if it is about an item not on the agenda.
- **Emailed written comments must be submitted no later than 5:00 p.m. on Tuesday, July 7, 2020.**

Mail – Written Public Comments

- Mail to:
Clerk of the Board
SLO RTA
179 Cross Street
San Luis Obispo, CA 93401
- **Mailed written comments must be received by the RTA no later than 5:00 p.m. on Tuesday, July 7, 2020.**

FLAG SALUTE, CALL MEETING TO ORDER AND ROLL CALL

PUBLIC COMMENT: The Board reserves this portion of the agenda for members of the public to address the San Luis Obispo Regional Transit Authority Board on any items not on the agenda and within the jurisdiction of the Board. Comments are limited to three minutes per speaker. The Board will listen to all communication, but in compliance with the Brown Act, will not take any action on items that are not on the agenda.

A. INFORMATION AGENDA

A-1 Executive Director's Report (Receive)

B. ACTION AGENDA

B-1 Financing of New Bus Maintenance Facility (Approve)

B-2 Awarding the Contract for the Construction of the RTA Bus Maintenance Facility (Approve)

C. CONSENT AGENDA

C-1 RTA Executive Committee Meeting Minutes of April 8, 2020 (Information)

C-2 RTA Board Meeting Minutes of May 6, 2020 (Approve)

C-3 RTA Board Meeting Minutes of May 22, 2020 (Approve)

C-4 RTA Board Meeting Minutes of June 3, 2020 (Approve)

C-5 Paso Robles Bus Parking Yard Mitigations Monitoring Report (Receive)

C-6 Declare Vehicles Surplus (Approve)

D. CLOSED SESSION – No closed session items

E. BOARD MEMBER COMMENTS

Next regularly-scheduled RTA Board meeting on September 2, 2020

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY

JULY 8, 2020

STAFF REPORT

AGENDA ITEM: A-1

TOPIC: Executive Director's Report

PRESENTED BY: Geoff Straw, Executive Director

STAFF RECOMMENDATION: Accept as Information

BACKGROUND/DISCUSSION:

Update on COVID-19 Pandemic Impacts:

The RTA continues to respond to and plan for recovery from the COVID-19 pandemic. The RTA and its transit agency partners are continuing to provide lifeline services, including transportation for vital healthcare workers and other essential employees responding to the pandemic. Public transit is also critical for many persons so that they can obtain necessary goods and services.

Below is a summary of the previously reported changes (and implementation dates) staff implemented in response to the emergency:

1. Public info campaign to sanitize hands and stay home if sick (March 3)
2. Revised vehicle & facility sanitizing procedures (March 10)
3. Weekday Regular Service decreased to Saturday Service levels (March 16)
4. Fares suspended & boarding at mid-door (March 23)
5. Ordered sanitizing foggers to clean bus interiors (March 27; delivery in July)
6. Fiscal Emergency declared by RTA Board (April 1)
7. Face masks provided to employees (April 3)
8. Bus Operator bid "shake-up" & admin leave program implemented (April 5)
9. Maximum vehicle loads established & Tripper buses added (April 13)

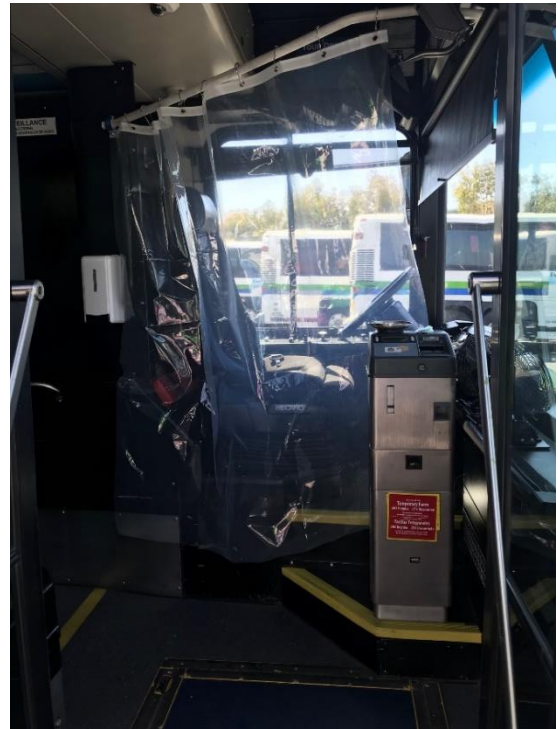
Other more recent COVID-19 initiatives (and pertinent dates) include:

1. Face coverings required on all buses and at bus stops (June 12) – to help avoid spread of COVID-19, I ordered that all employees and riders must wear a face covering while using our services beginning on June 14. The Governor issued a statewide order on June 19.
2. Implementation of an interim cash fare (June 14) – the Tripper buses implemented in mid-April did not provide enough overall capacity to avoid overcrowding – particularly on Route 9 SLO-Paso, Route 10 SLO-Santa Maria, and Route 12 SLO-Osos-Morro Bay. In some instances, we left passengers

behind. This was a particular hardship, since the time between scheduled COVID-19 fixed-route service is long¹. An on-going challenge of the suspended fare program has been “sheltering on bus,” particularly by homeless persons during inclement weather. As such, on June 14, I ordered a nominal base cash fare of \$0.50 and a senior/disabled/youth cash fare of \$0.25 to help save limited capacity for truly essential travel. We worked with Token Transit to develop a special new electronic \$7.50 fare media that persons with a Smartphone can use in lieu of coins.

Obviously, this required reinstitution of front door boarding so that passengers can place their fare into the farebox. To provide additional safety for Bus Operators, our Technicians developed a temporary shower curtain-based screen used during the passenger boarding process. Permanent Plexiglas barriers are on order, and should be delivered and installed in July.

During the last week of June, we began installing passenger hand sanitizing gel dispensers on all transit vehicles. Full reimplementations of fares will occur roughly two weeks after the last City Hall is opened (likely late-summer?) so that RTA and SoCo Transit fare media can be easily accessed and purchased by riders throughout our service area.



The picture above is an example of the driver barrier (in the “deployed” position) and the hand sanitizing station

3. Bus Operator Shake-Up for June 28 Service Ramp-Up (June 15) – throughout May and June ridership continued to increase, and the added Tripper capacity was found to not be enough to meet demand – particularly as the economy continued to emerge from the imposed shutdown. Beginning on June 28 and in coordination with our partners at SLO Transit, an RTA “Modified Regular Service” was implemented on weekdays that provides hourly fixed-route service, but without traditional commuter Express runs. SoCo Transit and Paso Express reverted back to pre-COVID-19 weekday Regular Service (which is frankly not that much different from the Saturday Service). Employees were notified that the temporary COVID-19 Administrative Leave Program would end on June 28 in conjunction with the service ramp up.

¹ The scheduled departures from SLO are at 8:33AM, 11:33AM, 1:33PM, 4:33PM and 7:33PM.

4. Employee personal temperature screening policy (June 19) – effective June 28, all employees are required to use an RTA-provided digital oral thermometer to check temperatures prior to reporting to work. We also procured touchless infrared thermometers for each operating location to test an employee's temperature if observed to exhibit COVID-19 symptoms.

The RTA submitted a “grant request” to the City of Santa Maria on June 11 for our \$1.3 million fair share of CARES Act funding apportioned to the Santa Maria Urbanized Area through the FTA Section 5307 program. We expect to hear back in the coming days the amount that is allocated, and we will submit a grant application to the FTA shortly thereafter.

Operations:

Since the previous RTA Board meeting in March, we have one new Bus Operators in revenue service and one new Bus Operator candidate that is in the training program. We also have nine candidates that are in the background/permitting phase of recruitment that could help us sustain service levels after the pandemic shelter at home order is lifted. We are continually seeking new candidates to fill the eight open Bus Operator positions.

Service Planning & Marketing:

Staff accepted the construction portion of Transit Center Improvements Project in early May, and it “went live” on May 17. One item that remains is the structural integrity of the two sign kiosks, which swayed in strong winds. The manufacturer has agreed that additional support is needed and is scheduled to be on-site the week of June 29th to correct the problem. Regardless, riders appreciate the extra plaza space and the enhanced amenities. Unfortunately, due to the shelter at home order, we could not conduct a ribbon-cutting event. Nonetheless, we reached out to our media partners to inaugurate the opening of the facility, but it was not picked up as a newsworthy event.

Obviously, with our reaction to and planning for recovery from the pandemic, since the last Board meeting much of our marketing efforts has centered on service and fare changes. In addition to information campaigns about face coverings, we continue to encourage good hygiene practices for employees and customers – including hand sanitizing, social distancing, and staying home when sick.

Bus Maintenance Facility Update:

Funding and award of a construction contract will be considered in Agenda Items B-1 and B-2. Staff is still awaiting announcement of awards for the next round of FTA Section 5339(b) grant funding; we submitted our grant proposal on April 28th. Due to the coronavirus pandemic and recent spikes in cases in California, we have abandoned the possibility of conducting a groundbreaking ceremony for the project.

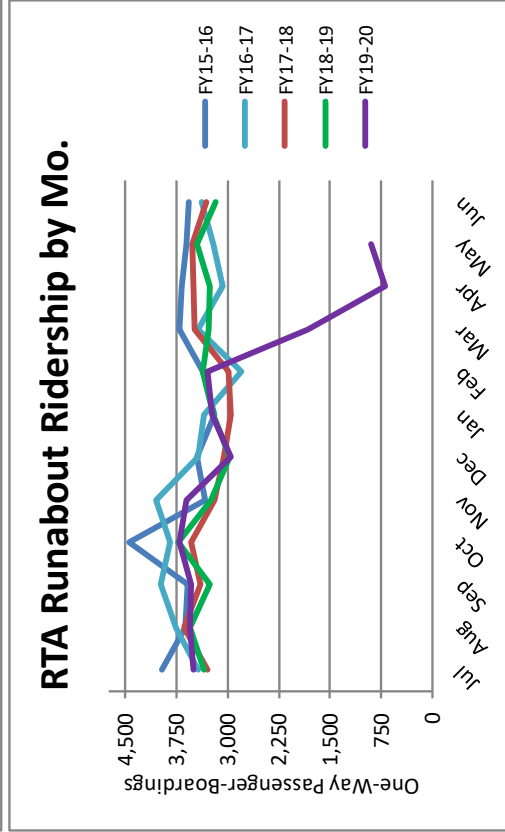
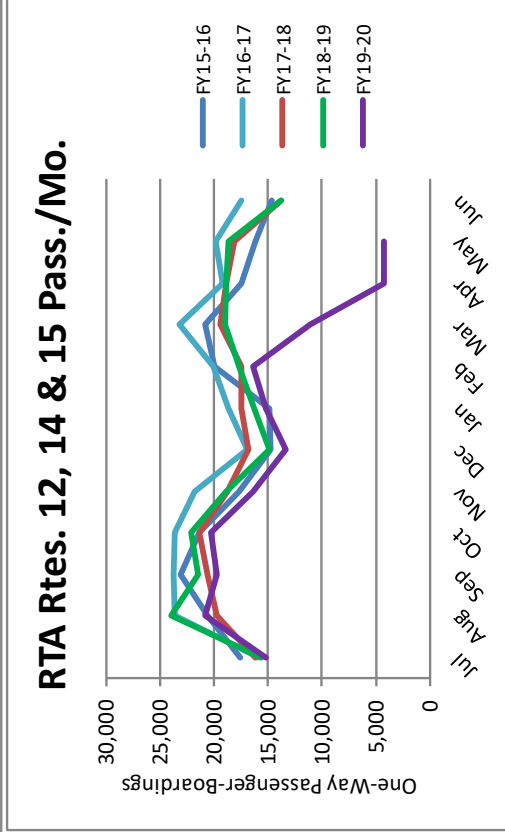
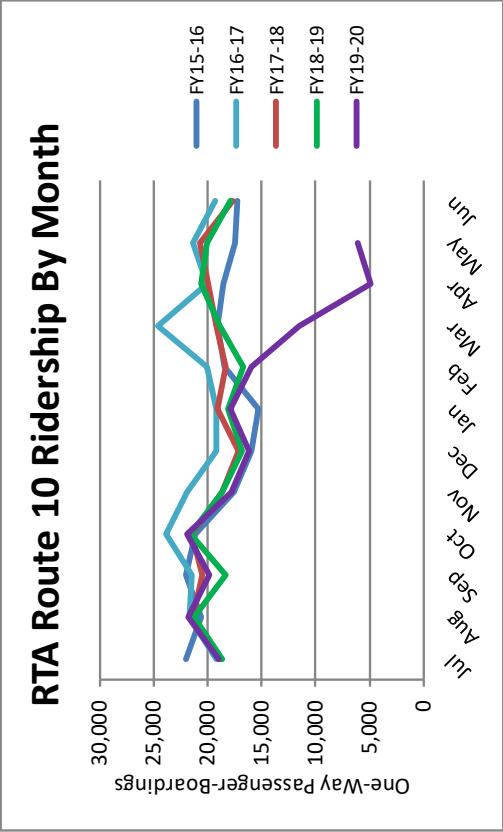
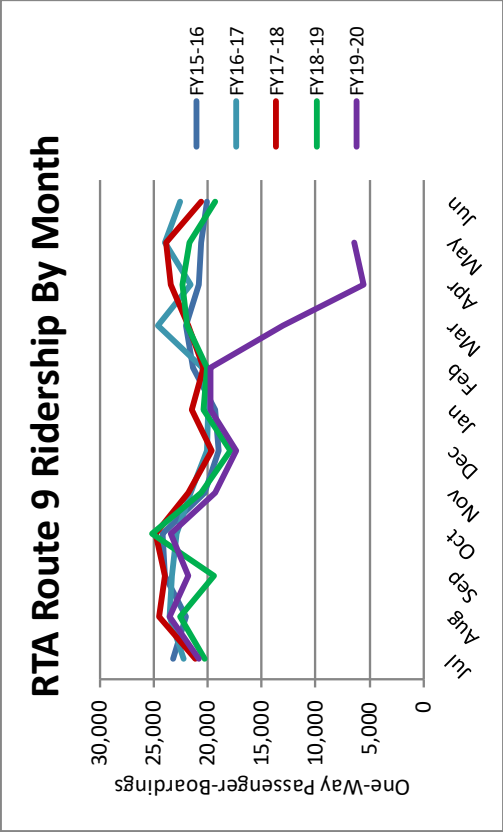
Finance and Administration:

Our unaudited operating and financial results through the first eleven months of FY19-20 are presented in the tables at the end of this report. This tabular information is summarized as follows:

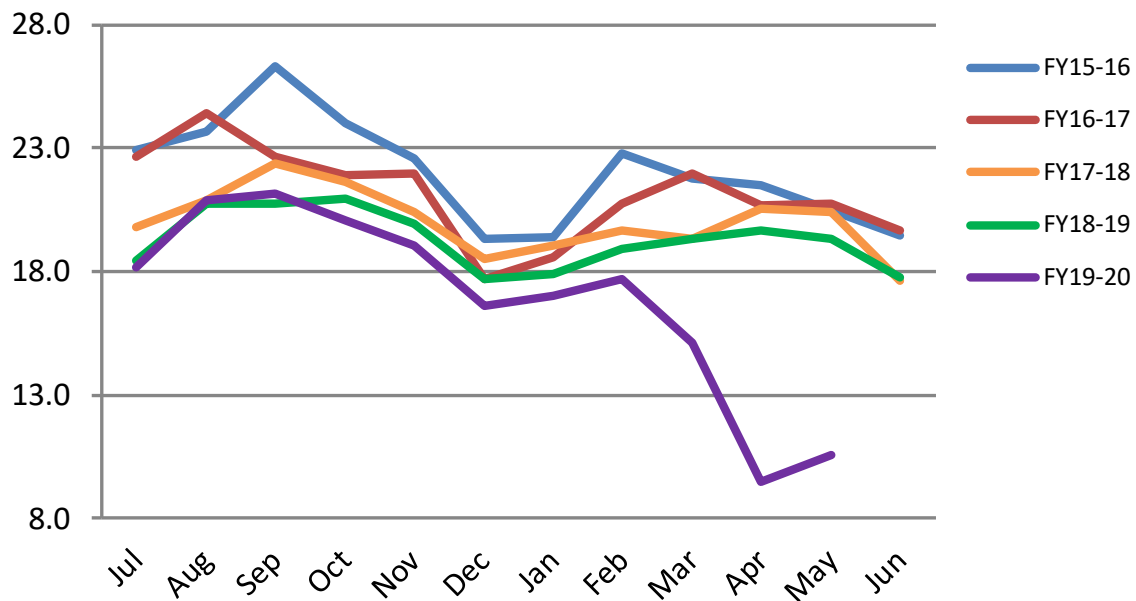
- RTA core fixed-route ridership totaled 520,046 through the end of May 2020. In comparison, the ridership for the same period last year was 649,410, which represents a decline of 24.9%. Note: the decline from July 2019 to February 2020 was 3.1% before service reduction due to COVID-19 were implemented. In comparison, the annual decline was 2.7% the same previous year-to-date period (July 2018 – February 2019). The decline was obviously sharpest during the March through May period: 67,032 in 2020 vs. 181,897 in 2019 – a decline of over 60%.
- Runabout ridership totaled 30,803, which is a decline of 16% compared to last year (36,665), largely due to the impacts of COVID-19 beginning in March 2020. Based on July 2019 – February 2020 results, Runabout ridership increased by 2.7% increase compared to last year. The March to May decline year over year is much greater: 3,413 in 2020 vs. 9,901 in 2019 – a decline of over 60%.
- Trends over the past five years for ridership and productivity (which is defined as the average number of passenger-boardings per service hour), are provided in the graphs beginning on page A-1-6.
- In terms of financial results, staff worked hard to keep operating and capital costs within budget in light of the weakened ridership and other financial challenges. See the tables at the end of this report for details. Some important takeaways include:
 - In terms of overall non-capital expenses, we are right on budget – 88.8% through 91.7% of the fiscal year.
 - Administrative costs are slightly above budget: 97.3% of the annual budget. The greatest deviation was due to the need to expend funds for professional technical services (\$173,918 expended vs. an annual budget of \$112,860).
 - Overall Service Delivery costs are slightly under budget, largely in part due to lower fuel prices and slightly reduced paid staff hours due to the COVID-19 pandemic.
 - The farebox recovery ratio for core fixed-route services equated to 13.3 %, while Runabout achieved a ratio of 3.6%. Through February 2020 the cored fixed-route service farebox ratio was 18.1%. Obviously, suspending the collection of fares on March 23rd greatly influenced this performance

result, and the results will remain below standards until such time that fares are fully re-implemented and ridership recovers.

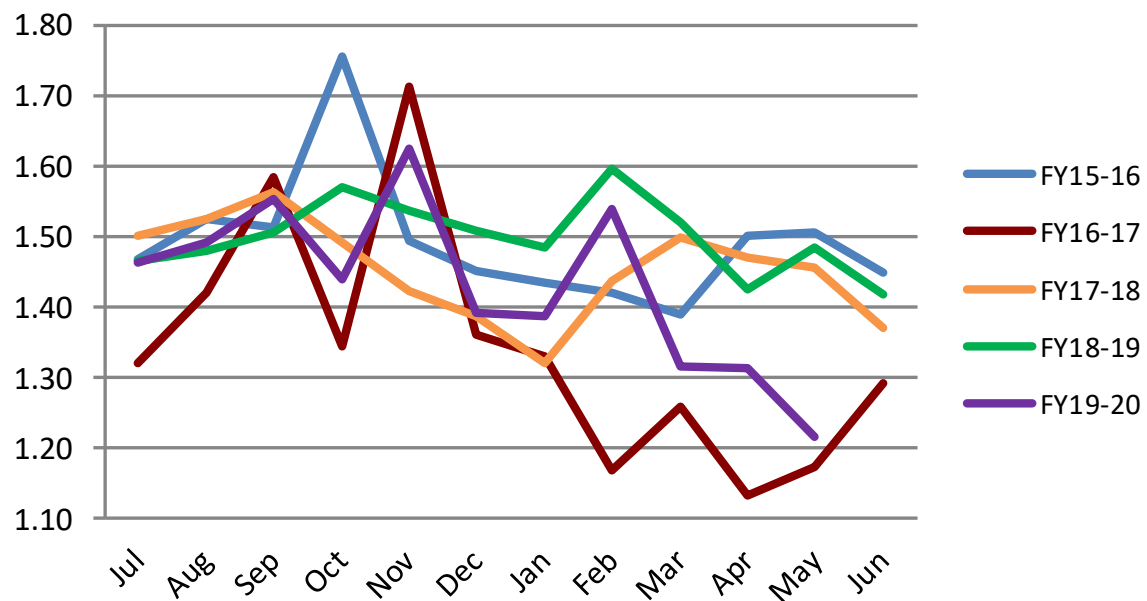
- The YTD subsidy per passenger-trip on core fixed-route services was \$9.57 and for Runabout it was \$96.34.



RTA Fixed Route Productivity



RTA Runabout Productivity



	Adopted Budget FY 2019-20	April Actual	May Budget	May Actual	May Variance	Year to Date FY 2019-20	Percent of Total Budget FY 2019-20
Administration:							
Labor							
Hours	70,210	2,534	5,851	2,758	3,093	57,026	81.2%
Miles	1,563,240	60,892	130,270	67,093	63,177	1,299,605	83.1%
operations cost	879,630	108,071	73,303	72,385	917	848,067	96.4%
Office Space Rental	51,300	11,834	-	-	-	47,336	92.3%
Property Insurance	476,920	36,465	39,743	36,465	3,278	438,663	92.0%
Professional Technical Services	20,710	-	-	-	-	24,384	117.7%
Professional Development	112,860	18,172	9,405	11,206	(1,801)	173,918	154.1%
Operating Expense	44,970	1,111	3,748	38	3,710	36,297	80.7%
Marketing and Reproduction	292,950	26,761	24,413	17,288	7,124	272,066	92.9%
North County Management Contract	133,240	6,925	11,103	2,942	8,161	102,803	77.2%
County Management Contract	(43,030)	(3,586)	(3,586)	(3,586)	-	(39,444)	91.7%
SCT Management Contract	(88,680)	(7,390)	(7,390)	(7,390)	-	(81,290)	91.7%
operations cost	(122,650)	(10,221)	(10,221)	(10,221)	-	(112,429)	91.7%
Total Administration	1,758,220	188,142	140,518	119,129	21,389	1,710,369	97.3%
Service Delivery:							
Labor - Operations	5,086,120	524,668	423,843	364,195	59,649	4,566,068	89.8%
hourly	347,120	80,074	-	-	-	320,297	92.3%
Labor - Maintenance	1,121,220	113,358	93,435	73,144	20,291	969,388	86.5%
hourly	101,580	23,433	-	-	-	93,731	92.3%
Fuel	1,048,730	34,957	87,394	47,377	40,018	825,541	78.7%
miles	677,570	56,237	56,464	56,237	228	623,977	92.1%
Insurance	44,900	815	3,742	1,093	2,648	30,910	68.8%
Special Transportation (for SLOCAT and Paso)	63,590	-	10,598	-	10,598	20,965	33.0%
Avila Trolley	628,670	74,023	52,389	25,833	26,556	588,137	93.6%
Maintenance (parts, supplies, materials)	125,900	10,380	10,492	4,353	6,139	127,085	100.9%
miles							
Total Operations	9,245,400	917,945	738,358	572,231	166,127	8,166,098	88.3%
Capital/Studies:							
Computer System Maintenance/Upgrades	46,020	-	-	-	-	8,825	19.2%
Miscellaneous Capital	89,460	-	-	-	-	151,447	169.3%
Specialized Maintenance Tools	252,860	72,296	71,000	70,320	680	232,376	91.9%
Bus Stop Improvements/Bus Stop Solar Lighting Vehicles	880,700	-	-	-	-	3,760	0.4%
Curaway and Dial A Ride Vehicles	555,200	-	-	-	-	5,000	0.9%
Runabout Vehicles and Equipment	1,824,240	72,296	71,000	70,320	680	401,408	22.0%
Total Capital Outlay							
Contingency	132,040	-	11,003	-	11,003	-	0.0%
Elks Lane Project	499,990	97,086	26,000	25,645	355	1,145,823	229.2%
Management Contracts	254,360	21,197	21,197	21,197	-	233,163	91.7%
TOTAL FUNDING USES	13,714,250	1,296,665	1,008,075	808,521	199,554	11,656,862	85.0%
TOTAL NON-CAPITAL EXPENDITURES	11,390,020	1,127,283	911,075	712,556	198,519	10,109,630	88.8%

SAN LUIS OBI SPO REGIONAL TRANSIT AUTHORITY
YEAR TO DATE THRU MAY 31, 2020
CURRENT FISCAL YEAR - 2019/2020

	RT 9 P.R., TEMP., ATAS., S.M., CAL POLY, S.L.O.	RT 10 S.M., NIPOMO, A.G., S.L.O.	RT 12 MORRO BAY, CUESTA, SAN LUIS	RT 14 CUESTA, SAN LUIS TRIPPER	RT 15 SAN SIM., CAMBRIA, CAYUCOS, M.B.	TOTAL RTA CORE SERVICES	TOTAL PASO EXPRESS FIXED ROUTE	PASO EXPRESS DIAL A RIDE	RUNABOUT	SYSTEM TOTAL
REVENUES:										
FARES	\$ 267,644	\$ 269,025	\$ 183,438	\$ 19,915	\$ 25,751	\$ 765,773	\$ 93,021	\$ 4,803	\$ 111,511	\$ 975,108
TOTAL ROUTE REVENUES	\$ 267,644	\$ 269,025	\$ 183,438	\$ 19,915	\$ 25,751	\$ 765,773	\$ 93,021	\$ 4,803	\$ 111,511	\$ 975,108
EXPENDITURES:										
ADMINISTRATION	\$ 385,184	\$ 323,295	\$ 207,434	\$ 16,174	\$ 118,923	\$ 1,051,010	\$ 33,485	\$ 5,959	\$ 703,794	\$ 1,794,247
MARKETING	37,954	31,598	20,401	1,813	11,038	102,803	-	-	-	102,803
OPERATIONS/CONTINGENCY	1,296,482	1,112,392	694,605	54,900	405,276	3,563,655	645,889	96,893	2,069,859	6,376,297
FUEL	212,593	207,484	113,254	11,916	68,307	613,555	44,371	3,738	146,311	807,975
INSURANCE	142,235	137,815	74,442	7,088	48,270	409,850	38,324	4,079	159,007	611,260
TOTAL EXPENDITURES	\$ 2,074,449	\$ 1,812,584	\$ 1,110,135	\$ 91,891	\$ 651,814	\$ 5,740,873	\$ 762,070	\$ 110,669	\$ 3,078,970	\$ 9,692,583
FAREBOX RATIO	12.9%	14.8%	16.5%	21.7%	4.0%	13.3%	12.2%	4.3%	3.6%	10.1%
SERVICE MILES	297,374.0	290,179.4	158,360.6	16,607.5	95,526.2	858,047.5	76,178.5	9,454.0	355,984.0	1,299,664.0
SERVICE HOURS	10,866.1	9,153.2	5,885.8	509.8	3,092.7	29,507.5	5,406.6	1,017.6	21,094.3	57,026.0
RIDERSHIP (Automatic Counters)	190,565	172,678	123,078	15,591	18,134	520,046	86,863	1,958	30,803	639,670
RIDERS PER MILE	0.64	0.59	0.79	0.94	0.20	0.61	1.14	0.21	0.09	0.49
RIDERS PER HOUR	17.5	18.8	21.4	30.6	6.3	17.6	16.1	1.9	1.5	11.2
COST PER PASSENGER	\$ 10.89	\$ 10.50	\$ 9.02	\$ 5.89	\$ 35.94	\$ 11.04	\$ 8.77	\$ 56.52	\$ 99.96	\$ 15.15
SUBSIDY PER PASSENGER	\$ 9.48	\$ 8.94	\$ 7.53	\$ 4.62	\$ 34.52	\$ 9.57	\$ 7.70	\$ 54.07	\$ 96.34	\$ 13.63

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY

JULY 8, 2020

STAFF REPORT

AGENDA ITEM: B-1

TOPIC: Financing of New Bus Maintenance Facility

PRESENTED BY: Geoff Straw

STAFF RECOMMENDATION:

1. Approve Resolution Regarding:
 - a. Term Sheet
 - b. Credit and Security Agreement
 - c. Collateral accounts and security agreement
2. Approve Direction of LTF Funds between the RTA and SLOCOG
3. Approve Direction of Farebox Revenue between the RTA and the County of San Luis Obispo Auditor/Controller/Treasurer/Tax Collector

SUMMARY:

The RTA has outgrown its current bus maintenance facility on leased premises and has received RTA Board approval to develop a new RTA Bus Maintenance Facility (the Project). The lease on the RTA's existing facility expires in February 2022 and staff continues to take action to ensure that the Project is constructed and operational before the lease term ends. The cost of the Project will be funded through a combination of secured State and Federal grants, as well as financing proceeds.

As a follow up to the March 2020 Board meeting, staff is returning to the Board with additional financing information for approval, which is subsequent to completion of the construction bid process providing staff a known project cost of \$20,830,395 (\$16,873,000 contact with Specialty Construction, plus contingency, construction management, and commissioning). Award of the construction services contract will be considered under Agenda Item B-2. As such, there is now greater certainty around the final plan of finance. Staff is recommending the Board approve a Term Sheet from Pacific Western Bank (PacWest) to provide interim/bridge funding sources for the construction of the project, and authorize the Executive Director to finalize a loan agreement with PacWest based on that term sheet.

BACKGROUND:

Previously, the RTA Board has provided various approvals for staff to proceed with the planning, land purchase, environmental, design, and engineering phases of the Project. All of such phases have been completed and have been fully funded with Federal, State, and Local funding sources. In anticipation of the cost and financing need associated with the

construction phase of the Project, staff has taken a number of steps to secure the Project funding approach.

On September 25, 2018, the RTA was awarded a Department of Transportation grant to help fund the Project. The amount awarded was \$6.285 million, which was the largest grant amount awarded in California and was made possible by a unique community partnership between the RTA, SLOCOG, CAPSLO, and the City and County of San Luis Obispo.

At the November 7, 2018 RTA Board meeting, the Board authorized the agreement with KNN Public Finance, a municipal advisory firm, to assist staff with developing and evaluating funding alternatives for the Project construction. At the April 3, 2019 RTA Board meeting, Melissa Shick, a municipal advisor at KNN Public Finance, presented information regarding the range of financing alternatives available to the RTA to help fund the Project. One such alternative included a loan through the U.S. Department of Transportation (US DOT) Build America Bureau (BAB) – Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

On May 31, 2019, and supplemented in August 2019, the RTA submitted a Letter of Interest to the US DOT to pursue funding through the TIFIA Loan program – and, specifically, under Rural Project Initiative (RPI). RPI is a new lending initiative that places an emphasis on rural transportation needs and offers some significant benefits and savings to rural sponsors – including, below market interest rates (50% of the UST rate), subsidized application fees, and all the same structuring flexibility afforded by the traditional TIFIA Loan program. RPI allows borrowers to fund up to 49% of total project costs with TIFIA Loan proceeds. It is anticipated that the RTA's Project will be the inaugural project funded through the RPI program.

At the July 10, 2019 RTA Board meeting, the Board authorized an agreement with Nossaman, LLP for special finance counsel services related to anticipated borrowings. Also included in the July 10, 2019 RTA Board meeting, staff further discussed the TIFIA Loan financing alternative and requested the Board authorize staff to continue to pursue this borrowing opportunity in tandem with other financing vehicles.

In September 2019, RTA staff provided a formal presentation to Moody's credit rating agency to achieve an indicative rating on the TIFIA Loan borrowing (a requirement of the US DOT/BAB credit review process). Moody's assigned the RTA with a strong indicative rating on the TIFIA Loan, which reflects the credit strengths of the RTA and is consistent with the credit ratings of the RTA's California transit agency peers.

On December 9, 2019, staff from the RTA, KNN, and Nossaman met with the US DOT/BAB staff and their advisors in Washington DC to formally present the Project for TIFIA Loan approval. Subsequent to the December meeting with the US DOT/BAB team, the RTA, KNN, and Nossaman have been in consistent dialogue with US DOT/BAB with regard to their credit review and due diligence process. As the due diligence process is still underway and negotiations have not commenced on the form of TIFIA Loan Agreement with the US DOT, the execution and closing of the TIFIA Loan is delayed and expected later in the 2020 calendar year.

In December 2019, at staff's direction, KNN solicited commercial banks and received borrowing rate indications for the Bank Loan borrowing component to be executed in tandem with the TIFIA Loan. Given the prolonged TIFIA Loan process, the solicitation of permanent Bank Loan borrowing rates also included inquiry around interim or "bridge" funding solutions.

In March 2020, the RTA Board approved an initial term sheet from Pacific Western Bank to provide the financing for the construction of the Project, a debt management policy, and the initial direction re: direction of LTF funds.

DISCUSSION:

Since the March RTA Board meeting, staff has received construction bids for the Project, which has resulted in a reduction in the borrowing needed for the project. Staff, with the advice and consultation of KNN and Nossaman, has developed a revised plan of finance approach for the Project to address the projected funding gap through the combined borrowing of a TIFIA Loan and PacWest Bank Loan under a transit revenue appropriation security structure.

Revised Estimated Borrowing Need

The total revised estimated project cost is now just over \$26.7 million (\$31.5 million previously), of which \$4.1 million is attributable to the land purchase and environmental/design phases that have already been fully funded. The remaining \$24.1 million of project costs are attributable to estimated construction costs based on the bids received on June 4, 2020, in addition to furniture, fixture, and moving expenses and estimated financing costs. RTA staff has secured Federal and State grants to offset the cost of construction at approximately \$8.5 million leaving a remaining Project funding gap of \$14.1 million.

	Total Estimated Cost	Secured Funding		Funding Gap
		Federal Amount	State/Local Amount	
Land Purchase	\$1,512,602	\$0	\$1,512,602	\$0
Environmental & Design	\$2,554,486	\$905,787	\$1,648,699	\$0
Construction				
Total Construction Cost	\$20,830,395	\$6,285,662	\$2,259,426	\$12,285,308
Furniture, Fixtures, and Expenses	\$1,422,412			\$1,422,412
Financing Costs	\$392,280			\$392,280
(RTA legal, advisor, trustee, and rating agency fees)				
Sub-Total Construction, FF&E, and Financing Costs	\$22,645,088	\$6,285,662	\$2,259,426	\$14,100,000
Total RTA Bus Facility Budgeted Costs	\$26,712,175	\$7,191,449	\$5,420,727	\$14,100,000

Revised Plan of Finance Approach

Following a detailed analysis of alternatives, it was determined that a loan secured through the TIFIA/RPI program with a smaller additional bank loan presents the lowest cost borrowing alternative for the Project (Plan A). Discussions with the US DOT/BAB were more questionable in March 2020 but have become more productive with staff receiving a first draft

loan agreement on April 22, 2020. This resulted in delays related to the draft loan agreement staff anticipated presenting during this meeting. If it does not continue to advance in an expeditious manner over the next couple of months, then the issuance of Certificates of Participation in the tax-exempt municipal public bond market remains a viable and attractive alternative (Plan B). Each is discussed below.

Plan A – TIFIA Loan and PacWest Bank Loan Financings. The proposed Project funding sources are summarized in the table below. Federal and State grants that staff has already secured contribute to 47% of total Project funding sources. The TIFIA Loan will provide 49% of the total Project funding needs, which is capped at this percentage contribution pursuant to Federal statute. A Bank Loan with PacWest will satisfy the remaining 3% of Project funding requirements. Further, Federal funds, including the \$6.285 million that was awarded in the Fall of 2018 for construction, can be used to maximize Federal interest in the Project up to 80% - the current anticipated Federal interest is 76%. Thus, in tandem with the plan of finance development, staff is actively working to secure additional Federal grant funding to offset estimated borrowing needs.

<u>Sources of Funding</u>	<u>\$</u>	<u>%</u>
Federal Grants	\$7,191,449	26.9%
State Grants	\$5,420,727	20.3%
TIFIA Loan	\$13,080,000	49.0%
Pacific Western Bank Loan	\$1,020,000	3.8%
Total Sources:	\$26,712,175	100.0%
<u>Funding Allocation</u>		
Total Federal Funding (FTA Grants & TIFIA Loan)	\$20,271,449	76%
Total Other Funding (State Grants & Bank Loan)	\$6,440,727	24%
Total Funding	\$26,712,175	100%

- **TIFIA Loan (\$13 Million):** The TIFIA/RPI program offers the RTA significantly reduced borrowing cost and annual budgetary benefits. Notably, at the time of closing on the TIFIA Loan, the RTA will lock-in a fixed interest rate for a 35-year term based on 50% of the then current US Treasury rate. By way of illustration, if current US Treasury rates remained unchanged between now and the time of closing on the TIFIA Loan, then the RTA's interest cost on a 35-year obligation would be 0.8% (based on a 30-year UST rate just shy of 1.6% as of June 9, 2020). The TIFIA Loan program typically requires high upfront fees to cover US DOT/BAB legal and advisor costs; however, under RPI a limited amount of Federal funds are available to cover such costs and the RTA's upfront TIFIA program costs have been fully offset. ***The TIFIA Loan can be prepaid and redeemed at any time.***
- **PacWest Bank Loan (\$1 Million):** PacWest currently serves as the County of San Luis Obispo and the RTA's bank and has provided a strong interest and commitment to the Project. On January 22, 2020, PacWest offered an initial term sheet which was reviewed by the RTA, KNN, and Nossaman. KNN provided an analysis of the PacWest Term Sheet and proposed borrowing rates against other commercial bank proposals to ensure

PacWest proposal was sufficiently aggressive relative to market comparables. Based on market indications, PacWest was willing to reduce its initially proposed borrowing rate to be more in-line with comparable banks. The adjustment resulted in a fixed 3.0% rate in addition to a \$14,100 upfront fee (which is reflected in the Financing Cost line-item of the Project budget), and lender's counsel fees capped at \$35,000.

The PacWest Term Sheet (**Attachment A**) presented to the Board for approval accomplishes two key objectives of the financing process:

1. Line of Credit – Provides access to funds over a two-year “draw down” or construction period for the **total** required borrowing amount of approximately \$14.1 million to allow RTA to proceed with construction irrespective of finalization of the TIFIA Loan process.
2. Permanent Loan – Secures permanent Project funding needs of \$1 million that together with the TIFIA Loan (whose size is capped under Federal statutes) will close the total Project funding gap.

Any amounts drawn under the PacWest Line of Credit above the \$1 million will be refinanced with the TIFIA Loan upon closing. The PacWest Loan can be prepaid and redeemed at any time. **The amounts in the Term Sheet are based on the October 2019 construction estimate which has dropped based on the bids received in May 2020 and the revised amounts would be reflected in the loan agreement.**

Plan B – Issuance of Certificates of Participation in the Municipal Bond Market. Should TIFIA be further delayed or if it is unable to close, staff and its advisors are closely tracking a Plan B financing approach, which would be the issuance of Certificates of Participation in the municipal market. This approach is a common mode of financing for the RTA's peer California transit agencies and current tax-exempt interest rates are at or near historic lows. With a favorable municipal market environment, the Plan B approach provides an attractive financing opportunity to the RTA; however, the estimated borrowing cost is above the TIFIA below market lending rate.

The RTA's advisors estimate that if the decision was made to pursue Plan B then the RTA could have market access in approximately 60 days. With a fully developed credit structure and established credit rating, the timeline for issuance will mostly be driven by the development of a public offering document (Official Statement) and the required Board approvals. Updates will be provided to the Board at each Board meeting regarding the progress of the TIFIA Loan negotiations and if Plan B will need to be pursued. In light of productive recent negotiations with TIFIA, the likelihood of this eventuality has lessened significantly.

Loan Repayment and Security Structure

The proposed structure for loan repayment aims to achieve fixed level annual payments to support ongoing budget certainty. Following an interest only payment period over the course of the construction period (2 years), the PacWest Bank Loan is expected to amortize from

July 1, 2023 through July 1, 2025 (3 years) and the TIFIA Loan will pay interest only during that period and begin amortizing on July 1, 2026 through July 1, 2056.

Based on the secured PacWest Bank Loan rate of 3.0% and a TIFIA Loan rate of 0.8%, estimated aggregate annual debt service payments equate to approximately \$478,000. The estimated annual debt service requirement is less than the RTA's prior/terminating annual fixed payments – payments on 2011 loan that matured in 2018 were \$220,000 and the lease payment on current administration and maintenance facility of \$477,000 will terminate in Fiscal Year 2020-21, together totaling \$697,000. Should the borrowing rate for TIFIA increase to 1.5%, the estimated combined annual debt service payments would equate to approximately \$557,000.

Further, the RTA will direct SLOCOG to deposit ALL of the RTA's allocated LTF funds on each calendar quarter basis (when LTF funds are received by SLOCOG from the State) with the Collateral Agent (Trustee) who will deposit from these amounts into the debt service accounts held by the Collateral Agent (the Irrevocable Direction RE Deposit of LTF Funds). Any amount of LTF funds not required to make the quarterly debt service deposits will be transferred to the RTA by the Collateral Agent.

The Irrevocable Direction RE Deposit of LTF Funds will be in effect until such time that the RTA's financial obligations under the Loan Agreements have been satisfied. The SLOCOG Board will also considered this request at the June 3, 2020 SLOCOG Board meeting and it is included as **Attachment B** to this staff report. The initial draft was approved by both the RTA Board and SLOCOG Board earlier this year.

Under the TIFIA and PacWest Bank Loan Agreements, RTA will covenant to budget and appropriate from all legally available sources of revenue (other than federal grant funds) amounts necessary to repay debt service on the TIFIA Loan. These sources include LTF, STA, and farebox revenues.

Staff Recommendation

1. Approve resolution:
 - a. Approving the term sheet from Pacific Western Bank (**Attachment A**) to provide financing for the construction of a new Bus Maintenance Facility project
 - b. Authorizing the Executive Director, in coordination with County Counsel, to negotiate and execute:
 - i. Credit and Security Agreement (draft included as **Attachment B**)
 - ii. Collateral accounts and security agreement (CASA) (draft included as **Attachment C** with associated fee schedule as **Attachment D**)
2. Approve the Irrevocable Direction RE Deposit of LTF Funds (**Attachment E**) between the RTA and SLOCOG.
3. Approve the Irrevocable Direction RE Deposit of Farebox Revenue (**Attachment F**) between the RTA and the County of San Luis Obispo Auditor/Controller/Treasurer/Tax Collector.

**SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY
RESOLUTION NO. 20-_____**

**RESOLUTION APPROVING A TERM SHEET FROM PACIFIC WESTERN BANK TO
PROVIDE FINANCING FOR THE CONSTRUCTION OF A NEW BUS MAINTENANCE
FACILITY**

WHEREAS, the San Luis Obispo Regional Transit Authority (RTA) is developing a new bus maintenance facility project in the City of San Luis Obispo (Project) and therefore solicited bids from contractors; and

WHEREAS, based on current cost estimates and a preliminary financing plan as described to this Board, the RTA will need to finance a portion of the cost of the Project; and

WHEREAS, the RTA received a preliminary term sheet from Pacific Western Bank (Bank) to provide a loan to the RTA in the amount of up to \$19,600,000 and on March 4, 2020 the Board approved; and

WHEREAS, the financing of the Project will produce significant public benefits, including
(a) demonstrable savings in effective interest rate, debt preparation, debt underwriting, and debt issuance costs, and
(b) significant reductions in effective user charges levied by the RTA for its transit service;

WHEREAS, the RTA received a revised term sheet from the Bank with revisions as the funding plan for the project was revised, attached hereto as Attachment A; and

WHEREAS, the RTA Board desires to delegate to the Executive Director the authority to negotiate and execute a Credit and Security Agreement (Agreement) with the Bank on substantially the terms and conditions and fees as set forth in the draft Agreement, attached hereto as Attachment B; and

WHEREAS, the RTA Board desires to delegate to the Executive Director the authority to negotiate and execute a Collateral Accounts and Security Agreement (CASA) with the Bank and U.S. Bank National Association on substantially the terms and conditions and fees as set forth in the draft CASA and fee schedule, attached hereto as Attachments C and D.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Board of Directors of the San Luis Obispo Regional Transit Authority:

1. The revised term sheet dated May 14, 2020 with the Bank to finance a portion of the cost of the Project is hereby approved, attached hereto as Attachment A.
2. The Executive Director or designee is authorized to negotiate and execute a Credit and Security Agreement with the Bank on substantial the terms and

conditions as set forth in the draft Credit and Security Agreement, attached hereto as Attachment B.

3. The Executive Director or designee is authorized to negotiate and execute a Collateral Accounts and Security Agreement (CASA) with the Bank and U.S. Bank National Association on substantially the terms and conditions and fees as set forth in the draft CASA and fee schedule, attached hereto as Attachments C and D.

Upon motion of Delegate _____, seconded by Delegate _____, and on the following roll call, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

The foregoing resolution is hereby passed and adopted by the San Luis Obispo Regional Transit Authority of San Luis Obispo County, State of California, at a regular meeting of said Board of Directors held on the 8th day of July 2020.

Fred Strong
RTA Board President

ATTEST:

Geoff Straw
RTA Executive Director

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal
County Counsel

By: _____
Nina Negranti
RTA Counsel

Dated: _____
(Original signature in BLUE ink)

Attachment A

May 14, 2020

Geoff Straw Executive Director
San Luis Obispo Regional Transit Authority
179 Cross Street
San Luis Obispo, CA 93401

Re: San Luis Obispo Regional Transit Authority \$19,600,000 Tax-Exempt Loan

Pacific Western Bank (the “Lender”) is pleased to submit the following preliminary terms, subject to formal credit approval and review of all relevant documentation, for the above-referenced debt of the San Luis Obispo Regional Transportation Authority. The following terms are preliminary and subject to change based on negotiations between the Lender and the San Luis Obispo Regional Transportation Authority.

Borrower:	San Luis Obispo Regional Transportation Authority (the “Borrower” or the “Authority”)
Lender:	Pacific Western Bank (the “Lender”)
Principal Amount:	<p>\$19,600,000 (Estimated). To be structured in two tranches:</p> <ul style="list-style-type: none">• Tranche A: \$1,800,000 (Estimated)• Tranche B: \$17,800,000 (Estimated)
Final Maturity:	No later than July 1, 2032
Tax Status:	Tax Exempt
Interest and Principal:	<p>Two-year drawdown period with semi-annual interest payments (such date, an “Interest Payment Date”), applicable only to amounts drawn. Following the drawdown period, an up to ten-year period with semi-annual interest payments due each January 1 and July 1, and annual principal payments due each July 1 (collectively, the “Loan Payments”).</p> <p>Tranche A will be fully drawn prior to draws on Tranche B.</p>
Rating:	<p>The Borrower, at its sole discretion and cost and expense, including any reasonable and agreed upon legal fees of the Bank's Counsel, is authorized and permitted to obtain a long-term debt rating relating to the Loan, and the Lender agrees to provide reasonable assistance in connection therewith.</p>

Default Rate:	Upon the occurrence and the continuance of any event of default the Borrower shall be obligated to pay the then applicable interest rate plus four percent (with a floor of eight percent).
Weighted Average Maturity:	TBD
Upfront Fee:	0.10% calculated on the Principal Amount due at closing.
Interest Rate Pricing:	Tax-exempt rate of 3.00%, calculated on an Actual/360 basis; pricing is firm for 60 days from the date of submittal and can be held for a longer period of time with the approval of the Lender.
Prepayment Provisions:	<p><u>Optional Prepayment</u></p> <p>Loan Payments are subject to prepayment prior to their respective stated payment dates, at the option of the Borrower, from any source of available funds, as a whole, or in part on any date at a prepayment price equal to the principal amount of the Loan Payments to be prepaid, together with accrued interest, without premium.</p>
U.S Dept. of Transportation Loan:	It is anticipated that the Authority will enter into a Federal TIFIA Rural Project Initiative Loan in the amount not to exceed \$17.8MM subsequent (the "TIFIA Loan") to the closing of the proposed loan from the Lender (the "Bank Loan"). Upon the issuance of the TIFIA Loan, the Bank Loan shall be reduced by the final size of the TIFIA Loan. Further, debt service payments for the TIFIA Loan shall be parity to the Bank Loan.
Security:	<p>The Bank Loan will be secured by the following security interests:</p> <ul style="list-style-type: none"> • a pledge of all Farebox Revenues; and • a security interest in each of the accounts established under the Collateral Accounts and Security Agreement for the transaction (the "CASA"), to be entered into by the Borrower, the Lender, U.S. Bank N.A., acting as collateral agent (other than those sub-accounts of the senior debt service account that exclusively secure any obligations of the Borrower on parity with the Bank Loan, including, but not limited to, the expected TIFIA Loan), including an exclusive security interest in the Bank Loan debt service sub-account of the senior debt service account established under the CASA (and collaterally assigned exclusively to the Lender) (the "Bank Loan Debt Service Sub-Account") and the Bank Loan Debt Service Reserve Account, and the amounts on deposit in each such account.

- The Lender shall have voting rights at all times that the Bank Loan is outstanding.

Sources of Funds for Loan Repayment: The following revenue sources of the Borrower will be available to pay debt service on the Bank Loan and other amounts under the Bank Loan Agreement (collectively “Revenues”):

- LTF: all Local Transportation Funds (“LTF Funds”) allocated to the Borrower.
- STA: all State Transit Assistance funds (“STA Funds”) received by the Borrower.
- Farebox Revenues: all farebox revenues received by the Borrower (“Farebox Revenues”).
- Other Revenues: including (i) all income derived from permitted investments, (ii) proceeds from business interruption and delay in start-up insurance policies, (iii) loss proceeds not applied to restore, rebuild, repair, replace or remediate the Project, (iv) revenue from any lease or other contract (e.g., advertising), (v) the proceeds of any Permitted Disposition, and (vi) all net cash payments received by the Borrower under or in connection with any hedging agreements (collectively, “Other Revenues”).

Lien: Pari Passu Obligation with the expected TIFIA Loan.

Other Fees Due at Closing: The Borrower shall be obligated to pay all delivery costs, including legal fees of the Lender’s counsel and the CDIAC Reporting fee. The Lender’s counsel fee shall be capped at \$35,000, provided Lender’s Counsel prepares the Line of Credit Agreement.

Lender’s Counsel: Rudy Salo, Esq. of Nixon Peabody LLP / Los Angeles, California

Special Finance Counsel: Nossaman LLP

Municipal Advisor: KNN Public Finance, LLC

Closing Date: June 2020 (estimated)

Reps., Warranties/Covenants: Legal documentation will contain customary representations, warranties and affirmative and negative covenants for like situated borrowers acceptable to the Lender and its counsel, including a covenant to budget and appropriate Loan Payments, an Additional Parity Obligations Test equal to at least 2.0X Maximum Annual Debt Service, and taxability gross up. California Judicial Reference/waiver of jury trial provisions shall be included as well as representations that the Lender is not a fiduciary of the Borrower and waiver of sovereign immunity.

Legal Opinion(s): Opinion of Special Counsel, among other things, as to (1) treatment of the Payments as tax-exempt obligations under the IRS Code and (2) opinion as to the validity and enforceability of the Loan, and

other opinions to the satisfaction of the Lender. Authority Counsel opinion regarding status of the authority, litigation and other standard opinions shall also be required.

Documentation:

The Lender will book the Bank Loan as a loan, and, therefore, the additional provisions and conditions set forth in this term sheet shall be included in the documentation, which shall include execution and delivery of legal documentation acceptable to the Lender and its counsel; the Lender shall hold the applicable Bank Loan note with no DTC, and the Bank Loan note will not have a CUSIP; there will not be a disclosure document or a purchase contract; and no amendments to the issuing documents without the Lender's prior consent.

Reporting Requirements:

Standard reporting requirements, including:

- (1) Audited financial statements of the Borrower for the preceding fiscal year within 9 months of fiscal year-end;
- (2) Certification of the Borrower that it is not aware of any default or Event of Default.

The Borrower shall provide the Lender with its annual approved operating budget within one month after its adoption.

The Borrower shall furnish at Lender's request such additional information that Lender may from time to time reasonably request.


Assignment/Participation:

The Lender retains the right to assign its interest in the Bank Loan in whole to one or more assignees and will give the Borrower appropriate written notice of such assignment and will retain any security interests and consent rights on behalf of such assignees. The Lender acknowledges and agrees that the Bank Loan may only be transferred to a "Qualified Institutional Buyer" or an "Accredited Investor" within the meaning of the Securities Act of 1933, as amended. The Lender retains the right to participate its interest in the Loan but only to "Qualified Institutional Buyers" or an "Accredited Investors" within the meaning of the Securities Act of 1933, as amended.

Please sign the enclosed copy of this term sheet to myself via e-mail or regular mail to my attention at:

Christopher Baron
Managing Director
Pacific Western Bank
9701 Wilshire Blvd. Suite 700
Beverly Hills, CA 90212
cbaron@pacwestbancorp.com
(310)887-8509

PACIFIC WESTERN BANK

BY 

Christopher Baron
Managing Director

SAN LUIS OBISPO REGIONAL TRANSPORTATION AUTHORITY

BY _____

Name:

Title:

Attachment B

CREDIT AND SECURITY AGREEMENT

by and between

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY,
as the Borrower,

and

PACIFIC WESTERN BANK,
as the Lender

Dated as of _____, 2020

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CREDIT AND SECURITY AGREEMENT

This CREDIT AND SECURITY AGREEMENT (this “Agreement”), dated as of _____, 2020 is entered into by and between SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY, a joint powers authority organized under the laws of the state of California (with its successors, the “Borrower”), and PACIFIC WESTERN BANK (including its successors and permitted assigns hereunder, the “Lender”).

RECITALS

WHEREAS, the Borrower has requested that the Lender provide a certain tax-exempt credit facility to the Borrower, as more particularly set forth in this Agreement, consisting of a non-revolving drawdown credit facility in the aggregate principal amount of up to [Fourteen Million One Hundred Thousand Dollars (\$14,100,000)] (the “Credit Facility”), for the purpose of [to fund the construction of a bus maintenance facility]; and

WHEREAS, the Borrower approved this Agreement and the transactions related thereto pursuant to Resolution No. _____, adopted by the [Board of Directors] of the Borrower (the “Board”) on June ___, 2020 (together with all amendments and modifications thereto, the “Authorizing Resolution”); and

WHEREAS, the Lender is willing to provide the requested Credit Facility to the Borrower on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** Any capitalized term used herein (including in the Preamble, recitals, exhibits and schedules hereto) shall have the meaning ascribed to such term in this Section 1.1.

“Affiliate” means any other Person directly or indirectly controlling, controlled by or under common control with such Person, or possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, including, without limitation, such Person’s Subsidiaries.

“Agreement” is defined in the Preamble hereto and shall include all amendments, supplements or modifications from time to time.

“Applicable Law” means, collectively, all federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative

orders, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“Approved Electronic Communications” means any notice, demand, communication, information, document or other material that the Borrower provides to the Lender pursuant to any Related Document or the transactions contemplated therein which is distributed to the Lender by means of electronic communications pursuant to Section 7.1(b) hereof.

“Available Commitment” means the Initial Commitment Amount as adjusted from time to time as follows: (a) downward in an amount equal to any Loan made to the Borrower hereunder; (b) downward in an amount equal to any reduction thereof effected pursuant to Section 2.18 or 6.1(a) hereof; and (c) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof.

“Bankruptcy Code” means Title 11 of the United States Code, as now and hereafter in effect, or any successor statute.

“Board of Governors” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“Borrower” is defined in the Preamble hereto and shall include its successors and assigns.

“Business Day” means any day other than (a) a Saturday or Sunday or a day on which banking institutions are authorized or required by law or executive order to be closed in the State of California for commercial banking purposes; (b) a day on which the New York Stock Exchange is authorized or required by law or executive order to be closed; and (iii) a day upon which commercial banks, including the Lender, are authorized or required by law or executive order to be closed in the cities or states in which demands for payment may be presented hereunder.

“CASA” means the Collateral Accounts and Security Agreement, dated as of [____], 2020 among the Borrower, the Lender and the Collateral Agent, as such agreement may be amended and supplemented from time to time.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Applicable Law including, without limitation, any Risk-Based Capital Guidelines, (b) any change in any Applicable Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Closing Date” means the first date on which all of the conditions precedent in Section 3.1 hereof are satisfied or waived in accordance with Section 7.5 hereof.

“Code” means the IRS Code of 1986, as amended.

“Collateral Agent” means, initially, U.S. Bank National Association, together with its successors and assigns.

“Commitment” means the agreement of the Lender pursuant to Section 2.1 hereof to make Loans under the terms hereof for the account of the Borrower.

“Credit Availability” means the agreement of the Lender to make or otherwise fund any Loan, the maximum aggregate amount of which as of the Closing Date equals the Initial Commitment Amount.

“Credit Date” means the date of a Credit Extension.

“Credit Extension” means the making of a Loan.

“Credit Facility” has the meaning assigned to that term in the introductory clauses of this Agreement.

“Debt” means, with respect to any Person, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person as lessee under capital leases; (c) all obligations of such Person to pay the deferred purchase price of property or services; (d) certificates of participation evidencing an undivided ownership interest in payments made by such Person as lessee under capital leases, as purchaser under an installment sale agreement or otherwise as an obligor in connection therewith; (e) the face amount of any letter of credit issued for the account of such Person and, without duplication, all drafts drawn and reimbursement obligations arising thereunder; (f) all Debt of a second Person secured by any Lien on any property owned by such first Person, whether or not such Debt has been assumed; and (g) obligation of such Person due and payable under Swap Contracts; *provided, however*, that Debt shall not include trade payables arising in the ordinary course of business.

“Debt Service” means, with respect to Pari Passu Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of such Pari Passu Obligations accruing and payable in respect of such period. In determining the principal and interest amounts of Pari Passu Obligations due in such period (unless a subsection below of this definition applies for purposes of determining such amounts), payment shall be assumed to be made in accordance with any debt service schedule established for such Pari Passu Obligations, including any balloon or bullet maturities (which shall be treated as being paid in full on their respective due dates), as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

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

(1) any Variable Interest Rate Debt for which the interest rate payable thereon has not yet been determined shall be deemed to bear interest at all times prior to the maturity date thereof at the Assumed Variable Rate;

(2) any Put Obligations outstanding during such period which by its terms is required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the earliest date as of which the holder of such Put Obligations may tender such Put Obligations to the Borrower, as provided in the applicable issuing document for such debt, and (iii) if the Liquidity Facility securing such Put Obligations expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Liquidity Facility;

(a) the principal amount of any Put Obligations tendered for payment by the Borrower that is required to be paid by the Borrower and that has not yet been purchased in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender; and

(b) [Extendible Maturity Debt] outstanding during such period shall be deemed to mature on the earlier of the stated maturity date or the date to which such stated maturity date has been extended, unless such extension is not exercisable at the discretion of the Borrower.

~~“Debt Service Reserve Required Balance” has the meaning set forth in the CASA.~~

“Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“Default Rate” means the then existing Interest Rate plus four hundred basis points (4.00%) per annum; provided, however, that upon the occurrence and continuance of an Event of Default, the Default Rate shall be no less than eight hundred basis points (8.00%).

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

(a) on the date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(b) on the date when the Lender has received written notification from the Borrower, supported by a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax exempt municipal finance, to the effect that an Event of Taxability has occurred;

(c) on the date when the Borrower shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other

government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Borrower (or a statutory notice of deficiency, or a document of substantially similar import), or upon any review or audit of the Borrower, or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(d) on the date when the Borrower shall receive notice from the Lender that the Internal Revenue Service (or any other Governmental Authority exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Lender due to the occurrence of an Event of Taxability;

provided, however, that (i) no Determination of Taxability shall occur under subparagraph (c) or (d) above unless the Borrower has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; and (ii) upon demand from the Lender, the Borrower shall promptly reimburse the Lender for any payments, including any taxes, interest, penalties or other charges the Lender shall be obligated to make as a result of the Determination of Taxability.

“Dollar” and the sign “\$” mean the lawful money of the United States of America.

“Environmental Laws” means any and all federal, state, and local statutes, laws, regulations, ordinances, or rules, and all judgments, orders, decrees, permits, concessions, grants, franchises, licenses, permits, agreements or governmental restrictions relating to air, water or land pollution, wetlands, or the protection of the environment or the release of any materials into the environment, including air, water or land and those related to Hazardous Materials, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

“Event of Default” means each of the conditions or events set forth in Section 6.1 hereof.

“Event of Taxability” means the taking of any action by the Borrower, or the failure to take any action by the Borrower, or the making by the Borrower of any misrepresentation herein or in any certificate required to be given in connection with this Agreement which has the effect of causing interest paid or payable on any Loan to become includable, in whole or in part, in the gross income of the Lender or any other Participant for federal income tax purposes.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

[“Extendible Maturity Debt” means [TO COME].

“Farebox Revenues” means all farebox revenues and contract service revenues received by or on behalf of the Borrower in connection with the operation of the transit vehicles owned or leased by the Borrower, including:

- (c) revenues earned under contractual arrangements with public or private entities, either (i) for transit fares for a specified group of employees, members, or clients, or (ii) to guarantee a minimum revenue on a line operated especially for the benefit of the paying entity (e.g., an employer, shopping center, university, etc.);

- (d) cash donations made by individual passengers or community organizations in lieu of a prescribed fare;

- (e) passenger fares collected by the Borrower;

- (f) fare subsidies from a public or private entity;

- (g) local support, including passenger donations and local business contributions made to benefit employees, customers, visitors, or residents;

- (h) parking revenues used as fare subsidies; and

support from private non-profits to supplement discount or zero fares.

“Final Borrowing Date” has the meaning set forth in Section 2.6 hereof.

“Final Borrowing Amount” means the Initial Commitment Amount less any amounts not borrowed hereunder or repaid pursuant to Section 2.5.

“Fiscal Year” means the fiscal year of the Borrower, which currently ends on June 30 of each year.

“Funding Notice” means a notice substantially in the form of Exhibit A hereto.

“Generally Accepted Accounting Principles” or “GAAP” means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the Borrower.

“Governmental Approval” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“Governmental Authority” means the government of the United States or any state or political subdivision thereof or any other nation or political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“Hazardous Materials” means (a) any petroleum or petroleum products, flammable substance, explosives, radioactive materials, hazardous waste or contaminants, toxic wastes, substances or contaminants, or any other wastes, contaminants, or pollutants; (b) asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers, or other equipment that contains dielectric fluid containing levels of polychlorinated biphenyls or radon gas; (c) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar import, under any applicable Environmental Law; (d) any other chemical, material or substance, exposure to which is prohibited, limited, or regulated by any governmental authority; and (e) any other chemical, material or substance which may or could pose a hazard to the environment.

“Indemnified Liabilities” means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnatee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or local laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnatee, in any manner relating to or arising out of this Agreement or the other Related Documents or the transactions contemplated hereby or thereby (including the Lender’s agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Related Documents .

“Indemnatee” is defined in Section 7.3 hereof.

“Initial Commitment Amount” means, as of the Closing Date, \$[14,100,000].

“Interest Payment Date” means (i) January 1 and July 1, which, prior to the Final Borrowing Date, such applicable interest payments shall be made solely for Loans provided hereunder prior to such applicable Interest Payment Date, and (ii) the Termination Date.

“Interest Rate” means, with respect to all Loans hereunder until an Event of Default or an Event of Taxability has occurred and is continuing, 3.00%; provided, however, that upon the occurrence of an Event of Taxability, the Interest Rate shall mean 3.00% plus the Taxable Gross Up Rate, and, upon the occurrence and continuance of an Event Default, Interest Rate shall then mean the Default Rate.

“Lender” is defined in the Preamble hereto, and if a Participation Agreement is entered into, “Lender” as used herein shall also encompass any and all Participants.

“Lender Agreement” means any credit agreement, bond purchase agreement, liquidity agreement or other agreement or instrument (or any amendment, supplement or modification thereto) entered into by the Borrower with any Person, directly or indirectly, or otherwise consented to by the Borrower, under which any Person or Persons undertakes to make loans, extend credit or liquidity to the Borrower in connection with, or purchase on a private placement basis, any Debt secured by or payable from Revenues executed after the Closing Date.

“Lender’s Office” means the office of the Lender set forth on Appendix A hereto, or such other office or person as the Lender may hereafter designate in writing as such to the other parties hereto.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means a loan made by the Lender to the Borrower pursuant to Section 2.1(a), bearing interest at the Interest Rate.

“Local Transportation Fund” means Local Transportation Funds distributed by the State pursuant to the TDA.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower, taken as a whole; (b) a material impairment of the rights and remedies of the Lender under this Agreement, the Notes, or any other Related Document, or of the ability of the Borrower to perform its obligations under this Agreement, the Note, and any other Related Document to which it is a party, as determined in the reasonable discretion of the Lender; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of this Agreement, the Note, or any other Related Document to which it is a party, as determined in the sole discretion of the Lender.

“Margin Stock” has the meaning ascribed to such term in Regulation U and/or Regulation X promulgated by the Board of Governors, as now and hereafter from time to time in effect.

“Maturity Date” is defined in Section 2.6 hereof.

“Maximum Annual Debt Service” means the maximum amount of Debt Service hereunder and Debt Service in respect of all Pari Passu Obligations payable, in the aggregate, during any year while the Loan or any such Pari Passu Obligations are (or are scheduled to be) outstanding. “Maximum Rate” means the lesser of (i) 12%, or (ii) the maximum rate permitted by law.

“No Transfer Conditions” means (a) amounts on deposit in the Pari Passu Debt Service Account (or the applicable sub-accounts thereunder) are at least equal to the Adjusted Debt Service Amount and (b) amounts on deposit in the Debt Service Reserve Sub-Account are at least equal to the [PWB](#) Debt Service Reserve Required Balance.

“No Transfer Order” has the meaning provided in the CASA.

“Note” means the Note evidencing the Credit Facility substantially in the form attached hereto as [Exhibit B](#).

“Obligations” means all obligations of every nature of the Borrower from time to time owed to the Lender under any Related Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to the Borrower, would have accrued on any Obligation, whether or not a claim is allowed against the Borrower for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

“Other Revenues” means any revenues of the Borrower (other than Local Transportation Funds allocated to the Borrower, Farebox Revenues and federal grant funds), including (a) all State Transit Assistance Funds allocated to the Borrower, (b) all income derived from Permitted Investments, (c) proceeds from business interruption and delay in start-up insurance policies, and (d) revenue from any lease or other contract (including advertising revenues).

“Outstanding Amount” means with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“Participant” means a bank which has purchased a participation from the Lender pursuant to a Participation Agreement.

“Participation Agreement” means any agreement entered into among the Lender and one or more other banks purchasing participations and named therein, pursuant to which such other bank or banks shall purchase from the Lender a participation or participations in this Agreement and the Note.

“~~Parity~~[Pari Passu](#) Obligations” means indebtedness or other obligations (including leases and installment sale agreements) issued or incurred by the Borrower and payable from Local Transportation Funds and Farebox Revenues and Other Revenues equally and ratably with the Obligations hereunder.

“Pari Passu Debt Service Account” has the meaning provided in the CASA.

“Pari Passu Debt Service Sub-Account” means any Pari Passu Debt Service Account established pursuant to the CASA other than the Debt Service Sub-Account created for the Lender.

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

“Principal Payment Date” means (i) each July 1 from and after the Final Borrowing Date, and (ii) the Termination Date.

[“PWB Debt Service Reserve Required Balance” has the meaning set forth in the CASA.](#)

“Related Documents” means this Agreement, the Note, the CASA, and the Authorizing Resolution and any other documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing.

“Revenue Account” has the meaning provided in the CASA.

“Revenues” means (a) all Local Transportation Funds allocated to the Borrower, (b) all Farebox Revenues received by or on behalf of the Borrower and (c) all Other Revenues received by or on behalf of the Borrower.

“Risk-Based Capital Guidelines” means (a) the risk-based capital guidelines in effect in the United States on the Closing Date, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Closing Date.

“Same Day Funds” means with respect to disbursements and payments in Dollars, immediately available funds.

“State Transit Assistance Funds” means a portion of the tax collected on the sale of diesel fuel pursuant to The Mills-Alquist-Deddeh Act (SB 325), as amended, and otherwise known as the Transportation Development Act of 1971.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, total return swaps, credit derivative transactions, forward rate transactions, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement,

or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Taxable Date” means the date on which interest on any Loan is first includable in gross income of the Lender as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“Taxable Gross-Up Rate” means, assuming no Event of Default has occurred and is continuing, with respect to a Taxable Period, 4.21 (i.e., 3.00% plus 1.21.%).

“Taxable Period” has the meaning set forth in Section 2.9 hereof.

“Taxes” means all present and future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, liabilities or other charges imposed by any applicable Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“TDA” means [TO COME].

“Termination Date” means the earliest of (a) the Maturity Date , as such date may be extended pursuant to Section 2.6 hereof, (b) the date on which the Commitment and the Available Commitment are otherwise terminated or reduced to zero in accordance with Section 2.5 hereof, and (c) the date the Available Commitment terminates by its terms in accordance with Section 6.1(a) hereof.

“TIFIA Lender” the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

“TIFIA Loan Agreement” means any agreement pursuant to which the TIFIA Lender provides financing to the Borrower paid from the Revenues.

“Total Outstandings” means, as at any date of determination, the aggregate Outstanding Amount of all Loans.

1.2. Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Submitted Financial Statements.

1.3. Interpretation. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or

matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable.

1.4. Certifications. Any certificate or other writing required hereunder or under any other Related Document to be certified by any officer or other authorized representative of any Person shall be deemed to be executed and delivered by such officer or other authorized representative solely in such individual’s capacity as an officer or other authorized representative of such Person and not in such officer’s or other authorized representative’s individual capacity.

ARTICLE II LOANS

2.1. Loans.

(a) Available Commitment. Subject to the terms and conditions hereof, the Lender hereby agrees to make Loans to the Borrower commencing on the Closing Date and ending on the Final Borrowing Date in amounts not to exceed at any time outstanding the Available Commitment. Amounts borrowed pursuant to this Section 2.1(a) may not be reborrowed during the Credit Availability Period and shall be fully repaid on or before the Termination Date. The Available Commitment shall expire on the Final Borrowing Date, and all then-outstanding Loans and all other amounts then owed hereunder with respect to the Loans and the Credit Availability shall be paid in full no later than the Termination Date. The Borrower’s obligation to repay Loans hereunder, together with interest thereon, shall be evidenced by the Note. The Lender will deposit the funds for the Loan into an account held at the Lender or held by a collateral agent under a collateral agent and account agreement (the “**Borrower’s Account**”). The Available Commitment may be borrowed in two tranches: (i) Tranche A, which may be in the total aggregate amount of up to \$[1,020,000] and shall be due and payable on or before the Maturity Date; provided, however, that, Tranche A shall be fully drawn upon prior to any drawing under Tranche B; and (ii) Tranche B, which may be in the aggregate amount of up to \$[~~13,090,000~~13,080,000] and which shall be due and payable on or before the Maturity Date.

(b) Borrowing Mechanics for Loans. Whenever the Borrower desires that the Lender make a Loan, the Borrower shall deliver to the Lender at the Lender’s Office a fully executed and delivered Funding Notice, which shall be signed by [_____] no later than 12:30 p.m. Los Angeles, California time, at least two (2) Business Days prior to the Credit Date requested pursuant to such Funding Notice; provided, however, that, Tranche A shall be fully drawn upon prior to any drawing under Tranche B. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Lender shall make the proceeds of such Loan available to the Borrower on the applicable Credit Date by causing an amount of Same Day Funds in Dollars to be credited to the account of the Borrower at the Lender’s Office or such other account as may be designated in writing to the Lender by the Borrower.

2.2. Use of Proceeds. The proceeds of the Loans may be applied by the Borrower to fund the design, study, permitting and construction of a bus maintenance facility, including

furniture, fixtures and equipment relating thereto as well as the cost of issuing the notes. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

2.3. Evidence of Debt; Note. The Loans shall be evidenced by one or more accounts or records maintained by the Lender in the ordinary course of business. The accounts or records maintained by the Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lender to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. The Borrower shall execute and deliver to the Lender the Note, which shall evidence the Loans in addition to such accounts or records. The Lender may attach schedules to the Note and endorse thereon the date, amount and maturity of Loans and payments with respect thereto. The Note will not be (i) assigned a separate rating by any rating agency; *provided*, the Borrower at its sole discretion and cost and expense is authorized and permitted to obtain a long-term debt rating relating to the Note evidencing the Loans hereunder. and the Lender agrees to provide reasonable assistance in connection therewith; *provided*, further, that the Borrower shall pay for all reasonable amounts incurred by the Lender and its legal counsel in connection with such rating on the Loans hereunder, (ii) registered with the Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of offering document or official statement, or (iv) assigned a CUSIP number by Standard & Poor's CUSIP service.

2.4. Interest on and Repayment of Loans.

(a) Interest on Loans.

(i) Amounts outstanding under this Agreement will (except to the extent specifically provided to the contrary) bear interest at the Interest Rate.

(ii) Interest payable pursuant to Section 2.4(a)(i) hereof shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan shall be included, and the date of payment of such Loan shall be excluded.

(iii) Except as otherwise set forth herein, interest on each Loan shall accrue on a daily basis and be payable on each Interest Payment Date and shall be paid for the actual number of days that the funds are advanced under the Loan.

(b) Repayment of Loans. From and after the Final Borrowing Date, the Borrower shall repay principal amounts then outstanding on the Note on each Principal Payment Date, [which such amounts shall, as near as possible, be scheduled to be level debt service payments agreed upon by the Lender and the Borrower in a schedule to be attached to the Note after the Final Borrowing Date]; provided that if at any time the outstanding principal balance of the Loans exceeds the Credit Availability, such excess shall be due and payable immediately

along with interest thereon for the number of days that such excess remains outstanding at a rate equal to the Default Rate determined pursuant to Section 2.7 hereof.

2.5. Reduction and Termination. (a) The Borrower may elect to reduce the Available Commitment from time to time prior to the Final Borrowing Date by delivery to the Lender of a written Notice of Termination or Reduction in the form of Exhibit C hereto delivered thirty (30) days prior to the date of termination or reduction, upon receipt of which the Lender will notify the Borrower by means of a notice in the form of Exhibit D hereto, thereby reducing the Available Commitment; *provided*, that (i) each such reduction amount shall be in an amount equal to \$100,000 or a whole multiple of \$1,000 in excess thereof, and (ii) following such reduction, the Available Commitment shall not be less than the aggregate principal amount of all Loans outstanding on the date of such reduction.

(a) The Borrower may at any time and at its sole option terminate this Agreement and the Commitment upon [thirty (30)] days prior written notice to the Lender; *provided*, that the Borrower pays to the Lender all Obligations hereunder and under the Note; *provided, however*, that (A) all payments to the Lender shall be made with immediately available funds, and (B) any such termination of this Agreement and the Commitment shall be in compliance with the terms and conditions of this Agreement.

2.6. Maturity Date. The ability of the Borrower to request Loans hereunder shall expire on the second anniversary of the Closing Date hereunder (the “**Final Borrowing Date**”). The Note established hereunder to evidence Loans made hereunder from the Closing Date through and until the Final Borrowing Date shall mature on July 1, 2032 (the “**Maturity Date**”); *provided, however*, that the Lender may in its sole absolute discretion extend the Maturity Date of the Note.

2.7. Default Interest. Upon the occurrence and during the continuance of an Event of Default, the principal amount of all Loans and, to the extent permitted by Applicable Law, any interest payments on the Loans or any fees or other amounts owed hereunder not paid on the due date thereof, in each case whether at stated maturity, by notice of prepayment, by acceleration or otherwise, shall bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) from the date of such Event of Default, payable on demand on the unpaid principal balance of all of the Loans at the Default Rate.

2.8. Upfront and Legal Fees. On or before the date of execution of this Agreement, Borrower shall pay to Bank a nonrefundable commitment fee of Fourteen Thousand One Hundred Dollars (\$14,100) (*i.e.*, ten basis points). The Borrower shall be obligated to pay all delivery costs, including legal fees of the Lender’s counsel, Nixon Peabody LLP in the amount of \$35,000, Borrower’s counsel and the California Debt Investment Advisory Commission fees.

2.9. Taxability. (a) In the event a Taxable Date occurs, the Borrower hereby agrees to pay to the Lender on demand therefor (i) an amount equal to the difference between (A) the amount of interest that would have been paid to the Lender on any Loans during the period for which interest on such Loans is includable in the gross income of the Lender if such Loans

had borne interest at the Taxable Gross-Up Rate, beginning on the Taxable Date (the “**Taxable Period**”), and (B) the amount of interest actually paid to the Lender during the Taxable Period, and (ii) an amount equal to any interest, penalties or charges owed by the Lender, as applicable, as a result of interest on the Loans becoming includable in the gross income of the Lender together with any and all reasonable attorneys’ fees, court costs, or other out-of-pocket costs incurred by the Lender in connection therewith; *provided* that the Lender reports to the Borrower the amounts of such interest, penalties, charges attorneys’ fees, court costs or other out-of-pocket costs within one year of receipt of notification of a Determination of Taxability.

(b) Subject to the provisions of clauses (c) and (d) below, the Lender shall afford the Borrower the opportunity, at the Borrower’s sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on such Loans to be includable in the gross income of the Lender or such other Bondholder or (ii) any challenge to the validity of the tax exemption with respect to the interest on a Loan, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(c) As a condition precedent to the exercise by the Borrower of its right to contest set forth in clause (b) above, the Borrower shall, on demand, immediately reimburse the Lender for any and all expenses (including reasonable attorneys’ fees for services that may be required) that may be incurred by the Lender in connection with any such contest, and shall, on demand, immediately reimburse the Lender for any and all penalties or other charges payable by the Lender for failure to include such interest in its gross income.

(d) The obligations of the Borrower under this Section 2.9 shall survive the termination of the Commitment and this Agreement.

2.10. Application of Payments or Proceeds Upon Acceleration of Obligations. If an Event of Default shall have occurred and the Obligations shall have been accelerated pursuant to Section 6.1 hereof, all payments or proceeds received by the Lender hereunder in respect of any of the Obligations shall be applied in accordance with Section 6.2 hereof.

2.11. General Provisions Regarding Payments.

(a) All payments of principal, interest, fees and other Obligations shall be made pursuant to the CASA and shall be made in Same Day Funds without defense, setoff or counterclaim, free of any restriction or condition, and delivered to the Lender not later than 2:00 pm (Los Angeles, California time) on the date due at the Lender’s Office; for purposes of computing interest and fees, funds received by the Lender after that time on such due date shall be deemed to have been paid by the Borrower on the next succeeding Business Day.

(b) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

(c) The Borrower hereby authorizes the Lender to charge the Borrower's accounts with the Lender in order to cause timely payment to be made to the Lender of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose). **[CONFIRM STILL CORRECT A LA THE CASA]**

(d) The Lender shall deem any payment by or on behalf of the Borrower hereunder that is not made in Same Day Funds prior to 2:00 pm (Los Angeles, California time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by the Lender until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. The Lender shall give prompt telephonic notice to the Borrower (confirmed in writing) if any payment is non-conforming. Any non-conforming payment shall constitute or become a Default or Event of Default in accordance with the terms of Section 6.1(a) hereof. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.7 hereof from the date such amount was due and payable until the date such amount is paid in full.

2.12. Booking of Loans. The Lender may make, carry or transfer Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of the Lender.

2.13. Increased Costs; Capital Adequacy. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Lender;

(ii) subject the Lender to any Tax (except for Taxes on the overall net income or share capital of the Lender) of any kind whatsoever with respect to this Agreement, the Loans or the Note, or change the basis of taxation of payments to the Lender or such Participant in respect thereof; or

(iii) impose on the Lender or any Participant any other condition, cost or expense affecting this Agreement, the Commitment, the Loans or the Note;

and the result of any of the foregoing shall be to increase the cost to the Lender or such Participant related to issuing or maintaining the Commitment, the Loans or holding the Note, or to reduce the amount of any sum received or receivable by the Lender or such Participant hereunder, or under the Note (whether of principal, interest or any other amount) then, within 90 days after written request of the Lender, the Borrower shall pay to the Lender or such Participant, as the case may be, such additional amount or amounts as will compensate the Lender or such Participant, as the case may be, for such additional costs incurred or reduction suffered determined in good faith by the Lender or such Participant.

(c) If the Lender or any Participant determines that any Change in Law affecting the Lender or such Participant or the Lender's or such Participant's parent or holding

company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return to the Lender or such Participant or the Lender's or such Participant's parent or holding company, if any, as a consequence of this Agreement, the Loans, the Note or the Commitment, to a level below that which the Lender or such Participant or the Lender's or such Participant's parent or holding company could have achieved but for such Change in Law (taking into consideration such entities policies with respect to capital adequacy), then from time to time upon written request of the Lender, the Borrower shall promptly pay to the Lender or such Participant, as the case may be, such additional amount or amounts as will compensate the Lender or such Participant or the Lender's or such Participant's parent or holding company for any such reduction suffered determined in good faith by the Lender or such Participant.

(d) A certificate of the Lender or a Participant setting forth the amount or amounts necessary to compensate the Lender or such Participant or the Lender's or such Participant's parent or holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay the Lender, such Participant or their parent or holding company, as the case may be, the amount shown as due on any such certificate within sixty (90) days after receipt thereof.

(e) Failure or delay on the part of the Lender or any Participant to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's or such Participant's right to demand such compensation. The Borrower shall not be required to compensate, or cause to be compensated, the Lender, or any Participant pursuant to this Section 2.13 in respect of a period occurring more than six (6) months prior to the date the above-described written demand is given to the Borrower with respect thereto (the "*Cut-Off Date*"), except where (i) the Lender, or any Participant had no actual knowledge of the action resulting in such increased costs, increased capital or charges or reduction in rate of return, as applicable, as of the Cut-Off Date or (ii) such increased costs, increased capital or reduction in rate of return applies to the Lender, or any Participant retroactively to a date prior to the Cut-Off Date.

(f) Notwithstanding anything to the contrary in this Section 2.13, in the event the Lender grants any participation to any Participant under this Agreement, the Borrower will have no obligation to pay amounts pursuant to this Section 2.13 in an amount greater than that which it would have been required to pay if the Lender had not granted such participation.

(g) The obligations of the Borrower under this Section 2.13 shall survive the termination of the Commitment and this Agreement.

2.14. Security; Obligations Absolute.

(a) All of the Farebox Revenues and all amounts held in the funds and accounts pursuant to the CASA are hereby pledged to secure the payment of principal and interest of the Note as set forth in the CASA. The Note is secured solely by a lien on and pledge of Farebox Revenues hereunder and in the CASA. The pledge of the Farebox Revenues securing the payment of the principal of and interest on the Note is a valid and binding obligation of the Borrower, on parity with the lien on an security interest in such Farebox Revenues granted to

secure any other ~~Parity~~Pari Passu Obligations, subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally or limitations of remedies against public entities in the State. No filing, registration, recording or publication of the Authorizing Resolution, the Note, the CASA or this Agreement or any other instrument nor any prior separation or physical delivery of the Farebox Revenues is required to establish the pledge provided for hereunder or to protect or maintain the Lien created thereby on the Farebox Revenues and amounts held under the CASA in funds, accounts or subaccounts to secure the Note. As of the Closing Date, there is no Debt of the Borrower payable from or secured by the Farebox Revenues or amounts held in funds, accounts or subaccounts under the CASA or any portion thereof on a basis that is on a parity with the Obligations other than the Note existing as of the Closing Date. The Borrower authorizes the Lender to file any financing statements as are necessary to maintain the security interests granted in or pursuant to this Agreement and the other Related Documents.

(b) The payment obligations of the Borrower under this Agreement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(i) any lack of validity or enforceability of this Agreement, the Obligations or any of the other Related Documents;

(ii) any amendment or waiver of or any consent to departure from all or any of the Related Documents;

(iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Lender, or any other person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or

(iv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

ARTICLE III CONDITIONS PRECEDENT

3.1. Closing Date. The obligation of the Lender to execute this Agreement is subject to the satisfaction, or waiver in accordance with Section 7.5 hereof, of the following conditions on or before the Closing Date, each to the satisfaction of the Lender in its sole discretion and, as to any agreement, document or instrument specified below, each in form and substance satisfactory to the Lender:

(a) Related Documents. The Lender shall have received:

(i) sufficient copies of this Agreement, originally executed and delivered by each applicable Borrower for the Lender;

(ii) the Note executed by the Borrower in favor of the Lender;

(iii) the CASA executed by the Borrower, the Lender and the Collateral Agent.

(b) Organizational Documents; Incumbency; Resolution. The Lender shall have received:

(i) a signature and incumbency certificate of the officers or other authorized representatives of the Borrower executing the Related Documents;

(ii) the Authorizing Resolution of the Board of Directors of the Borrower approving and authorizing the execution, delivery and performance of the Related Documents or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment;

(iii) a certificate executed by an officer of the Borrower providing that each of the representations and warranties set forth in each Related Document is true and correct as of the Closing Date;

(iv) audited financial statements, any unaudited financial statements since the most recent audited financial statements, and debt management policy;

(v) a certificate evidencing no default shall have occurred and no material adverse change has occurred with respect to the Borrower;

(vi) legal opinions of counsel to the Borrower and Bond Counsel to the Borrower each in form and substance satisfactory to the Lender;

(vii) a certified copy of the Borrower's Joint Exercise of Powers Agreement, and

(viii) such other documents as the Lender may reasonably request.

(c) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened to the Borrower's knowledge in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of the Lender, singularly or in the aggregate, materially impairs the transactions contemplated by the Related Documents, or that could reasonably be expected to have a Material Adverse Effect on the Borrower's ability conduct its business or to perform its obligations hereunder or under any of the Related Documents.

(d) Collateral Agent and other CASA –Related Documents. The Lender shall receive certificates, resolutions, opinions and other documents as the Lender may reasonably request from the Collateral Agent and from the San Luis Obispo Council of Governments.

(e) Other Matters. All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Lender and its counsel, and the Lender shall have received such other statements, certificates, agreements,

documents and information with respect to the Borrower, the Issuer and the other parties to the Related Documents and matters contemplated by this Agreement as the Lender may reasonably request. The execution and delivery of this Agreement shall be conclusive evidence that all such statements, certificates, agreements, documents and information with respect to the Borrower and the other parties to the Related Documents and matters contemplated by this Agreement have been received and approved by the Lender or waived.

3.2. Conditions to Each Credit Extension. The obligation of the Lender to make any Loan on any Credit Date is subject to the satisfaction, or waiver in accordance with Section 7.5 hereof, of the following conditions precedent:

(a) Notice. The Lender shall have received a fully executed and delivered Funding Notice;

(b) Credit Line. After making the Credit Extensions requested on such Credit Date, the Total Outstandings shall not exceed the Credit Availability then in effect;

(c) Representations and Warranties. As of such Credit Date, the representations and warranties contained herein and in the other Related Documents shall be true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which shall be true and correct in all respects) on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which shall have been true and correct in all respects) on and as of such earlier date;

(d) No Default or Event of Default. As of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute a Default or an Event of Default hereunder; and

(e) No Material Adverse Effect. As of such Credit Date, no event, including any change in any Law, or omission shall have occurred which has resulted, or is likely to result, in a Material Adverse Effect.

3.3. Notices. Every Funding Notice shall be executed by an officer of the Borrower in a writing delivered to the Lender. In lieu of delivering a Funding Notice, the Borrower may give the Lender telephonic notice by the required time of any proposed borrowing; provided that each such notice shall be promptly confirmed in writing by delivery of the applicable Funding Notice to the Lender on or before the applicable date of borrowing. The Lender shall not incur any liability to the Borrower in acting upon any telephonic notice referred to above that the Lender believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of the Borrower or for otherwise acting in good faith.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1. Organization, Powers, Etc. On the Closing Date, (a) the Borrower is a joint powers authority organized and existing under the Constitution and laws of the State of

California, (b) the Borrower (i) has full power and authority to carry on its business as now conducted, (ii) has (or, if already executed or adopted, had at the time of execution or adoption) full power and authority to execute (or adopt, if applicable), deliver and perform its obligations under this Agreement and the other Related Documents, to borrow hereunder and to execute, deliver and perform its obligations hereunder, the Note and the other Related Documents and to repay the Obligations, and (iii) may only contest the validity or enforceability of any provision of, or deny that the Borrower has any liability or obligation under this Agreement, the Law, the Note or any other Related Document by an act of its governing body.

4.2. Authorization, Absence of Conflicts, Etc. The execution (or adoption, if applicable), delivery and performance of this Agreement, the Note and the other Related Documents (a) have been duly authorized, executed and delivered or, if applicable, adopted by the Borrower, (b) do not and will not, to any material extent, conflict with, or result in violation of, any Applicable Law, including the Law, or any order, rule or regulation of any court or other Government Authority and (c) do not and will not, to any material extent, conflict with, result in a violation of or constitute a default under, the Authorizing Resolution or any other resolution, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property is bound.

4.3. Governmental Consent or Approval. The execution (or adoption, if applicable), delivery and performance of this Agreement, the Note and the other Related Documents do not and will not require registration with, or the consent or approval of, or any other action by, any federal, state or other Governmental Authority or regulatory body other than those which have been made or given and are in full force and effect; provided that no representation is made as to any blue sky or securities law of any jurisdiction.

4.4. Binding Obligations. This Agreement, the Note, and the other Related Documents are legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial discretion and principles of equity relating to or affecting creditors' rights or contractual obligations generally or limitations on remedies against public entities in the State.

4.5. Litigation. There is no action or investigation pending or, to the knowledge of the Borrower, threatened, against the Borrower before any court or other Governmental Authority which questions the validity of any act or the validity of any proceeding taken by the Borrower in connection with the execution and delivery of this Agreement, the Note or the other Related Documents, or wherein an unfavorable decision, ruling or finding would in any way adversely affect (a) the validity or enforceability of this Agreement, the Note or the other Related Documents, (b) the validity, enforceability or the pledge of and lien on the Revenues or on the amounts held in funds, accounts and subaccounts under the CASA, or (c) the status of the Borrower as a joint powers authority organized pursuant to and existing under the Constitution and other Applicable Laws of the State of California.

4.6. Financial Condition. All of the Borrower's financial statements that have been furnished to the Lender have been prepared in conformity with GAAP (except as noted

therein) and are comprised of a balance sheet and a statement of revenues and expenditures and changes in fund balances. All of such financial statements accurately present, in all material respects, the financial condition of the Borrower, including the Revenues as of the dates thereof, and there have been no changes in the business, operations or condition (financial or otherwise) of the Borrower, since the dates of said financial statements that could reasonably be expected to result in a Material Adverse Effect on the ability of the Borrower to receive Revenues or its ability to perform its obligations hereunder or under the Note and under the other Related Documents.

4.7. Related Documents. Each of the Related Documents is in full force and effect. Except as previously disclosed in writing to the Lender prior to the Closing Date, no event of default and no event which, with the giving of notice, the passage of time or both, would constitute an event of default, presently exists under any of the Related Documents. Except as previously disclosed in writing to the Lender prior to the Closing Date, neither the Borrower nor any other party thereto has waived or deferred performance of any material obligation under any Related Document.

4.8. Incorporation of Representations and Warranties. In addition to the representations and warranties set forth herein, the Borrower hereby makes to the Lender the same representations and warranties as are set forth by the Borrower in each of the other Related Documents, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Lender with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. The representations and statements made by the Borrower herein and therein are true and correct as of the date of this Agreement. No amendment to such representations and warranties or definitions which could reasonably be expected to have a Material Adverse Effect with respect to the ability of the Borrower to meet its obligations hereunder or under the other Related Documents or the rights or security of the Lender hereunder or under the other Related Documents shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Lender.

4.9. Margin Regulations. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of the Loans or the Note or any amounts furnished by the Lender will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

4.10. No Event of Default. No Event of Default or Default has occurred and is continuing.

4.11. Security; Pledge of Revenues Securing Obligations. All of the Farebox Revenues are hereby pledged to secure the payment of principal and interest of the Obligations and the Note. In addition, the Local Transportation Funds and Other Revenues are available to repay the principal and interest of the Obligations. The Obligations and the Note are secured solely by a lien on and pledge of Farebox Revenues hereunder and under the CASA and the Local Transportation Funds and Other Revenues are available to repay the Obligations

hereunder. The pledge of the Farebox Revenues securing the payment of the principal of and interest on the Note and the contractual obligation of the Local Transportation Funds and Other Revenues hereunder and under the CASA is a valid and binding obligation of the Borrower, on parity only with the other ~~Parity~~Pari Passu Obligations, if any, subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally or limitations of remedies against public entities in the State. No filing, registration, recording or publication of the Authorizing Resolution, the CASA or any other instrument nor any prior separation or physical delivery of the Revenues is required to establish the pledge of the Farebox Revenues and availability of the Local Transportation Funds and Other Revenues provided for hereunder or under the CASA- or to protect or maintain the Lien created thereby on the Farebox Revenues.. As of the Closing Date, there is no Debt of the Borrower payable from or secured by the Revenues or amounts held in funds, accounts or subaccounts under the CASA or any portion thereof on a basis that is senior to or on a parity with the Obligations other than the Note.

4.12. Sovereign Immunity. The Borrower is subject to claims and to suit for damages in connection with its obligations under this Agreement and the other Related Documents pursuant to and in accordance with the laws of the State applicable to public entities such as the Borrower; *provided, however*, that a claimant shall be required to comply with the provisions of the Government Claims Act set forth in California Government Code Section 810 et seq. in tort or contract suits, actions or proceedings brought against the Borrower.

4.13. Accurate Information. All information, reports and other papers and data with respect to the Borrower furnished to the Lender, at the time the same were so furnished, were accurate in all material respects. Any financial, budget and other projections furnished to the Lender were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections.

4.14. Maximum Rate. The terms of the Related Documents (including the Note) regarding the calculation of interest and fees do not violate any Applicable Laws.

4.15. No Proposed Legal Changes. There is no amendment or, to the knowledge of the Borrower, no proposed amendment certified for placement on a statewide or local ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any Applicable Laws, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, which could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to receive Revenues or its ability to perform its obligations hereunder or under the Note and under the other Related Documents.

4.16. Valid Lien. The Borrower's irrevocable pledge of the Farebox Revenues hereunder and under the CASA to and for the payment of the Obligations of the Borrower under this Agreement and for the payment of the Obligations and the Note and the availability of the Local Transportation Funds and the Other Revenues are valid and binding and no

further acts, instruments, approvals or consents are necessary for the creation, validity or perfection, as applicable, thereof.

4.17. ERISA. The Borrower is not subject to ERISA. The Borrower has no funding deficiency with respect to any employee benefit plan which could reasonably be expected to materially and adversely affect the ability of the Borrower to perform its obligations hereunder or under any other Related Documents to which it is a party, and the Borrower is otherwise in compliance with terms of any such plan in which the Borrower or any of its employees participate to the extent any such failure to comply could reasonably be expected to materially and adversely affect the ability of the Borrower to perform its obligations hereunder or under any other Related Documents to which it is a party.

4.18. Solvency. After giving effect to the issuance of the Note and the other obligations contemplated by this Agreement, the Borrower will be able to pay its debts (including contingent, subordinated, unmatured and unliquidated liabilities) as they become absolute and matured, and the Borrower is able to and anticipates that it will be able to meet its debts as they mature and has adequate resources to conduct its business in which it is engaged.

4.19. Environmental Laws. The Borrower and its properties (a) have not become subject to any Environmental Liability caused by Borrower nor does it know of any basis for any Environmental Liability against Borrower, (b) have not received notice to the effect that any of the Borrower's operations are not in compliance with any of the requirements of any Environmental Laws or any applicable federal, state or local health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any Hazardous Materials into the environment, and (c) to the best of the knowledge of the Borrower, is in compliance with all Environmental Laws and has obtained and maintains or complies with any permit, license or other approval required under any Environmental Law, in each of (a), (b) and (c) above, except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect on the ability of the Borrower to receive Revenues or its ability to perform its obligations hereunder or under the Note and under the other Related Documents.

4.20. Investment Policy. The Borrower has neither made any investment nor entered into any agreements for the purpose of effecting any investment which are not permitted pursuant to the Authorizing Resolution or under Applicable Law.

4.21. Binding Effect. This Agreement and the other Related Documents constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law and by limitations on legal remedies against public agencies in the State of California. The Note will be duly issued, executed and delivered in conformity with the Law and the Authorizing Resolution, and constitute legal, valid and binding special, limited obligations of the Borrower, enforceable in accordance with

their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law and by limitations on legal remedies against public agencies in the State, and entitled to the benefit and security of the Authorizing Resolution.

4.22. Swap Contracts. As of the Closing Date, the Borrower is not a party to any Swap Contract.

4.23. Usury Limits. The terms of this Agreement, the Note and the other Related Documents regarding calculation and payment of interest and fees do not violate any applicable usury laws.

ARTICLE V COVENANTS

5.1. Affirmative Covenants of the Borrower. So long as the Commitment is outstanding and until all Obligations shall have been paid in full, the Borrower hereby covenants and agrees, that:

(a) Notice of Default. As promptly as practical after the date the Borrower shall have obtained knowledge of the occurrence of a Default or an Event of Default or a breach of this Agreement or any other Related Document, the Borrower will provide notice of the same to the Lender and, in each such case the Borrower will provide to the Lender the written statement of the Borrower setting forth the details of each such event and the action which the Borrower proposes to take with respect thereto.

(b) Reporting Requirements. The Borrower will provide the following to the Lender:

(i) within nine months after the end of each Fiscal Year of the Borrower, the Borrower will provide to the Lender (I) the audited financial statements of the Borrower consisting of a balance sheet and a statement of revenues, expenditures and changes in fund balances of the Borrower, including the Revenues for such Fiscal Year, setting forth in comparative form the corresponding figures (if any) for the preceding Fiscal Year, all in reasonable detail, and accompanied by an unqualified opinion of an independent certified public accounting firm satisfactory to the Bank stating that they have been prepared in accordance with GAAP and (II) a certificate from the Chairman of the Board or another authorized officer and addressed to the Lender stating that (1) neither a Default nor an Event of Default has occurred which was continuing at the end of such Fiscal Year or on the date of such certification, or, if such an event has occurred and was continuing at the end of such Fiscal Year or on the date of such certification, indicating the nature of such event and the action which the Borrower proposes to take with respect thereto, and (2) the representations and warranties of the Borrower contained in this Agreement and in each of the other Related Documents are true and correct on and as of the date of such certification as though made on and as of such date;

(ii) [a final executed copy of which shall be provided by the Borrower to the Lender no later than ten (10) Business Days after the execution thereof)]; promptly after

process has been served on the Borrower, the Borrower will provide to the Lender written notice of any newly filed action, suit or proceeding before any court or other Governmental Authority in which there is a reasonable probability of an adverse decision which could (A) materially adversely affect the business, financial position or results of operations of the Borrower, the management or operation of the Borrower or the ability of the Borrower to perform its obligations hereunder or under the Note or any other Related Document or (B) draw into question the validity or enforceability of this Agreement, the Note or any other Related Document;

(iii) as soon as possible after the Borrower acquires knowledge of the occurrence of (A) the filing of any initiative or referendum which could lead to the diminution or reallocation of the Revenues or any portion thereof or (B) any other event which, in the reasonable judgment of the Borrower, could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to receive Revenues or its ability to perform its obligations under this Agreement, the Note or under any other Related Document, the Borrower will provide written notice thereof to the Lender;

(iv) as soon as available, the Borrower will provide the Lender a copy of the Borrower's annual budget; and

(v) the Borrower will provide the Lender, from time to time, such additional information regarding the financial position, operations, business or prospects of the Borrower, and the operation and management of the Borrower, as may be in the possession of the Borrower, as the Lender may reasonably request.

(c) Use of Proceeds. The Borrower shall use the proceeds of the Loans for to fund the construction of a bus maintenance facility, all of which shall comply with Applicable Laws.

(d) Inspections; Discussion. The Borrower will permit the Lender or its representatives, at any reasonable time during normal business hours and from time to time at the request of the Lender to the extent that the Borrower is not legally precluded from permitting access thereto, upon no less than forty-eight (48) hours prior written notice: to visit and inspect the properties of the Borrower; to examine and make copies of and take abstracts from the records and books of account of the Borrower; and to discuss the affairs, finances and accounts of the Borrower including, without limitation, the management and operation of the Borrower, with the appropriate officers of the Borrower; *provided* that, if required by the Borrower, as a condition to the Lender being permitted by the Borrower to make or conduct any such visit, inspection, examination or discussion, the Lender shall certify to the Borrower that the same is being made or conducted solely in order to assist the Lender in determining the Borrower's compliance with its obligations under this Agreement, the Note or the other Related Documents.

(e) Further Assurances. Subject to the provisions of the CASA, the Borrower shall take any and all actions necessary or reasonably requested by the Lender to (i) perfect and protect, any lien, pledge or security interest or other right or interest given, or purported to be given to the Lender or any other Person under or in connection with this Agreement or the other Related Documents, (ii) enable the Lender to exercise or enforce its rights under or in connection

with this Agreement and the other Related Documents or (iii) enable the Lender to assign or pledge the Note to any Federal Reserve Bank.

(f) Taxes and Liabilities. The Borrower shall pay all its Debt and obligations promptly and in accordance with their terms and pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default, which default could reasonably be expected to result in a Material Adverse Effect on the ability of the Borrower to receive Revenues or its ability to perform its obligations hereunder or under the Note and under the other Related Documents; *provided* that the Borrower shall have the right to defer payment or performance of obligations to Persons other than the Lender so long as it is contesting in good faith the validity of such obligations by appropriate legal action and no final order or judgment has been entered with respect to such obligations.

(g) Incorporation of Covenants. Subject to the provisions of the CASA, the covenants of the Borrower set forth in each of the Related Documents to which the Borrower is a party are hereby incorporated by reference in this Agreement for the benefit of the Lender. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion, report or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such compliance shall be waived, or such provision shall be consented to, only if it is waived or consented to, as the case may be, by the Lender and such document, opinion, report or other instrument shall be acceptable or satisfactory to the Lender. Subject to the provisions of the CASA, no amendment to such covenants (or the defined terms relating thereto) made pursuant to the Related Documents, which could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to receive Revenues or its ability to perform its obligations hereunder or under the Note and under the other Related Documents shall be effective to amend such incorporated covenants without the prior written consent of the Lender.

(h) Waiver of Sovereign Immunity. Except for applicable requirements of the Borrower and the Lender pursuant to the Applicable Law of the State of California relating to the Lender asserting a claim hereunder, the Borrower hereby agrees not to assert the defense of any future right of sovereign immunity in any legal proceeding to enforce or collect upon the obligations of the Borrower under this Agreement or any other Related Document or the transactions contemplated hereby or thereby.

(i) Credit Facilities. Except for the TIFIA Loan Agreement, in the event that the Borrower shall, directly or indirectly, enter into or otherwise consent to any Lender Agreement, which such Lender Agreement provides such Person with additional remedies (the "Additional Rights") than are provided to the Lender in this Agreement, then, such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the Lender shall have the benefits of such Additional Rights. The Borrower shall promptly, upon entering into or otherwise consenting to a Lender Agreement containing such Additional Rights, notify the Lender hereunder of such Lender Agreement and enter into an amendment to this Agreement to include such Additional Rights; provided that the Lender shall have the benefit of such Additional Rights even if the Borrower fails to provide such notice or enter into an amendment

hereto to include said Additional Rights into this Agreement. If the Borrower shall amend the related Lender Agreement such that it no longer provides for such Additional Rights, then, without the consent of the Lender, this Agreement shall automatically no longer contain the related Additional Rights and the Lender shall no longer have the benefits of any of the related Additional Rights.

(j) Right to Accelerate. In the event the Borrower shall, directly or indirectly, enter into or otherwise consent to any Lender Agreement, which Lender Agreement includes the right to accelerate the payment of the principal of or interest on any series of Obligations upon the occurrence and continuation of an event of default or event of termination under such Lender Agreement, or such Lender Agreement includes the right to accelerate the payment of the principal of or interest on any series of Obligations upon the occurrence and continuation of an event of default or event of termination under such Lender Agreement within a shorter period than is available to the Lender under this Agreement (herein referred to as “New Acceleration Provisions”), then such New Acceleration Provisions shall automatically be deemed incorporated herein and the Lender shall automatically have the benefit of such New Acceleration Provisions. The Borrower shall promptly, upon the occurrence of the Borrower entering into any Lender Agreement (or amendment thereto) which provides for New Acceleration Provisions, enter into an amendment to this Agreement to include such New Acceleration Provisions; provided that the Lender shall maintain the benefit of such New Acceleration Provisions even if the Borrower fails to provide such amendment. The release, termination or other discharge of such Lender Agreement that provides for such New Acceleration Provisions shall be effective to amend, release, terminate or discharge (as applicable) such provisions as incorporated by reference herein without the consent of the Lender.

(k) Revenues, Budget and Appropriation. The Borrower covenants and agrees that it shall take any and all action necessary such that Revenues in each Fiscal Year shall equal an amount at least sufficient to satisfy the respective provisions of the Related Documents. To the extent required by the Applicable Law of the State of California or any Related Document, the Borrower shall cause the appropriate Borrower official to take any and all actions that may be necessary to facilitate the payment of all Obligations under this Agreement, the Note and the other Related Documents and to include such Obligations in the Borrower’s budget and included in an appropriations request.

(l) Financial Covenants. The Borrower shall at all times adequately maintain the debt service payments and reserve funds, if any, on any ~~Parity~~Pari Passu Obligations.

(m) Maintenance of Existence. The Borrower shall preserve and maintain its existence and rights as a joint powers authority.

(n) Disclosure to Participants. Except to the extent expressly prohibited by state or federal law, the Borrower shall permit the Lender to disclose any information received by the Lender in connection herewith including, without limitation, the financial information described in Section 6.1(b)(i) hereof, to any Participant.

(o) Licenses, Permits, Etc. The Borrower will take all necessary and appropriate action to ensure the continuance in force of all material consents, licenses, permits,

orders, decrees, authorizations, registrations, filings and other Governmental Approvals obtained or made in connection with this Agreement, the Note and the other Related Documents and/or necessary to enable and authorize the ongoing performance by the Borrower of this Agreement, the Note and the other Related Documents and all other agreements to be delivered in connection with any thereof.

(p) Insurance. The Borrower shall maintain insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts as are customarily maintained by similar businesses and as may be required by applicable law and as are required by any Loan Document (including insuring its assets against loss by fire, explosion, theft and other risks and casualties as are customarily insured against by companies engaged in the same or a similar business, insuring it against liability for personal injury and property damages relating to its assets, such policies to be in such amounts and covering such risks as are usually insured against by companies engaged in the same or a similar business, and insuring such other matters as may from time to time be reasonably requested by the Lender, and insuring it against business interruption in such amounts as the Lender shall reasonably deem appropriate). After the Closing Date upon the request of the Lender, the Borrower shall provide a certificate in reasonable detail as to the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

5.2. Negative Covenants of the Borrower. So long as the Commitment is outstanding and available to the Borrower and until all of the Obligations shall have been paid in full, the Borrower hereby covenants and agrees that it will not:

(a) Compliance With Laws, Etc. Violate any laws, rules, regulations, governmental orders or other Governmental Approvals to which it, is subject and of which it is aware after diligent inquiry, which violation could reasonably be expected to result in a Material Adverse Effect on the ability of the Borrower to receive Revenues or its ability to perform its obligations hereunder or under the Note and under the other Related Documents.

(b) Amendments. Subject to the provisions of the CASA, amend, modify or supplement in any manner whatsoever of the Authorizing Resolution without the prior written consent of the Lender, nor shall it amend, modify or supplement any provision of the Authorizing Resolution or any other Related Document, in a manner which would have an adverse effect upon the Borrower's ability to perform its obligations under this Agreement or to repay indebtedness that is secured by the Revenues or which adversely affects the security for the Note or the Borrower's ability to repay when due the Obligations or the rights, interests, security or remedies of the Lender under this Agreement, the Authorizing Resolution or the other Related Documents.

(c) Liens, Etc. Subject to the provisions of the CASA, create or suffer to exist any Lien upon or with respect to any of the funds or accounts created under the CASA other than as consented to by the Lender.

(d) Swap Contract. Unless otherwise consented to in writing by the Lender, the Borrower shall not enter into any Swap Contract relating to Debt secured by Revenues.

(e) Federal Reserve Board Regulations. The Borrower shall not use any portion of the proceeds of any Loans or the Note for the purpose of carrying or purchasing any Margin Stock.

(f) Use of Lender's Name. Except as may be required by law (including, but not limited to, federal and state securities laws), the Borrower shall not use the Lender's name in any published materials (other than the Borrower's staff reports, annual statements, audited financial statements and rating agency presentations) without the prior written consent of the Lender (which consent shall not be unreasonably withheld).

(g) Accounting Changes. Change the times of commencement or termination of Fiscal Years or other accounting periods without first disclosing in writing such change to the Lender.

(h) Consolidation, Merger, Etc. Dissolve or otherwise dispose of all or substantially all of the assets of the Borrower or consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into the Borrower; *provided, however,* that the Borrower may consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into the Borrower if each of the following conditions shall have been fulfilled:

(i) such merger or consolidation shall be with or into another governmental entity which shall assume in writing, reasonably satisfactory in form and substance to the Lender, or by operation of law the due and punctual performance and observance of all of the covenants, agreements and conditions of this Agreement and the other Related Documents;

(ii) such merger or consolidation shall not adversely affect or impair to any extent or in any manner (1) the Revenues, (2) the availability of the Revenues for the payment and security of the obligations of the Borrower under this Agreement, and (3) an opinion of its Bond Counsel, satisfactory in form and substance to the Lender, to such effect; and

(iii) the Borrower shall have given the Lender not less than sixty (60) days' prior written notice of such merger or consolidation and furnished to the Lender all such information concerning such merger or consolidation as shall have been reasonably requested by the Lender.

(i) Additional Debt.

The Borrower shall not issue or incur Additional Obligations unless the Local Transportation Funds allocated to the Borrower and deposited into the Revenue Account and Farebox Revenues received by or on behalf of the Borrower, in the aggregate, during any twelve (12) consecutive months during the eighteen (18) months prior to the date of the issuance of such Additional Obligations were at least equal to 2.0x Maximum Annual Debt Service.

ARTICLE VI EVENTS OF DEFAULT

6.1. Events of Default. If any one or more of the following conditions or events shall occur:

(a) The Borrower shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization, arrangement, adjustment, winding-up, dissolution, composition or other similar relief with respect to itself or its indebtedness under any bankruptcy, insolvency, reorganization or other similar law for the relief of debtors now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or a substantial part of its property, (ii) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, (iii) make a general assignment for the benefit of creditors, (iv) admit, in writing, its inability to pay its indebtedness as it becomes due, (v) become insolvent within the meaning of Section 101(32)(C) of the Bankruptcy Code, or (vi) take any official action to authorize any of the foregoing; or

(b) Any of the following shall occur with respect to the Borrower: (i) an involuntary case or other proceeding shall be commenced against the Borrower seeking liquidation, reorganization or other relief with respect to it or its indebtedness under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall not be dismissed within sixty (60) days; or (ii) an order for relief shall be entered against the Borrower under the federal bankruptcy laws as now or hereafter in effect or pursuant to any other state or federal laws concerning insolvency or of similar purpose; or (iii) there shall be commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, restraint or similar process against all or any substantial part of its assets, which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Borrower shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as the same becomes due, or (vi) a debt moratorium, debt adjustment, debt restructuring or comparable extraordinary restriction with respect to the payment of principal or interest on the indebtedness of the Borrower shall be declared or imposed pursuant to a finding or ruling by the Borrower, the United States of America, the State of California, any instrumentality thereof or any other Governmental Authority of competent jurisdiction over the Borrower; or

(c) Any Governmental Authority of competent jurisdiction shall declare a financial emergency or similar declaration with respect to the Borrower and shall appoint or designate, with respect to the Borrower, an entity such as an organization, a board, a commission, an authority, an agency or any other similar body to manage the affairs and operations of the Borrower; or

(d) The dissolution or termination of the existence of the Borrower shall occur; or

(e) The Borrower shall fail to pay the principal of or interest on the Note when due; or

(f) The Borrower shall fail to pay any Obligation when due (other than as provided in Section 6.1(e) hereof) and such failure shall continue for five (5) days after the Borrower has received written notice from the Lender that any such amount was not paid when due; or

(g) The Borrower shall default in the observance or performance of any agreement or condition relating to the Obligations or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to cause (determined without regard to whether any notice is required) any such Obligations to become immediately due and payable in full as the result of the acceleration, mandatory redemption, mandatory tender or mandatory prepayment of such Obligations (whether or not any such Obligations are in fact accelerated or subject to mandatory tender for purchase or mandatory redemption or mandatory prepayment); or

(h) The occurrence of any event of default or termination under any other Related Document (which is not waived pursuant to the terms thereof); or

(i) Any material representation or warranty made by or on behalf of the Borrower in this Agreement (including, without limitation, representation and warranties incorporated herein by reference) or in any certificate or statement delivered hereunder or thereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered; or

(j) The Borrower shall default in the due performance or observance of any term, covenant or agreement contained in this Agreement or any other Related Document and such default shall remain unremedied for a period of thirty (30) days after written notice thereof shall have been received by the Borrower from the Lender; or

(k) The existence of one or more final, non-appealable judgments, attachments or levies against the Borrower for the payment of money payable out of Revenues, the operation or result of which, individually or in the aggregate, equals or exceed \$500,000, and such judgment, attachment or levy shall remain unpaid or the lien created thereby shall remain unsatisfied, undischarged, unbonded or not otherwise covered by insurance (by property other than any of the Revenues) for a period of one hundred twenty (120) days; or

(l) Any Lien created by this Agreement or any other Related Document in favor of, or for the benefit of, the Lender shall at any time or for any reason (except as expressly permitted to be released by the terms of such governing document) not constitute a valid Lien; or

(m) (i) Any provision of this Agreement, the Note or any other Related Document related to (A) payment of principal of or interest on the Note or (B) the validity or enforceability of the pledge of, and Lien on, the Revenues shall, at any time and for any reason, cease to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction, or shall be declared, in a final non-appealable judgment by any court of competent jurisdiction, to be null and void, invalid or unenforceable; (ii) the validity or enforceability of any material provision of this Agreement, the

Note or any other Related Document related to (A) payment of principal of or interest on the Note, or (B) the validity or enforceability of the pledge of and Lien on the Revenues shall be publicly contested, repudiated or denied by the Issuer; or (iii) any other material provision of this Agreement, the Note or any other Related Document, other than a provision described in clause (i) above, shall, at any time and for any reason, cease to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or shall be declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the Borrower.

THEN, upon the occurrence of any Event of Default, upon written notice to the Borrower by the Lender:

(a) the Credit Availability shall immediately terminate or be reduced (as specified by the Lender);

(b) the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other Obligations under the Related Documents, shall become due and payable immediately, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) the Lender may exercise any and all of its other rights and remedies under applicable Law or at equity, hereunder and under the other Related Documents;

(d) all Obligations hereunder and under the Note to accrue interest at the Default Rate;

(e) the Lender may cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Lender shall have no obligation to effect such a cure; and

(f) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the Borrower under the Related Documents, whether for specific performance of any agreement or covenant of the Borrower or in aid of the execution of any power granted to the Lender in the Related Documents;

provided, further, however, that all remedies hereunder are subject to the provisions and terms of the CASA.

6.2. Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement or any other Related Document, upon the occurrence and during the continuance of an Event of Default, the Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by the Lender from or on behalf of the Borrower, and, as between the Borrower on the one hand and the

Lender on the other, the Lender will apply payments received against the Obligations in the following order: interest, then principal then late fees.

ARTICLE VII MISCELLANEOUS

7.1. Notices.

(a) Generally. Any notice or other communication herein required or permitted to be given to the Borrower, the Lender, and the Lender shall be sent to such Person's address as set forth on Appendix A hereof or in the other relevant Related Document. Except as otherwise set forth in paragraph (b) below, each notice hereunder shall be in writing and may be personally served or sent by facsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed.

(b) Electronic Communications.

(i) Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Lender; provided that the foregoing shall not apply to notices to the Lender if the Lender has notified the Borrower that it is incapable of receiving notices by electronic communication. The Lender or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Lender otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (A) of notification that such notice or communication is available and identifying the website address therefor.

(ii) The Borrower understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Lender.

(iii) Any Approved Electronic Communications are provided "as is" and "as available". None of the Lender or its respective officers, directors, employees, agents, advisors or representatives (the "Lender Affiliates") warrants the accuracy, adequacy, or completeness of the Approved Electronic Communications and each expressly disclaims liability

for errors or omissions in the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Lender Affiliates in connection with the Approved Electronic Communications.

7.2. Expenses. Whether or not the transactions contemplated hereby shall be consummated, the Borrower agrees to pay promptly (a) all the actual and reasonable costs and expenses of preparation of the Related Documents and any consents, amendments, waivers or other modifications thereto; (b) all the actual and reasonable costs of furnishing all opinions by counsel for the Borrower; (c) the reasonable fees and expenses to the Lender in connection with the negotiation, preparation, execution and administration of the Related Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by the Borrower, *provided, however*, the Borrower shall not be responsible for Lender's counsel's fees in connection with the preparation of the Related Documents; (d) all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers used in connection with the preparation of the Related Documents; and (e) after the occurrence of a Default or an Event of Default, all reasonable costs and expenses, including reasonable attorneys' fees and costs of settlement, incurred by the Lender in enforcing any Obligations of or in collecting any payments due from the Borrower hereunder or under the other Related Documents by reason of such Default or Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings.

7.3. Indemnity. In addition to the payment of expenses pursuant to Section 7.2 hereof, whether or not the transactions contemplated hereby shall be consummated, the Borrower agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, the Lender and its officers, partners, directors, trustees, employees, agents and Affiliates (each, an "Indemnitee"), from and against any and all Indemnified Liabilities; provided that the Borrower shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence, illegal acts or willful misconduct of that Indemnitee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 7.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. To the extent permitted by applicable law, the Borrower shall not assert, and the Borrower hereby waives, any claim against the Lender and its Affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Related Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Credit Extension or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and the Borrower hereby waives, releases and agrees not to sue upon

any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

7.4. Reserved.

7.5. Amendments and Waivers. Subject to the provisions of the CASA, no amendment, modification, termination or waiver of any provision of the Related Documents, or consent to any departure by the Borrower therefrom, shall in any event be effective without the written concurrence of the Lender. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 7.5 shall be binding upon the Lender at the time outstanding, and, if signed by the Borrower, on the Borrower.

7.6. Participants. The Lender shall have the right to grant participations from time to time (to be evidenced by one or more Participation Agreements or certificates of participation) in this Agreement to one or more other banking institutions; provided, that (i) the grant of any such participation shall not terminate or otherwise affect any obligation of the Lender hereunder, (ii) no such participation by any such participant shall in any way affect the obligations of such Lender hereunder, (iii) the Borrower (and any collateral agent) shall be required to deal only with the Lender, with respect to any matters under this Agreement, the Notes, and (iv) no such participant shall be entitled to enforce any provision hereunder against the Borrower. In connection with each participation, the Lender may disclose to any proposed participant any information that the Borrower delivers or discloses pursuant to this Agreement. The Lender shall give notice to the Borrower of any banking institution that is granted a participation pursuant to this Section.

7.7. Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

7.8. Survival of Representations, Warranties and Related Documents. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of the Borrower set forth in Sections 2.13, 2.14, 7.2, 7.3 and 7.4 hereof shall survive the payment of the Loans and the reimbursement of any amounts drawn thereunder, and the termination hereof, provided, however, the agreements of the Borrower set forth in Section 2.13 shall terminate at the end of the calendar year in which this Agreement is terminated. Additionally, notwithstanding the termination of any of the other Related Documents prior to the termination of this Agreement, each of the representations, warranties and covenants set forth in such other Related Documents shall continue in full force and effect upon the termination of such other Related Documents, and, in the event of a conflict between the provisions of the representations, warranties and covenants in such other Related Documents, the Lender, in its sole and absolute discretion, shall determine which such representations, warrants and covenants shall control.

7.9. No Waiver; Remedies Cumulative. No failure or delay on the part of the Lender in the exercise of any power, right or privilege hereunder or under any Related Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence herein or therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to the Lender hereby and thereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the Related Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder or thereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

7.10. Marshalling; Payments Set Aside. The Lender shall not be under any obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that the Borrower makes a payment or payments to the Lender on account of the Borrower's Obligations to exercise its rights of setoff, and such payment or payments or the proceeds of such setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments or setoff had not been made and applied on account of Borrower's Obligations.

7.11. Severability. In case any provision in or obligation hereunder 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.

7.12. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

7.13. Governing Law; Consent to Jurisdiction and Venue; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

(b) EXCLUSIVE JURISDICTION. EXCEPT AS PROVIDED IN SUBSECTION (c), EACH OF THE PARTIES AGREES THAT ALL DISPUTES AMONG THEM ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH, THIS AGREEMENT OR ANY OF THE OTHER RELATED DOCUMENTS (OTHER THAN THE CASA) WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, WILL BE RESOLVED EXCLUSIVELY BY STATE OR FEDERAL COURTS LOCATED IN LOS ANGELES, CALIFORNIA, BUT THE PARTIES ACKNOWLEDGE THAT ANY APPEALS

FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF LOS ANGELES, CALIFORNIA. EACH OF THE PARTIES WAIVES IN ALL DISPUTES BROUGHT PURSUANT TO THIS SUBSECTION (a) ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT CONSIDERING THE DISPUTE.

(c) OTHER JURISDICTIONS. EACH BORROWER AGREES THAT THE LENDER HAS THE RIGHT TO PROCEED AGAINST EACH BORROWER AND ITS RESPECTIVE PROPERTY IN A COURT IN ANY LOCATION TO ENABLE THE LENDER TO (1) OBTAIN PERSONAL JURISDICTION OVER ANY BORROWER OR (2) REALIZE ON THE COLLATERAL OR (3) ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF THE LENDER. EACH BORROWER WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT IN WHICH THE LENDER HAS COMMENCED A PROCEEDING DESCRIBED IN THIS SUBSECTION (c).

(d) VENUE. THE BORROWER IRREVOCABLY WAIVES ANY OBJECTION (INCLUDING, WITHOUT LIMITATION, ANY OBJECTION OF THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS) WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith IN ANY JURISDICTION SET FORTH ABOVE.

(e) SERVICE OF PROCESS. THE BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH BORROWER'S NOTICE ADDRESS SPECIFIED PURSUANT TO SECTION 6.02, SUCH SERVICE TO BECOME EFFECTIVE UPON RECEIPT OF SUCH MAILING. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR LIMIT THE RIGHT OF THE LENDER TO BRING PROCEEDINGS AGAINST ANY BORROWER IN THE COURTS OF ANY OTHER JURISDICTION.

(f) JUDICIAL REFERENCE. EACH PARTY AGREES TO SUBMIT TO JUDICIAL REFERENCE PURSUANT TO SECTION 638, ET SEQ., OF THE CALIFORNIA CODE OF CIVIL PROCEDURE ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY EXHIBIT HERETO, ANY CLOSING DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, STATUTE OR ANY OTHER LEGAL THEORY (HEREINAFTER "DISPUTE")). SUCH JUDICIAL REFERENCE WILL BE FILED AND PROSECUTED IN THE LOS ANGELES SUPERIOR COURT. PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND TO USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES TO THE DISPUTE ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE WILL BE APPOINTED BY THE COURT TO HEAR ANY AND ALL DISPUTES HEREUNDER IN LIEU OF A JURY TRIAL. THE PARTIES AGREE THAT THE APPOINTED REFEREE

WILL HAVE THE POWER TO DECIDE ALL ISSUES REGARDING THE DISPUTE IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND WILL REPORT A STATEMENT OF DECISION THEREON. THE PARTIES AGREE THAT THE PROVISIONS CONTAINED IN THIS AGREEMENT HAVE BEEN FAIRLY NEGOTIATED ON AN ARM'S-LENGTH BASIS, WITH ALL PARTIES BEING AFFORDED THE OPPORTUNITY TO HAVE THE ADVICE AND COUNSEL OF THEIR INDEPENDENT ATTORNEY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE APPLICATION OF JUDICIAL REFERENCE IN THE EVENT OF ANY DISPUTE.

(g) ADVICE OF COUNSEL. EACH OF THE PARTIES REPRESENTS TO EACH OTHER PARTY HERETO THAT IT HAS DISCUSSED THIS AGREEMENT AND, SPECIFICALLY, THE PROVISIONS OF THIS SECTION, WITH ITS COUNSEL.

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

7.15. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

7.16. OFAC; Patriot Act. (a) The Lender hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Patriot Act. The Borrower hereby agrees that it shall promptly provide such information upon request by the Lender.

(b) The Borrower shall (i) ensure that it is not and shall not be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the U.S. Department of the Treasury or included in any Executive Orders, that prohibits or limits the Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower and (ii) to ensure that the proceeds of any Loan shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

7.17. No Advisory or Fiduciary Relationship. connection with all aspects of the transaction contemplated hereby, the Borrower acknowledges and agree that: (a) (i) the services regarding this Agreement provided by the Lender is an arm's-length commercial transactions between the Borrower, on the one hand, and the Lender and its affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions

contemplated hereby and by the other Related Documents; (b) (i) the Lender and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower or any other Person and (ii) neither the Lender nor any of its affiliates has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Lender and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and neither the Lender nor any of its affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Lender or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

[Remainder of page intentionally left blank.]

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

SAN LUIS OBISPO REGIONAL TRANSIT
AUTHORITY

By: _____
Name:
Title:

[Signatures continue on the following page]

COUNTERPART SIGNATURE PAGE

PACIFIC WESTERN BANK

By: _____
Name: Chris Baron
Title: Managing Director

[End of signature pages]

APPENDIX A
Notice Addresses

Borrower:

San Luis Obispo Regional Transit Authority

Attention: _____

Email: _____

Telephone: _____

Lender, Lender's Office and Lender's Office:

Pacific Western Bank
9701 Wilshire Blvd, Suite 700
Beverly Hills, CA 90212
TEL: (310) 887-8509
Attention: Chris Baron, Managing Director

EXHIBIT A
FORM OF
FUNDING NOTICE

Pacific Western Bank

Attention:
Email:
Telephone:

Reference is made to the Credit and Security Agreement, dated as of _____, 2020 (as it may be amended, supplemented or otherwise modified, the “**Agreement**”), by and between SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY, a joint powers authority organized and existing under the Constitution and laws of the State of California (including its successors, the “**Borrower**”), and PACIFIC WESTERN BANK (including its successors and assigns, the “**Lender**”). Any capitalized term used but not defined herein has the meaning assigned to such term in the Agreement.

Pursuant to Sections 2.1 and 2.4(a) of the Agreement, the Borrower desires that the Lender makes the following Loan in the amount of _____ Thousand Dollars (\$_____,000) to the Borrower in accordance with the applicable terms and conditions of the Agreement on _____, 20__ (the “**Credit Date**”) into the Borrower’s Account as defined herein. [NOTE: MUST BE AT LEAST 2 BUSINESS DAYS FROM DATE OF NOTICE]

The Borrower hereby certifies that:

- (a) after making the above-requested Loan on the Credit Date, the Total Outstandings does not exceed the Credit Availability then in effect;
- (b) as of the Credit Date, the representations and warranties contained in each of the Related Documents are true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which are true and correct in all respects) on and as of such Credit Date to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties are true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which are true and correct in all respects) on and as of such earlier date; and
- (c) as of the Credit Date, no event has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby that would constitute an Event of Default or a Default;
- (d) as of such Credit Date, no event, including any change in any Law, or omission shall have occurred which has resulted, or is likely to result, in a Material Adverse Effect;

(e) the other ~~Parity~~Pari Passu Obligations payment funds are adequately maintained, and evidence of such is attached hereto; [and

(f) [SOLELY INCLUDED FOR TRANCHE B FUNDS: amounts borrowed under Tranche A have been fully funded].

Date: _____, 20__

SAN LUIS OBISPO REGIONAL TRANSIT
AUTHORITY

By: _____

Name:

Title:

EXHIBIT B

FORM OF NOTE

[Up to \$[14,100,000] to be bifurcated by Tranche A and Tranche B as set forth in Section 2.1 of the Agreement]

Interest Rate: 3.00%

_____, 2020

_____, California

FOR VALUE RECEIVED, SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY, a joint powers authority organized and existing under the Constitution and laws of the State of California (including its successors, the “*Borrower*”), and PACIFIC WESTERN BANK (including its successors and assigns, the “*Payee*”) or its registered assigns, on or before the Termination Date, the lesser of (a) _____ MILLION _____ THOUSAND DOLLARS (\$_____,000) and (b) the unpaid principal amount of all advances made by the Payee to the Borrower as Loans under the Agreement referred to below.

The Borrower also promises to pay interest on the unpaid principal amount from time to time outstanding under this Note, from the date outstanding until paid in full, at the rates and at the times which shall be determined in accordance with the provisions of that certain Credit and Security Agreement, dated as of _____, 2020 (as it may be amended, supplemented or otherwise modified, the “*Agreement*”), by and between the Borrower and the Payee. Any capitalized term used but not defined herein has the meaning assigned to such term in the Agreement.

This Note is issued pursuant to and entitled to the benefits of the Agreement and the Related Documents (as defined in the Agreement) each which reference is hereby made for a more complete statement of the terms and conditions under which the Loans evidenced hereby were made and are to be repaid.

This Note is a special limited obligation of the Borrower payable from and secured by a upon the Revenues as set forth in the Agreement, and this Note is not a general obligation of the Borrower. The principal of and interest on this Note are not a debt of the Borrower, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the Revenues.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Lender’s Office or at such other place as shall be designated in writing for such purpose from time to time. Unless and until an assignment agreement effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by the Lender and the Borrower, the Lender shall be entitled to deem and treat the Payee as the owner and holder of this Note and the obligations evidenced hereby. The Payee hereby agrees, by its acceptance hereof, that at the time of disposing of this Note or any part hereof, if any time shall occur, it will make a notation hereon of all principal payments previously made hereunder and of the date to which interest hereon has been paid; provided, the failure to make a notation of any payment made on this Note shall not limit or otherwise affect

the obligations of the Borrower hereunder with respect to payments of principal of or interest on this Note.

This Note is subject to prepayment at the option of the Borrower, as provided in the Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND THE PAYEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH SECTION 7.13 OF THE AGREEMENT.

Upon the occurrence and continuance of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Agreement.

This Note and all amounts owed to the Lender hereunder are subject to the right of set-off by the Lender as further described in the Agreement.

No reference herein to the Agreement and no provision of this Note or the Agreement shall alter or impair the obligations of the Borrower, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

The Borrower promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, all as provided in the Agreement, incurred in the collection and enforcement of this Note. The Borrower and any endorsers of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment and protest.

[Signature appears on the following page]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

SAN LUIS OBISPO REGIONAL TRANSIT
AUTHORITY

By: _____
Name:
Title:

TRANSACTIONS ON
REVOLVING LOAN NOTE

<u>Date</u>	<u>Amount of Loan Made This Date</u>	<u>Amount of Principal Paid This Date</u>	<u>Outstanding Principal Balance This Date</u>	<u>Notation Made By</u>
-------------	--	---	--	-----------------------------

EXHIBIT C
[FORM OF NOTICE OF TERMINATION OR REDUCTION]
NOTICE OF TERMINATION OR REDUCTION

[Date]

Pacific Western Bank
9701 Wilshire Blvd, Suite 700
Beverly Hills, CA 90212
TEL: (310) 887-8509
Attention: Chris Baron, Managing Director

Ladies and Gentlemen:

Re: Credit and Security Agreement dated as of _____, 2020

The SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY (the “Borrower”), acting through the undersigned hereby certifies to PACIFIC WESTERN BANK (with its successors and assigns, the “Lender”), with reference to the Credit and Security Agreement, dated as of _____, 2020 (together with any amendments or supplements thereto, the “Agreement”), by and between the Borrower and the Lender (the terms defined therein and not otherwise defined herein being used herein as therein defined):

[The Borrower hereby informs you that the Commitment is terminated in accordance with the Agreement.]

OR

[The Borrower hereby requests that the current Available Commitment of \$[insert Available Commitment as of the date of Certificate] be reduced by \$[insert amount of requested reduction], which is an amount equal to \$100,000 or a whole multiple of \$1,000 in excess thereof so that the new Available Commitment will equal \$[insert new Available Commitment], which will not be less than aggregate principal amount of all Loans to be outstanding on _____, 20____, the effective date of such new Available Commitment following such reduction.]

IN WITNESS WHEREOF, we have executed and delivered this Notice of Termination as of the ____ day of _____, 20____.

SAN LUIS OBISPO REGIONAL TRANSIT
AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT D
[FORM OF NOTICE OF REDUCTION]
NOTICE OF REDUCTION

[Date]
San Luis Obispo Regional Transit Authority

Attention: _____

Ladies and Gentlemen:

We hereby notify you that, pursuant to Section 2.5(a) of the Credit Agreement, dated as of _____, 2020 (including any amendments and supplements thereto, the “Agreement”), by and between SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY, and PACIFIC WESTERN BANK (including its successors and assigns), the Available Commitment is reduced from [insert Available Commitment amount prior to reduction] to [insert new Available Commitment], such reduction to be effective on _____. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement.

Very truly yours,

PACIFIC WESTERN BANK

By _____
Name:
Title:

Document comparison by Workshare 10.0 on Friday, June 12, 2020 7:49:47 PM

Input:	
Document 1 ID	netdocuments://4852-7066-9234/8
Description	SLO RTA Credit and Security Agreement
Document 2 ID	netdocuments://4852-7066-9234/9
Description	SLO RTA Credit and Security Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	31
Deletions	9
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	42

Attachment C

COLLATERAL ACCOUNTS AND SECURITY AGREEMENT

Dated as of _____, 2020

by and among

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY

as the Borrower

PACIFIC WESTERN BANK

and

U.S. BANK NATIONAL ASSOCIATION

as the Collateral Agent and the Securities Intermediary

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COLLATERAL ACCOUNTS AND SECURITY AGREEMENT

This COLLATERAL ACCOUNTS AND SECURITY AGREEMENT (including any supplements and amendments hereafter, this "**Agreement**"), dated as of [____], 2020 is made by and among San Luis Obispo Regional Transit Authority, a California joint powers authority (the "**Borrower**"); Pacific Western Bank, a [____], as lender under the PWB Loan Agreement (defined below) (including its successors and assigns, "**PWB**"), U.S. Bank National Association, a national banking association, in its capacity as collateral agent on behalf of itself and the other Secured Parties (in such capacity (including its successors and assigns), the "**Collateral Agent**"), U.S. Bank National Association, a national banking association, in its capacity as Securities Intermediary (as defined herein) and each other Secured Party that accedes to this Agreement in accordance with Article IX hereto. All capitalized terms used herein that are defined in the UCC (as defined in Exhibit A hereto) are used herein as defined therein; all other capitalized terms used herein but not otherwise defined herein shall have the respective meanings given to such terms in Exhibit A hereto. The rules of interpretation set forth in Exhibit A hereto shall apply to this Agreement.

RECITALS

A. The Borrower deems it necessary and appropriate to provide for the financing of a transit vehicle maintenance and administration facility in the City of San Luis Obispo, California (the "**Project**").

B. Pursuant to that certain Credit and Security Agreement, dated as of [____], 2020 (the "**PWB Loan Agreement**") by and between the Borrower and PWB, PWB has agreed to make a loan (the "**PWB Loan**") to the Borrower, the proceeds of which will be used to finance a portion of the costs of the Project.

C. It is expected that the Borrower and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (in its capacity as lender under the TIFIA Loan Agreement (defined below), the "**TIFIA Lender**") will enter into a TIFIA Loan Agreement (the "**TIFIA Loan Agreement**") between the Borrower and the TIFIA Lender, pursuant to which the TIFIA Lender is expected to make a loan (the "**TIFIA Loan**") to the Borrower on the terms and subject to the conditions set forth therein, the proceeds of which will be used to finance a portion of the costs of the Project.

D. PWB wishes to appoint U.S. Bank National Association, a national banking association, as Collateral Agent and Securities Intermediary under this Agreement, and the Collateral Agent wishes to set forth the terms on which it shall accept such appointment and shall undertake to perform certain duties on behalf of all Secured Parties with respect thereto.

E. In consideration of the extensions of credit under the PWB Loan Agreement and expected to be made under the TIFIA Loan Agreement, and other accommodations of PWB set forth in the PWB Loan Agreement and expected to be made by the TIFIA Lender under the TIFIA Loan Agreement, respectively, the Borrower has agreed to secure its obligations under the Finance Documents as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I GRANT OF LIEN ON COLLATERAL

Section 1.01 Grant of Lien. In order to secure the prompt, irrevocable and indefeasible payment and performance in full when due of the Secured Obligations (whether now existing or hereafter arising and howsoever evidenced, and whether at stated maturity, upon acceleration, on any optional or mandatory prepayment date, redemption date or otherwise), (a) the Borrower hereby pledges and grants to the Collateral Agent, for the benefit of the Secured Parties, a first priority and continuing Lien on and security interest in all right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to all Farebox Revenues, whether now earned or hereafter acquired and (b) the Borrower hereby grants to the Collateral Agent, for the benefit of the Secured Parties as provided herein, a first priority and continuing Lien on security interest in all right, title and interest of the Borrower, whether now owned or hereafter acquired or arising, in and to the Project Accounts, all security entitlements carried therein, and all cash, cash equivalents, Permitted Investments, instruments, Securities and other funds or amounts on deposit in the Project Accounts.

Section 1.02 Priority of Liens. The Lien and security interests granted pursuant to Section 1.01 shall be prior in right to any other pledge, Lien or security interest created by the Borrower in any Collateral and shall have priority over any other claims against the Collateral.

Section 1.03 Preservation of Liens. The Borrower shall promptly take any and all steps that may be necessary, or that the Collateral Agent may reasonably request (acting on the instructions of the Secured Parties) to maintain the validity, perfection and first priority position of the Lien on the Collateral to enable the Collateral Agent to exercise and enforce its rights, remedies, powers and privileges under this Agreement with respect to such Liens.

Section 1.04 Preservation of Collateral. The Borrower shall defend the right, title and interest of the Borrower in and to the Collateral against the claims of any other Person.

ARTICLE II COLLATERAL AGENT

Section 2.01 Appointment. U.S. Bank National Association is hereby appointed as collateral agent for the benefit of the Secured Parties with respect to the Liens in the Collateral and the rights and remedies granted pursuant to the Security Documents. The Collateral Agent hereby accepts such appointment and agrees to act as Collateral Agent in the manner contemplated herein and in the Security Documents. The Collateral Agent is hereby authorized and directed to act in strict accordance with the terms of this Agreement (notwithstanding any contrary provision in any other Security Document) with respect to Enforcement Actions or the application of any Collateral or the Proceeds thereof. The Collateral Agent hereby accepts and agrees to, and the Borrower hereby acknowledges and consents to, the foregoing authorization and direction. Any party that shall become a Secured Party after the date hereof pursuant to the terms hereof shall be deemed to have so acknowledged and consented to such appointment, authorization and direction of the Collateral Agent by the Secured Parties set forth in this Section 2.01.

Section 2.02 Duties and Responsibilities.

(a) Subject to the terms hereof, the Collateral Agent agrees, for the benefit of the Secured Parties, to administer and enforce this Agreement and any other Security Documents to which it is a party as Collateral Agent, and, among other remedies, to foreclose upon, collect and dispose of the Collateral and to apply the Proceeds therefrom, for the benefit of the Secured Parties, as provided herein, and otherwise to perform its duties and obligations as the Collateral Agent hereunder and thereunder in

accordance with the terms hereof and thereof; provided, however, that the Collateral Agent shall have no duties or responsibilities except those expressly set forth herein or in any other Security Documents to which it is a party, and no implied covenants or obligations, fiduciary or otherwise, shall be read into this Agreement or any such other Security Documents against the Collateral Agent.

(b) Notwithstanding anything contained herein to the contrary, the Collateral Agent shall not be required to exercise any discretion or take any discretionary action but shall only be required to act or refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Creditors, and such instructions shall be binding upon the Collateral Agent and each of the Secured Parties; provided, however, that the written instructions of all of the Secured Parties shall be required where expressly provided for herein; provided, further, that the Collateral Agent shall not be required to take any action which is contrary to any provision hereof or of the other Finance Documents to which the Collateral Agent is a party or applicable Law.

(c) Notwithstanding any other provision of the Security Documents, in no event shall the Collateral Agent be required to foreclose on, or take possession of, any Collateral, if, in the reasonable judgment of the Collateral Agent, such action would be in violation of any applicable Law, rule or regulation pertaining thereto, or if the Collateral Agent reasonably believes that such action would result in the incurrence of liability by the Collateral Agent for which it is not fully indemnified by the Borrower pursuant to Sections 2.10 and 7.02 hereof.

(d) The Collateral Agent shall not be responsible to the other Secured Parties for (i) any recitals, statements, representations or warranties by the Borrower or any of the Secured Parties (other than its own) contained in this Agreement or the other Finance Documents, or any certificate or other document delivered by the Borrower or any of the other Secured Parties thereunder, (ii) the value, validity, effectiveness, genuineness, enforceability (other than as to the Collateral Agent with respect to such documents to which the Collateral Agent is a party) or sufficiency of this Agreement or any other document referred to or provided for herein or therein or of the Collateral held by the Collateral Agent under the Security Documents, (iii) the performance or observance by the Borrower or any of the Secured Parties (other than as to itself) of any of their respective agreements contained herein or therein, nor shall the Collateral Agent be liable to the other Secured Parties because of the invalidity or unenforceability of any provisions of this Agreement (other than as to itself) or (iv) the validity, perfection, priority or enforceability of the Liens on any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder (except to the extent such action or omission constitutes gross negligence, bad faith or willful misconduct on the part of the Collateral Agent), the validity of the title of the Borrower to the Collateral owned by the Borrower, insuring the Collateral or the payment of Taxes, charges, assessments on the Collateral or otherwise as to the maintenance of the Collateral.

(e) Except when a mandatory action is required by the Collateral Agent under the Security Documents, the Collateral Agent may at any time request written instructions from the Required Creditors as to a course of action to be taken by it hereunder and under any of the Security Documents or in connection herewith and therewith or any other matters relating hereto and thereto. The Required Creditors shall promptly reply to any such request and the Collateral Agent shall be fully justified in failing or refusing to take any such action if it shall not have received such written instruction of the Required Creditors. This provision is intended solely for the benefit of the Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any other party hereto.

(f) None of the Collateral Agent, the Securities Intermediary or any of their directors, officers, employees or agents shall be liable or responsible to the other Secured Parties for any action taken

or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence, bad faith or willful misconduct.

Section 2.03 Authorization. The Collateral Agent is hereby authorized to (a) execute, deliver, and perform in such capacity under this Agreement and each other Finance Document to which the Collateral Agent is or is intended to be a party, (b) exercise and enforce any and all rights, powers and remedies provided to the Collateral Agent under this Agreement, any other Finance Document to which the Collateral Agent is a party or is a third party beneficiary, any applicable Law, or any other document, instrument, or agreement to which the Collateral Agent is a party or a third party beneficiary, in each case in accordance with the terms thereof, and (c) take any other action under and in accordance with this Agreement and any other Finance Document to which the Collateral Agent is a party reasonably incidental to the foregoing or in order to facilitate the issuance of new Secured Obligations permitted under, and in accordance with, each of the Finance Documents, including executing documents to which it is intended to be a party, and amendments, modifications and supplements to the Finance Documents to which it is a party, in each case, that do not adversely affect the rights of the existing Secured Creditors or the Liens on the Collateral held for the benefit of the existing Secured Creditors. Notwithstanding the foregoing, the Collateral Agent shall not commence an Enforcement Action except in accordance with written instructions given by the Required Creditors (acting in accordance with the terms of this Agreement; provided, that if the Collateral Agent is prohibited by any court order or applicable Law from commencing any Enforcement Action due to a lack of consent or direction of or from the Required Creditors, the Collateral Agent shall seek the requisite authority from, or joinder of, the Required Creditors to commence such Enforcement Action but shall not be obligated to commence such Enforcement Action until such authority is obtained. All decisions with respect to the type of Enforcement Action which is to be commenced shall be made by, and all actions with respect to prosecution and settlement of such Enforcement Action shall require the written consent of, the Required Creditors (acting in accordance with the terms of this Agreement), and the Collateral Agent shall not be required to take any Enforcement Action in the absence of any such written consent. The Collateral Agent shall diligently pursue, and use all commercially reasonable efforts in connection with, the prosecution of any Enforcement Action that the Collateral Agent is so authorized or directed to initiate pursuant to this Agreement, subject to the terms of this Agreement. The Collateral Agent shall deliver copies of all notices it receives on behalf of any of the Secured Parties or in connection with the Finance Documents or the Project to each Secured Creditor promptly upon receipt.

Section 2.04 Administrative Actions. The Collateral Agent shall take such action as it deems necessary or advisable to perfect or continue the perfection of the Liens on the Collateral held for the benefit of the other Secured Parties, subject to the limitations set forth herein. The Collateral Agent shall not release any of the Collateral held by the Collateral Agent for the benefit of such Secured Parties, except: (a) upon payment in full in cash of all of the Secured Obligations; or (b) with respect to amounts on deposit in any sub-account of the Pari Passu Debt Service Account or the Pari Passu Debt Service Reserve Account, upon the written direction of the Secured Party for which such sub-account has been established. Upon the written request by the Collateral Agent or the Borrower at any time, the Required Creditors (acting in accordance with the terms of this Agreement) will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to clause (c) of this Section. At the Borrower's reasonable expense, the Collateral Agent will take all actions necessary, including executing documents to which it is intended to be a party, and amendments, modifications and supplements to such documents to which it is a party, in each case, to preserve, protect and accept additional Collateral for the benefit of the Secured Parties.

Section 2.05 Determination of Amounts of Secured Obligations. Upon the written request of the Collateral Agent or the Borrower, the Secured Creditors shall promptly deliver to the Collateral Agent (with a copy to each other Secured Party that is a party hereto and the Borrower) a certificate, dated the date of delivery thereof and signed by each such Secured Creditor, as to (a) the identity and address of any

Secured Creditor (or representative thereof), (b) the principal amount of the Secured Obligations then outstanding held by such Secured Creditor (provided, with respect to PWB, such amount shall be the aggregate principal amount of the then outstanding PWB Loan and with respect to the TIFIA Lender, such amount shall be equal to the aggregate principal amount of the then outstanding TIFIA Loan), (c) in the case of any such certificate being delivered in contemplation of the application of amounts received by the Collateral Agent in respect of the Collateral pursuant to Article VI hereof, the amount of interest on the Secured Obligations owing and any other amounts in respect of the Secured Obligations owing to such Secured Party, as the case may be (in the case of any such other amounts, accompanied by appropriate evidence thereof), and/or (d) in the event that any of the Secured Obligations shall have become or been declared to be due and payable, (whether at stated maturity, by required prepayment, redemption, declaration, acceleration, demand or otherwise), the principal amount of such Secured Obligations then due and payable to such Secured Party, as the case may be (to the extent that such information is different from that provided in clause (b) above); provided that each such Secured Party shall have not less than fifteen (15) days from receipt of such copy of such certificate to review any such certificate and provide any objections with respect thereto to the Collateral Agent. Absent receipt of notice of such objections from a Secured Party, the Collateral Agent shall be entitled to rely on certifications received by it in accordance with the above for the purposes of determining the amount of the Secured Obligations then outstanding held by such Secured Party; provided, that in the absence of the Collateral Agent's receipt of any certification requested by it pursuant to this sentence, the Collateral Agent shall be entitled (but not obligated) to take such action if the Collateral Agent shall have sufficient knowledge (acting reasonably) to make any determination required to be made in connection with such action.

Section 2.06 Employment of Agents. The Collateral Agent may, at the Borrower's reasonable cost and expense, employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Collateral Agent's gross negligence, bad faith or willful misconduct in employing or retaining, or relying on, any such counsel, accountants, appraisers, experts or advisers, may act and rely and shall be fully protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Collateral Agent, in relation to any matter arising in the administration hereof or in the determination or discharging of its rights and duties hereunder, and shall not be responsible to Borrower for any act or omission on the part of any of them or for acting or relying in good faith on the opinion, advice or information obtained from such expert or advisor; provided, however, that except in connection with actions taken by the Collateral Agent in connection with the exercise of its rights under Section 10.09(b) or in the case of an actual or asserted Event of Default under the Finance Documents that has occurred and is continuing, the Collateral Agent shall not be entitled to incur any costs or expenses of the scope contemplated in this Section 2.06 in excess of \$2,000 without the prior approval of the Borrower. In addition, the Collateral Agent shall not be liable to Borrower for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians as it may reasonably require for the purpose of discharging its ministerial duties hereunder, and the Collateral Agent shall not be liable to Borrower hereunder in excess of its recourse under contract or law with regards to such third party nominees, correspondents, designees, agents, subagents or subcustodians for any acts or omissions of such persons except to the extent of its gross negligence, bad faith or willful misconduct in nominating, appointing, directing or instructing such Persons and so long as such Persons are permitted to act hereunder.

Section 2.07 Reliance of Collateral Agent. In connection with the performance of its duties hereunder, the Collateral Agent shall be entitled to rely conclusively upon, and shall be fully protected in acting or refraining from acting in accordance with, any written certification, notice, instrument, opinion, request, consent, order, approval, direction or other written communication (including any thereof by facsimile or electronic communication) of or from the Required Creditors (including, but not limited to, instructions under Section 2.02) or of or from any other Secured Party that is a party hereto (to the extent

not in violation of the terms hereof or of the other Finance Documents), which the Collateral Agent in good faith reasonably believes to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and it shall be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The Collateral Agent shall not have any responsibility hereunder to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction, or other communication furnished to it. Whenever this Agreement (or any other Finance Document) specifies that any instruction, direction or consent by the Required Creditors is to be given in accordance with the terms of this Agreement, the Collateral Agent shall be entitled to rely upon any such instruction, direction or consent by the Required Creditors (which instruction, direction or consent need not state that it is given in accordance with the terms of this Agreement), and the Collateral Agent may presume without investigation that any such instruction, direction or consent by the Required Creditors has been given in accordance with the terms of this Agreement and the other applicable Finance Documents. The Required Creditors shall give any instruction, direction or consent required to be given by it to the Collateral Agent in accordance with the terms of this Agreement.

Section 2.08 Non-Reliance on Collateral Agent. Each Secured Party that is a party hereto hereby expressly acknowledges that neither the Collateral Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Collateral Agent (other than any explicit written representation or warranty made by the Collateral Agent) hereafter taken shall be deemed to constitute any representation or warranty by the Collateral Agent to such Secured Party or the Borrower. Except for any notices, reports and other documents expressly required to be maintained by the Collateral Agent or furnished to the other Secured Parties or to any Farebox Bank by the Collateral Agent hereunder, the Collateral Agent shall not have any duty or responsibility to provide any other Secured Party with any credit or other information concerning the business, operations, property, condition (financial or other), prospects or creditworthiness of the Borrower. Except to the extent it has made or renewed any Secured Obligations as permitted under Section 2.09, U.S. Bank National Association is entering into this Agreement and any other Security Documents solely in its capacity as Collateral Agent and as Securities Intermediary and not in its individual capacity and in no case shall U.S. Bank National Association (or any Person acting as successor Collateral Agent under this Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations of the Borrower (as applicable) hereunder or thereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under such party. This Section 2.08 shall survive the payment of all Secured Obligations. Except as provided in Section 2.12(c) hereof, the Collateral Agent shall have no obligation and shall incur no obligation for its failure to monitor or verify the filing of financing statements (or amendments or continuations thereto) and the information contained therein.

Section 2.09 Collateral Agent in Individual Capacity. The Collateral Agent and its Affiliates may make loans to, issue letters of credit in favor of, accept deposits from and generally engage in any kind of business with the Borrower and its Affiliates as though the Collateral Agent were not the Collateral Agent hereunder and under any Security Documents. With respect to Secured Obligations made or renewed by it and any Additional Pari Passu Debt or Notes issued to it, if any, the Collateral Agent shall have the same rights and powers under this Agreement and the Finance Documents as any other Secured Party and may exercise the same as though it were not the Collateral Agent, and the term "Secured Party" shall include the Collateral Agent in its individual capacity.

Section 2.10 Collateral Agent Under No Obligation. None of the provisions of this Agreement or any other Security Documents shall be construed to require the Collateral Agent to expend or risk its own funds or otherwise to incur any personal liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder. The Collateral Agent shall be under no obligation to exercise

any of the rights or powers vested in it by the Security Documents unless the Collateral Agent shall have been offered and accepted security or indemnity from the Borrower reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in exercising such rights or powers (including interest thereon from the time incurred until reimbursed); provided, however, that for purposes of this Section 2.10, the indemnification provided to the Collateral Agent by the Borrower pursuant to Section 7.02 is hereby acknowledged as acceptable.

Section 2.11 Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent.

(a) Subject to the appointment and acceptance of a successor Collateral Agent as provided below, the Collateral Agent may resign at any time by giving at least thirty (30) days' prior written notice thereof to the other Secured Parties that are parties hereto and the Borrower, and the Collateral Agent may be removed at any time with or without cause by the Required Creditors (acting in accordance with the terms of this Agreement and the other applicable Finance Documents) upon thirty (30) days' written notice thereof to the Collateral Agent, the other Secured Parties that are parties and the Borrower unless a shorter period of notice is required by the Secured Parties. Upon any such resignation or removal, the Required Creditors (acting in accordance with the terms of this Agreement) shall have the right to appoint a successor Collateral Agent which, so long as no Event of Default has occurred and is continuing, shall be reasonably acceptable to the Borrower.

(b) If no successor Collateral Agent shall have been so appointed by the Required Creditors within thirty (30) days after the retiring Collateral Agent's giving of notice of resignation or the removal of the retiring Collateral Agent by the Required Creditors in accordance with clause (a) above, then the retiring Collateral Agent may, on behalf of the Secured Parties, apply, at the reasonable expense of the Borrower, to a court of competent jurisdiction (with notice to each Secured Creditor and the Borrower) for the appointment of a successor Collateral Agent. In all such cases, the successor Collateral Agent shall (i) be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of California and which agrees to administer the Collateral in accordance with the terms hereof and of any other Security Documents and the unsecured long-term debt of which shall be rated no lower than 'A', 'A2' or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such bank's unsecured long-term debt, (ii) have a total capital stock and unimpaired surplus of not less than \$500,000,000, and (iii) so long as no Event of Default has occurred and is continuing, be reasonably acceptable to the Borrower. If at any time the Collateral Agent shall fail to meet such requirements and qualifications set forth in the sentence above, the Collateral Agent shall promptly provide notice of such failure to the Borrower and the other Secured Parties. U.S. Bank National Association hereby represents and confirms that it meets the qualifications provided in the second sentence of this clause (b). Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, obligations and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and responsibilities hereunder arising thereafter. After any retiring Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement (including Sections 2.14, 7.01 and 7.02) shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent. For the avoidance of doubt, no resignation or removal pursuant to this Section 2.11 shall be effective until (i) a successor for the Collateral Agent has been appointed in accordance with (and subject to) the provisions of this Section 2.11, (ii) the resigning or removed Collateral Agent has transferred to its successor all of its rights and obligations in its capacity as the Collateral Agent under this Agreement and the other Finance Documents, (iii) the resigning or removed Collateral Agent has assigned, transferred or delivered, as applicable, all Collateral held by it to the successor Collateral Agent, together with all records, instruments and other documents necessary or appropriate to execute such assignment, transfer or delivery to the successor Collateral Agent,

(iv) the resigning or removed Collateral Agent has executed and delivered to the successor Collateral Agent the amendments to the applicable financing statements, and has taken other actions as may be necessary or appropriate, in connection with the assignment, transfer or delivery to the successor Collateral Agent of the Liens created under the Security Documents, and (v) the successor Collateral Agent has executed and delivered an agreement to be bound by the terms of this Agreement and to perform all duties required of the Collateral Agent hereunder and thereunder.

(c) If at any time the Collateral Agent shall reasonably determine that it shall be necessary or appropriate under applicable Law or in order to permit action to be taken hereunder, the Collateral Agent and the Borrower (with written notice to the other Secured Parties that are parties hereto) shall execute and deliver all instruments necessary to appoint any Person as a Co-Collateral Agent ("**Co-Collateral Agent**"), with respect to all or any portion of the Collateral, in any case with such powers, rights, duties, obligations and immunities conferred upon the Collateral Agent hereunder as may be specified therein (but not in excess of or different from those set forth herein for the Collateral Agent). If the Borrower shall refuse to join in the execution of any such instrument within ten (10) Business Days of any written request therefor by the Collateral Agent or if any Event of Default shall have occurred and is continuing, the Collateral Agent may act under the foregoing provisions without the concurrence of the Borrower; and the Borrower hereby irrevocably makes, constitutes and appoints the Collateral Agent as the agent and attorney-in-fact for the same to act for it under the provisions of (and in accordance with) this paragraph.

Each Co-Collateral Agent shall, to the extent permitted by Law, be appointed and act subject to the following provisions and conditions:

(i) all rights and powers, conferred or imposed upon the Collateral Agent may be conferred or imposed upon and may be exercised or performed by such Co-Collateral Agent as specified in the instrument appointing such Co-Collateral Agent; and

(ii) no Collateral Agent shall be personally liable by reason of any act or omission of any other Collateral Agent or Co-Collateral Agent hereunder.

A Co-Collateral Agent shall not be required to meet the conditions of eligibility under Section 2.11(b) if such Co-Collateral Agent holds only an insubstantial amount of the Collateral, as determined by the Required Creditors (acting in accordance with the terms of this Agreement and the other applicable Finance Documents).

Section 2.12 Books and Records; Reports.

(a) The Collateral Agent and, if appointed, a Co-Collateral Agent, shall at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries shall be made of all transactions relating to the Secured Obligations, Revenues and all Project Accounts established pursuant to this Agreement. Such books of record and accounts shall be available for inspection by the Secured Parties that are parties hereto, or their respective agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

(b) Within fifteen (15) days after the end of each month, the Collateral Agent shall furnish to the other Secured Parties that are parties hereto or relevant representatives thereof and the Borrower, a report (which may be in the form of the customary account statements of the Collateral Agent) that shall set forth in reasonable detail the account balances, receipts, disbursements, transfers, investment

transactions, and accruals for each of the Project Accounts during such month. If available from the Collateral Agent, the Collateral Agent shall provide electronic statements upon request of the Borrower.

(c) Within sixty (60) days after the end of each calendar year, the Collateral Agent shall furnish to the other Secured Parties that are parties hereto or relevant representatives thereof and the Borrower, a report setting forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts during the preceding year. The Collateral Agent shall provide electronic statements upon request of the Borrower.

(d) The Collateral Agent shall maintain records of all receipts, disbursements, and investments of funds with respect to the Project Accounts until the fifth (5th) anniversary of the date on which all of the Secured Obligations shall have been paid in full.

(e) On or prior to the date that is six (6) months prior to the expiration date of any UCC financing statement that has been filed with respect to the Collateral for which Collateral Agent is secured party and is known to the Collateral Agent, the Collateral Agent shall provide the other Secured Parties that are parties hereto or relevant representatives thereof and the Borrower notice of the impending expiration date. The Borrower shall provide the Collateral Agent and the other Secured Parties that are parties hereto or relevant representatives thereof evidence that the required continuation statement has been properly and timely filed promptly following such filing. This clause (e) is not intended to modify the responsibility of, the liability of, or provide a defense to, the Borrower under any Finance Document with respect to the filing of continuation statements or the maintenance of the Collateral Agent's perfected security interest in the Collateral with the priority contemplated by the Finance Documents.

Section 2.13 No Consequential Damages. In no event shall the Collateral Agent or the Securities Intermediary be liable to Borrower or the other Secured Parties under or in connection with the Finance Documents for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the Collateral Agent and/or Securities Intermediary has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

Section 2.14 Authorization of Collateral Agent to Recover Compensation, Fees and Expenses. To the extent that the Borrower fails to pay any amount required to be paid by it to the Collateral Agent pursuant to Sections 7.01 and 7.02 hereof and after the delivery of written notice of such failure to the Borrower, the Collateral Agent is hereby authorized to transfer funds to reimburse itself for such amounts out of the Revenue Account. The provisions of this Section 2.14 shall survive the termination of the Finance Documents and the resignation or removal of the Collateral Agent until the amounts required to be paid to the applicable Collateral Agent pursuant to Sections 7.01 and 7.02 hereof is paid in full.

Section 2.15 Force Majeure. In no event shall the Collateral Agent be responsible or liable to the Borrower or the other Secured Parties for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services not within the Collateral Agent's control, the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 2.16 Additional Protections. The rights, privileges, protections and benefits given to the Collateral Agent or the Securities Intermediary, as the case may be, including its rights to be

indemnified, are extended to, and shall be enforceable by, each agent, custodian and other Person employed to act hereunder by the Collateral Agent or the Securities Intermediary, as the case may be, including any Co-Collateral Agent, to the extent permitted to be so employed in accordance with the terms hereof; provided, however, that all such rights, privileges, protections and benefits are subject to the same limits and conditions imposed upon the Collateral Agent or the Securities Intermediary, as the case may be.

Section 2.17 [Reserved].

Section 2.18 Merger of the Collateral Agent. Any corporation or company into which the Collateral Agent shall be merged, or with which it shall be consolidated, or any corporation or company resulting from any merger or consolidation to which the Collateral Agent shall be a party, shall be the Collateral Agent under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided, that such resulting corporation or company shall meet the requirements of Section 2.11(b). Upon the occurrence of any such event the Collateral Agent shall promptly provide written notice thereof to the other Secured Parties that are parties hereto or relevant representatives thereof and the Borrower.

Section 2.19 Transfer to an Affiliate. In addition to any rights it may have under Section 2.18 hereof or under any other provision of this Agreement or any other Security Document, each of the Collateral Agent and the Securities Intermediary may assign or transfer its rights under this Agreement and any other Security Documents to any Affiliate that meets the requirements of Section 2.11(b) subject to the prior written consent of the Borrower (so long as no Event of Default has occurred and is continuing) and the Required Creditors.

**ARTICLE III
BORROWER REMAINS LIABLE**

Anything herein to the contrary notwithstanding, (a) the Borrower shall remain liable under its contracts and agreements (including the Finance Documents to which it is a party) to its respective counterparties to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Collateral Agent of any of the rights hereunder shall not release the Borrower from any of its duties or obligations to its respective counterparties under its contracts and agreements, and (c) neither the Collateral Agent nor any of the other Secured Parties shall have any obligation or liability to the respective counterparties under the contracts and agreements of the Borrower to which the Collateral Agent or any of the other Secured Parties is not a party solely by reason of this Agreement, nor shall the Collateral Agent be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned thereunder. Notwithstanding the foregoing, if the Borrower fails to perform any agreement or obligation of the Borrower contained herein relating to the perfection or preservation of the Collateral, the Collateral Agent may (but shall not be obligated to) itself perform, or cause performance of, such agreement or obligation, and the reasonable and documented expenses of the Collateral Agent incurred in connection therewith shall be payable by the Borrower under Article VII hereof.

**ARTICLE IV
REASONABLE CARE**

The powers conferred on the Collateral Agent hereunder are being conferred solely to protect its interest in the Collateral for the benefit of the Secured Parties and shall not impose any duty upon it to exercise any such powers unless otherwise expressly provided. Except for the safe custody and preservation of the Collateral in its possession, the accounting for monies actually received, transferred or disbursed by it hereunder and the obligations pursuant to Section 5.03(g), the Collateral Agent shall have no other duty as

to the Collateral, whether or not the Collateral Agent or any of the other Secured Parties has or is deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the Collateral. The Collateral Agent hereby agrees to exercise reasonable care in respect of the custody and preservation of the Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords property that it customarily holds in the capacity of collateral agent.

ARTICLE V THE PROJECT ACCOUNTS

Section 5.01 Establishment of Project Accounts and Other Accounts.

(a) As of the date hereof, the Borrower has established and created the accounts identified below with the Securities Intermediary, each in the name of the Borrower (collectively, each such account and any Additional Pari Passu Debt Proceeds Account, including, in each case, any sub-accounts established and created from time to time, the "**Securities Accounts**"; and the Securities Accounts also constitute Project Accounts): **[Note to Borrower: Please confirm whether the Project Accounts will be deposit accounts or securities accounts.]**

(i) account number [] (the "**Revenue Account**");

(ii) account number [] (the "**Pari Passu Debt Service Account**"), and within the Pari Passu Debt Service Account, the following sub-accounts:

A. account number [] (the "**PWB Debt Service Sub-Account**"); and

B. account number [] (the "**TIFIA Debt Service Sub-Account**"); and **[Note to Borrower: Can the TIFIA sub-accounts be opened when the CASA is signed?]¹**

(iii) account number [] (the "**Pari Passu Debt Service Reserve Account**"), and within the Pari Passu Debt Service Reserve Account, the following sub-accounts:

A. account number [] (the "**PWB Debt Service Reserve Sub-Account**"); and

B. account number [] (the "**TIFIA Debt Service Reserve Sub-Account**"); and

(iv) [account number [] (the "**Mandatory Prepayment Account**")].

Notwithstanding anything herein to the contrary, upon the written instruction of the Borrower, the Securities Intermediary may from time to time hereafter establish and maintain additional sub-accounts

¹ Note to Draft: If TIFIA sub-accounts will not be opened when the CASA is signed, (i) change Section 5.01(a)(ii)(B) to read: "the TIFIA Debt Service Sub-Account, to be created upon execution of the TIFIA Loan Agreement (the "**TIFIA Debt Service Sub-Account**")" and (ii) change Section 5.01(a)(iii)(B) to read: "the TIFIA Debt Service Reserve Sub-Account, to be created upon execution of the TIFIA Loan Agreement (the "**TIFIA Debt Service Reserve Sub-Account**")".

within the Project Accounts. Each such sub-account shall be a separately identified account with a separate and distinct name and account number and, upon establishment, shall constitute a Project Account hereunder. Each such sub-account shall be for the purposes and the term specified in such instruction, and deposits and withdrawals shall be permitted in those circumstances expressly provided for in any such instruction, which instructions shall in each case conform to the requirements and limitations applicable to the Project Account (including those set forth herein) with respect to which any such sub-account has been established. The Securities Intermediary shall promptly, and in any event prior to establishing any such sub-account, provide written notice of any such request or instruction from the Borrower pursuant to this paragraph to the Secured Parties that are parties hereto or relevant representatives thereof.

(b) Additional Pari Passu Debt Proceeds Accounts

(i) In connection with the incurrence of any Additional Pari Passu Debt, upon the written instruction of the Borrower, the Securities Intermediary may hereafter establish and maintain from time to time in the Borrower's name one or more proceeds accounts (each, an "**Additional Pari Passu Debt Proceeds Account**"). Each Additional Pari Passu Debt Proceeds Account shall constitute a Project Account and a Securities Account.

(ii) All proceeds from the issuance of any Additional Pari Passu Debt, net of any original issue discount, underwriting discount or similar fee in respect thereof, in each case, received by the Borrower pursuant to the terms of the applicable Additional Pari Passu Loan Agreement and, thereafter, any Account Earnings with respect to such proceeds, shall be deposited in the applicable Additional Pari Passu Debt Proceeds Account, if applicable.

(iii) All moneys in any Additional Pari Passu Debt Proceeds Account shall be applied, at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.09, solely to pay costs in compliance with the applicable Additional Pari Passu Loan Agreement and the applicable provisions of the other Finance Documents (including the PWB Loan Agreement and the TIFIA Loan Agreement, when executed) relating to the incurrence of such Additional Pari Passu Debt, and with respect to any future tax-exempt borrowings comprising Additional Pari Passu Debt, in compliance with the Code.

(iv) With respect to any future tax-exempt borrowings comprising Additional Pari Passu Debt, upon a date that is no earlier than five (5) years after the date of issuance of any such Additional Pari Passu Debt, and no later than five (5) years and sixty (60) days after the date of issuance of such Additional Pari Passu Debt, the remaining unspent proceeds of such Additional Pari Passu Debt, in each case, rounded down to the nearest multiple of \$5,000, from any remaining unspent proceeds of such Additional Pari Passu Debt on deposit in the applicable Additional Pari Passu Debt Proceeds Account on such date (with respect to which, for the avoidance of doubt, no Secured Party shall have any right) shall be applied as follows, pursuant to one or more written directions of an Authorized Representative of the Borrower: (1) first, any applicable amount thereof shall be transferred to the applicable rebate fund for any such tax-exempt Additional Pari Passu Debt, as applicable; and (2) second, any remaining amount shall be transferred to the applicable sub-account of the Mandatory Prepayment Account for redemption of such Additional Pari Passu Debt in accordance with the applicable Additional Pari Passu Loan Agreement; provided, that no such transfer to the applicable sub-account of the Mandatory Prepayment Account or redemption of the Additional Pari Passu Debt will be required if the Borrower has obtained an opinion of bond counsel stating that the failure to redeem any such Additional Pari Passu Debt will not adversely affect the exclusion of interest on such Additional Pari Passu Debt from gross income for federal or State income tax purposes and that such redemption is not required by State law, in which case, any such remaining proceeds shall be transferred to the Revenue Account.

(v) With respect to any proceeds of Additional Pari Passu Debt that do not constitute tax-exempt borrowings, any amounts on deposit in any related Additional Pari Passu Debt Proceeds Account, after the completion of the work with respect to which such Additional Pari Passu Debt was incurred (as certified in writing by the Borrower to the Collateral Agent), shall promptly be transferred to the applicable sub-account of the Mandatory Prepayment Account for redemption of such Additional Pari Passu Debt.

(vi) As soon as practicable, following the date that all amounts on deposit in any Additional Pari Passu Debt Proceeds Account are transferred out of such Additional Pari Passu Debt Proceeds Account, the Collateral Agent shall close such Additional Pari Passu Debt Proceeds Account.

(vii) Notwithstanding anything to the contrary herein and subject to Section 6.06(c) hereof, the Lien on any Additional Pari Passu Debt Proceeds Account (and on all amounts deposited thereto and Account Earnings with respect to amounts deposited thereto) shall solely secure the obligations of the Borrower under the applicable Additional Pari Passu Loan Agreement (such exclusive Lien to continue upon and following the occurrence of a Bankruptcy Related Event) until such funds have been disbursed in accordance with this Section 5.01(b).

(c) The Securities Intermediary shall promptly, and in any event prior to establishing any account pursuant to clause (b) of this Section 5.01, provide written notice of any request or instruction from the Borrower to establish such account to the Secured Parties that are parties hereto or relevant representatives thereof. Upon creation of any account pursuant to clause (b) of this Section 5.01, the Securities Intermediary shall, by written notice, inform the other Secured Parties that are parties hereto or relevant representatives thereof of such account's purposes, terms and instructions. Any Additional Pari Passu Debt Proceeds Accounts (each of which shall be a separately identified account with a separate and distinct name and account number) shall be identified in the manner set forth in Section 5.01(a).

(d) All of the Project Accounts shall be under the control of the Collateral Agent and, except as expressly provided herein, the Borrower shall not have any right to withdraw funds from any Project Account (including sub-accounts). The Borrower hereby irrevocably authorizes the Collateral Agent to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Project Account in accordance with the terms of this Agreement.

Section 5.02 [Reserved.]

Section 5.03 Revenue Account.

(a) From and after the date hereof the Borrower shall deposit (or cause to be deposited) (i) immediately upon allocation from SLOCOG but no less frequently than on a quarterly basis, all LTF Funds allocated to the Borrower, (ii) on the [] day of each month, subject to Section 5.03(g), all Farebox Revenues received by or on behalf of the Borrower, and (iii) when and to the extent required by Section 5.03(f), any other Revenues, in each case into the Revenue Account.² The Borrower shall at all times maintain in effect the SLOCOG Irrevocable Instruction and each Farebox Bank Irrevocable Instruction and use commercially reasonable efforts to ensure that SLOCOG and each Farebox Bank maintain compliance with the respective instruction applicable to it. If, notwithstanding the SLOCOG Irrevocable Instruction and the Farebox Bank Irrevocable Instructions, the Borrower receives any LTF Funds (except for LTF Funds that have been released to the Borrower pursuant to this Agreement) or, except to the extent a No

2 Note to Draft: Parties to discuss specific dates for such deposits.

Transfer Order is in effect, Farebox Revenues, the Borrower shall hold all such amounts coming into its possession in trust for the benefit of the Secured Parties and shall turn over such LTF Funds and Farebox Revenues, in the form received, to the Collateral Agent for deposit to the Revenue Account.

(b) At the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.09, and subject to Section 6.06 hereof, the Collateral Agent shall make the following withdrawals, transfers and payments from the Revenue Account (and any sub-accounts thereof) as set forth in the applicable Funds Transfer Certificate, on each Monthly Transfer Date and on each other date on which funds are deposited into the Revenue Account in accordance with Section 5.03(a), in the following amounts and in the following order of priority (it being agreed that (i) no amount shall be withdrawn on any date pursuant to any clause below (A) until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses shall have been withdrawn or set aside or (B) in respect of any items for which amounts have previously been transferred) and (ii) each such transfer shall be made only to the extent there are sufficient amounts on deposit in the Revenue Account, on such date to make any such transfer:

First, on a pari passu basis, deposits to the PWB Debt Service Sub-Account and to each other applicable sub-account of the Pari Passu Debt Service Account for any Additional Pari Passu Debt (including, but not limited to, the TIFIA Debt Service Sub-Account [when created]), as applicable, until the following amounts have been fully funded:

(a) for the PWB Debt Service Sub-Account, (i) the interest due on the PWB Loan on the next Interest Payment Date, plus (ii) (A) for any Payment Period beginning on a Principal Payment Date, fifty percent (50%) of the principal due on the PWB Loan on the next Principal Payment Date or (B) for any Payment Period that does not begin on a Principal Payment Date, one hundred percent (100%) of the principal due on the PWB Loan on the next Principal Payment Date, plus (iii) any fees, costs, expenses and other amounts then due and payable under the PWB Loan Agreement;

(b) for the TIFIA Debt Service Sub-Account, (i) the interest due on the TIFIA Loan on the next Interest Payment Date, plus (ii) (A) for any Payment Period beginning on July 1, fifty percent (50%) of the principal due on the TIFIA Loan on the next Principal Payment Date or (B) for any Payment Period beginning on January 1, one hundred percent (100%) of the principal due on the TIFIA Loan on the next Principal Payment Date, plus (iii) any fees, costs, expenses and other amounts then due and payable under the TIFIA Loan Agreement; and

(c) for each applicable sub-account of the Pari Passu Debt Service Account (other than the PWB Debt Service Sub-Account and the TIFIA Debt Service Sub-Account), in each case (i) the interest due on the applicable Pari Passu Debt with respect to such account on the next Interest Payment Date, plus (ii) (A) for any Payment Period beginning on a Principal Payment Date, fifty percent (50%) of the principal due on the applicable Pari Passu Debt with respect to such account on the next Principal Payment Date or (B) for any Payment Period that does not begin on a Principal Payment Date, one hundred percent (100%) of the principal due on the applicable Pari Passu Debt with respect to such account on the next Principal Payment Date; provided that if the principal on any Pari Passu Debt is payable on a semi-annual basis, clause (ii) shall read “the principal due on the applicable Pari Passu Debt with respect to such account on the next semi-annual principal payment date for such Pari Passu Debt”, plus (iii) any fees, costs, expenses and other amounts then due and payable under the applicable Additional Pari Passu Loan Agreement;

provided further, that on each Interest Payment Date, amounts on deposit in the TIFIA Debt Service Sub-Account, the PWB Debt Service Sub-Account and any such other applicable sub-account of the Pari Passu Debt Service Account, as applicable, shall be transferred by the Collateral Agent in

an amount required for the payment of interest then due and payable on the applicable Secured Obligations, on each Principal Payment Date, amounts on deposit in the TIFIA Debt Service Sub-Account, the PWB Debt Service Sub-Account and any such other applicable sub-account of the Pari Passu Debt Service Account, as applicable, shall be transferred by the Collateral Agent in an amount required for the payment of principal then due and payable on the applicable Secured Obligation, and on each date when any other fees, costs, expenses and other amounts are then due and payable on any Secured Obligations, amounts on deposit in the TIFIA Debt Service Sub-Account, the PWB Debt Service Sub-Account and any such other applicable sub-account of the Pari Passu Debt Service Account, as applicable, shall be transferred by the Collateral Agent in an amount required for the payment of such fees, costs, expenses and other amounts then due and payable on the applicable Secured Obligations;

Second, on a pari passu basis, deposits to the PWB Debt Service Reserve Sub-Account and to each applicable sub-account of the Pari Passu Debt Service Reserve Account established for any Additional Pari Passu Debt (including, but not limited to, the TIFIA Debt Service Reserve Sub-Account [when created]), as applicable, in an amount, if any:

(a) for the PWB Debt Service Reserve Sub-Account, such that amounts on deposit therein are at least equal to the PWB Debt Service Reserve Required Balance;

(b) for the TIFIA Debt Service Reserve Sub-Account, such that amounts on deposit therein are at least equal to the TIFIA Debt Service Reserve Required Balance; provided that the TIFIA Debt Service Reserve Sub-Account shall initially be funded in an amount equal to the TIFIA Debt Service Reserve Required Balance by no later than the date that is twelve (12) months prior to the Debt Service Payment Commencement Date; and

(c) for each other applicable sub-account of the Pari Passu Debt Service Reserve Account established for any Additional Pari Passu Debt, in each case, such that amounts on deposit therein are at least equal to the Pari Passu Debt Service Reserve Required Balance for such sub-account;

provided, that amounts on deposit in the PWB Debt Service Reserve Sub-Account, the TIFIA Debt Service Reserve Sub-Account, and any other applicable sub-account of the Pari Passu Debt Service Reserve Account, as applicable, shall be transferred by the Collateral Agent in an amount and when required to ensure the timely payment of interest and principal on the PWB Loan, the TIFIA Loan or the applicable Additional Pari Passu Debt with respect to such sub-account, as applicable, that is not otherwise paid by Revenues deposited to the Revenue Account;

Third, if a mandatory prepayment or mandatory redemption under any Secured Obligation is then due and payable, to the Mandatory Prepayment Account to make payments in respect of mandatory prepayments and mandatory redemptions of the outstanding Secured Obligations solely to the extent not payable from amounts on deposit in another Project Account pursuant to the terms hereof (collectively, the "**Mandatory Payments**") in an amount equal to the total aggregate amount of such Mandatory Payments then due and payable in respect of such Secured Obligations;

Fourth, if any Permitted Subordinated Loans are outstanding, to any sub-account of the Revenue Account established for the payment of interest on Permitted Subordinated Loans (if any), an amount not to exceed (together with amounts then on deposit therein) the interest then due and payable on any outstanding Permitted Subordinated Loans plus any other amounts required to be deposited in accordance with the relevant financing documents; provided, that on each Interest Payment Date, amounts on deposit in such sub-account shall be transferred by the Collateral Agent for the payment of interest then due and payable on such Permitted Subordinated Loans; and

Fifth, if any Permitted Subordinated Loans are outstanding, to any sub-account of the Revenue Account established for the payment of principal on Permitted Subordinated Loans (if any), an amount not to exceed (together with amounts then on deposit therein) the principal then due and payable on any outstanding Permitted Subordinated Loans plus any other amounts required to be deposited in accordance with the relevant financing documents; provided, that on each Principal Payment Date, amounts on deposit in such sub-account shall be transferred by the Collateral Agent for the payment of the principal then due and payable on such Permitted Subordinated Loans.

(c) If, on the date of any withdrawal or transfer from the Revenue Account for payment pursuant to any of clauses "First" through "Fifth" of Section 5.03(b), the amount required to be withdrawn and transferred from the Revenue Account pursuant to such clause exceeds the amount then on deposit in or credited to the Revenue Account after the withdrawals and transfers made pursuant to all applicable preceding clauses are completed, the amount on deposit in or credited to the Revenue Account at the time of application pursuant to such clause shall be transferred *pro rata* to each of the Persons (or Project Accounts) specified in such clause based on the respective amounts owed to such Persons (or otherwise required to be transferred) pursuant to such clause (including, upon and following the occurrence of a Bankruptcy Related Event) based on outstanding principal, as of such date of withdrawal or transfer; provided that (i) the payments described in this paragraph shall be applied in accordance with the payment priorities set forth in Section 5.03(b) and (ii) the payments due at a particular level of the waterfall set forth in Section 5.03(b) shall be made in full before any payment is made at the next level.

(d) For the avoidance of doubt, after application of funds in the Revenue Account on any Monthly Transfer Date or any other specified date pursuant to Section 5.03(b), to the extent any funds remain in the Revenue Account, such funds shall be transferred by the Collateral Agent to the Borrower.

(e) To the extent that the balance of funds on deposit in any Project Account with a required minimum balance exceeds such required minimum balance as of any Monthly Transfer Date, such excess funds will be transferred to the Revenue Account for application as contemplated by this Section 5.03.

(f) If LTF Funds and Farebox Revenues on deposit in the Pari Passu Debt Service Account (or the applicable sub-accounts thereunder), the TIFIA Debt Service Reserve Sub-Account, the PWB Debt Service Reserve Sub-Account, or any other applicable sub-account of the Pari Passu Debt Service Reserve Account are at any time not sufficient to satisfy the No Transfer Conditions set forth in clause (a) and (b) of the definition thereof, the Borrower shall deposit (or cause to be deposited) other Revenues to the Revenue Account as needed to meet the Borrower's funding obligations pursuant to clauses "First" through "Second" in Section 5.03(b) by the applicable Payment Date or other applicable date set forth in Section 5.03(b).

(g) On each Determination Date, the Collateral Agent shall determine whether the No Transfer Conditions are satisfied. If the No Transfer Conditions are satisfied, the Collateral Agent shall notify each Farebox Bank in writing (with a copy to the Borrower, PWB and the TIFIA Lender) that no transfer of Farebox Revenues to the Revenue Account is required during the current Payment Period (a "**No Transfer Order**"). If the Collateral Agent does not issue a No Transfer Order at such time, the Collateral Agent shall continue to deposit to the Revenue Account Farebox Revenues received from each Farebox Bank, as described in Section 5.03(b), until the No Transfer Conditions are satisfied, at which time the Collateral Agent will issue a No Transfer Order (with a copy to the Borrower, PWB and the TIFIA Lender). The Borrower may deposit any funds available to it into the Revenue Account in order to satisfy the No Transfer Conditions and the Collateral Agent shall deposit such funds in accordance with clauses "First" through "Second" of Section 5.03(b). If at any time the No Transfer Conditions are satisfied by the deposit of any available funds of the Borrower (including Revenues pursuant to Section 5.03(f)) to the Revenue

Account, the Collateral Agent will issue a No Transfer Order (with a copy to the Borrower, PWB and the TIFIA Lender) at that time.

(h) To the extent that the Collateral Agent receives Farebox Revenues from any Farebox Bank at a time when a No Transfer Order is in effect, the Collateral Agent shall transfer such Farebox Revenues to the Borrower. To the extent that the Collateral Agent fails to issue a No Transfer Order at a time when the No Transfer Conditions have been satisfied, the Borrower shall deliver written notice to the Collateral Agent, PWB and the TIFIA Lender of such circumstances and, upon confirming that the No Transfer Conditions are satisfied as of such time, the Collateral Agent shall issue a No Transfer Order covering the remainder of such Payment Period.

Section 5.04 Pari Passu Debt Service Account.

(a) The PWB Debt Service Sub-Account, the TIFIA Debt Service Sub-Account ([when created]), and any other sub-account of the Pari Passu Debt Service Account established for any Additional Pari Passu Debt shall be funded in accordance with and subject to clause "First" of Section 5.03(b).

(b) Funds on deposit in the PWB Debt Service Sub-Account shall be applied to pay principal, accrued and unpaid interest, and any other fees, costs, expenses and other amounts due and payable on the PWB Loan.

(c) Funds on deposit in the TIFIA Debt Service Sub-Account shall be applied to pay principal, accrued and unpaid interest, and any other fees, costs, expenses and other amounts due and payable on the TIFIA Loan.

(d) Funds on deposit in any other sub-account of the Pari Passu Debt Service Account shall be applied to pay principal, accrued and unpaid interest, and any other fees, costs, expenses and other amounts due and payable on the applicable Additional Pari Passu Debt related to such sub-account.

(e) Notwithstanding anything to the contrary herein and subject to Section 6.06(c) hereof, the Lien on (i) the PWB Debt Service Sub-Account (and on all amounts deposited thereto and Account Earnings with respect to amounts deposited thereto) shall solely secure the obligations of the Borrower under the PWB Loan Agreement (such exclusive Lien to continue upon and following the occurrence of a Bankruptcy Related Event), and shall be established solely for the benefit of PWB, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only PWB, (ii) the TIFIA Debt Service Sub-Account (and on all amounts deposited thereto and Account Earnings with respect to amounts deposited thereto) shall solely secure the obligations of the Borrower under the TIFIA Loan Agreement (such exclusive Lien to continue upon and following the occurrence of a Bankruptcy Related Event), and shall be established solely for the benefit of the TIFIA Lender, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only the TIFIA Lender and (iii) any other sub-account of the Pari Passu Debt Service Account (and on all amounts deposited thereto and Account Earnings with respect to amounts deposited thereto) shall solely secure the obligations of the Borrower with respect to the applicable Additional Pari Passu Debt related to such sub-account (such exclusive Lien to continue upon and following the occurrence of a Bankruptcy Related Event), and shall be established solely for the benefit of the applicable Secured Party, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Secured Party.

Section 5.05 Pari Passu Debt Service Reserve Account.

(a) The PWB Debt Service Reserve Sub-Account, the TIFIA Debt Service Reserve Sub-Account ([when created]), and any other sub-account of the Pari Passu Debt Service Reserve Account established for any Additional Pari Passu Debt shall be funded in accordance with and subject to clause "Second" of Section 5.03(b).

(b) Funds on deposit in the PWB Debt Service Reserve Sub-Account shall be applied when and in an amount required to pay principal and accrued and unpaid interest due and payable on the PWB Loan that is not otherwise paid by Revenues deposited to the Revenue Account.

(c) Funds on deposit in the TIFIA Debt Service Reserve Sub-Account shall be applied when and in an amount required to pay principal and accrued and unpaid interest due and payable on the TIFIA Loan that is not otherwise paid by Revenues deposited to the Revenue Account.

(d) Funds on deposit in any other applicable sub-account of the Pari Passu Debt Service Reserve Account established for any Additional Pari Passu Debt shall be applied when and in an amount required to pay principal and accrued and unpaid interest due and payable on the applicable Additional Pari Passu Debt with respect to such sub-account that is not otherwise paid by Revenues deposited to the Revenue Account.

(e) Notwithstanding anything to the contrary herein and subject to Section 6.06(c) hereof, the Lien on (i) the PWB Debt Service Reserve Sub-Account (and on all amounts deposited thereto and Account Earnings with respect to amounts deposited thereto) shall solely secure the obligations of the Borrower under the PWB Loan Agreement, and shall be established solely for the benefit of PWB, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only PWB, (ii) the TIFIA Debt Service Reserve Sub-Account (and on all amounts deposited thereto and Account Earnings with respect to amounts deposited thereto) shall solely secure the obligations of the Borrower under the TIFIA Loan Agreement (such exclusive Lien to continue upon and following the occurrence of a Bankruptcy Related Event), and shall be established solely for the benefit of the TIFIA Lender, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only the TIFIA Lender and (iii) any other applicable sub-account of the Pari Passu Debt Service Reserve Account established for any Additional Pari Passu Debt (and on all amounts deposited thereto and Account Earnings with respect to amounts deposited thereto) shall solely secure the obligations of the Borrower with respect to the applicable Additional Pari Passu Debt related to such sub-account (such exclusive Lien to continue upon and following the occurrence of a Bankruptcy Related Event), and shall be established solely for the benefit of the applicable Secured Party, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Secured Party.

Section 5.06 Mandatory Prepayment Account.

(a) The Mandatory Prepayment Account shall be funded as follows:

(i) from amounts transferred, if any, from the Revenue Account in accordance with clause "Third" of Section 5.03(b), to make Mandatory Payments in accordance with an Additional Pari Passu Loan Agreement, as applicable; and

(ii) from amounts transferred from any Additional Pari Passu Debt Proceeds Accounts in accordance with Section 5.01(b)(iv) and Section 5.01(b)(v).

(b) Funds deposited into the Mandatory Prepayment Account will be transferred into any sub-account of the Mandatory Prepayment Account established for any Secured Obligations in accordance with the provisions of this Section 5.06 for prepayment and redemption of any Secured

Obligations to the extent required to be repaid thereby (and solely to the extent expressly required, on a *pro rata* basis based on the then outstanding principal amounts of such Pari Passu Secured Obligations) in accordance with the terms of the Finance Documents and the other provisions of this Agreement at such redemption prices and required prepayment amounts as and to the extent contemplated herein and therein; provided, that amounts on deposit in any sub-account established for any Secured Obligations shall be transferred by the Collateral Agent to the applicable debt service account for the applicable Secured Party for the mandatory redemption and/or mandatory prepayment of the related Secured Obligations at the instruction of the Borrower in accordance with a Funds Transfer Certificate pursuant to Section 5.09.

(c) Notwithstanding anything to the contrary herein and subject to Section 6.06(c) hereof, any sub-account under the Mandatory Prepayment Account established for any Secured Obligations shall be pledged solely as collateral to secure the related Secured Obligations and shall be established solely for the benefit of the related Secured Parties, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such related Secured Parties.

Section 5.07 Funds as Collateral. Any deposit made into the Project Accounts hereunder (except through clerical or other manifest error or in a manner that is otherwise inconsistent with this Agreement) shall be irrevocable and all cash, cash equivalents, Permitted Investments, instruments, and other Securities on deposit in the Project Accounts are subject to a Lien in favor of the Collateral Agent (on behalf of the Secured Parties) pursuant to Section 1.01 and shall be held by the Collateral Agent as Collateral for the benefit of the Secured Parties as provided herein.

Section 5.08 Investment.

(a) Funds in the Pari Passu Debt Service Reserve Account (and sub-accounts thereunder) may be invested and reinvested only in Permitted Investments (at the risk and expense of the Borrower) in accordance with written instructions given to the Collateral Agent by the Borrower (prior to the occurrence of an Event of Default and, thereafter (so long as such Event of Default shall be continuing), as directed by the Required Creditors and in accordance with the written instructions of the Required Creditors) and, unless an Event of Default has occurred and is continuing, the Borrower is entitled to instruct the Collateral Agent to liquidate Permitted Investments for purposes of effecting any such investment or reinvestment, upon permitted withdrawals from the respective accounts or for any other purpose permitted hereunder; provided, that absent such instruction, such amounts held in the Pari Passu Debt Service Reserve Account shall be invested and reinvested in Permitted Investments as selected by the Borrower in advance (which may be in the form of a standing instruction). The Collateral Agent shall not be required to take any action with respect to investing the funds in the Pari Passu Debt Service Reserve Account in the absence of written instructions by the Borrower or the Required Creditors (to the extent provided in accordance with the terms hereof). The Collateral Agent shall not be liable for any loss resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms hereof. If and when cash is required for disbursement in accordance with this Article V or Section 6.06 hereof, the Collateral Agent is authorized, without instructions from the Borrower, in the event the Borrower fails to direct the Collateral Agent to do so in a timely manner and to the extent necessary to make payments required pursuant to this Article V or Section 6.06 hereof, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Collateral Agent shall deem reasonable and prudent under the circumstances. The Borrower acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Borrower specifically waives receipt of such confirmations to the extent permitted by law. The Collateral Agent will provide the Borrower periodic cash transaction statements which shall include detail for all investment transactions made by the Collateral Agent hereunder.

(b) The Collateral Agent shall have no obligation to invest or reinvest the funds if all or a portion of the funds is deposited with (or instructions with respect to the same are given to) the Collateral Agent after 11 a.m. (E.S.T. or E.D.T., as applicable) on the day of deposit. Instructions to invest or reinvest that are received after 11 a.m. (E.S.T. or E.D.T., as applicable) will be treated as if received on the following Business Day.

(c) In the event the Collateral Agent does not receive investment instructions, the amounts held by the Collateral Agent pursuant to the provisions of this Agreement shall not be invested and the Collateral Agent shall not incur any liability for interest or income thereon.

(d) The parties hereto each acknowledge that non-deposit investment products are not obligations of or guaranteed by U.S. Bank National Association nor any of its affiliates, are not FDIC insured, and are subject to investment risks, including the possible loss of principal amount invested in one or more of the money market funds made available by the Collateral Agent and initially selected by the Borrower.

(e) Any investment direction contained herein may be executed through an affiliated broker or dealer of the Collateral Agent and any such affiliated broker or dealer shall be entitled to such broker's or dealer's usual and customary fees for such execution as agreed to by the Borrower. It is agreed and understood that the Collateral Agent may earn fees associated with the investments outlined above to the extent previously agreed with the Borrower. Neither the Collateral Agent nor its affiliates shall have a duty to monitor the investment ratings of any Permitted Investments.

(f) Investments may be held by the Collateral Agent directly or through any clearing agency or depository (collectively, the "**Clearing Agency**") including the federal reserve/treasury book-entry system for United States and federal agency securities, and The Depository Trust Company. The Collateral Agent shall not have any responsibility or liability for the actions or omissions to act on the part of any Clearing Agency.

Section 5.09 Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default.

(a) Except as expressly provided herein, each withdrawal or transfer of funds from the Project Accounts by the Collateral Agent on behalf of the Borrower will be made pursuant to an executed Funds Transfer Certificate, which certificate will be provided and prepared by the Borrower and will contain a certification by the Borrower, as applicable, that such withdrawal or transfer complies with the requirements of this Agreement.

(b) Unless a shorter period is acceptable to the Collateral Agent, such Funds Transfer Certificate relating to each applicable Project Account will be delivered to the Collateral Agent no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn or transferred. In the event that a Funds Transfer Certificate does not comply with the requirements of this Agreement and the other Finance Documents, the Collateral Agent has the right to reject such certificate and the Borrower will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate.

(c) Notwithstanding anything to the contrary contained in this Agreement, upon receipt of a notice of an Event of Default, the Required Creditors may (i) in connection with or following the taking of an Enforcement Action, without consent of the Borrower, instruct the Collateral Agent in writing to apply proceeds of the Project Accounts to the payment of Secured Obligations, in accordance with the terms of this Agreement and in the order set forth in Section 6.06, so long as such payments are on

account of amounts due under the Finance Documents in respect of such Secured Obligations and (ii) at any time prior to the taking of an Enforcement Action, instruct the Collateral Agent to apply the proceeds of the Project Accounts in the order set forth in Section 5.03(b); provided, that in the case of this clause (ii), amounts on deposit in the any Additional Pari Passu Debt Proceeds Account may only be applied in accordance with the provisions of Section 5.01(b).

Section 5.10 Termination of Project Accounts. Upon the payment in full in cash of the Secured Obligations, this Agreement will terminate, and the Collateral Agent will, within thirty (30) days of receipt of a request from the Borrower, countersigned by the Secured Creditors, and at the expense of the Borrower, close the Project Accounts and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by the Borrower. Thereafter, the Collateral Agent will be released from any further obligation to (a) comply with Entitlement Orders originated by the Collateral Agent to the extent that any of the Project Accounts is a "securities account" under the applicable provision of the UCC or (b) comply with instructions originated by the Required Creditors, to the extent that any of the Project Accounts is a "deposit account" under the applicable provision of the UCC or (c) comply with any obligation under any Finance Document except as specifically provided herein or therein, in each case as contemplated herein or therein. Nothing contained in this Section 5.10 will be construed to modify or otherwise affect the Collateral Agent's Lien in the Project Accounts and the funds therein, prior to such closure and liquidation and/or transfer in accordance with the terms hereof.

Section 5.11 Securities Intermediary.

(a) The Securities Accounts shall be established and maintained as securities accounts (within the meaning of Section 8-501(a) of the UCC) with a securities intermediary. Each of the parties to this Agreement, including U.S. Bank National Association, hereby agrees that U.S. Bank National Association (or any successor thereto) shall act as the securities intermediary (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) (in such capacity (including its successors and assigns), the "**Securities Intermediary**") under and for the purposes of this Agreement and for so long as U.S. Bank National Association (or any successor thereto) is also acting in the capacity as the Collateral Agent.

(b) The Securities Intermediary hereby accepts and agrees to act as such under this Agreement and represents and warrants that it is as of the date hereof, and shall be for so long as it is the Securities Intermediary hereunder, a banking corporation or a national bank that in the ordinary course of its business maintains securities accounts for others, meets the requirements and qualifications set forth in the first sentence of Section 5.11(e) and is acting in that capacity hereunder. The Securities Intermediary agrees with the parties hereto that each of the Securities Accounts shall be an account to which Financial Assets may be credited and undertakes to treat the Collateral Agent as entitled to exercise the rights that comprise such Financial Assets. The Securities Intermediary agrees with the parties hereto that each item of property credited to each Securities Account shall be treated as a Financial Asset. Each of the Collateral Agent and the Securities Intermediary represents and warrants that it has not entered into any agreement or taken any other action that gives any Person other than the Collateral Agent control over any of the Securities Accounts or that is otherwise inconsistent with this Agreement. Each of the Collateral Agent and the Securities Intermediary agrees that it shall not become a party to any agreement or take any action that gives any Person other than the Collateral Agent control over any of the Securities Accounts or that is otherwise inconsistent with this Agreement. The Securities Intermediary agrees that any Financial Assets credited to such Securities Accounts, or any "securities entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, shall not be subject to any Lien or right of set-off in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other than the Collateral Agent). The Securities Intermediary hereby represents that, except for the claims and interests of the Collateral Agent and the

Borrower in the Securities Accounts, the Securities Intermediary has no knowledge of, and has received no notice of, any claim to, or interest in, any Securities Account. If any Person asserts any lien (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any Securities Account, the Securities Intermediary, upon obtaining written notice thereof, will promptly notify the Collateral Agent, the other Secured Parties that are parties hereto or relevant representatives thereof and the Borrower thereof.

(c) It is the intent of the Collateral Agent and the Borrower that the Collateral Agent (for the benefit of the Secured Parties) be the Entitlement Holder with respect to the Securities Accounts. In any event, the Securities Intermediary hereby agrees that it will comply with Entitlement Orders with respect to any and/or all of the Securities Accounts originated by the Collateral Agent without further consent by the Borrower or any other Person. The Securities Intermediary covenants that it will not agree with any Person other than the Collateral Agent to comply with Entitlement Orders with respect to the Securities Accounts originated by any Person or entity other than the Collateral Agent. The Collateral Agent authorizes the Securities Intermediary to follow Entitlement Orders issued by the Borrower unless and until the Securities Intermediary receives an Entitlement Order from the Collateral Agent. Without limiting the Securities Intermediary's obligation or ability to comply with Entitlement Orders originated by the Collateral Agent, the Collateral Agent covenants with the Borrower that it shall not provide any such Entitlement Order unless an Event of Default shall have occurred and be continuing.

(d) The Securities Intermediary shall not change the name or account number of any Securities Account without the prior written consent of the Collateral Agent and, for so long as no Event of Default has occurred and is continuing, the Borrower and at least five (5) Business Days' prior notice to the Secured Parties that are parties hereto or relevant representatives thereof, and shall not change the Entitlement Holder. The Securities Intermediary shall at all times act as a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) in maintaining the Securities Accounts and shall credit to each Securities Account each Financial Asset to be held in or credited to each Securities Account pursuant to this Agreement. To the extent, if any, that the Collateral Agent is deemed to hold directly, as opposed to having a security entitlement in, any Financial Asset held by the Securities Intermediary for the Collateral Agent, the Securities Intermediary hereby agrees that it is holding such Financial Asset as the agent of the Collateral Agent and hereby expressly acknowledges and agrees that it has received notification of the Collateral Agent's security interest in such Financial Asset and that it is holding possession of such Financial Asset for the benefit of the Collateral Agent.

(e) Each Securities Account shall remain held at all times by a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) that is a bank organized under the laws of the United States of America or any state thereof that has offices in the State of California with unsecured long-term debt which shall be rated no lower than 'A', 'A2' or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such bank's unsecured long-term debt and that has a total capital stock and unimpaired surplus of not less than \$500,000,000. The Securities Intermediary shall give notice to the Collateral Agent and the Borrower of the location of the Securities Accounts and of any change thereof prior to the use or change thereof. If at any time the Securities Intermediary shall fail to meet such requirements and qualifications set forth in the first sentence above, the Borrower shall replace the Securities Intermediary as soon as practicable with a qualifying Securities Intermediary.

(f) Any income received by the Collateral Agent with respect to the balance from time to time on deposit in each Securities Account, including any interest or capital gains on investments in overnight securities made with amounts on deposit in each Securities Account, shall be credited to the applicable Securities Account. All right, title and interest in and to the cash amounts on deposit from time

to time in each Securities Account together with any investments in overnight securities from time to time made pursuant to this Section 5.11 shall constitute part of the Collateral for the Secured Obligations and shall be held for the benefit of the Secured Parties and the Borrower as their interests shall appear hereunder and shall not constitute payment of the Secured Obligations (or any other obligations to which such funds are provided hereunder to be applied) until applied thereto as provided in this Agreement.

(g) In the event that, notwithstanding the last sentence of clause (b) above, the Securities Intermediary has or subsequently obtains by agreement, operation of Law or otherwise a Lien in any of the Securities Accounts, or any Financial Asset credited thereto, or any "securities entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, the Securities Intermediary hereby agrees that such Lien shall be subordinate to the Lien of the Collateral Agent.

(h) The "securities intermediary's jurisdiction" of the Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) is the State of California.

(i) Terms used in Section 5.10 and this Section 5.11 that are defined in the UCC shall have the meaning set forth in the UCC. Without limiting the foregoing, the term "securities intermediary" shall, with respect to book-entry securities, have the meanings given to it, as applicable to the types of security under: 31 C.F.R. Part 357 (sale and issue of marketable book-entry Treasury bills, notes and Senior Loan); 12 C.F.R. Part 615 (book-entry securities of the Farm Credit Administration and related conditions); 12 C.F.R. 987 (book-entry securities of the Financial Federal Housing Board), 12 C.F.R. Part 1511 (book-entry securities of the Resolution Funding Corporation); 24 C.F.R. Part 81 (book-entry securities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation); 31 C.F.R. Part 354 (book-entry securities of the Student Loan Marketing Association); 18 C.F.R. Part 1314 (book-entry securities of Tennessee Valley Authority); and 24 C.F.R. Part 350 (book-entry securities of Government National Mortgage Association).

(j) To the extent that any Project Account is not considered a "securities account" (within the meaning of Section 8-501(a) of the UCC), such Project Account shall be deemed to be a "deposit account" (as defined in Section 9-102(a)(29) of the UCC), which the Collateral Agent shall maintain with the Securities Intermediary acting not as a securities intermediary but as a "bank" (within the meaning of Section 9-102(a)(8) of the UCC) and, in such circumstances, the "bank's jurisdiction" of the Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) is the State of California. The Securities Intermediary hereby agrees to comply with any and all instructions originated by the Collateral Agent directing disposition of funds in any and/or all of the Project Accounts without any further consent of the Borrower or any other Person. The Collateral Agent authorizes the Securities Intermediary to comply with any instructions with respect to any such deposit accounts from the Borrower unless and until the Securities Intermediary receives instructions with respect to any such deposit accounts from the Collateral Agent. Without limiting the Securities Intermediary's obligation or ability to comply with any instructions with respect to any such deposit accounts from the Collateral Agent, the Collateral Agent covenants with the Borrower that it shall not provide any such instructions unless an Event of Default shall have occurred and be continuing.

Section 5.12 Inadequately Identified Amounts. In the event that the Collateral Agent receives any amount which is inadequately or incorrectly identified as to the Project Account into which such amount is to be credited, the Collateral Agent shall notify the Borrower (with a copy of such notice to the other Secured Parties that are parties hereto or relevant representatives thereof) of such event and shall request instructions as to the Project Account into which such amount should be credited. With respect to any such amount, the Collateral Agent shall credit such amount to the Revenue Account, in each case until such time

as the Collateral Agent receives instructions from the Borrower in accordance herewith stating that such amount should be credited to another Project Account in accordance with the Finance Documents, in which case the Collateral Agent shall credit such amount to the Project Account designated by the Borrower.

Section 5.13 Tax Reporting. All Account Earnings relating to the Project Accounts shall be reported to the Internal Revenue Service and, to the extent applicable, all state and local taxing authorities under the name and taxpayer identification number of the Borrower. The Borrower shall prepare or cause to be prepared any tax returns or other forms or information required to be filed in connection with any such earnings. The Collateral Agent does not have any interest in the Collateral deposited hereunder but is serving as collateral agent only and having only possession thereof. The Borrower shall pay or reimburse the Collateral Agent upon request for any transfer taxes or other Taxes relating to the Collateral incurred in connection herewith and shall indemnify and hold harmless the Collateral Agent from any amounts that it is obligated to pay in the way of such Taxes to the extent paid by the Collateral Agent in respect of the Collateral. The Borrower will provide the Collateral Agent with appropriate W-9 forms for taxpayer identification numbers, number certifications, or W-8 forms for non-resident alien certifications. This paragraph shall survive notwithstanding any termination of this Agreement or the resignation or removal of the Collateral Agent.

ARTICLE VI COLLATERAL AND REMEDIES

Section 6.01 Administration of Collateral. The Project Accounts and the amounts on deposit therein shall be held by the Collateral Agent for the benefit of the Secured Parties pursuant to the terms hereof and any other Security Documents and shall be administered by the Collateral Agent in the manner contemplated hereby and thereby.

Section 6.02 Knowledge of Event of Default. Notwithstanding anything to the contrary contained in this Agreement or any document executed in connection with any of the Secured Obligations, the Collateral Agent, unless a responsible officer of the Collateral Agent shall have actual knowledge thereof, shall not be deemed to have any knowledge of any Event of Default unless and until it shall have received written notice from the Borrower or any other Secured Party describing such Event of Default in reasonable detail. If the Collateral Agent receives any such notice, the Collateral Agent shall deliver a copy thereof to the other Secured Parties that are parties hereto (or representatives thereof); provided that if the Collateral Agent receives any such notice from a Person other than the Borrower, the Collateral Agent also shall deliver a copy thereof to the Borrower.

Section 6.03 Enforcement of Remedies. Upon the occurrence of any Event of Default, the Collateral Agent shall, subject to the other provisions of this Agreement, take such Enforcement Action with respect to such Event of Default as shall be directed by the Required Creditors, acting in accordance with the terms of this Agreement and the other applicable Finance Documents (a "**Direction Notice**"), subject to the requirements of Section 5.09(c) with respect to application of proceeds of the Project Accounts; provided that, in the absence of a Direction Notice, the Collateral Agent may (but shall not be obligated to) take such action (with written notice thereof to the other Secured Parties that are parties hereto or the representatives thereof) or refrain from taking such action with respect to such Event of Default as it shall deem in the best interests of the Secured Parties and solely to the extent permitted hereunder or pursuant to any other Security Documents. Upon receipt by the Collateral Agent of a Direction Notice, the Collateral Agent shall seek to enforce the Security Documents (with prior notice thereof to the Borrower, to the extent not in violation of Law or court order) and to realize upon the Collateral in accordance with such Direction Notice and otherwise in accordance with the terms hereof and of any other Security Documents; provided, however, that the Collateral Agent shall not be obligated to follow any Direction Notice if the Collateral Agent reasonably determines that such Direction Notice is in conflict with any

provisions of any applicable law or any Security Document, and the Collateral Agent shall not, under any circumstances except in the event of the Collateral Agent's gross negligence, fraud, bad faith or willful misconduct, be liable to any Secured Party, the Borrower or any other Person for following a Direction Notice.

Section 6.04 Remedies of the Secured Parties. Unless otherwise consented to in writing by the Required Creditors (acting in accordance with the terms of this Agreement), no Secured Party, individually or together with any other Secured Parties (other than the Collateral Agent, in such capacity), shall have the right, nor shall it (i) exercise or enforce any of the rights, powers or remedies which the Collateral Agent is authorized to exercise or enforce under this Agreement or under any other Security Documents, (ii) sue for or institute any creditor's process (including an injunction garnishment, execution or levy, whether before or after judgment) in respect of any Secured Obligation (whether or not for the payment of money) owing to it under or in respect of any Finance Document, (iii) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Borrower, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Borrower, or (iv) apply for any order for an injunction or specific performance in respect of the Borrower in relation to any of the Finance Documents. Notwithstanding the foregoing, the Secured Parties hereby expressly acknowledge the TIFIA Lender's rights (from and after the execution of the TIFIA Loan Agreement) to take the actions that will be described in clauses (b) through (f) of Section 19 of the TIFIA Loan Agreement when executed, without the consent of the Required Creditors.

Section 6.05 Secured Party Information. In the event that the Collateral Agent proceeds to foreclose upon, collect, sell or otherwise dispose of or take any other action with respect to any or all of the Collateral or to enforce any provisions of the Security Documents or takes any other action pursuant to this Agreement or any provision of any other Security Documents or requests directions from the Required Creditors as provided herein, upon the request of the Collateral Agent, each of the other Secured Parties (or any agent of or representative for such Secured Party) shall promptly deliver a written notice to the Collateral Agent and each of the other Secured Parties that are parties hereto setting forth (a) the aggregate amount of Secured Obligations owing to such Secured Party under the applicable Finance Documents as of the date specified by the Collateral Agent in such request and (b) such other information as the Collateral Agent may reasonably request.

Section 6.06 Application of Proceeds.

(a) Subject to clauses (b) and (c) of this Section 6.06, after the taking of an Enforcement Action, all Proceeds received by the Collateral Agent derived from the funds set forth in clauses (i)-(iv) below pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents shall be applied as follows:

(i) All amounts on deposit in, and all Proceeds attributable to any sub-account of the Pari Passu Debt Service Account shall be transferred to the relevant Secured Creditor with respect to such sub-account in accordance with the Lien granted on such sub-account and Proceeds attributable thereto pursuant to this Agreement as set forth in Section 5.04(e), first to pay for the *pro rata* payment of all accrued and unpaid interest on the applicable Secured Obligations with respect to such sub-account, second, if any unpaid principal of any such Secured Obligation is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts, and third, if any unpaid fees, costs, expenses and other amounts with respect to any such Secured Obligation are due and payable, to the *pro rata* payment of such fees, costs, expenses and other amounts;

(ii) All amounts on deposit in, and all Proceeds attributable to any sub-account of the Pari Passu Debt Service Reserve Account shall be transferred to the relevant Secured Creditor with respect to such sub-account in accordance with the Lien granted on such sub-account and Proceeds attributable thereto pursuant to this Agreement as set forth in Section 5.05(e), first to pay for the *pro rata* payment of all accrued and unpaid interest on the applicable Secured Obligations with respect to such sub-account, and second, if any unpaid principal of any such Secured Obligation is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts;

(iii) All amounts on deposit in, and all Proceeds attributable to any Additional Pari Passu Debt Proceeds Account shall be transferred to the relevant Secured Creditor with respect to such account in accordance with the Lien granted on such account and Proceeds attributable thereto pursuant to this Agreement as set forth in Section 5.01(b)(vii), first to pay for the *pro rata* payment of all accrued and unpaid interest on the applicable series of Additional Pari Passu Debt with respect to such Additional Pari Passu Debt Proceeds Account, and second, if any unpaid principal of any such Additional Pari Passu Debt is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts; and

(iv) All amounts on deposit in, and all Proceeds attributable to, any sub-account of the Mandatory Prepayment Account shall be transferred to the relevant Secured Creditor with respect to such sub-account in accordance with the Lien granted on such sub-account and Proceeds attributable thereto pursuant to this Agreement as set forth in Section 5.06(c), first to pay for the *pro rata* payment of all accrued and unpaid interest on the relevant Secured Obligations with respect to such sub-account and second, if any unpaid principal of any such Secured Obligation is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts.

(b) Following the taking of an Enforcement Action, notwithstanding any provision contrary in this Agreement or any other Finance Document, but subject to Section 5.09(c) and clause (a) of this Section 6.06, the Collateral Agent, as directed by the Required Creditors, will have the right to direct the application of all amounts on deposit in or credited to the Project Accounts, and to otherwise deal with the Collateral, without the need for consent of, or any other action by, the Borrower or any other Secured Party. Subject to the prior application of the funds as described in clause (a) of this Section 6.06, following the taking of an Enforcement Action, all Proceeds received by the Collateral Agent pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, including proceeds from the sale or disposition of Collateral or other Enforcement Action and amounts available in or otherwise transferred from the Project Accounts shall be applied promptly by the Collateral Agent as directed by the Required Creditors as follows (provided, that any such proceeds that are to be used to pay any amounts to any Secured Creditor shall be paid to such Secured Creditor for deposit into the debt service fund applicable to such Secured Creditor's Secured Obligations, as the case may be):

First, to the *pro rata* payment of the unpaid fees, administrative costs and expenses due and payable to the Secured Parties under the Finance Documents, if any;

Second, to the *pro rata* payment of all accrued and unpaid interest due and payable on all Secured Obligations;

Third, to the *pro rata* payment of any unpaid principal of any Secured Obligation that is due and payable (by acceleration or otherwise);

Fourth, to the *pro rata* payment of all other amounts, if any, due and payable under the Finance Documents to the Secured Parties with respect to any Secured Obligations; and

Fifth, upon the payment in full of all Secured Obligations in accordance with clauses "First" through "Fourth" hereof, to pay to the Borrower, or as may be directed by the Borrower, or as a court of competent jurisdiction may direct, any Proceeds then remaining.

(c) If at any time any Secured Party shall for any reason obtain any payment or distribution upon or with respect to the Secured Obligations contrary to the terms of this Agreement, whether as a result of the Collateral Agent's exercise of any Enforcement Action in respect of the Collateral or otherwise, such Secured Party agrees that it shall have received such amounts in trust, and shall promptly remit such amount so received in error to the Collateral Agent to be applied in accordance with the terms of this Agreement.

Section 6.07 Reliance on Information. For purposes of applying payments received in accordance with this Article VI, the Collateral Agent shall be entitled to rely upon the information received by, and upon the request of, the Collateral Agent for such purpose, pursuant to Section 2.05 and Section 6.05 of this Agreement, with respect to the amounts of the outstanding Secured Obligations owed to the Secured Parties and the amount of any proceeds distributed from the Project Accounts. In the event that the Collateral Agent, in its reasonable discretion, determines that it is unable to determine the amount or order of payments that should be made hereunder, the parties hereto agree that the Collateral Agent shall have the right, at its option, to deposit with, or commence an interpleader proceeding in respect of, such funds in a court of competent jurisdiction for a determination by such court as to the correct application of such funds hereunder.

Section 6.08 Right of Holders of Secured Obligations to Direct Collateral Agent. Notwithstanding anything in this Agreement to the contrary, the holders of a majority in aggregate principal amount of Secured Obligations then outstanding (the "**Required Creditors**") shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Collateral Agent, to give any instruction, consent or direction to the Collateral Agent as required or permitted to be given pursuant to the terms of this Agreement, subject to the requirements of Section 5.09(c) with respect to application of proceeds of the Project Accounts.

ARTICLE VII COMPENSATION, INDEMNITY AND EXPENSES

Section 7.01 Compensation; Fees and Expenses. The Borrower hereby agrees to pay to the Collateral Agent for its own account compensation in such amount as separately agreed upon in writing between the Borrower and the Collateral Agent. In addition, the Borrower shall pay on the next Monthly Transfer Date falling at least ten (10) Business Days after written demand from the Collateral Agent the amount of any and all other reasonable out-of-pocket expenses incurred by the Collateral Agent, including the reasonable and customary fees, charges and disbursements of any counsel for the Collateral Agent, in connection with (a) the preparation of amendments and waivers hereunder and under any other Security Documents requested by the Borrower; (b) the enforcement of the rights or remedies of the Collateral Agent under this Agreement or any other Security Document, including all reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Secured Obligations; (c) the sale of, collection from or other realization upon, the Collateral in accordance with the terms hereof and of any other Security Documents; and (d) lien and security interest searches and filings in connection with the Collateral.

Section 7.02 Borrower Indemnification. The Borrower shall indemnify each of the Collateral Agent, the Securities Intermediary and any Co-Collateral Agent, and each of their respective officers, directors, employees, agents and attorneys-in-fact (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Security Document or any agreement or instrument contemplated thereby to which such Indemnitee is a party or the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated thereby (including the performance by the parties hereto of their respective obligations under the Security Documents), (ii) any actual or alleged presence or release of hazardous material by the Borrower on or from the Project, or (iii) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related fees, charges, disbursements or expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee. The obligations of the Borrower under this Section 7.02 shall survive the payment in full of the Secured Obligations, any resignation or removal of the Collateral Agent and the Securities Intermediary pursuant to Section 2.11 hereof, and the termination of this Agreement pursuant to Article VIII hereof.

ARTICLE VIII TERMINATION

Upon termination of this Agreement pursuant to Section 5.10 of this Agreement, all rights to the Collateral as shall not have been sold or otherwise applied, in each case, pursuant to the terms hereof shall revert to the Borrower, its successors or assigns, or otherwise as a court of competent jurisdiction may direct. Upon any such termination, the Collateral Agent shall, at the Borrower's direction and expense, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

ARTICLE IX ACCESSION

Section 9.01 Accession Generally. Any Person that is to become a party to this Agreement (an "Acceding Party"), including any Person that replaces any Secured Creditor party to this Agreement, shall accede to this Agreement by delivering to the Collateral Agent (with a copy to the Borrower and other Secured Parties that are parties hereto or relevant representatives thereof) an Accession Agreement, duly executed by that Acceding Party. Upon the execution of such Accession Agreement by an Acceding Party and the Collateral Agent, and acknowledged by the Borrower, such Acceding Party shall be a Secured Creditor hereunder and shall be bound by and subject to the terms and conditions of this Agreement. In connection with the issuance of any Additional Secured Debt, the Borrower shall ensure that the secured parties with respect to such Additional Secured Debt accede to this Agreement in accordance with this Section 9.01.

Section 9.02 Collateral Agent Instructions. The Collateral Agent is hereby authorized and instructed to promptly execute any Accession Agreement duly executed and delivered to the Collateral Agent by an Acceding Party, which is acknowledged by the Borrower.

ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.01 Further Assurances. The Borrower agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action as the Collateral Agent or any Secured Party, with the consent of the Required Creditors, shall reasonably request to perfect and maintain perfected the Liens created and/or perfected hereunder and under the other Security Documents and to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder and thereunder.

Section 10.02 Amendments; Waivers.

(a) Any term, covenant, agreement or condition of this Agreement or of any other Security Documents may be amended, modified or waived only by an instrument in writing signed by each of the Collateral Agent (acting upon the instruction of the Required Creditors) and the Borrower; provided, that the consent of the Securities Intermediary shall be required for any amendment to Section 5.11 hereof or any other amendment that would modify the rights or obligations of the Securities Intermediary; provided, further, that any such amendment, modification or waiver that materially and adversely or disproportionately affects the rights of any Secured Party as compared to the other Secured Parties shall require the consent of such Secured Party.

(b) The waiver (whether express or implied) by the Collateral Agent of any breach of the terms or conditions of this Agreement shall not prejudice any remedy of the Collateral Agent in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which the Collateral Agent would otherwise have on any future occasion under this Agreement.

(c) No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or any other Secured Party, of any right, power or privilege under this Agreement shall operate as a waiver thereof. No single or partial exercise by the Collateral Agent or any other Secured Party of any right, power or privilege under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege available to it. All remedies hereunder and under any other Security Documents are cumulative and are not exclusive of any other remedies that may be available to the Collateral Agent, whether at law, in equity or otherwise.

Section 10.03 Successors and Assigns.

(a) This Agreement and the other Security Documents, if any, shall be binding upon and inure to the benefit of the Collateral Agent, the Securities Intermediary, the Borrower, the other Secured Parties that are parties hereto, any Acceding Party and their respective successors and permitted assigns. Each Secured Party that is not a party hereto shall be an express third party beneficiary of this Agreement.

(b) Nothing contained in this Agreement or any other Security Document is intended to limit the right of any Secured Party to assign, transfer or grant participations in its rights in its respective Secured Obligations and Finance Documents.

Section 10.04 Notices. Unless otherwise expressly provided herein, all notices, instructions, consents, requests, directions and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email, as follows:

(i) if to the Borrower:

[]

with copies to:

[]

(ii) if to the Collateral Agent and Securities Intermediary:

U.S. Bank National Association

[]

(iii) if to the TIFIA Lender:

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

(iv) if to PWB:

[]

(v) if to Pacific Western Bank (as a Farebox Bank)

[]

(vi) if to San Louis Obispo County (as a Farebox Bank):

[]

All instructions required under this Agreement shall be delivered to the Collateral Agent in writing, in either original, electronic document format (e.g. pdf) or facsimile form, executed by an Authorized Representative. The identity of such Authorized Representatives, as well as their specimen signatures, shall be delivered to the Collateral Agent substantially in the form of a duly completed and executed Incumbency Certificate substantially in the form of Exhibit C (provided that for the TIFIA Lender, delivery of the TIFIA Lender's Authorized Representative Certificate, as provided pursuant to the TIFIA Loan Agreement, shall satisfy the requirements of this section) and shall remain in effect until such party notifies the Collateral Agent of any change by delivery of a replacement duly completed and executed Incumbency Certificate substantially in the form of Exhibit C. In its capacity as Collateral Agent, the Collateral Agent will accept all instructions and documents complying with the above under the indemnities provided in this Agreement, and reserves the right to refuse to accept any instructions or documents which fail to comply with the terms hereof; provided, that in the event of any such refusal by the Collateral Agent, the Collateral Agent shall promptly notify the relevant Authorized Representative executing the instructions or delivering the documents of such non-compliance and provide a reasonable time period for the correction thereof. Further to this procedure, the Collateral Agent reserves the right to telephone an Authorized Representative of the

applicable Secured Creditor or the Borrower to confirm the details of such instructions or documents if they are not already on file with it as standing instructions, and the Collateral Agent agrees that it will promptly telephone an Authorized Representative of the applicable Secured Creditor or the Borrower, as applicable, if the Collateral Agent has determined that it will refuse to accept any instructions or documents which fail, or appear to fail, to comply. The Collateral Agent and the parties hereto agree that the above constitutes a commercially reasonable security procedure.

Any party hereto may change its address, email address or facsimile number for notices and other communications hereunder by notice to the Borrower, the Collateral Agent, PWB, the TIFIA Lender and the other Secured Parties party hereto. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and, if given in accordance with this Section, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or, in the case of notice given by mail, overnight delivery service, facsimile or email, when deposited in the mail, one Business Day after delivery to the overnight courier, or when sent by fax or email, as applicable; provided that any notice to be served on the Collateral Agent shall be effective only when actually received by the Collateral Agent, marked for the attention of the department or officer specified by the Collateral Agent for such purpose.

Section 10.05 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 10.04 shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures for this Agreement or for any document or instrument delivered in connection herewith may be made by electronic means, if accompanied by an email, contemporaneous or otherwise, confirming the use of such means.

Section 10.06 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed in accordance with the laws of the State of California. **[Note to Borrower: Who will provide the NY law legal opinion on behalf of the Borrower?]** Each of the parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any California state court sitting in California County, California and of the United States District Court of the Southern District of California sitting in California County, in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 10.07 Captions. The headings of the several articles and sections and clauses of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 10.08 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 10.09 Collateral Agent's Rights.

(a) If at any time the Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the Collateral Agent is authorized to comply therewith in any manner it or legal counsel of its own choosing reasonably deems appropriate. If the Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Collateral Agent shall not be liable to any of the parties hereto or to any other Person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(b) In the event of any dispute between or conflicting claims by or among the Borrower and the Secured Parties with respect to any property being held by the Collateral Agent in connection with this Agreement or any other Security Documents, the Collateral Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such property so long as such dispute or conflict shall continue, and the Collateral Agent shall not be or become liable in any way to the Borrower or the Secured Parties for failure or refusal to comply with such conflicting claims, demands or instructions. The Collateral Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Collateral Agent or (ii) the Collateral Agent shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting (provided that any indemnity that may at any time be requested from the TIFIA Lender shall instead be provided by the Borrower and the Collateral Agent shall not refuse to take any action on the basis that the Borrower is providing such indemnification in lieu of the TIFIA Lender). Any court order, judgment or decree shall be accompanied by a legal opinion by counsel for the presenting party, reasonably satisfactory to the Collateral Agent, to the effect that said order, judgment or decree represents a final adjudication of the rights of the parties by a court of competent jurisdiction, and that the time for appeal from such order, judgment or decree has expired without an appeal having been perfected. The Collateral Agent shall act on such court order and legal opinions without further question.

(c) To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. When any account or sub-account is opened, the Collateral Agent shall be entitled to such information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

Section 10.10 Patriot Act Notification. The Collateral Agent hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, Title III of Pub. L., 107-56 (signed into law October 26, 2001) (the "**Patriot Act**"), the Collateral Agent may be required to obtain, verify and record information that identifies the Borrower, which information includes the name, address, tax identification number and other information regarding the Borrower that will allow the Collateral Agent to identify the Borrower in accordance with the Patriot Act.

Section 10.11 Events Occurring on Days That Are Not Business Days. Other than as expressly set forth in this Agreement, if the date for making any payment or the last day for the performance of any act or the exercising of any right under this Agreement is a day that is not a Business Day, such

payment shall be made, such act shall be performed and such right shall be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date herein.

[signature pages follow]

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

**SAN LUIS OBISPO REGIONAL TRANSIT
AUTHORITY,**
as Borrower

By: _____
Name:
Title:

U.S. Bank National Association,
as the Collateral Agent and the Securities
Intermediary on behalf of itself and the other
Secured Parties

By: _____
Name:
Title:

PACIFIC WESTERN BANK

By: _____
Name:
Title:

EXHIBIT A

DEFINITIONS AND RULES OF INTERPRETATION

Defined Terms

"Acceding Party" has the meaning specified in Section 9.01.

"Accession Agreement" means an Accession Agreement substantially in the form attached as Exhibit D to this Agreement.

"Account Earnings" means the interest income and other investment earnings earned with respect to amounts deposited to any Project Account.

"Additional Pari Passu Debt" means additional indebtedness that the Borrower incurs after the date hereof and that is (a) equally and ratably secured by the Collateral with the PWB Loan, without preference, priority or distinction and (b) permitted pursuant to the terms of the Finance Documents, including, from and after the execution of the TIFIA Loan Agreement, the requirements for "Additional Obligations" pursuant to the TIFIA Loan Agreement. The TIFIA Loan will constitute Additional Pari Passu Debt upon execution of the TIFIA Loan Agreement.

"Additional Pari Passu Debt Proceeds Account" has the meaning specified in Section 5.01(b)(i).

"Additional Pari Passu Loan Agreement" means, for each series of Additional Pari Passu Debt, the loan agreement executed by the Borrower and the lender thereto in connection with the issuance of such Additional Pari Passu Debt.

"Adjusted Debt Service Amount" means the sum of the amounts described in clauses (a), (b) and (c) below:

(a) with respect to the PWB Loan, an amount on deposit in the PWB Debt Service Sub-Account equal to (i) the interest due on the PWB Loan on the next Interest Payment Date, plus (ii) (A) for any Payment Period beginning on July 1, fifty percent (50%) of the principal due on the PWB Loan on the next Principal Payment Date or (B) for any Payment Period beginning on January 1, one hundred percent (100%) of the principal due on the PWB Loan on the next Principal Payment Date, plus (iii) any fees, costs, expenses and other amounts then due and payable under the PWB Loan Agreement;

(b) with respect to the TIFIA Loan, an amount on deposit in the TIFIA Debt Service Sub-Account equal to (i) the interest due on the TIFIA Loan on the next Interest Payment Date, plus (ii) (A) for any Payment Period beginning on July 1, fifty percent (50%) of the principal due on the TIFIA Loan on the next Principal Payment Date or (B) for any Payment Period beginning on January 1, one hundred percent (100%) of the principal due on the TIFIA Loan on the next Principal Payment Date, plus (iii) any fees, costs, expenses and other amounts then due and payable under the TIFIA Loan Agreement; and

(c) with respect to any other Additional Pari Passu Debt, an amount on deposit in each applicable sub-account of the Pari Passu Debt Service Account equal to (i) the interest due on the applicable Pari Passu Debt with respect to such account on the next Interest Payment Date, plus (ii) (A) for any Payment Period beginning on a Principal Payment Date, fifty percent (50%) of the

principal due on the applicable Pari Passu Debt with respect to such account on the next Principal Payment Date or (B) for any Payment Period that does not begin on a Principal Payment Date, one hundred percent (100%) of the principal due on the applicable Pari Passu Debt with respect to such account on the next Principal Payment Date; provided that if the principal on any Pari Passu Debt is payable on a semi-annual basis, clause (ii) shall read “the principal due on the applicable Pari Passu Debt with respect to such account on the next semi-annual principal payment date for such Pari Passu Debt”, plus (iii) any fees, costs, expenses and other amounts then due and payable under the applicable Additional Pari Passu Loan Agreement with respect to such account.

"Affiliate" means, with respect to any Person, any other Person that is Controlling, Controlled by, or under common Control with such Person. For purposes of this definition, **"control"** (including its correlative meanings – "Controlling", "Controlled by" and "under common Control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Agreement" has the meaning specified in the preamble.

"Authorized Representative" means the authorized representative or other authorized signatory of the Borrower or any other party hereto, as set forth in the most recently delivered Incumbency Certificate for such party.

"Bankruptcy Related Event" means, with respect to the Borrower,

(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 thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

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

(c) (i) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Secured Obligations, or (ii) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Collateral may

be sold or otherwise disposed of pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or

(d) the Collateral Agent shall transfer, pursuant to directions issued by the Secured Creditors, funds on deposit in any of the Project Accounts upon the occurrence and during the continuation of an Event of Default for application to the prepayment or repayment of any principal amount of the PWB Loan, the TIFIA Loan or any other Secured Obligations other than in accordance with the provisions of the Finance Documents.

"Borrower" has the meaning specified in the recitals to this Agreement.

"Borrower Fiscal Year" means (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 after giving thirty (30) days' prior written notice to the Secured Parties.

"Business Day" means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government of the United States of America and its departments and agencies or the State of California are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in [California, California], San Luis Obispo County, California or Los Angeles, California.

"Clearing Agency" has the meaning specified in Section 5.08(f).

"Co-Collateral Agent" has the meaning specified in Section 2.11(c).

"Code" means the Internal Revenue Code of 1986 and the regulations promulgated and rulings issued thereunder, each as amended from time to time, and any successor statute.

"Collateral" means all real and personal property, now owned or hereafter acquired, that is subject to the Liens granted by the Borrower under any of the Security Documents, which as of the Effective Date consists of the property described in Section 1.01.

"Collateral Agent" has the meaning specified in the preamble to this Agreement.

"Debt Service Payment Commencement Date" means the first Interest Payment Date following the initial draw on the TIFIA Loan.

"Default" means any event or circumstance that, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

"Determination Date" means each [January 3] and [July 3]; provided, that if such day is not a Business Day, the Determination Date shall be the immediately preceding Business Day.

"Direction Notice" has the meaning specified in Section 6.03.

"Dollars", "U.S. Dollars" or "\$" means the lawful currency of the United States of America.

"Effective Date" means the date of this Agreement.

"Enforcement Action" means any action, whether by judicial proceedings or otherwise, to enforce or exercise any of the rights and remedies granted to the Collateral Agent and/or the Secured Parties pursuant to the Finance Documents against the Collateral or the Borrower, in each case, upon the occurrence of an Event of Default.

"Event of Default" means any of the events identified as an "Event of Default" under any Finance Document.

"Farebox Bank" means each financial institution, Governmental Authority, or other entity that receives, or directs the deposit and transfer of, Farebox Revenues on behalf of the Borrower (whether based on cash receipts, credit/debit card charges, or wire transfers in connection with bulk purchases or payments that supplement subsidized rate fare collections). Initially, the Farebox Bank consists of Pacific Western Bank and San Luis Obispo County.

"Farebox Bank Irrevocable Instruction" means an irrevocable direction issued by the Borrower to a Farebox Bank and acknowledged and agreed to by such Farebox Bank, as of the date hereof or from time to time in connection with the designation of any new Farebox Bank.

"Farebox Revenues" means all farebox revenues and contract service revenues collected by or on behalf of the Borrower in connection with the operation of all transit vehicles owned or leased by the Borrower, including:

- (a) revenues earned under contractual arrangements with public or private entities, either (i) for transit fares for a specified group of employees, members, or clients, or (ii) to guarantee a minimum revenue on a line operated especially for the benefit of the paying entity (e.g., an employer, shopping center, university, etc.);
- (b) cash donations made by individual passengers or community organizations in lieu of a prescribed fare;
- (c) passenger fares collected by the Borrower;
- (d) fare subsidies from a public or private entity;
- (e) local support, including passenger donations and local business contributions made to benefit employees, customers, visitors, or residents;
- (f) parking revenues used as fare subsidies; and
- (g) support from private non-profits to supplement discount or zero fares.

"FDIC" means the Federal Deposit Insurance Corporation.

"Federal Book-Entry Regulations" means (i) the United States Department of the Treasury's regulations governing "Securities" (as defined in 31 C.F.R. § 357.2) issued by the United States Treasury and maintained in the form of entries in the federal reserve banks' book-entry system known as the Treasury/Reserve Automated Debt Entry System (TRADES), as such regulations are set forth in 31 C.F.R. Part 357 and (ii) regulations analogous and substantially similar to the regulations described in clause (i) above governing any other automated book-entry system operated by the United States federal reserve banks in which securities issued by government sponsored enterprises are issued, recorded, transferred and maintained in book-entry form.

"Finance Documents" means:

- (a) the PWB Loan Agreement;
- (b) the Notes;
- (c) the TIFIA Loan Agreement (from and after the execution thereof);
- (d) any other Additional Pari Passu Loan Agreements;
- (e) this Agreement;
- (f) any other Security Documents; and
- (g) any other agreement, document or instrument relating to the foregoing and designated as a Finance Document in writing by the Borrower and each of the Secured Parties.

"Funds Transfer Certificate" means a certificate prepared by the Borrower in accordance with the terms of this Agreement substantially in the form of Exhibit B attached to this Agreement containing the certifications by the Borrower required by this Agreement with respect to a requested transfer of funds from a Project Account.

"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.

"Governmental Authority" means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Person or matters in question.

"Indebtedness" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, loan agreements, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person in respect of letters of credit, bankers' acceptances, bank guarantees, surety Pari Passu Debt or similar extensions of credit, (g) indebtedness secured by a Lien on property owned or being purchased by such Person, whether or not such indebtedness shall have been assumed by such Person or is limited in recourse and (h) all Indebtedness of others referred to in clauses (a) through (g) above and other payment obligations (collectively, **"Guaranteed Indebtedness"**) guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Guaranteed Indebtedness or to advance or supply funds for the payment or purchase of such Guaranteed Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Guaranteed Indebtedness or to assure the holder of such Guaranteed Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss.

"Indemnatee" has the meaning specified in Section 7.02.

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

"Interest Payment Date" means (i) for the PWB Loan, each January 1 and July 1 or if any such day is not a Business Day, then the Business Day immediately succeeding such date, for so long as the PWB Loan is outstanding, (ii) for the TIFIA Loan (when issued), each January 1 and July 1, or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing on the Debt Service Payment Commencement Date, and (iii) for any other Secured Obligations, the date or dates on which interest is payable on such Secured Obligations as set forth in the documents pursuant to which such Secured Obligations were incurred.

"Law" means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date hereof including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Governmental Authority.

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

"LTF Funds" means Local Transportation Funds distributed by the State pursuant to the Transportation Development Act ([California Government Code Section 29530 – 29536, California Public Utilities Code Section 99200 – 99408, and Title 21 California Code of Regulations Section 6600 – 6756]).

"Mandatory Payments" has the meaning specified in clause "Third" of Section 5.03(b).

"Mandatory Prepayment Account" has the meaning specified in Section 5.01(a).

"Monthly Transfer Date" means the [2nd] of each month; provided, that if such day is not a Business Day, the Monthly Transfer Date shall be the immediately preceding Business Day.

"Nationally Recognized Rating Agency" means any nationally recognized statistical rating organization identified as such by the U.S. Securities and Exchange Commission.

"No Transfer Conditions" means (a) amounts on deposit in the applicable sub-accounts of the Pari Passu Debt Service Account are at least equal to the Adjusted Debt Service Amount, and (b) (i) amounts on deposit in the TIFIA Debt Service Reserve Sub-Account are at least equal to the TIFIA Debt Service Reserve Required Balance, (ii) amounts on deposit in the PWB Debt Service Reserve Sub-Account are at least equal to the PWB Debt Service Reserve Required Balance, and (iii) amounts on deposit in each other applicable sub-account of the Pari Passu Debt Service Reserve Account are at least equal to the Pari Passu Debt Service Reserve Required Balance for such sub-account.

"No Transfer Order" has the meaning specified in Section 5.03(g).

"Notes" means the PWB Note and any promissory note, if any, issued by the Borrower relating to the PWB Loan Agreement or any Additional Pari Passu Loan Agreement (including the TIFIA Note, upon issuance).

"Other Revenues" means any revenues of the Borrower (other than LTF Funds allocated to the Borrower, Farebox Revenues and federal grant funds), including (a) all STA Funds allocated to the Borrower, (b) all income derived from Permitted Investments, (c) proceeds from business interruption and delay in start-up insurance policies, and (d) revenue from any lease or other contract (including advertising revenues).

"Pari Passu Debt" means the PWB Loan and any Additional Pari Passu Debt.

"Pari Passu Debt Service Account" has the meaning specified in Section 5.01(a).

"Pari Passu Debt Service Reserve Account" has the meaning specified in Section 5.01(a).

"Pari Passu Debt Service Reserve Required Balance" means, at any time for a sub-account of the Pari Passu Debt Service Reserve Account established for any Additional Pari Passu Debt, the amount required to be on deposit in such sub-account as set forth in the applicable Additional Pari Passu Loan Agreement for such Additional Pari Passu Debt with respect to such sub-account.

"Pari Passu Secured Obligations" means any obligations of the Borrower incurred under or in connection with the PWB Loan Agreement or any Additional Pari Passu Loan Agreement, including all such amounts that would be owed by the Borrower but for the fact that collection or receipt of such amounts is unenforceable or not allowed due to a pending proceeding by or against the Borrower under any Insolvency Law.

"Patriot Act" has the meaning specified in Section 10.10.

"Payment Date" means each Interest Payment Date and each Principal Payment Date.

"Payment Period" means any period of six (6) months from (and including) an Interest Payment Date to (but excluding) the immediately succeeding Interest Payment Date.

"Permitted Indebtedness" means any Indebtedness to the extent permitted by the terms of the Finance Documents (including the PWB Loan Agreement prior to the termination thereof).

"Permitted Investments" means any investments to the extent permitted under each of the Finance Documents (including the PWB Loan Agreement prior to the termination thereof).

"Permitted Lien" means any Liens to the extent permitted by the Finance Documents (including the PWB Loan Agreement prior to the termination thereof).

"Permitted Subordinated Loans" means, to the extent permitted by the terms of the TIFIA Loan Agreement (from and after the execution thereof), the PWB Loan Agreement and, if applicable, any Additional Pari Passu Loan Agreement, unsecured Indebtedness of the Borrower.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Principal Payment Date" means (i) for the PWB Loan, each July 1, or, if such date is not a Business Day, then the Business Day immediately succeeding such date, (ii) for the TIFIA Loan, each July 1, or if such day is not a Business Day, then the Business Day immediately succeeding such date, [commencing with the Debt Service Payment Commencement Date], and (iii) for any other Secured Obligations, the date on which principal of such Secured Obligations is due and payable as set forth in the documents pursuant to which such Secured Obligations were incurred.

"Proceeds" means "proceeds" as such term is defined in the UCC or under other relevant law and, in any event, shall include, but shall not be limited to, (i) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Borrower, in each case with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (iii) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

"Project" has the meaning specified in the recitals hereinabove.

"Project Accounts" means, collectively, (a) each of the Securities Accounts and (b) each such other account specified or to be specified as being a "Project Account" in this Agreement, including any sub-accounts thereof, from time to time.

"PWB" has the meaning specified in the recitals to this Agreement.

"PWB Debt Service Reserve Required Balance" means [_____].

"PWB Debt Service Reserve Sub-Account" has the meaning specified in Section 5.01(a).

"PWB Debt Service Sub-Account" has the meaning specified in Section 5.01(a).

"PWB Loan" has the meaning specified in the recitals to this Agreement.

"PWB Loan Agreement" has the meaning specified in the recitals to this Agreement.

"PWB Note" has the meaning specified in the recitals to the PWB Loan Agreement.

"Required Creditors" has the meaning specified in Section 6.08.

"Revenues" means (i) all LTF Funds allocated to the Borrower, (ii) all Farebox Revenues received by or on behalf of the Borrower and (iii) all Other Revenues received by or on behalf of the Borrower.

"Revenue Account" has the meaning specified in Section 5.01(a).

"Secured Creditors" means, collectively, (i) PWB, (ii) the TIFIA Lender (upon execution of the TIFIA Loan Agreement), and (iii) any other holder of Secured Obligations.

"Secured Obligations" means (i) the Pari Passu Secured Obligations and (ii) the TIFIA Obligations.

"Secured Parties" means, collectively, the Secured Creditors and the Collateral Agent.

"Securities" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

"Securities Accounts" has the meaning specified in Section 5.01(a).

"Securities Intermediary" has the meaning specified in Section 5.11(a).

"Security Documents" means the collective reference to (a) this Agreement; (b) any other agreement, document or instrument hereafter entered into or delivered by the Borrower or any other Person which purports to create a Lien in favor of the Collateral Agent for the benefit of all of the Secured Parties; and (c) all UCC financing statements and other filings, recordings or registrations required by the Finance Documents to be filed or made in respect of any such Security Document.

"SLOCOG" means the San Luis Obispo Council of Governments.

"SLOCOG Irrevocable Instruction" means that certain Irrevocable Direction re Deposit of LTF Funds, dated as of [___], 2020, among the Borrower, SLOCOG and the other signatories thereto.

"STA Funds" means State Transit Assistance funds distributed by the State pursuant to the Transportation Development Act ([California Government Code Section 29530 – 29536, California Public Utilities Code Section 99200 – 99408, and Title 21 California Code of Regulations Section 6600 – 6756]).

"State" means the State of California.

"Taxes" means any and all present or future income, stamp, transfer, turnover and other taxes, levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and any and all interest, penalties, claims or other liabilities arising under or relating thereto, including those on any of the Secured Parties or on payments to be made to or received by any of them from the Borrower under this Agreement.

"TIFIA Debt Service Reserve Required Balance" means, as of any date, an amount equal to fifty percent (50%) of the principal and interest payments on the TIFIA Loan due and payable during the then-current Borrower Fiscal Year.

"TIFIA Debt Service Reserve Sub-Account" has the meaning specified in Section 5.01(a).

"TIFIA Debt Service Sub-Account" has the meaning specified in Section 5.01(a).

"TIFIA Lender" has the meaning specified in the recitals to this Agreement.

"TIFIA Loan" has the meaning specified in the recitals to this Agreement.

"TIFIA Loan Agreement" has the meaning specified in the recitals to this Agreement.

"TIFIA Note" means the promissory note to be delivered by the Borrower in substantially the form of Exhibit A to the TIFIA Loan Agreement.

"TIFIA Obligations" means any obligations of the Borrower incurred under or in connection with the TIFIA Loan Agreement, including all such amounts that would be owed by the Borrower but for the fact that collection or receipt of such amounts is unenforceable or not allowed due to a pending proceeding by or against the Borrower under any Insolvency Law.

"Treasury Regulations" means the temporary, proposed or final federal income tax regulations promulgated by the U.S. Department of the Treasury, together with the other published written guidance thereof, as applicable.

"Uniform Commercial Code" or **"UCC"** means the Uniform Commercial Code, as the same may, from time to time, be in effect in the State of California; provided that if, with respect to any financing statement or by reason of mandatory provisions of law, any or all of the perfection, or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of California, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof or any other Finance Document or any financing statement relating to such perfection or priority and for purposes of definitions related to such provisions.

"U.S. Government" means the United States of America and its departments and agencies.

Rules of Interpretation

1. The incorporation by reference of definitions or other terms from other agreements shall survive any termination of such agreements until this Agreement is terminated as provided in Article VIII hereof.
2. Definitions of terms shall apply equally to the singular and plural forms of the terms defined.
3. The use in this Agreement of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.
4. The word "will" shall be construed to have the same meaning and effect as the word "shall".
5. A reference to a Law includes any amendment or modification to such Law, and all regulations, rulings and other Laws promulgated under such Law.
6. A reference to a Person shall be construed to include its successors and permitted assigns.
7. Except as otherwise expressly specified, all accounting terms have the meanings assigned to them by GAAP, as in effect from time to time.
8. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.
9. Any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented and/or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Finance Documents).
10. The words "herein," "hereof," "hereto," "hereby," "hereunder" and other words of similar import in this Agreement refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and, if this Agreement has been amended, such words shall refer to this Agreement as so amended.
11. References to "days" means calendar days, unless the term "Business Days" shall be used. References to a time of day means such time in California, California, unless otherwise specified.
12. The terms lease and license shall include sub-lease and sub-license, as applicable, and as may be allowed under this Agreement, any other Finance Documents, as applicable.

13. All references in this Agreement to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to the applicable UCC.
14. The term "money" or "funds" includes any cash, check, deposit, investment security or other form in which any of the foregoing are held hereunder.
15. Any reference to or defined term for any securities account or deposit account, including without limitation the Project Accounts and the Securities Accounts, shall include any subaccount thereof, and any substitute, successor (whether by renumbering or otherwise) or replacement account therefore.

EXHIBIT B

FORM OF FUNDS TRANSFER CERTIFICATE

Date: [____], [____]
Funding Date: [____], [____]

U.S. Bank National Association,
as Collateral Agent

[____]

[____]

Attention: [____]

Telephone: [____]

Fax: [____]

E-mail: [____]

Re: San Luis Obispo Regional Transit Authority

Ladies and Gentlemen:

Reference is made to that certain Collateral Accounts and Security Agreement, dated as of [____], 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “CASA”), among the San Luis Obispo Regional Transit Authority, a California joint powers authority (the “Borrower”), Pacific Western Bank, a [____], as lender under the PWB Loan Agreement (including its successors and assigns, “PWB”), U.S. Bank National Association, a national banking association, in its capacity as collateral agent on behalf of itself and the other Secured Parties (in such capacity (including its successors and assigns), the “Collateral Agent”), U.S. Bank National Association, a national banking association, in its capacity as securities intermediary (in such capacity (including its successors and assigns), the “Securities Intermediary”), and each other Secured Party that accedes to the CASA in accordance with Article IX thereto.

The undersigned is an Authorized Representative of the Borrower and is delivering this certificate (this “Funds Transfer Certificate”) pursuant to Section 5.03(b) and Section 5.09 of the CASA. Capitalized terms used and not otherwise defined herein shall have the meanings given to them (by reference or otherwise) in the CASA.

1. Revenue Account. The following transfers are requested to be made from the Revenue Account on [____], [____] (the “Funding Date”)¹ in accordance with this Funds Transfer Certificate as set forth in greater detail in Part A of the attached Schedule I, each in accordance with Section 5.03(b) of the CASA and the other provisions of the CASA:
 - (a) In accordance with priority “First” of Section 5.03(b) of the CASA, the Borrower requests that:
 - (i) [\$[____]] be withdrawn from the Revenue Account and transferred to the PWB Debt Service Sub-Account for payment of interest and/or principal on the

¹ Each Funding Date shall be a Monthly Transfer Date or any other date on which funds are deposited into the Revenue Account in accordance with Section 5.03(a) of the CASA.

PWB Loan and/or other fees, costs, expenses and other amounts then due and payable under the PWB Loan Agreement.]

- (ii) [\$[_____] be withdrawn from the Revenue Account and transferred to the TIFIA Debt Service Sub-Account for payment of interest and/or principal on the TIFIA Loan and/or other fees, costs, expenses and other amounts then due and payable under the TIFIA Loan Agreement.]
 - (iii) [\$[_____] be withdrawn from the Revenue Account and transferred to the [insert name of applicable sub-account of the *Pari Passu Debt Service Account*] for payment of interest and/or principal on the applicable Additional *Pari Passu Debt* with respect to such sub-account and/or other fees, costs, expenses and other amounts then due and payable under the applicable Additional *Pari Passu Loan Agreement* with respect to such sub-account.]
- (b) In accordance with priority “Second” of Section 5.03(b) of the CASA, the Borrower requests that:
- (i) [\$[_____] be withdrawn from the Revenue Account and transferred to the PWB Debt Service Reserve Sub-Account in order to satisfy the PWB Debt Service Reserve Required Balance.]
 - (ii) [\$[_____] be withdrawn from the Revenue Account and transferred to the TIFIA Debt Service Reserve Sub-Account in order to satisfy the TIFIA Debt Service Reserve Required Balance.]
 - (iii) [\$[_____] be withdrawn from the Revenue Account and transferred to the [insert name of applicable sub-account of the *Pari Passu Debt Service Reserve Account*] in order to satisfy the *Pari Passu Debt Service Reserve Required Balance* for such sub-account.]
- (c) In accordance with priority “Third” of Section 5.03(b) of the CASA, the Borrower requests that \$[_____] be withdrawn from the Revenue Account and transferred to the Mandatory Prepayment Account for Mandatory Payments to the applicable Secured Obligations.
- (d) In accordance with priority “Fourth” of Section 5.03(b) of the CASA, the Borrower requests that \$[_____] be withdrawn from the Revenue Account and transferred to [insert name of applicable sub-account] of the Revenue Account for the payment of interest on the applicable Permitted Subordinated Loans.
- (e) In accordance with priority “Fifth” of Section 5.03(b) of the CASA, the Borrower requests that \$[_____] be withdrawn from the Revenue Account and transferred to [insert name of applicable sub-account] of the Revenue Account for the payment of principal on the applicable Permitted Subordinated Loans.

The following transfers are requested to be made from the applicable Project Account set forth below on the Funding Date (or such other date as set forth in greater detail in the relevant Part(s) of the attached Schedule I) in accordance with the provisions of the CASA:

2. PWB Debt Service Sub-Account. In accordance with Section 5.04(b) of the CASA, the Borrower requests that \$[_____] be withdrawn from the PWB Debt Service Sub-Account

and applied to pay principal, accrued and unpaid interest, and any other fees, costs, expenses and other amounts due and payable on the PWB Loan, as set forth in greater detail in Part B of the attached Schedule I.

3. TIFIA Debt Service Sub-Account. In accordance with Section 5.04(c) of the CASA, the Borrower requests that \$[] be withdrawn from the TIFIA Debt Service Sub-Account and applied to pay principal, accrued and unpaid interest, and any other fees, costs, expenses and other amounts due and payable on the TIFIA Loan, as set forth in greater detail in Part C of the attached Schedule I.
4. [] Sub-Account of the Pari Passu Debt Service Account. In accordance with Section 5.04(d) of the CASA, the Borrower requests that \$[] be withdrawn from the [insert name of applicable sub-account of the Pari Passu Debt Service Account] established for the [describe applicable Additional Pari Passu Debt] and applied to pay principal, accrued and unpaid interest, and any other fees, costs, expenses and other amounts due and payable on such Additional Pari Passu Debt, as set forth in greater detail in Part D of the attached Schedule I.
5. PWB Debt Service Reserve Sub-Account. In accordance with Section 5.05(b) of the CASA, the Borrower requests that \$[] be withdrawn from the PWB Debt Service Reserve Sub-Account and applied to pay principal and accrued and unpaid interest due and payable on the PWB Loan that is not otherwise paid by Revenues deposited to the Revenue Account, as set forth in greater detail in Part E of the attached Schedule I.
6. TIFIA Debt Service Reserve Sub-Account. In accordance with Section 5.05(c) of the CASA, the Borrower requests that \$[] be withdrawn from the TIFIA Debt Service Reserve Sub-Account and applied to pay principal and accrued and unpaid interest due and payable on the TIFIA Loan that is not otherwise paid by Revenues deposited to the Revenue Account, as set forth in greater detail in Part F of the attached Schedule I.
7. [] Sub-Account of the Pari Passu Debt Service Reserve Account. In accordance with Section 5.05(d) of the CASA, the Borrower requests that \$[] be withdrawn from the [insert name of applicable sub-account of the Pari Passu Debt Service Reserve Account] established for the [describe applicable Additional Pari Passu Debt] and applied to pay principal and accrued and unpaid interest due and payable on such Additional Pari Passu Debt that is not otherwise paid by Revenues deposited to the Revenue Account, as set forth in greater detail in Part G of the attached Schedule I.
8. Additional Pari Passu Debt Proceeds Account.
 - (a) In accordance with Section[s] 5.01(b)(iii) [and (iv)] of the CASA, the Borrower requests that \$[] be withdrawn from the [insert name of applicable Additional Pari Passu Debt Proceeds Account] and transferred as set forth in greater detail in Part H of the attached Schedule I to pay costs in compliance with the applicable Additional Pari Passu Loan Agreement and the applicable provisions of the other Finance Documents relating to the incurrence of the applicable Additional Pari Passu Debt, and with respect to any future tax-exempt borrowings comprising Additional Pari Passu Debt, in compliance with the Code.
 - (b) In accordance with Section 5.01(b)[(iv)][(v)] of the CASA, the Borrower requests that \$[] be withdrawn from the [insert name of applicable Additional Pari Passu Debt Proceeds Account] and transferred to the [insert name of applicable sub-account]

of the Mandatory Prepayment Account for redemption of the applicable Additional Pari Passu Debt with respect to such sub-account in accordance with the applicable Additional Pari Passu Loan Agreement, as set forth in greater detail in Part H of the attached Schedule I.

9. Mandatory Prepayment Account. In accordance with Section 5.06(b) of the CASA, the Borrower requests that \$[] be withdrawn from the Mandatory Prepayment Account and transferred to the *[insert name of applicable sub-account]* of the Mandatory Prepayment Account for prepayment and redemption of the applicable Secured Obligation, as set forth in greater detail in Part I of the attached Schedule I.
10. [] Sub-Account of the Mandatory Prepayment Account. In accordance with Section 5.06(b) of the CASA, the Borrower requests that \$[] be withdrawn from the *[insert name of applicable sub-account]* of the Mandatory Prepayment Account established for the *[describe applicable Secured Obligations]* and transferred as set forth in greater detail in Part K of the attached Schedule I for application to the mandatory prepayment and/or mandatory redemption of such Secured Obligations.
11. [] Sub-Account of the Revenue Account. In accordance with Section 5.03(b) of the CASA, the Borrower requests that \$[] be withdrawn from the *[insert name of applicable sub-account]* of the Revenue Account established for the payment of *[interest][principal]* on Permitted Subordinated Loans and transferred as set forth in greater detail in Part L of the attached Schedule I for application to the payment of *[interest][principal]* then due and payable on such Permitted Subordinated Loans.

The undersigned, as an Authorized Representative of the Borrower, hereby certifies on behalf of the Borrower, as of the date hereof, that each withdrawal or transfer requested hereby complies with each of the applicable requirements of the CASA and each other relevant Finance Document.

[Signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Funds Transfer Certificate to be duly executed and delivered by an Authorized Representative of the Borrower as of the date first written above.

**SAN LUIS OBISPO REGIONAL
TRANSIT AUTHORITY,**
as the Borrower

By: _____

Name:

Title:

SCHEDULE I TO FUNDS TRANSFER CERTIFICATE

[Borrower to attach Excel spreadsheets (in .pdf format) with appropriate detail for each applicable transfer, including columns for (i) Section reference, (ii) Transfer Date, (iii) Payee/Account, (iv) Purpose, (v) Payment Date, (vi) Wiring or Other Payment Instructions and (vii) Amount, divided by Parts A through L (and sub-divided as necessary)]

Part A: Transfers from Revenue Account

Part B: Transfers from PWB Debt Service Sub-Account

Part C: Transfers from TIFIA Debt Service Sub-Account

Part D: Transfers from [] Sub-Account of the Pari Passu Debt Service Account

Part E: Transfers from PWB Debt Service Reserve Sub-Account

Part F: Transfers from TIFIA Debt Service Reserve Sub-Account

Part G: Transfers from [] Sub-Account of the Pari Passu Debt Service Reserve Account

Part H: Transfers from Additional Pari Passu Debt Proceeds Account

Part I: Transfers from Mandatory Prepayment Account

Part J: Transfers from [] Sub-Account of the Mandatory Prepayment Account

Part K: Transfers from [] Sub-Account of the Revenue Account

EXHIBIT C

INCUMBENCY CERTIFICATE

San Luis Obispo Regional Transit Authority

[____], 20[__]

I, the undersigned [*NAME*], [*TITLE*] of San Luis Obispo Regional Transit Authority (the “Borrower”), hereby certify that the following Authorized Representatives of the Borrower have been duly elected or appointed and are now acting and are qualified to sign on the Borrower’s behalf and that the specimen signatures appearing opposite the names and titles are the genuine signatures of such officers and that said elections or appointments are now in full force and effect. You are further authorized to recognize these signatures until you receive our written instructions to the contrary.

Name (Print)	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, the undersigned has caused this Incumbency Certificate to be duly executed and delivered as of the date set forth above.

By:

Name:
Title:

EXHIBIT D

FORM OF ACCESSION AGREEMENT

[Date]

To: U.S. Bank National Association,
as Collateral Agent
[]
[]
Attention: []
Telephone: []
Fax: []
E-mail: []

Re: Collateral Accounts and Security Agreement, dated as of [], 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “CASA”), among the San Luis Obispo Regional Transit Authority, a California joint powers authority (the “Borrower”), Pacific Western Bank, a [], as lender under the PWB Loan Agreement (including its successors and assigns, “PWB”), U.S. Bank National Association, a national banking association, in its capacity as collateral agent on behalf of itself and the other Secured Parties (in such capacity (including its successors and assigns), the “Collateral Agent”), U.S. Bank National Association, a national banking association, in its capacity as securities intermediary (in such capacity (including its successors and assigns), the “Securities Intermediary”), and each other Secured Party that accedes to the CASA in accordance with Article IX thereto.

Ladies and Gentlemen:

The undersigned acknowledges receipt of the CASA and agrees to be bound by and subject to the terms of the CASA in its capacity as [INSERT CAPACITY] OF ACCEDING PARTY]. The undersigned further agrees to the appointment of the Collateral Agent as its agent in accordance with the terms of the CASA. Capitalized terms used but not defined in this Accession Agreement have the meanings given to them (by reference or otherwise) in the CASA.

The address and fax number for notice of [ACCEDING PARTY] for the purposes of Section 10.04 (*Notices*) of the CASA is:

[INSERT ACCEDING PARTY]
[INSERT ADDRESS]
Attention: [INSERT ATTENTION PARTY]
Facsimile: [INSERT FACSIMILE NUMBER]
Telephone: [INSERT TELEPHONE NUMBER]
Email: [INSERT EMAIL]

The provisions of Section 10.05 (*Counterparts*) and Section 10.06 (*Governing Law; Consent to Jurisdiction; Waiver of Jury Trial*) of the CASA shall apply *mutatis mutandis* to this Accession Agreement as if set out in full herein.

Very truly yours,

[NAME OF ACCEDING PARTY],

as **[INSERT CAPACITY][IES] OF ACCEDING PARTY]**

By: _____

Name:

Title:

AGREED AND ACCEPTED:

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

By: _____

Name:

Title:

AGREED AND ACCEPTED:

**SAN LUIS OBISPO REGIONAL TRANSIT
AUTHORITY,**
as the Borrower

By: _____
Name:
Title:

cc: San Luis Obispo Transit Authority, as the Borrower
Secured Parties to the CASA (other than the Collateral Agent)

Attachment D



Global Corporate Trust
633 W. Fifth Street, 24th Floor
Los Angeles, CA 90071

usbank.com

Via Email

February 18, 2020

Tania Arnold
Deputy Director/Chief Financial Officer
San Luis Obispo Regional Transit Authority
179 Cross Street, Suite A
San Luis Obispo, CA 93401

Re: San Luis Obispo Regional Transit Authority Series 2020 Senior Debt Loan and 2020 TIFIA Loan
(Bus Maintenance Facility)

Dear Ms. Arnold:

U.S. Bank please to provide Collateral and Loan Administration Services for the above. Enclosed are Fee Schedules for the services.

The Fee Schedules are for loans issued at a fixed rate paying interest semi-annual with October 1 annual principal payments.

It is our understanding loan proceeds will not be received at closing of the loans, but periodically deposited with the Collateral Agent that will immediately be transferred disbursed to the Authority for reimbursement of project costs.

We understand transit revenues will be received quarterly and set aside for upcoming loan payments and funds not needed for the upcoming payment will be disbursed to the Authority.

The amount of fees and expenses due at closing of the Senior Debt Loan on about March 18, 2020 is \$2,630.06. The amount is comprised of the Acceptance Fee, Expenses of Legal Counsel including the rendering of a standard legal opinion and administration fees billed from the closing date to October 1; thereafter, the Authority will be billed \$1,320 annually each, October, commencing 2020, plus charges of investments and disbursements.

Understand the TIFIA Loan will not close with the Senior Debt Loan and upon closing of the TIFIA Loan will bill for Acceptance Fee of \$500 plus administration fees prorated from the closing date to October 1; thereafter, the Authority will be billed \$1,320 plus charges for investment and disbursements annually each October 1, commencing October 2020.

Note, we do not expect to incur legal expenses for closing the TIFIA Loan unless a legal opinion is required of the Collateral Agent then the initial fee will be \$2,000 plus administration fees prorated from closing date to October 1.

Should you have any questions, please do not hesitate to call me at (213) 247-1069 or send me an email at john.axt@usbank.com.

We appreciate being of service to the Authority and are here to make it possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Axt", with a stylized flourish at the end.

John Axt
Vice President

Encl.:



U.S. Bank Customer Confidential

Schedule of Fees for Services as Collateral Agency and Account Agreement

For San Luis Obispo Regional Transit Authority 2020 Senior Debt Loan (Bus Maintenance Facility)

CTS01010A	Acceptance Fee The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time, non-refundable fee, payable at closing.	\$700.00
CTS16156B	Legal Expenses Includes fees and expenses of legal counsel as well as the rendering of a standard legal opinion if required.	\$1,500.00
CTS04040	Collateral Agent Annual account administration fee for the performance of the routine duties associated with the administration of the account. Administration fees are payable in advance.	\$800.00
CTS04280	Administration Annual administration fee for the performance of the routine duties associated with the payment of the loan. Administration fees are payable in advance.	\$400.00
CTS10100	Investment Trades Charge per trade to buy or sell investments, excluding automated sweep transactions. **Automatic sweeping of cash into money market funds is not considered a "trade" for the purposes of this fee. However, applicable fees are disclosed in the "Automatic Money Market Investments" authorization letter or the fund prospectus provided ***No charge for investments settled through U.S. Bank Money Center.	\$50.00
CTS10880	Disbursements/Draws Charge per item disbursed. Includes the wire or check fee.	\$25.00
Out of Pocket	Out of Pocket Expense Charge for miscellaneous expenses such as; fax, messenger service, overnight mail, telephone, stationery and postage. This charge is a percent of total Administration Fees, charged in advance.	10%
	Direct Out of Pocket Expenses Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel after the initial close, travel expenses and filing fees.	At Cost
	Extraordinary Services Extraordinary Services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the services and the responsibility involved. At our option, these charges will be billed at a flat fee or at our hourly rate then in effect.	

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

Schedule of Fees for Services as Collateral Agency and Account Agreement

For
San Luis Obispo Regional Transit Authority

United States Department of Treasury 2020 TIFIA Loan (Bus Maintenance Facility)

CTS01010A	Acceptance Fee The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time, non-refundable fee, payable at closing.	\$500.00
CTS16156B	Legal Expenses, if applicable, Includes fees and expenses of legal counsel as well as the rendering of a standard legal opinion if required.	\$1,500.00
CTS04040	Collateral Agent Annual account administration fee for the performance of the routine duties associated with the administration of the account. Administration fees are payable in advance.	\$800.00
CTS04280	Administration Annual administration fee for the performance of the routine duties associated with the payment of the loan. Administration fees are payable in advance.	\$400.00
CTS10100	Investment Trades Charge per trade to buy or sell investments, excluding automated sweep transactions. **Automatic sweeping of cash into money market funds is not considered a "trade" for the purposes of this fee. However, applicable fees are disclosed in the "Automatic Money Market Investments" authorization letter or the fund prospectus provided ***No charge for investments settled through U.S. Bank Money Center.	\$50.00
CTS10880	Disbursements/Draws Charge per item disbursed. Includes the wire or check fee.	\$25.00
Out of Pocket	Out of Pocket Expense Charge for miscellaneous expenses such as; fax, messenger service, overnight mail, telephone, stationery and postage. This charge is a percent of total Administration Fees, charged in advance.	10%
	Direct Out of Pocket Expenses Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel after the initial close, travel expenses and filing fees.	At Cost
	Extraordinary Services Extraordinary Services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the services and the responsibility involved. At our option, these charges will be billed at a flat fee or at our hourly rate then in effect.	

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

Attachment E

IRREVOCABLE DIRECTION RE DEPOSIT OF LTF FUNDS

This IRREVOCABLE DIRECTION RE DEPOSIT OF LTF FUNDS (this “Irrevocable Direction”) is entered into this [] day of [], 2020, by and between the San Luis Obispo Regional Transit Agency, a California joint powers agency (“RTA”) and the San Luis Obispo Council of Governments, a California joint powers agency (“SLOCOG”).

RECITALS:

WHEREAS, RTA is the regional transit agency whose service area includes most of San Luis Obispo County, California;

WHEREAS, SLOCOG receives apportionments of Local Transportation Fund sales tax revenues (“LTF Funds”) from the California Department of Tax and Fee Administration (“CDTFA”) and allocates LTF Funds to eligible claimants pursuant to the California Transportation Development Act; and

WHEREAS, RTA has been a past recipient, and anticipates being a future recipient, of LTF Funds to pay in part for the capital and operating expenses relating to providing transit service to the region; and

WHEREAS, RTA anticipates entering into one or more loan agreements, including a TIFIA loan agreement (the “TIFIA Loan Agreement”) with the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), to pay for costs relating to the construction of a new administration and transit vehicle maintenance facility in the City of San Luis Obispo, California and such loan agreements will require RTA to make principal and interest payments as well as pay certain fees and expenses relating to the administration of such loan agreements (collectively, the “Loan Agreements”) and pursuant to the Loan Agreements RTA will covenant to budget and appropriate all of its revenues, including LTF Funds, but excluding, for the TIFIA Loan Agreement, any Federal Transit Administration funds, in order to make payments when due with respect to the Loan Agreements; and

WHEREAS, RTA has entered into that certain Collateral Accounts and Security Agreement (as it may be amended, amended and restated, or otherwise supplemented or modified, the “CASA”) with [U.S. Bank National Association, a national banking association,] as collateral agent (“Collateral Agent”), that has established a revenue fund, debt service funds and debt service reserve funds that will secure the Loan Agreements and into which RTA will deposit or cause to be deposited all LTF Funds allocated to it and, subject to the CASA, all farebox revenues and contract service revenues received by or on behalf of the Borrower in connection with the operation of the transit vehicles owned or leased by the Borrower and certain other revenues of the Borrower, provided that no Federal Transit Administration funds shall be used to make payments in respect of the TIFIA Loan Agreement; and

WHEREAS, to provide assurances to the lenders under the Loan Agreements that sufficient revenues will be deposited with the Collateral Agent to satisfy RTA’s financial obligations under the Loan Agreements, RTA is entering into this Irrevocable Direction.

NOW, therefor, in consideration of the foregoing the parties agree as follows:

1. Irrevocable Direction to Deposit LTF Funds into the Revenue Account. RTA hereby irrevocably and unconditionally directs SLOCOG to deposit, as and when allocated to RTA but no less frequently than on a quarterly basis, all LTF Funds received by SLOCOG from the CDTFA (or any successor or alternate public agency or governing body that may in the future apportion, direct or transfer or otherwise administer funds available pursuant to the California Transportation Development Act) that are allocated to RTA into the revenue account described below (the "Revenue Account"), which account is held by the Collateral Agent and governed by the terms of the CASA:

[INSERT RTA REVENUE ACCOUNT INFORMATION]

2. Acknowledgement. SLOCOG hereby (a) acknowledges and agrees to the RTA's irrevocable direction to deposit all LTF Funds allocated to RTA into the Revenue Account and (b) covenants to comply with the requirements of Section 1 above. Except for deposits into the Revenue Account, SLOCOG shall not transfer, allocate or otherwise provide LTF Funds allocable to the RTA to any other person or entity.

3. Term. This Irrevocable Direction shall be in force and effect until all outstanding financial obligations of RTA under the Loan Agreements have been irrevocably paid in full in cash. Upon such irrevocable payment in full of RTA's financial obligations, the Collateral Agent shall deliver a notice of such payment to SLOCOG.

4. Amendment. SLOCOG acknowledges that the directions set forth herein are irrevocable. This Irrevocable Direction shall not be amended, modified, supplemented, replaced or revoked (including by waiver of any provision of this Irrevocable Direction) without the prior written consent of the TIFIA Lender.

5. Third Party Beneficiaries. The TIFIA Lender and the other lenders under the Loan Agreements shall be third party beneficiaries of this Irrevocable Direction with respect to all rights, benefits, remedies, claims and other privileges of RTA with respect to this Irrevocable Direction and shall each have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits, remedies, claims and other privileges directly, without the consent or joinder of any other person. Except as set forth in this Section 5, nothing herein express or implied shall give to any person any benefit or any legal or equitable right, remedy, or claim hereunder.

6. Counterparts. This Irrevocable Direction may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Irrevocable Direction. Electronic delivery of an executed counterpart of a signature page of this Irrevocable Direction shall be effective as delivery of an original executed counterpart of this Irrevocable Direction and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. [Signatures for this Irrevocable Direction may be made by electronic means, if accompanied by an email, contemporaneous or otherwise, confirming the use of such means.]

7. Governing Law. This Irrevocable Direction shall be governed by and construed in accordance with the laws of the State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Irrevocable Direction to be effective as of the date first written above.

San Luis Obispo Regional Transit Agency

San Luis Obispo Council of Governments

Fred Strong
President of the RTA Board of Directors

Fred Strong
President of the SLOCOG Board of Directors

ATTEST:

ATTEST:

Geoff Straw
RTA Executive Director

Peter Rodgers
SLOCOG Executive Director

APPROVED AS TO FORM AND LEGAL EFFECT:

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal
County Counsel

Rita Neal
County Counsel

By: _____
Nina Negranti
RTA Counsel

By: _____
Nina Negranti
SLOCOG Counsel

Dated: _____
(Original signature in BLUE ink)

Dated: _____
(Original signature in BLUE ink)

Acknowledged and agreed to:

[U.S. Bank National Association],
as Collateral Agent

By: _____
Name:
Title:

Attachment F

IRREVOCABLE DIRECTION RE DEPOSIT OF FAREBOX REVENUES

This IRREVOCABLE DIRECTION RE DEPOSIT OF FAREBOX REVENUES (this “Irrevocable Direction”) is entered into this [] day of [], 2020, by and between the San Luis Obispo Regional Transit Agency, a California joint powers agency (“RTA”) and the Auditor/Controller/Treasurer/Tax Collector of County of San Luis Obispo, California, a [] (the “ACTTC”).

RECITALS:

WHEREAS, RTA is the regional transit agency whose service area includes most of San Luis Obispo County, California;

WHEREAS, RTA receives farebox revenues and contract service revenues in connection with the operation of the transit vehicles owned or leased by RTA, including (a) revenues earned under contractual arrangements with public or private entities, either (i) for transit fares for a specified group of employees, members, or clients, or (ii) to guarantee a minimum revenue on a line operated especially for the benefit of the paying entity (e.g., an employer, shopping center, university, etc.); (b) cash donations made by individual passengers or community organizations in lieu of a prescribed fare; (c) passenger fares collected by RTA; (d) fare subsidies from a public or private entity; (e) local support, including passenger donations and local business contributions made to benefit employees, customers, visitors, or residents; (f) parking revenues used as fare subsidies; and (g) support from private non-profits to supplement discount or zero fares (collectively, “Farebox Revenues”); and

WHEREAS, RTA has entered into separate services agreements with the ACTTC for RTA’s 2019-2020 fiscal year and for RTA’s 2020-2021 fiscal year, in each case, pursuant to which the ACTTC provides accounting services to RTA, including maintaining RTA’s revenues, including Farebox Revenues, in a ACTTC-held bank account with Pacific Western Bank (“Account Bank”), and directing the deposit and transfer of such RTA revenues on behalf of RTA, and RTA anticipates entering into similar services agreements with the ACTTC in the future; and

WHEREAS, RTA anticipates entering into one or more loan agreements, including a TIFIA loan agreement (the “TIFIA Loan Agreement”) with the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), to pay for costs relating to the construction of a new administration and transit vehicle maintenance facility in the City of San Luis Obispo, California and such loan agreements will require RTA to make principal and interest payments as well as pay certain fees and expenses relating to the administration of such loan agreements (collectively, the “Loan Agreements”) and pursuant to the Loan Agreements RTA will covenant to budget and appropriate all of its revenues, including Farebox Revenues, but excluding, for the TIFIA Loan Agreement, any Federal Transit Administration funds, in order to make payments when due with respect to the Loan Agreements; and

WHEREAS, RTA has entered into that certain Collateral Accounts and Security Agreement (as it may be amended, amended and restated, or otherwise supplemented or modified, the “CASA”) with [U.S. Bank National Association, a national banking association,] as collateral agent (“Collateral Agent”), that has established a revenue fund, debt service funds and debt service reserve funds that will secure the Loan Agreements and into which RTA will deposit or cause to be deposited all Local

Transportation Fund sales tax revenues allocated to it and, subject to the CASA, all Farebox Revenues and certain other revenues of the Borrower, provided that no Federal Transit Administration funds shall be used to make payments in respect of the TIFIA Loan Agreement; and

WHEREAS, to provide assurances to the lenders under the Loan Agreements that sufficient revenues will be deposited with the Collateral Agent to satisfy RTA's financial obligations under the Loan Agreements, RTA is entering into this Irrevocable Direction.

NOW, therefor, in consideration of the foregoing the parties agree as follows:

1. Irrevocable Direction to Deposit Farebox Revenues into the Revenue Account. RTA hereby irrevocably and unconditionally directs the ACTTC to deposit, on the [] day of each month, all Farebox Revenues received by or on behalf of RTA on or after the [] day of the immediately preceding month into the revenue account described below (the "Revenue Account"), which account is held by the Collateral Agent and governed by the terms of the CASA:

[INSERT RTA REVENUE ACCOUNT INFORMATION]

; provided that if at any time the ACTTC receives a notice in writing from the Collateral Agent that no transfer of Farebox Revenues to the Revenue Account is required for the remainder of the current Payment Period (as defined below) (a "No Transfer Order"), the ACTTC shall not be required to deposit Farebox Revenues into the Revenue Account from the date of receipt of such No Transfer Order until the end of the current Payment Period. For the purposes of this Irrevocable Direction, the following capitalized terms shall have the definitions given below:

(a) "Payment Period" means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the first Semi-Annual Payment Date following the initial draw on the loan under the TIFIA Loan Agreement.

(b) "Semi-Annual Payment Date" means each January 1 and July 1, or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing on the first Semi-Annual Payment Date following the initial draw on the loan under the TIFIA Loan Agreement.

(c) "Business Day" means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government of the United States of America and its departments and agencies or the State of California 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 Luis Obispo County, California or Los Angeles, California.

2. Acknowledgement. The ACTTC hereby (a) acknowledges and agrees to the RTA's irrevocable direction to deposit all Farebox Revenues received by or on behalf of RTA into the Revenue Account, (b) acknowledges and agrees that this Irrevocable Direction is the only direction or authorization required from RTA to permit the deposit of Farebox Revenues into the Revenue Account by the ACTTC under any accounting services agreement between RTA and the ACTTC that is currently in effect or that may be executed in the future, and (c) covenants to take all actions necessary to comply with the requirements of Section 1 above, including directing the Account Bank to transfer Farebox Revenues from a ACTTC-held account into the Revenue Account. During any time when the ACTTC is required to deposit Farebox

Revenues into the Revenue Account pursuant to Section 1 above, the ACTTC shall not withdraw or transfer, or permit the withdrawal or transfer of, Farebox Revenues for any purpose other than the transfer to the Revenue Account.

3. Term. This Irrevocable Direction shall be in force and effect until all outstanding financial obligations of RTA under the Loan Agreements have been irrevocably paid in full in cash. Upon such irrevocable payment in full of RTA's financial obligations, the Collateral Agent shall deliver a notice of such payment to the ACTTC.

4. Amendment. The ACTTC acknowledges that the directions set forth herein are irrevocable. This Irrevocable Direction shall not be amended, modified, supplemented, replaced or revoked (including by waiver of any provision of this Irrevocable Direction) without the prior written consent of the TIFIA Lender.

5. Third Party Beneficiaries. The TIFIA Lender and the other lenders under the Loan Agreements shall be third party beneficiaries of this Irrevocable Direction with respect to all rights, benefits, remedies, claims and other privileges of RTA with respect to this Irrevocable Direction and shall each have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits, remedies, claims and other privileges directly, without the consent or joinder of any other person. Except as set forth in this Section 5, nothing herein express or implied shall give to any person any benefit or any legal or equitable right, remedy, or claim hereunder.

6. Counterparts. This Irrevocable Direction may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Irrevocable Direction. Electronic delivery of an executed counterpart of a signature page of this Irrevocable Direction shall be effective as delivery of an original executed counterpart of this Irrevocable Direction and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. [Signatures for this Irrevocable Direction may be made by electronic means, if accompanied by an email, contemporaneous or otherwise, confirming the use of such means.]

7. Governing Law. This Irrevocable Direction shall be governed by and construed in accordance with the laws of the State of California.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Irrevocable Direction to be effective as of the date first written above.

San Luis Obispo Regional Transit Agency

Auditor/Treasurer/Tax Collector of County of
San Luis Obispo, California

Fred Strong
President of the RTA Board of Directors

James Hamilton
Auditor-Controller-Treasurer-Tax Collector

ATTEST:

Geoff Straw
RTA Executive Director

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal
County Counsel

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal
County Counsel

By: _____
Nina Negranti
RTA Counsel

By: _____
Deputy County Counsel

Dated: _____
(Original signature in BLUE ink)

Dated: _____
(Original signature in BLUE ink)

Acknowledged and agreed to:

[U.S. Bank National Association],
as Collateral Agent

By: _____

Name:

Title:

Acknowledged and agreed to:

Pacific Western Bank,
as Account Bank

By: _____

Name:

Title:

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SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY

JULY 8, 2020

STAFF REPORT

AGENDA ITEM: B-2

TOPIC: Construction of New Bus Maintenance Facility

ACTION: Consider Award Authority

PRESENTED BY: Geoff Straw, Executive Director

STAFF RECOMMENDATION: Resolution Awarding the Contract for the Construction of the RTA Bus Maintenance Facility to the Successful Bidder

SUMMARY:

The new long-term Bus Maintenance Facility (BMF) project will provide administrative, operations and vehicle maintenance functions on 6.5 acres of RTA-owned land at 253 Elks Lane in San Luis Obispo. Staff has presented the BMF project to the RTA Board of Directors many times through its various phases over the past six years – land purchase, conceptual planning, environmental review, design/engineering, and procurement of commissioning and construction management – and we are finally at the point of presenting the construction bids. The project will move into the Construction Phase upon authorization by the RTA Board to award this construction contract to the lowest-responsible bidder.

Following a two-week rebidding period, we opened three bids from General Contractors by the June 4th at 2:00 PM deadline, as follows:

1. Specialty Construction, Inc. for \$16,873,000;
2. Newton Construction for \$17,274,000; and
3. Katch Environmental for \$17,577,213

All bid results and follow-up submittal documents are posted on the RTA website. On June 9, 2020, we informed Specialty and Newton that both of their bids were deemed responsive and responsible, although Katch's was deemed non-responsive for failing to submit follow-up documents. Newton subsequently submitted a bid protest on July 11, 2020, and a hearing was conducted on July 17, 2020. That same day, with the assistance of RTA Counsel and our civil rights officer (Tania Arnold), I determined the bid protest to be without merit. See the copy of my determination letter (Attachment A) and related documents (Attachments B and C) at the end of this report for details. The attached Resolution Authorizing the Award of a Contract reflects the lowest responsive and responsible bid provided by Specialty.

In a separate item before the RTA Board today is the Resolution to finance the project through an interim/bridge loan with a local bank, with ultimate financing to be achieved in the coming weeks through the *Transportation Infrastructure Financing Innovation Act / Rural Project Initiative* (TIFIA/RPI) program or through Certificates of Participation should the TIFIA effort fail. That item will be considered under Agenda Item B-1. All other precursor work, including endorsement by the San Luis Obispo County Board of Supervisors at its April 21st meeting, has been completed.

Staff is asking that the Board approve and execute the attached Resolution authorizing the Executive Director to award the contract to Specialty Construction, Inc. for the contract price of \$16,873,000.

Staff Recommendation

Approve and execute the attached Resolution awarding the contract for the construction of the RTA Bus Maintenance Facility to the Successful Bidder, Specialty Construction of San Luis Obispo, California, for the Contract Price of \$16,873,000.

**SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY
RESOLUTION NO. 20-_____**

**RESOLUTION AUTHORIZING THE AWARD OF A CONTRACT FOR THE
CONSTRUCTION OF THE RTA BUS MAINTENANCE FACILITY**

WHEREAS, the San Luis Obispo Regional Transit Authority (RTA) Board of Directors (Board) certified the Initial Study – Mitigated Negative Declaration (IS-MND) of Environmental Review for the RTA Bus Maintenance Facility (Project) on September 6, 2017, and directed staff to proceed forward with the design and construction of the Project; and

WHEREAS, the RTA entered into a professional services agreement with several firms to provide professional services associated with the establishment of environmental permitting, design, financing, commissioning and construction management throughout the Design Phase of the project spanning from adoption of the IS-MND to the present; and

WHEREAS, the City of San Luis Obispo Planning Commission approved the Project at its July 24, 2019 meeting; and

WHEREAS, the Board authorized the reissuance of Invitation for Bids for Construction Services as its May 22, 2020 meeting; and

WHEREAS, the RTA publicly opened Bids for Construction of the RTA Bus Maintenance Facility, Project No. 2020-01, on June 4, 2020; and

WHEREAS, the RTA has deemed Specialty Construction, Inc. to be the lowest-responsive Successful Bidder and the price to be reasonable; and

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Board of Directors of the San Luis Obispo Regional Transit Authority:

1. The RTA hereby finds the above recitals to be true and correct, and authorizes the Project to move into the Construction Phase.
2. The RTA hereby authorizes the awarding of a Construction Contract for the RTA Bus Maintenance Facility, Project No. 2020-01, to Specialty Construction for the Contract Price of \$16,873,000.00, contingent on the following conditions:
 - a. Successful Bidder delivers to the RTA two executed Agreements, provided in Section 005000 of the Contract Documents.
 - b. Successful Bidder delivers to the RTA the completed Performance Bond, provided in Section 006000 of the Contract Documents.

- c. Successful Bidder delivers to the RTA the completed Payment Bond, provided in Section 00600 of the Contract Documents.
 - d. Successful Bidder provides proof to the RTA that he has acquired the necessary insurance coverage, as specified in Section 00600, Article 4 of the Contract Documents.
 - e. Successful Bidder submits the required recycling plan to the RTA, as specified in Section 013300 of the Contract Documents.
- 3. This award is subject to all of the terms and conditions set forth in the Contract Documents, including but not limited to Section 00100, Article 10.3 of the Contract Documents. Pursuant to provisions of Section 007300, Article 1.9 of the Contract Documents, the Successful Bidder shall not terminate a Disadvantaged Business Enterprise (DBE) Subcontractor without RTA written consent. In such case that the termination of a DBE Subcontractor is consented by the RTA, the Successful Bidder shall make good faith efforts to find another DBE Subcontractor.
 - 4. The RTA hereby delegates to the Executive Director and the Director's designee(s), including the Deputy Executive Director, the authority to issue a Notice of Award to the Successful Bidder pursuant to the terms of this resolution directing the Successful bidder to satisfy the conditions listed above and to deliver a properly executed agreement to the RTA pursuant to the provisions of the Contract Documents.
 - 5. The RTA hereby delegates to the Executive Director and the Director's designee(s), including the Deputy Executive Director, the authority to issue a Notice to Proceed to the Successful Bidder, authorizing the Successful Bidder to proceed with the work and establishing the date of commencement of the Contract Time, once the above conditions have been satisfied and the agreement has been properly executed by the Successful Bidder and the RTA pursuant to the Contract Documents.
 - 6. The RTA hereby approves all plans and designs contained in the Contract Documents, all terms and conditions relating to said plans and designs, and the liquidated damages provisions contained in the Contract Documents.
 - 7. The RTA hereby delegates to the Executive Director and the Director's designee(s) the authority to order any changes or additions to the plans, designs or any other provisions of the work so long as any such change or addition is deemed consistent with the proper completion of the Project under the sound discretion of the Director or his designee. The dollar amount of any such change or addition shall not exceed the maximum dollar amount allowed her Public Contract Code Section 20142. Any changes or additions shall be in writing and administered as specified in the Contract Documents.

8. The Executive Director shall return to this Board with a Completion of Construction Report for the construction of the Bus Maintenance Facility, and provide recommendations to this Board for issuing a Notice of Completion.

Upon motion of Delegate _____, seconded by Delegate _____, and on the following roll call, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

The foregoing resolution is hereby passed and adopted by the San Luis Obispo Regional Transit Authority of San Luis Obispo County, State of California, at a regular meeting of said Board of Directors held on the 8th day of July 2020.

Fred Strong
RTA Board President

ATTEST:

Geoff Straw
RTA Executive Director

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal
County Counsel

By: _____
Nina Negranti
RTA Counsel

Dated: _____
(Original signature in BLUE ink)

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ATTACHMENT A

179 Cross Street, Suite A
San Luis Obispo, CA 93401
(805) 781-4472 Fax (805) 781-1291
www.slorta.org

June 17, 2020

Eric Newton
Newton Construction & Management, Inc.
PO Box 3260
San Luis Obispo, CA 93403

Re: Response to Bid Protest of an Award to Specialty Construction

Dear Mr. Newton:

As you know, the San Luis Obispo Regional Transit Authority ("RTA") previously rejected all bids and decided to rebid its Bus Maintenance Facility Project 2020-01 (the "Project"). New bids from interested contractors were due on June 4, 2020. Specialty Construction Inc. ("Specialty") was determined to be the lowest responsive bidder. Your firm, and Newton Construction Inc. ("Newton") was the second lowest responsive bidder; Katch Environmental was subsequently determined to be non-responsive for failing to submit the Subcontractor List and DBE Forms in a timely manner.

On Thursday, June 11, 2020, the RTA received Newton's bid protest letter (the "Bid Protest"), which was timely submitted. The Bid Protest set forth three general allegations: (1) that the RTA failed to follow the Public Contract Code; (2) Specialty's bid listed an unqualified subcontractor and failed to list a subcontractor scope of work that is equal to or greater than one-half of one percent; and (3) that Specialty's bid did not meet the DBE participation goal.

On June 15, 2020, Specialty submitted a letter rebutting the allegations set forth in Newton's Bid Protest.

On June 17, 2020, a bid protest hearing was conducted telephonically. Persons present were yourself and Andy Unger from your firm; Rudy Bachman, Jeff Martin, Nathan Agin and Deborah Wilson from Specialty; and RTA counsel, the RTA Civil Rights Officer, and myself. After considering all the points in the Bid Protest, Specialty's response and testimony received at the hearing, Newton's Bid Protest is hereby denied. RTA's response to each claim is set forth below:

Allegation 1: RTA Failed to Follow Public Contract Code – The crux of this claim is that by awarding the project to Specialty, the RTA would be abusing its discretion because the RTA's opening of the bids was not open to the public.

The Regional Transit Authority is a Joint Powers Agency serving residents and visitors of:

Arroyo Grande Atascadero Grover Beach Morro Bay Paso Robles Pismo Beach San Luis Obispo and The County of
San Luis Obispo

In terms of what actually happened, at the 2:00PM bidding deadline on June 4th, the RTA announced to all present that the RTA received timely bids from three firms by the deadline. The RTA also announced that, because of COVID-19 pandemic safety concerns and the need to maintain adequate social distancing, the RTA's construction manager and its Executive Director would again complete the checklist process in the adjacent conference room and announce the results in a few minutes – the exact same process that occurred at the original April 21st public bid opening. Kitchell's Tully Wyatt and RTA staff opened the bids in alphabetical order, verified that required submittals were provided, and recorded the prices bid onto the checklist form. At 2:09 PM, RTA and Kitchell staff exited the conference room and read the results aloud on the sidewalk between the conference room and the adjacent parking lot. The RTA also announced that it would scan the results and post them on its website. Again, this is the same process that the RTA utilized during the original bid opening on April 21st, and no bidder disputed the stated need for personnel safety in light of the COVID-19 pandemic at either event.

Newton's Bid Protest references "Public Contract Code - Division 2 - Part 2 - chapter 2. - Article 3.10304" (sic) and the case of *Pozar v. State of California* (1983) 145 Cal. App. 3d 269 in support of the statement that "[it] would be an abuse of discretion for the RTA to award any project to any bidder by not following the required procedures set forth in the contract documents, therefore tainting the bidding process." The California Public Contract Code cited in the Bid Protest letter is not applicable to the RTA because the RTA is a joint powers authority, not a State agency. No section of California Public Contract Code §§ 20100 *et seq.*, which the RTA is subject to, has such a similar requirement – see e.g. § 20150.8 (counties) and § 20164 (cities), which constitute the common powers of the members of the RTA. Further, the way the bids were opened is immaterial and perfectly reasonable in light of the threats to public health by the COVID-19 pandemic and the need to maintain social distancing. While it is true that under the *Pozar* case, a public entity is obligated to follow its own rules regarding criteria used to decide the manner in which a contract should be awarded, however, its holding does not extend to situations where the discrepancy does not affect the evaluation of the total bid price. The alleged discrepancy in the way bids were opened has no bearing on the bid prices and did not provide any bidder with an unfair advantage over another. Accordingly, this argument has no merit.

Allegation 2: Specialty's bid listed an unqualified subcontractor and failed to list a subcontractor scope of work that is equal to or greater than one-half of one percent – As noted in Specialty's June 15, 2020 letter and as was discussed in the prior bid dispute, a bid is responsive if it promises to do what the bidding instructions demand. *Taylor Bus Service, Inc. v. San Diego Board of Education* (1987) 195 Cal. App. 3d 1331, 1341. The determination of whether a bid is responsive is an objective test and it is usually determined by the face of the bid. *Great Western Contractors, Inc. v. Irvine Unified School District*, (2010) 187 Cal. App. 4th 1425. Newton's allegation goes well beyond the face of Specialty's bid and therefore, raises concerns regarding responsibility.

Newton basically argues that because GBT Sheet Metal Inc. ("GBT") is not a certified installer of Morin formed metal wall panel systems it therefore does "...not possess the qualifications

requires, the required manufacturer certifications to self-perform this work, or even the ability to purchase these materials.” Protest Ltr. pg. 2, ¶ 6. In addition, Newton argues that no qualified subcontractor was listed to install thermally improved cladding systems.

Notwithstanding the responsive versus responsibility issue, Newton’s argument completely fails to account for the fact that the metal wall panel systems may be purchased from four other prequalified manufacturers that were identified in the Project’s bid specifications (ATAS, CENTRIA, Metal Sales and Peterson, in addition to Morin) and that the thermally improved cladding systems may be purchased from five prequalified manufacturers (AAP, Armatherm, Cascadia, ECO and Knight). In other words, the fact that the identified subcontractor is not a certified installer for *one of the* identified systems manufacturers in no way renders Specialty, vis a vis its subcontractor, not responsible to perform the work or as being non-responsive. In fact, acceptable alternatives to the prequalified manufacturers also can be considered during the submittal process, as long as those manufacturers meet the performance measures identified in the bid specifications.

GBT is a licensed (Lic. No. 973610), bonded and insured C-43 sheet metal contractor. Specialty is obligated to construct the Project in accordance with the Project specifications, including installation of the formed metal wall panels that meet the Project’s specifications. Newton’s Bid Protest fails to provide any relevant evidence that Specialty is not responsible to perform this work.

Allegation 3: Specialty’s bid did not meet the DBE participation goals – The discussions between Newton and BBC Electric, Inc. (“BBC”) are immaterial to the responsiveness of Specialty’s bid or Specialty’s ability to perform the work. Because BBC is being used as a DBE regular dealer, the extent and scope of performing a commercially useful function is consonant with such a function. It is clear that BBC has the appropriate DBE NAISC codes for the work proposed (423610) and Specialty appropriately counted 60% of BBC’s bid toward meeting the RTA’s 5.1% DBE goal in accordance with 49 CFR § 26.55(e)(2). Moreover, even assuming arguendo that BBC’s participation could not count towards Specialty’s DBE goals, Specialty has made sufficient good faith efforts in compliance with Section 1.9 of the Project’s Supplemental Conditions, Section 00 73 00.

Newton’s claim that SCI failed to contact S. Chavez Construction on the rebid is completely irrelevant and immaterial to the responsiveness of Specialty’s bid or its ability to perform the work.

CONCLUSION

Based on the above reasons, the RTA denies Newton's Bid Protest. This decision is final subject to § 1.21 of the Project's Supplemental Conditions § 00 73 00.

Sincerely,



Geoff Straw

RTA Executive Director

cc: Tania Arnold, RTA Civil Rights Officer
Jon Ansolabehere, RTA Counsel
Rudy Bachman, Specialty Construction

ATTACHMENT B



June 11, 2020

ATTN: Mr. Geoff Straw, Executive Director
San Luis Obispo Regional Transit Authority
179 Cross Street
San Luis Obispo, CA 93401

VIA: EMAIL (gstraw@slorta.org)

Project: San Luis Obispo Regional Transit Authority Bus Maintenance Facility
Project No. 2020-01
San Luis Obispo, CA

RE: Bid Protest of an Award to Specialty Construction, Inc.

Dear Mr. Straw,

Please consider this letter as a formal protest of consideration of the apparent low bid by Specialty Construction, Inc. for the above referenced project. The basis for this protest includes the following: the failure to follow public contract code by the RTA, the listing of an unqualified subcontractor by Specialty Construction, the failure to list a qualified subcontractor for a portion of work that has a value equal or greater than one-half of one percent, and the failure to meet the claimed DBE Participation Goal by Specialty Construction.

RTA – Failure to Follow Public Contract Code

Per Section 00 11 16 - Invitation to Bidders, Section 5.2 - Bid Opening of the Contract Documents: the potential bidders are affectively entitled to a public bid opening witnessed by all participants. In addition, per Public Contract Code - Division 2 - Part 2 - Chapter 2. - Article 3.10304, the following is stated:

“All bids shall be sealed and shall be publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read. No bids shall be considered which have not been received in the office of the department prior to the closing time for bids set forth in the invitations to bids. The department shall maintain confidentiality regarding each bid until the public opening and reading takes place.”

Per the contract documents, the Bid opening was stated to occur in the RTA's Downstairs Conference Room. However, no additional information was given stating that the public and / or bidders would not be allowed to witness the opening of bids. Newton Construction personnel submitting the bid asked RTA staff if they could witness the bid opening and enter the building but were not allowed to do so. This bid opening did not follow PCC and was absent of a public bid opening. Approximately 15 minutes passed between the time bids were received and when RTA staff came back outside to the publicly announce the bid results.

The RTA did not follow the guidelines of PCC and their own procedures set forth in the Contract Documents. Public agencies are required to follow their own procedures in awarding contracts.



See Pozar v. State of California (1983) 145 Cal.App.3d 269. It would be an abuse of discretion for the RTA to award any project to any bidder by not following the required procedures set forth in the contract documents, therefore tainting the bidding process.

Specialty Construction - Listing of an Unqualified Subcontractor and failure to list a subcontractor for a scope of work that is equal to or greater than one-half of one percent.

Specialty's bid is non-responsive because it failed to list a qualified supplier/installer specified in Sections 07 42 13.13. Specification Section 07 42 13.13 -1.07 A. Quality Assurance states the installer needs to be trained and approved by the manufacturer. The Basis-of-Design manufacture is listed as Morin per the contract drawings and the specifications. Attached you will find "Exhibit A"(GBT Sheet Metal bid proposal) stating they will be providing the Morin metal wall panels. Per attached letter from Morin listed as Exhibit "B" you will see that GBT is not a certified installer and Supplier of their products.

Per specification section 07 05 43.13 and the contract drawings, a Thermally Improved Cladding Attachment System (TICAS) is called for installation. This section ties directly with the metal panel system as the panels are attached and held up by this system. Both sections have specific performance requirements that require the installer to provide professional engineering to meet the design loads. These design loads require the two systems to be reviewed together, to assure the system will meet the design criteria. As shown in Exhibit "A", GBT did not have the TICAS as part of their proposal. Per Specialty Construction's bid, Four C's Construction Inc. was crossed off (listed by Newton). Four C's specifically called out the TICAS specification, the correct insulation per section 07 21 00, and holds the full Morin certified manufactures requirements.

Specification Section 01 40 00 Quality Requirements defines Experienced as "When used with an entity, "experienced" means having successfully completed a minimum of five previous projects similar in size and scope to this Project; being familiar with special requirements indicated; and having complied with requirements of authorities having jurisdiction". This section also defines "Installer Qualifications" to be "A firm or individual experienced in installing, erecting, or assembling work similar in material, design, and extent to that indicated for this Project, whose work has resulted in construction with a record of successful in-service performance". Specialty did not list a subcontractor with such qualifications, and thus represents it will be self-performing that work (Public Contract Code Section 4106). However, Specialty does not have those qualifications to perform this work either, which is above the threshold of one-half of one percent required to list.

Specification Sections for these scopes of work (specifically, 07 05 43.13 – Thermally Improved Cladding Attachment Systems, 07 21 00 – Thermal Insulation, 07 27 19 Plastic Sheet Air Barrier, 07 42 13.13 – Formed Metal Wall Panels) specifies various stringent performance characteristics, which require significant experience and manufacturer certifications in several applications.

Newton has proved Specialty and GBT do not possess the qualifications required, the required manufacturer certifications to self-perform this work, or even the ability to purchase these materials. As stated in the attached letter from Morin Exhibit "B".



The specification states the intent that RTA reasonably requires for quality assurance: an installer who has the necessary experience to not only ensure that the maintenance equipment is of functional quality and operates without deficiency or flaw, but must also have and possess the organization, experience, and ability to satisfactorily coordinate, procure and install the work in a first rate condition. RTA's Bus Maintenance facility must rely on the ability to operate its facility without deficiency or flaw and cannot take risks to otherwise ignore or fail to follow its bid requirements to assure the system is installed within the requirements and intentions of the bid documents and specifications in a first rate condition.

If Specialty, who does not possess the specified qualifications, is given the chance to install this work, it would mean Specialty was given a different expectation of the bid requirements than what Newton accurately relied on. Waving this irregularity would provide Specialty with an unfair bid advantage. Specialty cannot claim that the work was not listable since the work clearly exceeds the one half of one percent of the work. Please see the attached bid from GBT Sheet Metal, which clearly show the bid amount more than the one half of one percent to list. All subcontractors qualified for supply/installation of this scope would far exceed one half of one percent of the total bid. Therefore, bidders must rely on a subcontractor that meets those requirements. Newton did so by listing a subcontractor certified for the attachment, insulation, and metal panel systems. Newton submits this is not a minor irregularity that can, or should, be waived. Newton submits that RTA should reject the bid of Specialty to uphold the integrity of the bid process and avoid providing an unfair bid advantage to another bidder. Newton on the other hand understood the intentions of the bid documents, therefore choosing a subcontractor of a higher bid amount to meet the requirements of the contract documents and the necessity to assure a quality installation of the work by listing a qualified trade partner/subcontractor. Not listing a qualified subcontractor has given Specialty an advantage in which other bidders are not allowed.

DBE Participation Goals Not Met

Specialty's bid is again non-responsive by failing to meet the claimed DBE participation goal with eligible DBE regular dealer.

Newton was in contact with Chris Walker of BBC Electric Inc. After several phone calls, voicemails, and emails; Newton determined that BBC did not meet the commercially useful function as described in 49 CFR 26.55 (c) (1), and actually does fall into 49 CFR 26.55 (c) (2) listing when a DBE does not perform a Commercially Useful Function (CUF). See referenced section below.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

BBC, who was utilized by Specialty in the previous bid for plumbing and HVAC, changed what they were going to be providing for this rebid. Newton requested BBC to provide information on everything they can supply as a regular dealer and received an email from them stating that they were going to provide electrical materials per NAICS certification number 423610. Newton



asked several times to confirm that BBC was a regular dealer of the items they were anticipating providing but did not receive confirmation of this. BBC is only creating an extra layer between actual wholesalers and supply houses and is not a regular dealer as described in 49 CFR 26.55 (e) (2) (ii). See referenced section below.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Newton continued to try to determine what electrical materials BBC anticipated provided pricing, submittals, coordination, and supply of, but did not receive any specific information. After multiple phone calls, voicemails, and emails Chris Walker (BBC) responded that Newton should just put 8% mark-up on our supplier's costs. See attached email "Exhibit C" which shows Newton's email chain with BBC in trying to confirm what specific products they were able to provide. BBC was never able to confirm with Newton exactly what specific products he would provide, nor he did not give any quantities or confirm that he would be coordinating the submittals of the products he was going to provide. He simply stated "I would out 8% for our mark-up".

From this communication, Newton determined it would not be in Newton's or the RTA's best interest to list BBC as a DBE provider due to the appearance that they do not actually provide a CUF.

Notwithstanding the fact that Specialty listed a DBE provider who does not provide a CUF, Specialty's bid is also non-responsive because it does not identify any contract item or describe any parts of the work to which it relates. Under the Description Of Work To Be Performed section of Specialty's DBE Utilization form, BBC is performing "Electrical Apparatuses and Equipment". Per the contract documents and RTA's previous letter dated 5/5/2020 RE: Finding of Non-Responsive Bid for RTA Bus Maintenance Facility Construction Services Newton understands the importance to clearly explain the "Description Of Work To Be Performed". The Division 26 Electrical Specifications have 19 subsections. As you can see in the attached email chain "Exhibit C", BBC was not able to commit to providing anything specific from these 19 subsections of Electrical. Please keep in mind the majority of lighting, electrical panels, switch gear, charging equipment, and power related equipment manufacturers only sell to approved distributors or supply houses. Again, Newton did not believe it was in our or RTA's best interest to list BBC as a DBE provider due to the lack of scope that they were committing to provide. Newton did not believe we could fulfill the contract document requirements and 49 C.F.R. part 26 requirements if we chose to BBC as a DBE provider.

Specialty's bid is non-responsive due to not meeting the DBE participation goal of 5.1%. After removing BBC's 1.8% percentage, they are left with 3.99%. This is far below the 5.1 % and much lower than Newton's 11.3%. It is apparent Specialty did not perform or demonstrate adequate good faith efforts to meet the 5.1% goal. S Chaves Construction, who was listed by Newton construction on both bids, was not listed or even contacted on the rebid.

Newton construction understands the importance of meeting the DBE goal of 5.1%. Precedence was set by the RTA in the letter sent to Newton construction on 5/5/2020 RE: Finding of Non-



Responsive Bid for FTA Bus Maintenance Facility Construction Services. See below excerpt from this letter.

"The materiality of Newton Construction's failure to abide by the project's DBE participation requirement is underscored by the fact that RTA's failure to require its contractors to comply with U.S. Department of Transportation rules on DBE participation for this project would preclude the use of federal funding and make the project financially unviable. Strict compliance with this component is critical to the success of the project"

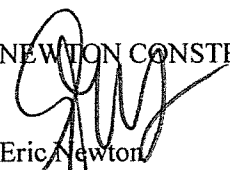
From this understanding Newton believes it is in the RTA's best interest to deem Specialty's bid non-responsive. It is apparent that Specialty chose to list BBC as a DBE provider not knowing exactly what services or products they were going to provide, and as provided in the emails between BBC and Newton "Exhibit C", they do not provide a CUF.

Newton expects RTA to complete the due diligence that is required to confirm BBC is actually acting as a "Sham DBE" and that they do not provide a CUF. As stated in your previous letters, the funding for this project that is requiring the DBE % goal is crucial to the success of the project. By doing this RTA will maintain the legitimacy of the public contract code, the DBE program, and will encourage equal and fair participation by contractors. The rejection of Specialty's bid and the award to Newton will show that RTA understands the project will move forward meeting and exceeding the DBE % goal. As previously emphasized by the RTA, it is critical that all DBE rules and regulations be followed to guarantee the grant funding provided to finance this project.

Due to the aforementioned items, we trust the RTA should find Specialty Construction's bid proposal non-responsive and award this project to the next responsive bidder. Newton Construction and Management, Inc. looks forward to the award of this project.

If you should have any questions, please feel free to contact our office at any time.

NEWTON CONSTRUCTION & MANAGEMENT, INC.


Eric Newton
Project Manager



Contractor's license # 976310

GBT Sheet Metal Inc. P.O. Box 6877, Santa Barbara, CA 93160. (805) 770-3872

GREETINGS: THIS AGREEMENT, made this 3rd day of June, 2020 by and between, GBT Sheet Metal & Gutter Inc., whose address is set forth above (hereinafter "CONTRACTOR") and Newton Construction. CONTRACTOR's address shown above is the address to which the Notice of Cancellation is to be mailed.

PROJECT LOCATION: 253 Elks In, San Luis Obispo CA

Andy- 458-0316 Email- Traci@newtonconstruction.com

Prepared by Garrett

OWNER and CONTRACTOR agree as follows:

DESCRIPTION OF THE PROJECT AND DESCRIPTION OF THE SIGNIFICANT MATERIALS TO BE USED AND EQUIPMENT TO BE INSTALLED.

This estimate is for the installation of sheet metal on the project located at 253 Elks In, SLO. This project is bid at prevailing wage rates.

1. Metal Wall paneling (Morin manufacture/Taylor manufacture)

MP-1

MP-2

MP-3

Install 6900 square feet of Vertical hidden fastener contour 16"

Install 3410 square feet of integrity x 12

Install 1560 square feet of integrity x-12 with ½" gap

All wall panels to be 24g kynar material (color to be chosen)

Install 11,870 sf of tyvek wall papering

Install 11,870 sf of Foamular ridged insulation, R-10 rating

Install z-subgrit for panel attachment (set in-between insulation)

Subgrit to be within 24" o.c.

Panels to be attached with approved fasteners (hidden/clip lock)

All trim to be installed per building plans (corners, starter metal and transition metal)

Install all trim metal round windows to tie into wall paneling

All associated trim for wall paneling to be installed (24g kynar)

Caulking to be used to seal where needed

All hardware color to match

All debris generated to be disposed of

Contract price.....\$448,911.00

2. Wall parapet coping

A-502 (3,7,8,9)

Install 1200 feet of 24g wall coping

Install cleat metal on outside of of coping

Coping to have 2" lap down

Coping laps to be butt joints and sealed with caulking

Coping to have rivets at seams

Coping to be attached from inside with screws/rivets

All hardware color to match

All debris generated to be disposed of

Contract price.....\$32,880.00

3. Trash Enclosure roof (Taylor metal product)

Install 270 sf of 7/8 corrugated, 24g kynar material

Roof to be installed over square tube metal

Roof to be attached with washer screws

Install all associated trim metal with roof

All debris generated to be disposed of

Contract price.....\$3,490.00

*Please initial all options, sign and date bottom and email to gbtSheetMetal@gmail.com

Entire Contract Price shall be due upon completion of the Work unless checked below

All Invoices paid with credit card will be charged additional 3.8%

CLEAN UP: Upon completion of the work, CONTRACTOR will remove debris and surplus material from OWNER's property and leave it in a neat, broom clean condition.

Warranty: All of the labor shall be completed in a reasonable and workman like manner according to the standard practices of the industry. CONTRACTOR warrants his labor to be free from defects for 3 years from date of substantial completion. This warranty shall not cover damages or leakage caused by alterations to the products installed after substantial completion, such as removal, lack of downspouts, and heavy debris.

APPROXIMATE START DATE AND APPROXIMATE COMPLETION DATE. Within 120 days after execution of this Contract, OWNER shall have the job site ready for commencement of construction, and shall thereupon give CONTRACTOR written notice to commence work. CONTRACTOR shall commence work within 30 days after receipt of such notice. Substantial commencement of the Work shall occur on the first day that CONTRACTOR furnishes construction labor, services and materials following receipt of OWNER's written notification to commence the Work. The Work shall be completed by the following approximate completion date: 120 working days from start date.. With 3 years of workmanship warranty.

WORKERS' COMPENSATION INSURANCE: CONTRACTOR carries workers' compensation insurance for all employees.

.....

Notice of the Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the Contract and this Notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this Contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense

and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, make or deliver a signed and dated copy of this Notice of Cancellation, or any other written notice, or send a telegram to GBT Sheet Metal., whose address is P. O. Box 6877, Santa Barbara, CA 93160 no later than midnight of _____. (Please write in a date 3 days after signing date and initial)

DATED THIS _____ day of _____, 2020.

OWNER

CONTRACTOR/AUTHORIZED AGENT

GBT Sheet Metal

(OWNER SIGN HERE)

By: Garrett _____

(If more than one Owner, Second Owner Sign Here)

Contractor's State License No. 976310

Owner's phone numbers:

This proposal is void if not accepted within ten working days of date listed above

Certificates of Insurance Provided Upon Request

June 11, 2020

Newton Construction + Management, Inc.
2436 Broad Street
San Luis Obispo, CA 93401
ATTN: Andy Unger

Re: SLO RTA Bus Maintenance Facility
253 Elks Ln
San Luis Obispo, CA

Dear Andy,

I'm replying to your inquiry about an Installer Certification for GBT Sheet Metal, Inc. as it pertains to the above referenced project.

GBT currently is not on our list of certified installers since we have not conducted any past business with them. Our standard way to certify installers is based on a few ways such as installation training in one of our three facilities or an installer list of successfully completed previous installations using similar products that Morin produces.

Hope this answers your questions.
If you have any additional questions, please feel free to contact me.

Sincerely,

David McCorriston

David McCorriston
Technical & Product Development Manager

Morin East
685 Middle Street
Bristol, CT 06010
tel: (860) 584-0900
fax: (860) 582-7503
toll free: (800) 640-9501

Morin West
10707 Commerce Way
Fontana, CA 92337
tel: (909) 428-3747
fax: (909) 428-6433
toll free: (800) 700-6140

Morin South
1975 Eidson Street
Deland, FL 32724
tel: (860) 584-0900
fax: (860) 582-7503
toll free: (800) 640-9501

www.morincorp.com

Exhibit "C"

Andy Unger

From: chris@bbcelectricinc.com
Sent: Thursday, June 4, 2020 1:07 PM
To: Andy Unger
Cc: Traci Parrish; Eric Newton
Subject: RE: Follow up on DBE wholesaler certification qualifications

Since we are at a late stage and you already have numbers, I would out 8% for our mark-up. We purchase our material two ways: directly from the manufacturer or from an authorized distributor (depending on the material)



Christopher Walker

BBC Electric Inc.
800-818-5638 Ext.810 Office
888-801-3792 Fax
chris@bbcelectricinc.com
Certs: SBE#1749202, DBE#41252, MBE#14020070, LSBE#16480101
NAICS: 221330, 335122, 335929, 339113, 332919, 423510, 423610, 423720, 423840, 424690
Cage: 5DXX8
Duns: 83-0136417

----- Original Message -----

Subject: RE: Follow up on DBE wholesaler certification qualifications
From: "Andy Unger" <andy@newtonconstruction.com>
Date: 6/4/20 12:49 pm
To: "chris@bbcelectricinc.com" <chris@bbcelectricinc.com>
Cc: "Traci Parrish" <traci@newtonconstruction.com>, "Eric Newton" <eric@newtonconstruction.com>

Chris,

Thanks for the response.

What is your estimate for that?

Would you provide interior and exterior lighting? Do you have any exclusions on lighting?

We have numbers from other wholesalers for electrical items. How do we know what your fees are or how much we need to put into the bid for you?

Thanks-

Andy Unger

NCM

805.458.0316

From: chris@bbcelectricinc.com <chris@bbcelectricinc.com>
Sent: Thursday, June 4, 2020 12:42 PM
To: Andy Unger <andy@newtonconstruction.com>
Cc: Traci Parrish <traci@newtonconstruction.com>; Eric Newton <eric@newtonconstruction.com>
Subject: RE: Follow up on DBE wholesaler certification qualifications

We can provide: wire & cable, lighting, conduit and power related equipment

Good luck!



Christopher Walker

BBC Electric Inc.

800-818-5638 Ext.810 Office

888-801-3792 Fax

chris@bbcelectricinc.com

Certs: SBE#1749202, DBE#41252, MBE#14020070, LSBE#16480101

NAICS: 221330, 335122, 335929, 339113, 332919, 423510, 423610, 423720, 423840, 424690

Cage: 5DXX8

Duns: 83-0136417

----- Original Message -----

Subject: RE: Follow up on DBE wholesaler certification qualifications
From: "Andy Unger" <andy@newtonconstruction.com>
Date: 6/4/20 12:07 pm
To: "Christopher Walker - BBC" <chris@bbcelectricinc.com>
Cc: "Traci Parrish" <traci@newtonconstruction.com>, "Eric Newton" <eric@newtonconstruction.com>

Chris,

Following up again on a voicemail I just left.

We need to know what you are offering to provide. Please provide a scope ASAP so we can try to coordinate with our other subs and suppliers so we can confirm we have coverage.

We are running out of time.

Thanks-

Andy Unger

NCM

805.458.0316

From: Andy Unger
Sent: Thursday, June 4, 2020 7:50 AM
To: Christopher Walker - BBC <chris@bbcelectricinc.com>
Cc: Traci Parrish <traci@newtonconstruction.com>; Eric Newton <eric@newtonconstruction.com>
Subject: RE: Follow up on DBE wholesaler certification qualifications

Chris,

Following up on the voicemail I just left.

We need to get the list of electrical items you are planning on providing to allow coordination with our other bidding potential subcontractors.

Please confirm you will be sending a scope letter shortly followed up with an estimate.

I'm assuming this is typically how you coordinate with the bidding contractors. If not please let me know how we can move forward with this.

Thanks-

Andy Unger

NCM

805.458.0316

From: Andy Unger
Sent: Wednesday, June 3, 2020 8:30 AM
To: Christopher Walker - BBC <chris@bbcelectricinc.com>
Cc: Traci Parrish <traci@newtonconstruction.com>; Eric Newton <eric@newtonconstruction.com>
Subject: RE: Follow up on DBE wholesaler certification qualifications

Chris,

Thanks for the update.

Will you be providing a list of all items you are able to meet the "Regular Dealer" requirements for?

We will need to coordinate with our subcontractors and determine who has what. We will need specifics of what you are going to provide ASAP to assure this coordination.

Also please confirm you will be providing all of the submittals for the items that you will be supplying.

Thanks-

Andy Unger

NCM

805.458.0316

From: Christopher Walker - BBC <chris@bbcelectricinc.com>

Sent: Wednesday, June 3, 2020 7:27 AM

To: Andy Unger <andy@newtonconstruction.com>

Cc: Traci Parrish <traci@newtonconstruction.com>; Eric Newton <eric@newtonconstruction.com>

Subject: Re: Follow up on DBE wholesaler certification qualifications

Hello Andy,

For this project we will provide the electrical materials only. (423610)

Our designation will allow you to capture 60% of the goal going toward DBE spend.

Regards,

Chris

Get Outlook for Android

On Wed, Jun 3, 2020 at 6:55 AM -0700, "Andy Unger" <andy@newtonconstruction.com> wrote:

Chris,

Wanted to follow up on this to make sure you received it and if you have any questions.

Thanks-

Andy Unger

NCM

805.458.0316

From: Andy Unger

Sent: Tuesday, June 2, 2020 10:47 AM

To: chris@bbcelectricinc.com

Cc: Traci Parrish <traci@newtonconstruction.com>; Eric Newton <eric@newtonconstruction.com>

Subject: Follow up on DBE wholesaler certification qualifications

Chris,

As we discussed over the phone we want to make sure we are accurately looking at the potential scope BBC Electric Inc. can provide as a DBE Wholesaler/Regular Dealer to achieve DBE participation.. We are looking for the supply of Light fixtures, switchgear, HVAC materials, and Plumbing.

Please confirm the certifications you will be providing estimates for so we can prepare our bid and subcontractors accordingly.

I've included the section from 49 CFR 26.55 regarding regular dealers. Please confirm the materials and equipment you are anticipating to provide will be able to be counted towards the DBE goal and meet the regular dealer requirements. From our conversation it did not sound like you typically keep all of the different products you anticipate to provide in stock and that they may be purchased and sent directly to the site.

(2)

(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

Please confirm we will be able to list BBC Electric Inc. as a wholesaler who meets the requirements referenced in the project specifications. In addition, we would like to know your fees on providing this service.

Also please take a look at the revised DBE Letter of Intent form in the revised bid documents.

DBE LETTER OF INTENT

SLO RTA Bus Maintenance Facility Project - Bid Date June 4, 2020
This information shall be provided no later than 2:00 P.M. on June 3, 2020.

Name of bidder/offeror's firm _____

Address _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm: _____

Caltrans DBE firm ID: _____

DBE NAICS Code(s) _____

NAICS Work Category Code(s) _____

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above.
The estimated dollar value of this work is \$ _____

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above. The DBE firm also affirms that, if it is supplying or installing specialized equipment as defined in the Specifications, it is properly trained and qualified to do so by the manufacturer's representative or distributor.

By _____

(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

I tried to call you back after our phone conversation because I forgot to ask how we confirm what items you have in your proposal. Do you provide a takeoff of all of the items you are planning on providing? Also do you provide submittals for all of the items you anticipate providing in your scope.

I appreciate your time on this and look forward to talking more to assure we understand how we can provide SLO RTA with a clean and fully functioning bid that meets and or exceeds their requirements and goals.

Please respond ASAP to assure we can work out any issues prior to the Thursday bid.

Thanks-

Andy Unger

NCM

805.458.0316

ATTACHMENT C



SPECIALTY CONSTRUCTION

June 15, 2020

Mr. Geoff Straw
San Luis Obispo Regional Transit Authority
179 Cross Street, Suite A
San Luis Obispo, CA 93401
Email: gstraw@slorta.org

Subject: San Luis Obispo Regional Transit Authority Bus Maintenance Facility
REBID – June 4, 2020

Re: Response to Bid Protest from Newton Construction & Management

Dear Mr. Straw:

Please consider this letter as a formal response to the bid protest letter submitted by Newton Construction & Management (Newton) dated June 11, 2020. After thorough review of the letter provided by Newton, there is no basis for RTA to consider or deem Specialty Construction, Inc (SCI) as non-responsive. The following outline shall serve as SCI's detailed response to the protest letter:

1. RTA – Failure to Follow Public Contract Code

- a. Newton contends RTA failed to follow PCC §10304, which is a part of the State Contract Act that applies to state acquisition of goods and services by the Department of General Services; it does not apply to RTA. As a local agency, RTA has and is complying with the requirements of PCC §20103.8 for contract award.
- b. Even if PCC §10304 applied to RTA as Newton references, it clearly states "publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read." Newton claims that their personnel submitting the bid asked RTA staff if they could witness the bid opening and enter the building but were not allowed to do so.

SCI had a single representative present at the time of the bid opening, Katch Environmental had a single representative present at the time of the bid opening, Newton had two representatives present at the time of the bid opening, Kitchell's Tully Wyatt acting as the Construction Manager was present, and RTA's Executive Director Geoff Straw were present. RTA accepted sealed bids from all three proposing firms prior to the bid deadline, and provided clear identification in the presence of all proposing firms that

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they had in fact received three sealed bids prior to the deadline, and clearly listed them to be SCI, Newton, and Katch. After listing the three firms, the RTA clearly stated they would enter their quarters along with Kitchell and open the sealed bids, complete their bid authentication by verifying the bids contained all the required supplemental documents per the Instruction to Bidders, and then they would return to the exterior of the building to read the result aloud. At the site of the bid opening, not only did Newton fail to make any objection to the expressed instruction at the time of the bid opening, but neither did SCI or Katch. Newton's claim that they raised objection to the manner with which RTA was handling the opening of the bid documents on June 4 is not true and nor accurate.

We are in an ever-evolving environment with continual regulatory updates on how to manage the COVID-19 pandemic that change from day to day. SCI understands that RTA took the necessary precautions during the bid opening to ensure not only their staff's safety, but also the safety of the other individuals present. Had Newton raised the objection that it claims to have made, we are confident RTA would have paused to evaluate the safety concern and make a recommendation on how to proceed, but that is not what took place. Under the circumstances, RTA clearly exercised reasonable discretion in the manner in which it conducted the bid opening and there is no basis to find the RTA abused its discretion or that the bidding process was thereby tainted.

2. Listing an Unqualified Subcontractor and failure to list a subcontractor for a scope of work that is equal to or greater than one-half of one percent.

Newton argues SCI's bid is nonresponsive based on its claim that SCI failed to list a qualified supplier/installer for Specification Section 07 42 13.13 – Formed Metal Wall Panels and that, as a result, SCI has failed to list a subcontractor. First, Newton misunderstands what is a responsive bid. Second, Newton's argument is not accurate and is based on the incorrect premise that SCI is required to utilize a certified installer of Morin products.

"A bid is responsive if it promises to do what the bidding instructions demand." (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341.) The determination of whether a bid is responsive is an objective test and it is determined by the face of the bid. *Great West Contractors, Inc. v. Irvine Unified School Dist.* (2010) 187 Cal.App.4th 1425, 1451-1455. Here, SCI's bid on its face promises to do what the bidding instructions demand.

Newton's claim that GBT Sheet Metal is not certified to install Morin products is immaterial and of no relevance to the responsiveness of SCI's bid. The specification sections referenced by Newton identified five

manufacturers for this work (ATAS, CENTRIA, Metal Sales, Morin, and Petersen) all of which would be a pre-approved acceptable product. As defined in Question 023 of Addendum A, a product that meets the requirements, regardless of being listed, is an acceptable alternate. Newton's argument that GBT is not a certified Morin installer has no relevance to SCI's responsiveness and the responsibility to meet the project requirements is the responsibility of the General Contractor.

GBT Sheet Metal (Lic. 973610) is a licensed, bonded, and insured C-43 Sheet Metal Contractor, and has been in business for going on eight years. Newton provided a copy of the proposal it received from GBT which is immaterial, as a subcontractor proposal is immaterial to a bid protest of another bidder. It is the responsibility of each individual General Contractor to evaluate subcontractor proposal and to meet the project requirements.

3. DBE Participation Goals Not Met.

Newton's argument that BBC Electric, Inc is not providing a Commercially Useful Function (CUF) is not factual. While the correspondence provided by Newton may serve to show some level of Good Faith Efforts (GFE's) made on its part, it is immaterial in a bid protest towards SCI. The issue that Newton was unable to make an arrangement to partner in a CUF agreement with BBC is not a protestable issue and is irrelevant. As described above with SCI's workings with GBT, it is the responsibility of each General Contractor to work with their own subcontractors to meet the project requirements, and this would apply to BBC as well. It is not the responsibility of the RTA to evaluate the responsiveness of SCI's bid based on subcontractor proposals to Newton. SCI has an agreement with BBC to provide Electrical Apparatuses and Equipment, which would include specification compliance, submittals, coordination, transportation, taxes, and purchasing of said equipment. Their NAICS work code 423610 clearly provides for this work as a Commercially Useful Function and further clarifies BBC as a "regular dealer".

SCI properly accounted for 60% of BBC's total Letter of Intent valuation within the DBE Participation Schedule as submitted to RTA on June 9, 2020, as required by the Instruction to Bidders. Newton's claim on this matter is unwarranted and not factual.

Lastly, the claim that SCI failed to contact S. Chaves Construction on the rebid is not factual and irrelevant; SCI provided evidence of such correspondence and reasoning with our Good Faith Effort submittal.

As an individual point of clarity, and as outlined above, it is the individual responsibility of the General Contractors to evaluate the subcontractor proposal and negotiate their

own individual terms, which are not subject to a bid protest. Evidence that this took place on this project lies within the LOI's provided by each firm. Both SCI and Newton listed Air and Lube for the same scope of work; however, within the LOI's provided for the DBE participation, our respective bids have different values (Newton \$648,634 and SCI \$672,488). This is evidence that the subcontractor proposal will vary amongst the various General Contractor bidders.

The above information should satisfy any concerns by RTA regarding SCI's bid responsiveness. We have provided a responsive bid complete with meeting the DBE Goal of 5.1% and all requirements of Public Contract Code have been met. We request that RTA award the project to the lowest responsive and responsible bidder, Specialty Construction, Inc.

Should you have any questions please contact the undersigned or Jeffery Martin directly. Thank you in advance for your assistance with this request.

Sincerely,

SPECIALTY CONSTRUCTION, INC.



Rudolph C. Bachmann
President

cc: Geoff Straw
Tully Wyatt
Jeffery Martin
Deborah Wilson
Nathan Agin



San Luis Obispo Regional Transit Authority

Executive Committee Meeting

Minutes 04/08/2020

Draft C-1

Members Present: Fred Strong, City of Paso Robles, **President**
Ed Waage, City of Pismo Beach
John Peschong, District 1 Supervisor, **Vice President**

Members Absent: None

Staff Present: Geoff Straw, Executive Director
Tania Arnold, Deputy Director/CFO
Nina Negranti, County Counsel
Chelsea Sperakos, Administrative Assistant

Call to Order and Roll Call:

President Fred Strong called the meeting to order at 10:00 AM. Roll call was taken and a quorum was present.

Public Comment: None

1. Information Items :

A-1 Executive Director's Report (Verbal; Receive)

Mr. Geoff Straw will report on bids received for construction of the Bus Maintenance Facility project on the 21st. Construction on the downtown transit center is continuing with the project nearing completion. Those two items in addition to addressing the COVID-19 pandemic have been staffs focus.

A-2 Update on RTA Response to COVID-19 Pandemic (Verbal; Receive)

Mr. Straw said things are changing daily. Staff negotiated a temporary program with the Union to create a COVID-19 bid. The shelter in place order made 24 of our employees not eligible to work as of March 16th. RTA has been maintaining a Saturday schedule of service – in addition to commuter express runs – to adjust to available employees. Re-bid with employees who are willing to work. Suspended fares to reduce interactions between riders, drivers, and other employees for safety. Staff does not anticipate the need to reduce service further unless employees becomes infected. Social distancing within the office but further quarantine could force the need to reduce daily service to Sunday service.

Mr. Ed Waage asked if the agency has enough protective supplies. **Mr. Straw** stated that the only staff who have N95 masks are utility employees for bio hazard cleaning only. The union provided cloth masks to all Bus Operators, Mechanics and Utility employees, and the RTA provided cloth masks to all other employees. We have plenty of gloves, hand sanitizer, and wipes. Ordered 5,000 non-medical masks. Constantly looking for additional supplies. Also ordered five disinfecting “foggers”.

President Strong wants to have the Board thank the union for assistance. Mr. Strong also asked about the SCT buses operating in Paso Robles. **Mr. Straw** stated that the SCT buses are there to allow social distancing by having the riders enter the bus through the rear second door away from the drivers and allowing staff to test routes for 40ft buses in the future. Also doing solo rides only on Runabout.

4. Action Items

B-1 Fiscal Year 2020-21 Operating and Capital Budget (Approve)

Ms. Tania Arnold noted that regardless of timing, the agency will need an approved budget to start the fiscal year. The CARES Act will bring in federal assistance that is 100% usable on operations, which will free up LTF funding for the jurisdictions. In July, provided the additional information is nailed down, there will most likely be a budget amendment request. Moving forward with SCT consolidation, funding for Paso and County services are separately identified, and the RTA has a 5% reduction in Route 9, 10, and 12 included. Related to the pandemic, staff does not know how long current service levels will remain. The TIFIA funding is expected to be available for the Bus Maintenance Facility project and the CARES funding is expected to assist with funding as well. Staff anticipates being able to resolve the payment due to leaving CalPERS. State Transit Assistance funds are projected to be flat. Estimated 30% increase in LTF needed in FY 20-21, which is decreased from 41% LTF projected previously. Liability costs will decrease. Workers comp costs will decline due to major efforts from Safety and Training, Maintenance and Operations departments. After consolidation, the agency will see a reduction in liability programs’ administration costs. Runabout ridership increase has increased operating costs slightly. Staffing and retention continue to be a priority and with the current collective bargaining agreement expiring in December 2021, negotiations will need to begin in summer 2021. Depending on the Governor’s pending decision regarding minimum wage, the salary schedule could change and need a budget amendment. There are significant decreases in fuel prices currently, but is expected to return to normal levels. The Bus Maintenance Facility project is the largest capital item; a small budget for specialized maintenance equipment and miscellaneous computer equipment will also be included.

President Strong asked if staff has to request money under the CARES Act, and it has to be COVID-19 related. **Ms. Arnold** said FTA clarified that it does not have to be directly COVID-19 related, it could just be general operating costs during the COVID-19 pandemic response and recovery period. Staff is working with SLOCOG to determine how to distribute funds. It is approximately 3x standard funds received. **Mr. Straw** stated the CARES funds are back funded to January 2020 and staff is hoping to free up LTF in 20-21.

No public comment.

Mr. Waage made a motion to approve agenda item B-1 and **Vice President John Peschong** seconded the motion. The motion passed unanimously with **Mr. Waage, Vice President Peschong, and President Strong** voting in favor of the motion, with none opposed and none absent.

5. Consent Items

C-1 Executive Committee Meeting Minutes of February 5, 2020 (Approve)

Vice President Peschong made a motion to approve agenda item C-1 and **Mr. Waage** seconded the motion. The motion passed unanimously with **Vice President Peschong, Mr. Waage, and President Strong** voting in favor of the motion, with none opposed and none absent.

6. May 6, 2020 Draft RTA Board Agenda: The Executive Committee is asked to review and comment on the proposed agenda items.

Information Items

A-1 Executive Director's Report (Receive)

Action Items

B-1 Approve Loan Agreement for Construction of 253 Elks Lane (Approve)

B-2 Authorize Construction of 253 Elks Lane (Approve)

B-3 Fiscal Year 2020-21 Operating and Capital Budget (Approve)

Consent Items

C-1 Executive Committee Meeting Minutes of February 5, 2020 (Information)

C-2 RTA Board Meeting Minutes of March 4, 2020 (Approve)

C-3 RTA Board Meeting Minutes of April 1, 2020 (Approve)

C-4 RTA Board Meeting Minutes of April 8, 2020 (Approve)

C-5 Summer Youth Ride Free Promotion (Approve)

C-6 Agreement Renewal with AGP Video (Approve)

C-7 Agreement for County Auditor/Controller Services (Approve)

C-8 Execute Grant Award for the SLOAPCD CAP Funds (Approve)

C-9 Social Security Resolution for RTA Employees (Approve)

C-10 Amendment to Agreement with Stantec Architects (Approve)

C-11 Strategic Business Plan Results (Receive)

C-12 Annual Fiscal & Compliance Audit for Fiscal Year 2018-19 (Accept)

Mr. Straw plans to ask for authorization for funding the Bus Maintenance Facility project on May 6th. C-8 did receive \$721,000 for electric bus infrastructure, which frees up funding for the Elks Lane realignment portion of the project.

Vice President Peschong made a motion to approve the Draft May 6, 2020 RTA Board agenda and **Mr. Waage** seconded the motion. The motion passed unanimously with **Vice President Peschong, Mr. Waage, and President Strong** voting in favor of the motion, with none opposed and none absent.

7. Adjournment

Next RTA Executive Committee Meeting:

June 3, 2020

Respectfully Submitted,

Acknowledged by,

Chelsea Sperakos
Administrative Assistant

Fred Strong
RTA President 2020

DRAFT
SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY
BOARD MEETING MINUTES OF MAY 6, 2020
C-2

BOARD MEMBERS PRESENT:

LYNN COMPTON, FOURTH DISTRICT, COUNTY OF SAN LUIS OBISPO
BRUCE GIBSON, SECOND DISTRICT, COUNTY OF SAN LUIS OBISPO
ROBERT DAVIS, CITY OF MORRO BAY
KAREN BRIGHT, CITY OF GROVER BEACH
JIMMY PAULDING, CITY OF ARROYO GRANDE
JOHN PESCHONG, FIRST DISTRICT, COUNTY OF SAN LUIS OBISPO (Vice President)
ANDY PEASE, CITY OF SAN LUIS OBISPO
HEATHER MORENO, CITY OF ATASCADERO
FRED STRONG, CITY OF PASO ROBLES (President)
ED WAAGE, CITY OF PISMO BEACH
DEBBIE ARNOLD, FIFTH DISTRICT, COUNTY OF SAN LUIS OBISPO

BOARD MEMBERS ABSENT:

ADAM HILL, THIRD DISTRICT, COUNTY OF SAN LUIS OBISPO

STAFF PRESENT:

GEOFF STRAW, EXECUTIVE DIRECTOR
TANIA ARNOLD, DEPUTY DIRECTOR/CFO
NINA NEGRANTI, SAN LUIS OBISPO COUNTY COUNSEL
CHELSEA SPERAKOS, ADMINISTRATIVE ASSISTANT

CALL MEETING TO ORDER, ROLL CALL

President Fred Strong called the meeting via teleconference to order at 8:30 AM. Roll call was taken and a quorum was present.

PUBLIC COMMENT: The Board reserves this portion of the agenda for members of the public to address the San Luis Obispo Regional Transit Authority Board on any items not on the agenda and within the jurisdiction of the Board. Comments are limited to three minutes per speaker. The Board will listen to all communication, but in compliance with the Brown Act, will not take any action on items that are not on the agenda.

Due to COVID-19, public comments were submitted via voicemail or email to RTA and presented to the Board in written form. *Please see the attachment for verbatim public comments.*

A. INFORMATION AGENDA

A-1 Executive Director's Report (Receive)

Mr. Geoff Straw stated transportation is down 70-80% due to COVID-19. Buses are carrying healthcare workers and essential workers on trips. RTA implemented the incident command system, Saturday service daily, suspended fares, single door entry and exit, and requested riders to use transit only for essential travel. The fiscal emergency allowed furloughed employees to be ready for when services ramp up again. Staff has implemented maximum passenger loads on vehicles, and trippers will be deployed to handle extra riders; we are also coordinating changes with all other transit agencies. Social distancing will be enforced on the bus, requiring passengers to sit 6 feet apart. Teamsters provided drivers with face masks, while RTA purchased additional masks for the rest of the staff. Five battery-powered disinfectant foggers have been purchased to sanitize the bus interiors and staff will share these with other local transit agencies. These items are expected to be delivered in June. SLO Transit has purchased UV disinfectant lights that will be shared with RTA. CARES Act is the one-time federal funding that will be provided for COVID-19 relief; no local match is required to use the funds. In SLO County, the funding will be approximately triple the normal funding received from the federal government. Agencies agreed to use this funding for operating costs from February 1st through June 30th. There will be a future budget revision at the meeting on June 3, 2020 as the current budget does not include these funds. There was one RTA employee who was COVID-19 positive. Any staff that came in contact with this employee was quarantined. The employee has returned to work.

Employee of the Quarter was cancelled and the next one will be in July. There is one new bus operator candidate and 10 candidates in background and licensing. Andrew Wyly is new Maintenance Manager and he will start June 1st. The ticket vending machine has been moved to the new government transit center. The new location is scheduled to go live May 11th; staff is unable to hold an opening ceremony, but it will be promoted in local media. Staff will discuss the bus maintenance facility funding and contract award at the special RTA meeting on May 20th. The adjacent U-Haul facility has had asbestos/lead paint testing and no hazards were found. The bus maintenance facility was not selected for latest round of transit and inner city rail capital program funding. Staff has submitted another grant proposal for the next round of FTA funding.

The FY 18-19 fiscal and compliance audit report came out with no significant findings. Unaudited operating and financial results FY 19-20 first nine months have shown a 3.1% decline in Fixed Route ridership before COVID-19 service reductions and a 2.7% increase in Runabout ridership. Costs for professional technical services have been higher.

Questions:

Ms. Andy Pease asked due to the driver bid shakeup, are drivers able to work if they are willing?

Mr. Straw stated that staff has built up a program with the bullpen drivers, not a surplus, so no drivers were forced to go to work if they did not want to. If there is an infection in the driver pool, it could affect who is willing to come to work.

President Strong asked if there is any missed connections or if closed colleges are affecting routes?

Mr. Straw stated we are able to communicate with other dispatchers, however Morro Bay difficult to reach. Schools are still unsure about the fall schedule.

Ms. Heather Moreno made a motion to receive and file agenda item A-1, and **Ms. Lynn Compton** seconded the motion. The motion passed unanimously via voice vote.

B. ACTION AGENDA

B-1 Fiscal Year 2020-21 Operating and Capital Budget (Approve)

Mrs. Tania Arnold stated the values of RTA are commitment to serve, leadership, teamwork, development. Some key items to pay attention to are the change in core level of service miles and hours and COVID-19 CARES funding which is not included in this budget. Staff is planning a budget amendment as soon as June. Highlights of the budget items include construction of long-planned bus maintenance facility, CalPERS liability due to termination of the RTA's contract with CalPERS, SoCo Transit's request to consolidate, STA funds, LTF funds, liability costs, containment of Runabout costs, staffing and retention, fuel cost volatility, and service reduction. Staff recommendation is to adopt the budget as presented and direct staff to conduct public participation process regarding 5% service reduction. A budget amendment is projected in June 2020 to include CARES Act funding.

Questions:

Ms. Pease asked when would the potential service reduction would take place.

Mr. Straw stated that we can expect to be the reduction to be implemented in August bid, and start immediate public outreach to determine changes. CARES funding can prevent the reduction, but declining ridership is a major factor. The services do not operate late enough for evening workers, and trip productivity drops significantly after 7 PM. Service changes can be delayed.

Mr. Jimmy Paulding asked if the survey recently completed will be reviewed? As the results are evaluated and LTF is reduced, perhaps we can see where that money can alternatively used.

Mr. Straw stated that staff will analyze the survey information and post results on the website. Data collected was prior to COVID-19, however current ridership is not valid for future planning. If ridership follows the history of recession, there could be a spike in ridership.

Ms. Moreno stated given that the bus maintenance facility construction cost is coming in at a lower estimate, have overall costs gone down? Are the estimates accurate or will there be change orders?

Mr. Straw stated both of the bidders said the plans were so well put together, and that the construction companies are able work efficiently. Competition is lowering the price. Change orders have been budgeted. Staff has seen same reductions from other public works projects in the area.

There was no public comment on this item.

Ms. Pease made a motion to approve agenda item B-1, and **Mr. Paulding** seconded the motion. The motion passed unanimously via roll call vote as follows:

<u>BOARD MEMBER</u>	<u>YES</u>	<u>NO</u>	<u>ABSENT</u>
DEBBIE ARNOLD	X		
LYNN COMPTON	X		
BRUCE GIBSON	X		
ADAM HILL			X
JOHN PESCHONG (Vice President)	X		
ROBERT DAVIS	X		
KAREN BRIGHT	X		
JIMMY PAULDING	X		
ANDY PEASE	X		
HEATHER MORENO	X		
FRED STRONG (President)	X		
ED WAAGE	X		

C. CONSENT AGENDA: (Roll Call Vote) the following items are considered routine and non-controversial by staff and will be approved by one motion if no member of the RTA or public wishes an item be removed. If discussion is desired by anyone, the item will be removed from the consent agenda and will be considered separately. Questions of clarification may be made by RTA Board members, without the removal of the item from the Consent Agenda. Staff recommendations for each item are noted following the item.

- C-1 Executive Committee Meeting Minutes of February 5, 2020 (Information)**
- C-2 RTA Board Meeting Minutes of March 4, 2020 (Approve)**
- C-3 RTA Board Meeting Minutes of April 1, 2020 (Approve)**
- C-4 RTA Board Meeting Minutes of April 8, 2020 (Approve)**
- C-5 Summer Youth Ride Free Program (Approve)**
- C-6 Public Transportation Agency Safety Plan (Approve)**
- C-7 Agreement for County Auditor/Controller Services (Approve)**
- C-8 Grant Award for the SLOAPCD CAP Funds (Approve)**
- C-9 Social Security Resolution for RTA Employees (Approve)**
- C-10 Amendment to Agreement with Stantec Architecture (Approve)**
- C-11 Strategic Business Plan Results (Receive)**
- C-12 Annual Fiscal & Compliance Audit for Fiscal Year 2018-19 (Accept)**
- C-13 Declare Paso Express Vehicle Surplus (Approve)**
- C-14 Amendment to Agreement with Kitchell Construction Management (Approve)**
- C-15 Amended Contract with RTA Executive Director**

Question

Ms. Bright asked how often is the auditor changed.

Mrs. Tania Arnold stated that the audit goes out to bid with SLOCOG every 5 years, and the new auditor is Brown Armstrong.

Ms. Moreno made a motion to approve consent agenda items C-1 through C-15, and **Mr. Ed Waage** seconded the motion. The motion passed unanimously via roll call vote as follows:

<u>BOARD MEMBER</u>	<u>YES</u>	<u>NO</u>	<u>ABSENT</u>
DEBBIE ARNOLD	X		
LYNN COMPTON	X		
BRUCE GIBSON	X		
ADAM HILL			X
JOHN PESCHONG (Vice President)	X		
ROBERT DAVIS	X		
KAREN BRIGHT	X		
JIMMY PAULDING	X		
ANDY PEASE	X		
HEATHER MORENO	X		
FRED STRONG (President)	X		
ED WAAGE	X		

D. BOARD MEMBER COMMENTS

President Strong stated you can find agendas on website prior to the meeting, and public comment can be called in or written comments.

The meeting was adjourned 9:48 AM.

Next regularly-scheduled RTA Board meeting is July 8, 2020

Respectfully Submitted,

Acknowledged by,

Chelsea Sperakos, Administrative Assistant

Fred Strong, RTA President 2020

DRAFT
SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY
BOARD MEETING MINUTES OF MAY 22, 2020
C-3

BOARD MEMBERS PRESENT:

LYNN COMPTON, FOURTH DISTRICT, COUNTY OF SAN LUIS OBISPO
BRUCE GIBSON, SECOND DISTRICT, COUNTY OF SAN LUIS OBISPO
ROBERT DAVIS, CITY OF MORRO BAY
KAREN BRIGHT, CITY OF GROVER BEACH
JOHN PESCHONG, FIRST DISTRICT, COUNTY OF SAN LUIS OBISPO (Vice President)
ANDY PEASE, CITY OF SAN LUIS OBISPO
HEATHER MORENO, CITY OF ATASCADERO
FRED STRONG, CITY OF PASO ROBLES (President)
ED WAAGE, CITY OF PISMO BEACH
DEBBIE ARNOLD, FIFTH DISTRICT, COUNTY OF SAN LUIS OBISPO

BOARD MEMBERS ABSENT:

ADAM HILL, THIRD DISTRICT, COUNTY OF SAN LUIS OBISPO
JIMMY PAULDING, CITY OF ARROYO GRANDE

STAFF PRESENT:

GEOFF STRAW, EXECUTIVE DIRECTOR
NINA NEGRANTI, SAN LUIS OBISPO COUNTY COUNSEL
CHELSEA SPERAKOS, ADMINISTRATIVE ASSISTANT

CALL MEETING TO ORDER, ROLL CALL

President Fred Strong called the meeting via teleconference to order at 10:00 AM. A roll call was taken and a quorum was present.

PUBLIC COMMENT: The Board reserves this portion of the agenda for members of the public to address the San Luis Obispo Regional Transit Authority Board on any items not on the agenda and within the jurisdiction of the Board. Comments are limited to three minutes per speaker. The Board will listen to all communication, but in compliance with the Brown Act, will not take any action on items that are not on the agenda.

There was no public comment.

A. INFORMATION AGENDA—None

B. ACTION AGENDA

B-1 Reject Construction Bids for Project #2020-01 Bus Maintenance Facility at 253 Elks Lane & Instruct Staff to Re-Bid (Approve)

Mr. Geoff Straw stated that two construction companies had submitted bids for the bus maintenance facility project and a bid protest was received. Both firms initially submitted that they would meet compliance standards. RTA feels it is best to reject both bids to avoid risking federal funds. There will be an abbreviated re-bid period for minimum of 10 days. Staff will change the dates in the bid documents to make the deadlines more stringent. Staff will be posting the new bid documents today, and bids would be due June 4th.

There was no public comment on this item.

Questions:

Ms. Andy Pease asked considering the timing, if there haven't been any bid protests by June 11, would it be possible to approve the bid during a special meeting before the July board meeting?

Mr. Straw stated that decision is up to the board, depending on schedules.

Ms. Pease made a motion to approve agenda item B-1, and **Mr. Ed Waage** seconded the motion. The motion passed unanimously via roll call vote as follows:

<u>BOARD MEMBER</u>	<u>YES</u>	<u>NO</u>	<u>ABSENT</u>
DEBBIE ARNOLD	X		
LYNN COMPTON	X		
BRUCE GIBSON	X		
ADAM HILL			X
JOHN PESCHONG (Vice President)	X		
ROBERT DAVIS	X		
KAREN BRIGHT	X		
JIMMY PAULDING			X
ANDY PEASE	X		
HEATHER MORENO	X		
FRED STRONG (President)	X		
ED WAAGE	X		

C. CONSENT AGENDA—None

D. CLOSED SESSION—None

E. BOARD MEMBER COMMENTS—None

The meeting was adjourned at 10:12 AM.

Next RTA Board meetings:

June 3, 2020--Special meeting for budget amendment

July 8, 2020--Regularly scheduled meeting

Respectfully Submitted,

Acknowledged by,

Chelsea Sperakos, Administrative Assistant

Fred Strong, RTA President 2020



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www.slorta.org

Public Comments for May 22, 2020 RTA Special Board of Directors Meeting

Below are comments received verbatim if by email, or summarized if verbally provided by telephone. Note that the sender's email address has been redacted. These comments will be posted on the RTA website as soon as possible.

Comments received as of May 22, 2020 at 9:30 AM:

From: Eric Greening <**REDACTED**>
Sent: Thursday, May 21, 2020 11:51 AM
To: Info <Info@slorta.org>
Subject: **Public comment from Eric Greening for the Special RTA Board meeting of May 22nd**

Hello!

Although it is unfortunate that the present bids must be rejected, stretching the timeline of a needed project, I can understand the reasoning behind the staff recommendation to do so, and fully trust staff to carry out its ambitious proposed timeline for a re-bidding process which we can hope will bring in responsible bids at least one of which is worthy of acceptance.

Given that there will be a special RTA Board meeting on June 3rd for a budget adjustment, I would like to request that on that date there also be a staff presentation on, and board discussion about (with the possibility of direction, although I think staff will probably be on top of it without the explicit need for such) the criteria or benchmarks which would allow for the return to a "new normal" and to what extent they might or might not align with the numbered phases in the State's plan for reopening. Current practices such as charging zero fares, rear door entry, rationing seating to promote social distancing, and limiting service to people with "essential" purposes for their travel must be sustained as long as protection of the safety of employees and passengers require them; the two questions that will need to be answered in finding our way forward are: at what point will it be genuinely safe to step away from these emergency measures (and, if so, all of them at once, or different ones at different times, and for each one, all the way, or partway, or in stages), and, once we have determined a return to some sort of "new normal" is safe, how do we create the PERCEPTION of safety so that previously loyal passengers can confidently return? Criteria or benchmarks for a return to or toward "normal" from the present reduced level of service could also be discussed.

In the meantime, my compliments to the entire RTA family for navigating these difficult times with such professionalism, courage, and devotion to public service!!

The Regional Transit Authority is a Joint Powers Agency serving residents and visitors of:

Arroyo Grande Atascadero Grover Beach Morro Bay Paso Robles Pismo Beach San Luis Obispo and The County of San Luis Obispo

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DRAFT
SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY
BOARD MEETING MINUTES OF JUNE 3, 2020
C-4

BOARD MEMBERS PRESENT:

DEBBIE ARNOLD, FIFTH DISTRICT, COUNTY OF SAN LUIS OBISPO
LYNN COMPTON, FOURTH DISTRICT, COUNTY OF SAN LUIS OBISPO
BRUCE GIBSON, SECOND DISTRICT, COUNTY OF SAN LUIS OBISPO
JOHN PESCHONG, FIRST DISTRICT, COUNTY OF SAN LUIS OBISPO (Vice President)
ROBERT DAVIS, CITY OF MORRO BAY
KAREN BRIGHT, CITY OF GROVER BEACH
JIMMY PAULDING, CITY OF ARROYO GRANDE
ANDY PEASE, CITY OF SAN LUIS OBISPO
HEATHER MORENO, CITY OF ATASCADERO
FRED STRONG, CITY OF PASO ROBLES (President)
ED WAAGE, CITY OF PISMO BEACH

BOARD MEMBERS ABSENT:

ADAM HILL, THIRD DISTRICT, COUNTY OF SAN LUIS OBISPO

STAFF PRESENT:

GEOFF STRAW, EXECUTIVE DIRECTOR
TANIA ARNOLD, DEPUTY DIRECTOR/CFO
NINA NEGRANTI, SAN LUIS OBISPO COUNTY COUNSEL
CHELSEA SPERAKOS, ADMINISTRATIVE ASSISTANT

CALL MEETING TO ORDER, ROLL CALL

President Fred Strong called the meeting via teleconference to order at 8:30 AM. A roll call was taken and a quorum was present.

PUBLIC COMMENT: The Board reserves this portion of the agenda for members of the public to address the San Luis Obispo Regional Transit Authority Board on any items not on the agenda and within the jurisdiction of the Board. Comments are limited to three minutes per speaker. The Board will listen to all communication, but in compliance with the Brown Act, will not take any action on items that are not on the agenda.

There was no public comment.

A. INFORMATION AGENDA –None

B. ACTION AGENDA

B-1 Fiscal Year 2019-20 and 2020-21 Budget Amendments (Approve)

Mrs. Tania Arnold stated the LTF that was previously allocated is now being allocated for the CAL PERS buyout instead of the debt service reserve. The balance of those funds is offsetting potential reduction in fare revenue. In FY 20-21, staff is looking to move federal funds from operating funds to capital funds due being allowed to use 80% federal funding and 20% local funding towards projects. The reduction in LTF (page B-1-3, item 2G) is \$1,683,620. The agency will be reducing the financing amount. The bus maintenance facility is expected to come in significantly under budget. This reduced LTF by \$1 million for FY 21-22. There will be additional 5311 CAREs funds. The city of Paso Robles has produced a budget amendment for receiving 5307 CARES funds. Staff is continuing to work with TIFIA and draft loan agreement for the bus maintenance facility. The two options presented are either 15% service reduction or no service reduction.

Public Comment:

See the attached document for public comment.

Mr. Geoff Straw stated the public comment received by **Mr. Eric Greening** (see attached) asked for no reduction of services. Ridership has declined over the past few years. The numbers showing here are worst case scenario. There is expected funding from Santa Maria urbanized area.

Questions:

President Strong stated Mr. Greening was asking specifically about service reduction on the last trip of the Saturday schedule. Has there been any specific service reductions yet?

Ms. Andy Pease asked is this due to recent circumstances or something that has been ongoing?

Mr. Straw stated that the need for service reduction that was brought forth in January 2020. There has not been any specific routes chosen for service reduction.

Ms. Debbie Arnold made a motion to approve agenda item B-1, and **Mr. Ed Waage** seconded the motion. The motion passed unanimously via roll call vote as follows:

<u>BOARD MEMBER</u>	<u>YES</u>	<u>NO</u>	<u>ABSENT</u>
DEBBIE ARNOLD	X		
LYNN COMPTON	X		
BRUCE GIBSON	X		
ADAM HILL			X
JOHN PESCHONG (Vice President)	X		
ROBERT DAVIS	X		
KAREN BRIGHT	X		
JIMMY PAULDING	X		
ANDY PEASE	X		
HEATHER MORENO	X		
FRED STRONG (President)	X		
ED WAAGE	X		

C. CONSENT AGENDA—None

D. CLOSED SESSION—None

E. BOARD MEMBER COMMENTS—None

The meeting was adjourned at 8:51 AM.

Next RTA Board meetings:

June 15, 2020: Special meeting for bid award & financing

July 8, 2020: Regularly scheduled meeting

Respectfully Submitted,

Acknowledged by,

Chelsea Sperakos, Administrative Assistant

Fred Strong, RTA President 2020



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Public Comments for June 3rd, 2020 RTA Special Board of Directors Meeting

Below are comments received verbatim if by email, or summarized if verbally provided by telephone. Note that the sender's email address has been redacted. These comments will be posted on the RTA website as soon as possible. Any additional comments received after June 2nd, 2020 at 11 AM, will be read aloud at the teleconference meeting.

Comments received as of June 2nd, 2020 11 AM:

From: Eric Greening <**REDACTED**>

Sent: Thursday, May 28, 2020 at 3:15 PM

To: Info <Info@slorta.org>

Subject: **Correspondence from Eric Greening for special RTA Board meeting of June 3rd**

I would very much appreciate if the RTA Board could approve of the proposed budget amendments WITHOUT the 5% service reduction, due to the lack of the public outreach and process that would normally precede such a reduction. While recognizing that these are extraordinary times, and that transit ridership has fallen drastically during the present "stay at home" order, and that, given the present reduced service, a return to 5% below the previous normal would not technically be a reduction compared to the present level of service. Nonetheless, I believe it is too soon for us to know what the "new normal" will be, and given the availability of the federal funds, I would prefer to see any service reduction, be it at the 5% level or any other level, deferred to a midyear course-correction if needed, rather than have it be assumed at a time when the future still looks so clouded. If there is to be a service reduction, the public needs the opportunity to weigh in on the specifics of how any given percentage of reduction could be achieved with the least impact to the fewest riders. The main scenario I have seen has been that it would at least partially achieved through elimination of the last weekday run. This would not only move the last evening departure from SLO from 8:33 to 7:33, but it would also move the last evening departure from Paso Robles from 7:10 to 6:10, with comparable losses of span of service from other points on all inbound lines.

The best sequence of events as we emerge from the acute phase of the present pandemic would be to start by co-ordinating with Dr. Borenstein on determining when it is safe to step away from the current practices that limit and ration seats to enable "social distancing," and that waive fares to allow passengers to board through the rear door. If this ultra-busy physician were available, it would be useful to have her at the July 8th Board meeting to inform the Board and to aid in the setting of benchmarks for the restoration of more normal practices, be it piecemeal or more comprehensively. If she is not available, I trust Geoff Straw to seek, and make use of, her expert advice. Another item that could be

The Regional Transit Authority is a Joint Powers Agency serving residents and visitors of:

Arroyo Grande Atascadero Grover Beach Morro Bay Paso Robles Pismo Beach San Luis Obispo and The County of San Luis Obispo

discussed at the July 8th meeting could be the benchmarks to inform a decision on when to ramp up the level of service in the direction of what had previously been normal.

Once service has been fully restored, which will require not only the reality but the public PERCEPTION of safety, we should give the public a couple of months to demonstrate with their actions what the needed level of service is. It may be that ridership will remain significantly lower than it had been before the pandemic hit. Should that be the case, there would probably be little resistance to the 5% cut. Several factors may depress ridership: continued fear of shared public facilities and spaces; fewer commuters due to fewer jobs, and more telecommuting to jobs that can accommodate it; low gasoline prices. Factors that could increase ridership include economic hardship that prevents drivers from replacing clunker vehicles, or potential drivers from acquiring them, and pent-up demand for services and activities that had been unavailable during the more acute phases of the pandemic. Until we see how things play out under the novel and unpredictable circumstances, we can't accurately forecast the economic and cultural factors behind future transportation choices and transportation needs.

Although I continue to "shelter at home" and am unable to personally testify to the quality of present service, I completely trust the RTA family to maintain their ethic and practice of safe and responsive public service, and wish to convey to everyone who works for the RTA my greatest respect.

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SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY

July 8, 2020

STAFF REPORT

AGENDA ITEM: C-5

TOPIC: Paso Robles Bus Parking Yard Mitigations Monitoring Report

ACTION: Receive

PRESENTED BY: Geoff Straw, Executive Director

STAFF RECOMMENDATION: Accept 3rd Annual Mitigations Monitoring Report for the Paso Robles Bus Parking Yard

BACKGROUND/DISCUSSION:

The RTA Board of Directors certified a Mitigated Negative Declaration (MND) report for the *RTA Use of County Yard for Bus Parking Facility in Paso Robles* project on September 14, 2016. The MND identified 19 mitigations that were required to minimize to less-than-significant or completely avoid on-going/long-term environmental impacts that would occur as a result of the project. This report provides the third of five required annual mitigations monitoring/reporting to the RTA Board.

Construction of the Bus Parking Facility in Paso Robles project was completed and all North County transit operations were transitioned to the new facility on May 20, 2018. As reported to the RTA Board in July 2018, all construction-related mitigations were fully implemented. The sole on-going monitoring issue is provided below:

Mitigation Measure: BIO-7 – Operations-Related Erosion Control Measures.
Erosion control measures shall be implemented to prevent runoff to the Salinas River corridor and associated tributaries. Silt fencing, in conjunction with other methods, shall be used to prevent erosion and avoid and/or minimize silts and sediments from entering adjacent waterways.

Staff herein certifies that all erosion control measures were appropriately implemented over the past year. If any major maintenance or repair efforts require changes that could impact one of the original construction-related mitigation categories, that action would be monitored and reported to the RTA Board.

Staff Recommendation

Accept and file this Mitigations Monitoring Report as an information item.

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SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY

JULY 8, 2020

STAFF REPORT

AGENDA ITEM: C-6

TOPIC: Declare Vehicles Surplus

ACTION: Approve

PRESENTED BY: Geoff Straw, Executive Director

STAFF RECOMMENDATION: Declare Vehicles Surplus

At its January 6, 2016 meeting, the RTA Board amended the RTA Purchasing Policy by adding procedures for the declaration of and disposal of surplus equipment. Consideration of today's action represents the first time that this new section will be utilized to dispose of RTA equipment.

The Policy requires staff to determine if any of the surplus equipment has a per-unit value greater than \$5,000. If a piece of equipment has a value greater than \$5,000 and it was originally purchased using Federal Transit Administration funds, staff would need to work with FTA staff to determine how any proceeds could be used. However, based on the condition and age of each piece of equipment proposed for surplus, none have an individual value greater \$5,000, and FTA funds were not used to purchase these vehicles.

Staff has determined that the following vehicles, should they need a repair over \$3,000, that staff would not feel it was an efficient or appropriate use of funds to repair the vehicle:

1. Vehicle 635: 2000 MCI 102-DL3 43-passenger/2-wheelchair 45-foot bus with 443,826 miles.
2. Vehicle 638: 2000 MCI 102-DL3 43-passenger/2-wheelchair 45-foot bus with 167,775 miles.
3. Vehicle 644: 2000 MCI 102-DL3 43-passenger/2-wheelchair 45-foot bus with 421,540 miles.

Staff Recommendation

Declare the aforementioned vehicles surplus, authorize the Executive Director to transfer vehicles and dispose of the vehicles through auction or salvage (as appropriate).