

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

For Up to \$[104,900,000]

With

Colorado High Performance Transportation Enterprise

For the

**C-470 EXPRESS LANES PROJECT
(TIFIA – 20____)**

Dated as of [____], 2017

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TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between **COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**, a government-owned business within the Colorado Department of Transportation created by the Funding Advancements for Surface Transportation and Economic Recovery Act of 2009, title 43, article 4, part 8, Colorado Revised Statutes, as amended (“**FASTER**”), for the purpose of financing Surface Transportation Infrastructure Projects, with an address of 4201 E. Arkansas Avenue, Denver, Colorado 80222 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

RECITALS:

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

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

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$[104,900,000] (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated [____], 2017 (the “**Application**”); and

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

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

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

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the Traffic and Revenue Study (as defined herein) and the Base Case Projections (as defined herein) delivered by the Borrower.

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

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

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a Qualified Hedge, a Credit Facility, or a repurchase obligation to fund any Reserve Account, ‘A+’, ‘A1’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

“Acceptable Letter of Credit” means a letter of credit, in form and substance satisfactory to the TIFIA Lender, issued by a Qualified Issuer, and without recourse to the Borrower or any of its assets.

“Accreted Value” means (a) with respect to any Bonds, “Accreted Value” as defined in the Indenture and (b) with respect to any other Capital Appreciation Bonds as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Capital Appreciation Bonds.

“Act” means the Act as defined in the recitals hereto.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument (other than a Principal Project Contract) entered into by (or on behalf of) the Borrower after the Effective Date, providing for the design, construction, testing, and start-up, of the Project, or the safety, financial services, operation or maintenance of the C-470 Express Lanes.

“Additional Senior Obligations” means any borrowings or indebtedness permitted under Section 17(a) (Indebtedness) and under the Indenture, which Additional Senior Obligations are issued or incurred after the Effective Date (but excluding Initial Senior Obligations) and shall also satisfy the following requirements, as applicable.

(a) [Reserved]

(b) With respect to Additional Senior Obligations issued to refinance outstanding Senior Obligations, (i) such Additional Senior Obligations must receive an

Investment Grade Rating at the time of issuance of such Additional Senior Obligations, (ii) after issuance of such Additional Senior Obligations, the Trustee shall have on deposit in a separate account irrevocably in trust and used only as provided in this clause (b), either (A) moneys in an amount sufficient to pay (but not more than is needed to pay) the applicable redemption price to refund the Senior Obligations being refinanced (together with accrued but unpaid interest) or (B) Permitted Investments in such principal amounts, having such maturities, bearing such interest, and otherwise having such terms and qualifications as shall be necessary to pay, as and when the Senior Obligations to be refinanced are redeemed, the applicable redemption price to refund such Senior Obligations (but not more than such amounts), as evidenced by a defeasance opinion from bond counsel and by a certificate of defeasance from the Trustee, in each case that has been delivered to the TIFIA Lender, (iii) the net proceeds of such Additional Senior Obligations (after deducting any amounts required to be deposited to satisfy the Senior Bonds Debt Service Reserve Account Requirements and any amounts used to pay reasonable and necessary costs of issuance) shall be used solely to refinance Senior Obligations (which may include the defeasing of the Senior Obligations to be refinanced) and shall not exceed the principal amount of the Senior Obligations outstanding and being refinanced by such Additional Senior Obligations, and (iv) annual Senior Debt Service in respect of Senior Obligations, after the incurrence of such Additional Senior Obligations, in each year of the remaining term of the TIFIA Loan, must be projected to be less than the annual Senior Debt Service in respect of Senior Obligations projected for each such year in the Base Case Financial Model.

(c) With respect to Additional Senior Obligations issued to refurbish, upgrade, modify, expand or add to the Project or for the purpose of constructing Phase 2 or Segment 2, (i) such Additional Senior Obligations may not be issued prior to the Substantial Completion Date, (ii) such Additional Senior Obligations and the TIFIA Loan must receive an Investment Grade Rating at the time of issuance of such Additional Senior Obligations and (iii) the Borrower's Authorized Representative shall have certified to the TIFIA Lender, and the Engineer shall have confirmed, that (A) there will be no fundamental change in the use of the Project, and the activity or project to which such Additional Senior Obligations will be applied could not reasonably be expected to result in a Material Adverse Effect, (B) all Reserve Accounts are fully funded as of the date of issuance of such Additional Senior Obligations, (C) the Total Debt Service Coverage Ratio for each Calculation Period from the date of issuance of such Additional Senior Obligations through the Final Maturity Date is not less than (1) 1.30:1.00 (based on a certified "base case" revenue forecast prepared by the Traffic Consultant and satisfactory to the TIFIA Lender) and (2) 1.00:1.00 (based on a certified "downside case" revenue forecast prepared by the Traffic Consultant and satisfactory to the TIFIA Lender), provided, that for purposes of this clause (2) only, TIFIA Scheduled Debt Service shall not be included in the calculation of the Total Debt Service Coverage Ratio, and (D) the proceeds of such Additional Senior Obligations, together with other funds available, shall be sufficient for the proposed purpose;

provided that for each of clauses (b) and (c) above, (x) no Event of Default under any Indenture Document or this Agreement has occurred and is continuing, (y) the Nationally Recognized Rating Agency that provided the most recent public ratings of the Senior Obligations and the

TIFIA Loan in accordance with Section 16(j) (*Annual Rating*) shall have provided a confirmation or affirmation (or the equivalent) that the incurrence of such Additional Senior Obligations shall not result in a downgrade of the lower of (A) the then-existing credit ratings of the Senior Obligations and the TIFIA Loan, respectively, and (B) the credit ratings of the Senior Obligations and the TIFIA Loan, respectively, as of the Effective Date or the closing date for the Initial Senior Obligations (to the extent the Initial Senior Obligations are issued on a day other than the Effective Date), and (z) repayment of the principal amount of such Additional Senior Obligations does not commence before the Debt Service Payment Commencement Date.

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

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

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

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

“**Bank Lending Margin**” means in respect of any Variable Interest Rate Senior Obligations, the “**Applicable Margin**” or comparable interest rate margin as defined in the financing documents related to such Variable Interest Rate Senior Obligations.

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

“**Bankruptcy Related Event**” means,

(a) with respect to a Principal Project Party, any default or event of default under a Principal Project Contract to which such Principal Project Party is party that is based on the occurrence of any of the following events (or events similar to such events) with respect to such Principal Project Party: (i) voluntary or involuntary bankruptcy proceedings, (ii) insolvency, (iii) failure or inability to pay debts as they become due, (iv) application for, consent to or appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official, (v) general assignment for the benefit of creditors or (vi) filing of an answer admitting the material allegations of a petition filed against such Principal Project Party in any proceeding referred to in the foregoing subleases (i) through (v);

(b) with respect to the Borrower or CDOT, (i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (A) liquidation, reorganization or other relief in respect of CDOT, the Borrower, any of the Borrower’s debts secured by the Project Revenues, or all or any portion of the C-470 Express Lanes, in each case under any Insolvency Laws, or (B) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for CDOT, the Borrower or all or any portion of the C-470 Express Lanes and, in any case referred to in the foregoing subclauses (A) and (B) of this subclause (c)(i), such proceeding or petition shall continue undismissed for sixty (60) days or an

order or decree approving or ordering any of the foregoing shall be entered or (ii) the Borrower or CDOT shall (A) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or CDOT or for all or any portion of the C-470 Express Lanes, (B) 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, (C) make a general assignment for the benefit of creditors, (D) 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 subclause (c)(i) of this definition, (E) 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, (F) file an answer admitting the material allegations of a petition filed against the Borrower or CDOT in any proceeding referred to in the foregoing subclauses (A) through (E), inclusive, of this subclause (c)(ii), or (G) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law;

(c) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Mandatory Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*);

(d) solely with respect to the Borrower, (i) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon, or (ii) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure; or

(e) solely with respect to the Borrower, the Trustee shall transfer funds on deposit in any of the Project Accounts upon the occurrence and during the continuation of an Indenture Event of Default for application to the prepayment or repayment of any principal amount of any Senior Obligations other than in accordance with Section 3.02 of the Indenture.

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

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

“Bond” means any bonds (including the TIFIA Bond and the Initial Senior Obligations) or any other evidences of indebtedness for borrowed money issued by the Borrower from time to time pursuant to the Indenture and the terms of the applicable Supplemental Indenture.

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

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 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 TIFIA Lender, as provided in Section 17(g) (*Organizational Documents; Fiscal Year*).

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

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or Denver, Colorado.

“C-470 Express Lanes” means two (2) tolled express lanes westbound on C-470 from I-25 to Colorado Boulevard, one (1) tolled express lane westbound on C-470 from Colorado Boulevard to Wadsworth Boulevard, one (1) tolled express lane eastbound on C-470 from Wadsworth Boulevard to I-25.

“Calculation Date” means each December 31 and June 30 occurring after the Effective Date.

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

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

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

“CDOT” means the Colorado Department of Transportation, an agency of the State of Colorado.

“CDOT Direct Agreement” means the Direct Agreement, dated as of the date hereof, among the Borrower, CDOT, the Trustee and the TIFIA Lender.

“CDOT - HPTE IAA” means the C-470 Express Lanes (Phase 1) Project Intra-Agency Agreement, dated as of [___], 2017, between CDOT and the Borrower, as amended and restated on [___], 2017.¹

“CDOT O&M Loan” means any loan made by CDOT to the Borrower under the CDOT O&M Loan Agreement.

“CDOT O&M Loan Account” means the account of that name within Subfund 1.

¹ **Note:** Discuss timing for revised draft of this agreement.

“**CDOT O&M Loan Agreement**” means any CDOT Backup Loan Agreement, in the form of Exhibit A to the CDOT – HPTE IAA, and the related promissory note, each entered into from time to time by CDOT, on behalf of the State, and the Borrower to authorize loans from CDOT to the Borrower to fund Project O&M Expenses.

“**CDOT O&M Loan Debt Service Account**” means the account of that name within Subfund 1.

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

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

“**Construction Account**” means the account of that name within Subfund 1.

“**Construction Agreements**” means the Design Build Contract and each other contract to be entered into by the Borrower or CDOT and one or more Construction Contractors in connection with the design, procurement, engineering and construction of the Project.

“**Construction Contractor**” means (a) with respect to the Design Build Contract, Flatiron | AECOM LLC and (b) with respect to any other Construction Contract that may be entered into, the contractor or contractors party thereto.

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

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

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

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2017 as the base period.

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

“Debt Service Payment Commencement Date” means the earlier of (a) [____]² and (b) the fifth (5th) anniversary of the Substantial Completion Date or, if such anniversary date does not fall on a Semi-Annual Payment Date, then the Debt Service Payment Commencement Date shall be the Semi-Annual Payment Date immediately preceding such anniversary date.

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

“Deferred Income Bond” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Income Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately succeeding the Interest Commencement Date and thereafter on the dates specified in or determined pursuant to the Supplemental Indenture authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Income Bond is redeemed prior to maturity, the principal amount of a Deferred Income Bond shall be deemed to be its Appreciated Value.

“Design-Build Contract” means the Design-Build Contract, dated as of June 16, 2016, between CDOT and the Construction Contractor.

“Development Default” means (a) the Borrower or CDOT fails to diligently prosecute or cause to be prosecuted the work related to the Project for which it is responsible or (b) CDOT fails to complete the Project or cause the Project to be completed by the Projected Substantial Completion Date.

“DRCOG” means the Denver Regional Council of Governments, a nonprofit association of local governments from the Denver metropolitan area, including Adams, Arapahoe, Boulder, Clear Creek, Douglas, Gilpin and Jefferson counties, the City and County of Denver, the City and County of Broomfield, and southwest Weld County.

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including prior Project expenditures for the three (3)-year period preceding the date of the Application, all of which shall arise from the following:

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

² **Note to HPTE:** This date will be a Semi-Annual Payment Date.

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

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

“**Engineer**” means [_____], or any replacement engineering firm selected by the Borrower and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving written notice from the Borrower of the name of the proposed replacement engineering firm and supporting information regarding the qualifications of the proposed replacement engineering firm.

“**Engineer’s Report**” means the annual report of the Engineer delivered pursuant to Section 4.06 of the Indenture.

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

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

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

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

“**Event of Loss**” means any event or series of events that causes any portion of the Project (including, to the extent applicable, Segment 2) to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Existing Indebtedness**” means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date, as listed and described in **Schedule III**.

“**FASTER**” means the Funding Advancements for Surface Transportation and Economic Recovery Act of 2009, title 43, article 4, part 8, Colorado Revised Statutes, as amended.

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

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

“**FHWA Division Office**” means the Colorado Division Office of the FHWA.

“**FHWA Oversight Agreement**” means that certain Stewardship and Oversight Agreement, dated as of April 11, 2016, by and between the Borrower and the FHWA Division Office attached hereto as **Exhibit F**.

“**Final Maturity Date**” means the earlier of (a) the date that is thirty-five (35) years from the Substantial Completion Date and (b) [_____].

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

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

“**Fixed Level Payment**” has the meaning provided in Section 9(e) (*Fixed Level Payments*).

“**GAAP**” means generally accepted accounting principles as defined by the Governmental Accounting Standards Board, in effect from time to time in the United States of America.

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

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

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

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

possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Hedging Agreement**” means (a) the ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, to be entered into by the Borrower and a Hedging Bank, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, and (c) any other documentation directly relating to the foregoing.

“**Hedging Banks**” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors (to the extent such successors are also Qualified Hedge Providers).

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

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

“**Hedging Transaction**” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose.

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

“**Indenture**” means that certain Master Trust Indenture, dated as of [____], 2017, between the Borrower and the Trustee.

“**Indenture Documents**” means the Indenture, each Supplemental Indenture, each Hedging Agreement, each Credit Facility, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“Indenture Event of Default” has the meaning provided in the Indenture.

“Initial Senior Obligations” means the Colorado High Performance Transportation Enterprise C-470 Express Lanes Senior Revenue Bonds, Series 2017 of the Borrower issued in connection with the Project under the Indenture.

“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.

“Intercreditor Agreement” means any subordination and intercreditor agreement to be entered into among the TIFIA Lender, the Trustee and any holder of indebtedness of the Borrower that is payable from Pledged Revenues other than any Owner.

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

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

“Interim Payment Period” means, at any time that interest on or principal of any Senior Obligations or Junior Bonds is scheduled to be paid on an Interim Payment Date, any period from (and including) the immediately preceding Payment Date to (but excluding) such Interim Payment Date.

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

“ISDA Master Agreement” means a master agreement, entered into by the Borrower and a Hedging Bank, in the form published by the International Swaps and Derivatives Association, Inc.

“Junior Bond Payment Obligations” means the debt service on, and redemption price and purchase price of, outstanding Junior Bonds and amounts payable to the providers of Credit Facilities and Qualified Hedges that are payable on parity with the debt service on the Junior Bonds.

“Junior Bonds” means Bonds designated as such by an applicable Supplemental Indenture.

“Junior Bonds Capitalized Interest Account” means the account of that name within Subfund 1.

1. “**Junior Bonds Debt Service Account**” means the account of that name within Subfund

“**Junior Bonds Debt Service Reserve Account**” means the account of that name within Subfund 1.

“**Junior Bonds Debt Service Reserve Account Requirement**” means the amount, if any, specified as such by the Supplemental Indenture entered into in connection with the issuance of the first series of Junior Bonds.

“**Level Payment Commencement Date**” means the Semi-Annual Payment Date following the end of the [___] ([___]th) consecutive Payment Period.

“**Level Payment Period**” means the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash).

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

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

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

“**Loss Proceeds**” means any proceeds of insurance received by the Borrower or CDOT resulting from any Event of Loss.

“**Material Adverse Effect**” means a material adverse effect on (a) the Project or the Pledged Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower or CDOT, (c) the legality, validity or enforceability of any material provision of any Indenture Document, TIFIA Loan Document or Principal Project Contract, (d) the ability of the Borrower, CDOT, or any Principal Project Party to enter into, perform or comply with any of its material obligations under any Indenture Document, TIFIA Loan Document or Principal Project Contract to which it is a party, (e) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Trust Estate in favor of the

Secured Parties or (f) the TIFIA Lender's rights or remedies available under any TIFIA Loan Document.

“**MOU**” means that certain Memorandum of Understanding, dated September 30, 2013, by and between CDOT and the Borrower.

“**Nationally Recognized Rating Agency**” means any nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“**NEPA**” means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“**NEPA Determination**” means [the Finding of No Significant Impact for the Project issued by the Federal Highway Administration on November 20, 2015] in accordance with NEPA.³

“**Net Loss Proceeds**” means remaining Loss Proceeds after excluding any proceeds of business interruption insurance, delay-in-start-up insurance, proceeds covering liability of the Borrower or CDOT to third parties and Loss Proceeds used or to be used by the Borrower or CDOT to repair or restore the Project (including, to the extent applicable, Segment 2).

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

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

³ **Notes to HPTE:** Please provide current FONSI; subject to discussion of potential outcome of Highlands Ranch litigation.

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

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

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

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

“Owner” means, when used with respect to the TIFIA Bond, the TIFIA Lender and, when used with respect to any other Bond, the registered owner of such Bond, as shown in the registration records of the Trustee.

“Partially Subordinated Hedge” means a Qualified Hedge, some or all of the Hedging Termination Obligations of which are subordinate to the payment of principal of and interest on Senior Obligations and are subordinate to the payment of the principal of and interest on the TIFIA Loan and are paid in accordance with Section 3.02(c) of the Indenture.

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

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

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

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

“Permitted Debt” means:

- (a) the TIFIA Loan;
- (b) the Initial Senior Obligations;
- (c) Additional Senior Obligations that satisfy each of the requirements in the definition thereof;
- (d) CDOT O&M Loans advanced to the Borrower from CDOT pursuant to and subject to the terms and conditions of the applicable CDOT O&M Loan Agreement(s);

(e) reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Principal Project Contracts or any other agreement executed by the Borrower in connection with the Project that are payable as Total Project Costs, Eligible Project Costs or Project O&M Expenses and that do not in the aggregate have face amounts exceeding \$1,000,000 (inflated annually by CPI);

(f) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that qualify as Project O&M Expenses, which obligations and leases do not require payments by the Borrower in any Borrower Fiscal Year in excess of \$500,000 in the aggregate (inflated annually by CPI);

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

(h) indebtedness incurred in respect of Qualified Hedges; and

(i) Junior Bond Payment Obligations, as authorized by the Indenture, provided that the issuance of Junior Bonds shall also be subject to the prior written consent of the TIFIA Lender.

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

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

(a) Government Obligations;

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

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

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

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Nationally Recognized Rating Agency equal to the then applicable rating of the United States of America by such Nationally Recognized Rating Agency.⁴

“Permitted Liens” means:

(a) Liens imposed pursuant to the TIFIA Loan Documents;

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

(c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(n) (*Material Obligations; Liens*);

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

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

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 20(a)(vii) (*Judgments*);

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

(h) any Lien on any property or asset of the Borrower existing on the Effective Date; provided that (i) such Lien shall not apply to any other property or asset of the Borrower and (ii) such Lien shall secure only those obligations which it secures on

⁴ **Note to HPTE:** Please provide details regarding State Treasurer Investment Pool.

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

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

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

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

“**Phase 2**” means the extension of the C-470 Express Lanes consisting of (a) two (2) tolled express lanes westbound from I-25 to Lucent Boulevard, (b) one (1) tolled express lane westbound from Lucent Boulevard to Kipling Parkway, (c) one (1) tolled express lane eastbound from Kipling Parkway to Broadway, and (d) two (2) tolled express lanes from Broadway to I-25.

“**Pledged Revenues**” means (a) the User Fees; (b) all earnings from the investment of moneys held in any Project Account that is part of the Trust Estate; (c) regularly scheduled payments to the Borrower or the Trustee from the provider of any Qualified Hedge with respect to Bonds that exceed the corresponding regularly scheduled payments by the Borrower or the Trustee to the provider of such Qualified Hedge; (d) all amounts payable to the Borrower or the Trustee from the provider of a Credit Facility; (e) all termination payments and all other payments that are not regularly scheduled payments payable to the Borrower or the Trustee by the provider of any Qualified Hedge with respect to Bonds; (f) the proceeds of any loan to the Borrower with respect to the Project (including, to the extent applicable, Segment 2); (g) the proceeds from the sale or other disposition of any portion of the Project (including, to the extent applicable, Segment 2); (h) delay liquidated damages and proceeds from business interruption and delay in start-up insurance policies with respect to the Project (including, to the extent applicable, Segment 2); (i) Net Loss Proceeds; and (j) all amounts received by the Borrower from grants and other sources with respect to the Project (including, to the extent applicable, Segment 2) that are not included in clauses (a) through (i) of this definition; provided, that the revenues described in clauses (e), (f), (g), (h), (i) and (j) above and any one time payments or revenue items shall not be counted for purposes of any calculation of debt service coverage ratios hereunder.

“Pledged Revenues Account” means the account of that name within Subfund 1.

“Principal Project Contracts” means the Design-Build Contract, the Tolling Services Agreement, the CDOT - HPTE IAA, any CDOT O&M Loan Agreement, the MOU, any contract entered into by the Borrower or CDOT required under the Design-Build Contract requiring payments by the Borrower in excess of \$1,000,000 (inflated annually by CPI) in any Borrower Fiscal Year, any other contract entered into by the Borrower relating to the Project designated as a Principal Project Contract by the TIFIA Lender and the Borrower, and any document that replaces or supplements any of the foregoing agreements.

“Principal Project Party” means any Person (other than the Borrower and CDOT) party to a Principal Project Contract for so long as such Principal Project Contract (or any provision thereof) remains in effect.

“Project” means (a) the C-470 Express Lanes, (b) safety and operational improvements between I-25 and Quebec Street via adding direct-connect ramps from SB I-25 to the WB C-470 tolled express lanes, NB I-25 to the WB C-470 tolled express lanes, and WB E-470 to the WB C-470 general purpose lanes, (c) adding auxiliary lanes at select locations, improving portions of on-ramps and off-ramps to current standards (including ramp metering where appropriate) and realigning substandard curves, (d) full reconstruction of the pavement, (e) widening existing structures throughout the corridor, replacing the bridges over the South Platte River, and construction new bridges for the direct connect ramps at I-25, (f) adding grade separations for the multi-use trail at Quebec Street and Colorado Boulevard, (g) installing tolling/Intelligent Transportation Systems (ITS) elements, (h) drainage and water quality treatment systems, (i) environmental mitigation as required in the Revised Environmental Assessment (July 2015) and the “Decision Document (November 2015),” (j) upon the acquisition, installation, construction and opening to tolled vehicular traffic thereof, Phase 2 and (k) upon the acquisition, installation, construction and opening to tolled vehicular traffic thereof, Segment 2 (if any indebtedness issued in respect thereof is payable from User Fees associated with the C-470 Express Lanes); provided, that the facilities described in clauses (j) and (k) shall be disregarded for purposes of determining whether or not the Project has achieved Substantial Completion.

“Project Accounts” means the Construction Account, the Project O&M Account, the Project O&M Reserve Account, the Project Renewal and Replacement Account, the Project Renewal and Replacement Reserve Account, the Ramp Up Reserve Account, the Pledged Revenues Account, the Surplus Account, the TIFIA Loans Debt Service Account, the TIFIA Loans Debt Service Reserve Account, the TIFIA Loans Prepayment Account, the Senior Bonds Debt Service Account, the Senior Bonds Debt Service Reserve Account, the Junior Bonds Debt Service Account, the Junior Bonds Debt Service Reserve Account, the Senior Bonds Capitalized Interest Account, the Junior Bonds Capitalized Interest Account, the CDOT O&M Loan Account, the CDOT O&M Loan Debt Service Account, the Rebate Account, and any sub-accounts established under any of the foregoing.

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

“Project O&M Account” means the account of that name within Subfund 1.

“Project O&M Expenses” means all actual maintenance and operation costs (excluding any Renewal and Replacement Costs) incurred and paid (or, if applicable, forecasted to be incurred and paid) in connection with the operation and maintenance of the Project in any particular time period to which said term is applicable, including payments for insurance, consumables, advertising, marketing, payments pursuant to any agreements for the management, operation or maintenance of the Project (including payments under the Tolling Services Agreement allocable to the Project), reasonable legal fees and expenses paid by the Borrower in connection with the management, maintenance or operation of the Project, fees paid in connection with obtaining, transferring, maintaining or amending any Governmental Approvals, the fees and expenses of any Engineer, financial consultant, Traffic Consultant or Toll Road Consultant for services performed to comply with the provisions of the TIFIA Loan Documents, fees and expenses payable to the Trustee pursuant to the Indenture, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Borrower with respect to the Project (but only to the extent such work has a useful life of less than twelve (12) months), costs incurred in connection with the performance of renewal, replacement or an improvement to the Project (but only to the extent such work has a useful life of less than twelve (12) months), and reasonable (and reasonably allocated) general and administrative expenses, including salaries and benefits payable to employees of the Borrower and employees of CDOT who perform services for the Borrower, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Project O&M Reserve Account” means the account of that name within Subfund 1.

“Project O&M Reserve Requirement” means, for any Calculation Date, an amount equal to fifty percent (50%) of expected Project O&M Expenses for the following 12-month period.

“Project Renewal and Replacement Account” means the account of that name in Subfund 1.

“Project Renewal and Replacement Requirement” means, for any Calculation Date, an amount equal to the aggregate of (a) one hundred percent (100%) of expected Renewal and Replacement Costs for the following 12-month period, (b) sixty-six and two thirds percent ($66\frac{2}{3}\%$) of expected Renewal and Replacement Costs for the next following 12-month period (i.e., year 2), and (c) thirty-three and one third percent ($33\frac{1}{3}\%$) of expected Renewal and Replacement Costs for the next succeeding 12-month period (i.e., year 3), in each case initially based on the forecast of estimated life cycle maintenance costs with respect to the Project set forth in the Base Case Financial Model and thereafter based on the then-current Engineer’s Report and in the Revised Financial Model approved by the TIFIA Lender as part of the then-current Financial Plan.

“Project Renewal and Replacement Reserve Account” means the account of that name in Subfund 1.

“Projected Substantial Completion Date” means [insert date], as such date may be adjusted in accordance with Section 22(a)(iii)(B) (*Financial Plan*).

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

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

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

“Ramp Up Reserve Account” means the account of that name in Subfund 1.

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

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

“Rebate Account” means the account of that name within Subfund 1.

“Related Documents” means the Indenture Documents, the TIFIA Loan Documents, the Hedging Agreements (if any) and the Principal Project Contracts.

“Renewal and Replacement” means each renewal, replacement or improvement to the Project with a useful life of 12 or more months recommended in the most recent Engineer’s Report.

“Renewal and Replacement Costs” means all expenses incurred or to be incurred by the Borrower or CDOT relating to Renewal and Replacement.

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

“Reserve Accounts” means the Senior Bonds Debt Service Reserve Account, the TIFIA Loans Debt Service Reserve Account, the Junior Bonds Debt Service Reserve Account, the Project Renewal and Replacement Reserve Account, Project O&M Reserve Account, and the Ramp Up Reserve Account.

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

“Secretary” means the United States Secretary of Transportation.

“Secured Obligations” means the Senior Obligations, the obligations of the Borrower under this Agreement and the TIFIA Bond, any Junior Bonds, the Hedging Obligations and the Hedging Termination Obligations.

“Secured Parties” means the Trustee, the TIFIA Lender, any other Owners, and the Hedging Banks.

“Segment 2” means the extension of the C-470 Express Lanes consisting of one (1) tolled express lane westbound from Kipling Parkway to I-70 and one (1) tolled express lane eastbound from I-70 to Kipling Parkway.

“Semi-Annual Payment Date” means each June 30 and December 31.

“Senior Bonds” means Bonds designated as such by an applicable Supplemental Indenture.

“Senior Bonds Capitalized Interest Account” means the account by that name of Subfund 1.

“Senior Bonds Debt Service Account” means the account by that name of Subfund 1.

“Senior Bonds Debt Service Reserve Account” means the account by that name of Subfund 1.

“Senior Bonds Debt Service Reserve Account Requirement” means fifty percent (50%) of scheduled Senior Debt Service for the next twelve (12) months, determined as of January 1 of each year.

“Senior Debt Service” means, with respect to the Senior Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of Senior Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model (or in the Base Case Financial Model to the extent that no Revised Financial Model has been approved by the TIFIA Lender). In determining the principal amount of Senior Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

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

- (a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon), unless clause (b) applies;

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

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

“Senior Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Pledged Revenues for such Calculation Period to Senior Debt Service for such Calculation Period.

“Senior Obligations” means (a) the Initial Senior Obligations, and (b) any Additional Senior Obligations.

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

“State” means the State of Colorado.

“State and Local Funds” means (a) funding by CDOT under the Responsible Acceleration of Maintenance and Partnerships (RAMP) program in an amount equal to \$[18,000,000], (b) funding by CDOT under the Highway Safety Improvement Program in an amount equal to \$[6,300,000], (c) funds contributed to the Project by Douglas County, CO in an amount equal to \$[10,000,000] and (d) funds appropriated and allocated to the Project by the General Assembly under FASTER in an amount equal to \$[2,000,000].⁵

“Subfund 1” means the C-470 Express Lane System Subfund 1 of the Transportation Enterprise Special Fund created pursuant to and designated as such in Section 3.01 of the Master Indenture.

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

“Substantial Completion” means the substantial completion of the Project, including the opening of the C-470 Express Lanes to tolled vehicular traffic.

⁵ **Note to HPTE:** Please update.

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

“**Supplemental Indenture**” means any indenture supplementing or amending the Indenture that is adopted pursuant to Article VII of the Indenture.

“**Surplus Account**” means the account by that name in Subfund 1.

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

“**TIFIA Bond**” means the Bond delivered by the Borrower in substantially the form of **Exhibit A**.

“**TIFIA Debt Service**” means with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the sum of (a) the TIFIA Mandatory Debt Service and (b) the TIFIA Scheduled Debt Service, in each case, for such period (whether or not any of such amounts were actually paid for such period and whether or not, in the case of TIFIA Scheduled Debt Service, such amount was actually required to be paid for such period under the provisions of Section 9 (*Payment of Principal and Interest*)), in each case, as set forth on **Exhibit G**.

“**TIFIA Debt Service Reserve Required Balance**” means, as of any date of determination, the greater of (a) the amount of TIFIA Mandatory Debt Service due and payable during the then-current Borrower Fiscal Year or (b) the largest amount of TIFIA Mandatory Debt Service payable in any of the succeeding four (4) Borrower Fiscal Years after the then-current Borrower Fiscal Year.

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

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

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

“**TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$[104,900,000] (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Bond, the Indenture Documents, the CDOT Direct Agreement, any CDOT O&M Loan Agreement, and any Intercreditor Agreement.

“**TIFIA Loans Debt Service Account**” means the account by that name in Subfund 1.

“**TIFIA Loans Debt Service Reserve Account**” means the account by that name in Subfund 1.

“TIFIA Loans Prepayment Account” means the account by that name of Subfund 1.

“TIFIA Mandatory Debt Service” means (a) with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (i) designated as “TIFIA Mandatory Debt Service” on **Exhibit G** and (ii) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(c) (*Payment of TIFIA Mandatory Debt Service*), and which shall be unconditionally required to be paid on such Semi-Annual Payment Date, and (b) with respect to any Semi-Annual Payment Date occurring on or after the Level Payment Commencement Date, the entire amount of each Fixed Level Payment required to be paid pursuant to Section 9(e) (*Fixed Level Payments*).

“TIFIA Scheduled Debt Service” means, with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) designated as “TIFIA Scheduled Debt Service” on **Exhibit G** and (b) scheduled to be paid on such Semi-Annual Payment Date in accordance with the provisions of Section 9(d) (*Payment of TIFIA Scheduled Debt Service*), but which shall be required to be paid on such Semi-Annual Payment Date only upon satisfaction of the condition specified in the proviso to the first sentence of such Section 9(d).

“TIFIA Supplemental Indenture” means that certain Second Supplemental Indenture, dated as of [____] 1, 2017, between the Borrower and the Trustee in connection with the issuance of the TIFIA Bond.

“Toll Road Consultant” means any toll road consultant firm selected by the Borrower and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving notice from the Borrower of the name of the proposed toll road consultant, together with supporting information regarding the qualifications of the proposed traffic consultant, which consultant is a Person who (a) is retained by the Borrower, (b) is not, and none of whose officers, directors or employees is, an officer, director or employee of the Borrower (but may be the original purchaser of any series of Bonds or a financial advisor retained by the Borrower for other purposes) and (c) is experienced and has a national and favorable reputation with respect to the collection of tolls from tolls roads such as the Project.

“Tolling Services Agreement” means (a) the Managed Lanes Tolling Services Agreement, dated as of May 7, 2015, by and between the Borrower and E-470 Public Highway Authority, together with each task order issued thereunder that relates to the Project and (b) any

other contract from time to time entered into by, or on behalf of, the Borrower related to tolling of vehicles using the Project or the collection or enforcement of such tolls.⁶

“Total Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Pledged Revenues (plus, solely with respect to the Rate Coverage Test, any amounts available in the Ramp Up Reserve Account) for such Calculation Period to the sum of (a) Senior Debt Service for such Calculation Period plus (b) either (i) for the calculation described in clause (c)(iii)(C)(2) in the definition of “Additional Senior Obligations”, TIFIA Mandatory Debt Service for such Calculation Period or (ii) for all other calculations, TIFIA Debt Service for such Calculation Period.

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

“Traffic and Revenue Study” means the C-470 Investment Grade Traffic & Revenues Study, dated August 9, 2016, prepared for CDOT and the Borrower by the Traffic Consultant, and any amendments, supplements or updates thereto.

“Traffic Consultant” means initially Louis Berger, and any replacement traffic consultant firm selected by the Borrower and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving notice from the Borrower of the name of the proposed traffic consultant, together with supporting information regarding the qualifications of the proposed traffic consultant.

“Transfer Date” means the next to last calendar date of each month (or the next succeeding Business Day if the next to last calendar day of the month is not a Business Day).

“Transportation Commission” means the Transportation Commission of Colorado.

“Transportation Enterprise Special Fund” means the statewide transportation enterprise special revenue fund created in the State treasury by C.R.S. § 43-4-806(3)(a).

⁶ **Note to HPTE:** Discuss timing for issuance of task orders. Please provide copies.

“True Interest Cost” means the rate necessary to discount the cumulative amounts payable on the respective Payment Dates in respect of Senior Debt Service to the original purchase price of the Senior Obligations (taking into account discounts, premiums and transaction costs) on the basis of semi-annual compounding of interest.

“Trust Estate” means the following described property, franchises and income, including any title or interest therein acquired after the date of the Indenture:

- (a) the Pledged Revenues;
- (b) all money from time-to-time held by the State Treasurer or the Trustee in any of the Project Accounts;
- (c) all amounts payable to the Borrower or the Trustee pursuant to any Credit Facility or Hedging Transaction; and
- (d) all other property, revenues, accounts or subaccounts under the Indenture from time to time hereafter by delivery or by writing of any kind specially granted, assigned or pledged as and for additional security under the Indenture, by the Borrower or anyone else, in favor of the Trustee for the benefit of the Secured Parties.

“Trustee” means Zions Bank, a division of ZB, National Association.

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

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

“USACE Permit” means any and all permits to be issued by the U.S. Army Corps of Engineers (USACE) in connection with the Project, including any permit issued pursuant to 33 U.S.C. § 408.⁷

“USDOT” means the United States Department of Transportation.

⁷ **Note to HPTE:** Will there be a single USACE permit or more than one?

“**User Fees**” means tolls, late fees, administrative fees, penalties and other fees received by the Borrower with respect to the use of the Project (including, to the extent applicable, Segment 2).

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

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

“**Variable Interest Rate Bonds**” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Bonds if the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect; provided, further, that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Bonds to the extent that the Borrower has entered into a Qualified Hedge pursuant to which the Borrower is obligated to pay a floating rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the lesser of the rate determined pursuant to clause (a) of the definition of the term Senior Debt Service or the maximum interest rate, if any, payable pursuant to such Qualified Hedge.

“**Variable Interest Rate Senior Obligations**” means any Senior Obligations under the Indenture that accrue interest at a Variable Interest Rate.

Section 2. Interpretation.

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

recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 37 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

(b) Segment 2. Any references herein to Segment 2 that are qualified by the phrase “if applicable” shall be applicable for all purposes of this Agreement and the other TIFIA Loan Documents if any indebtedness issued in respect of Segment 2 is payable from User Fees associated with the C-470 Express Lanes.

Section 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$[104,900,000].

Section 4. Disbursement Conditions.

(a) TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project. If the Borrower intends to utilize the TIFIA Loan proceeds to make progress payments for the Project construction work performed under the Construction Agreements, the Borrower shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** to **Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the TIFIA Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (*Disbursement Conditions*) and the conditions set forth in Section 13(b) (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender, the Servicer (if any) and the FHWA Division Office by no later than fifteen (15) Business Days prior to the requested date for the applicable disbursement. If the TIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the first (1st) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such first (1st) day is not a Business Day. Express TIFIA Lender approval or denial shall be substantially in the form annexed hereto as

Appendix Three to Exhibit D. In no event shall disbursements be made more than once each month. At the time of any disbursement, the sum of all prior disbursements of TIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current calendar year set forth in the Anticipated TIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Any scheduled disbursement (as reflected in the Anticipated TIFIA Loan Disbursement Schedule) that remains undrawn at the end of any year shall be available for disbursement in subsequent years, subject to Section 4(a) (Disbursement Conditions) above.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated TIFIA Loan Disbursement Schedule shall become effective upon the TIFIA Lender's approval thereof, which approval shall be granted in the TIFIA Lender's sole discretion.

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

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

Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9(b) (Capitalized Interest Period), by the amount of interest so capitalized; (iii) increased on each occasion on which the interest portion of any TIFIA Scheduled Debt Service is not paid by the Borrower on the applicable Semi-Annual Payment Date, by the amount of such unpaid interest, which shall be capitalized; and (iv) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from

time-to-time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

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

Section 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The TIFIA Loan shall be secured by the Liens on the Trust Estate and subordinate, during any period when a Bankruptcy Related Event with respect to the Borrower has not occurred, only (except as otherwise required by law) to the Lien on the Trust Estate of the Senior Obligations, the Hedging Obligations in respect of Senior Obligations, and the Hedging Termination Obligations (other than Subordinated Hedging Termination Obligations) in respect of such Hedging Obligations. Upon the occurrence of a Bankruptcy Related Event with respect to the Borrower, (i) the TIFIA Loan shall be secured by a first priority security interest in the Trust Estate on a parity with the Senior Obligations, the Hedging Obligations in respect of Senior Obligations and the Hedging Termination Obligations (other than Subordinated Hedging Termination Obligations) in respect of such Senior Obligations, (ii) TIFIA Debt Service shall be paid on a parity basis with the Senior Lien Debt Service, (iii) the TIFIA Loans Debt Service Account shall be funded on a parity basis with the Senior Bonds Debt Service Account, pro rata based on the respective amounts then required to be transferred or paid, (iv) the TIFIA Loans Debt Service Reserve Account shall be funded on a parity with the Senior Bonds Debt Service Reserve Account, pro rata in accordance with the relative deficiencies in the funding of such TIFIA Loans Debt Service Reserve Account and Senior Bonds Debt Service Reserve Account; and (v) all TIFIA Debt Service shall be treated as TIFIA Mandatory Debt Service for all purposes under the TIFIA Loan Documents and Indenture Documents; provided, that (A) the Senior Bonds Debt Service Account and the Senior Bonds Debt Service Reserve Account shall be held solely for the benefit of the Senior Obligations secured thereby and the TIFIA Loans

Debt Service Account, TIFIA Loans Debt Service Reserve Account and the TIFIA Loans Prepayment Account shall be held solely for the benefit of the holder of the TIFIA Bond and (B) in no event shall the proceeds of any Senior Obligations fund the TIFIA Loans Debt Service Reserve Account.

(b) Except (i) for Permitted Liens, or (ii) to the extent otherwise provided in clause (a) of this Section 8 (*Security and Priority; Flow of Funds*), the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge of the Borrower created under the Indenture Documents, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Indenture Documents and shall not apply any portion of the Pledged Revenues in contravention of this Agreement or the Indenture Documents.

(d) The Indenture provides that all Pledged Revenues shall, subject to Section 3.02(b) thereof, be deposited in the Pledged Revenues Account and applied in the order of priority described in Section 3.02(c) of the Indenture, a copy of which Section 3.02(c), as of the Effective Date, is attached as **Schedule IV** (all capitalized terms used in **Schedule IV** and not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Indenture).

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Indenture Documents on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date) and any date on which payment is due by reason of the acceleration of the maturity of the TIFIA Loan (to the extent provided in Section 20(d) (*Events of Default and Remedies*) or otherwise; provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be treated as a payment of the TIFIA Loan and any prepayment of principal of the TIFIA Loan shall be treated as redemption of the TIFIA Bond.

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

(c) Payment of TIFIA Mandatory Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the Borrower shall pay TIFIA Mandatory Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit G**, as the same may be revised as provided in Section 7 (Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule), which payments shall be made in accordance with Section 9(g) (Manner of Payment). On each Semi-Annual Payment Date commencing on the Level Payment Commencement Date, the Borrower shall pay TIFIA Mandatory Debt Service in the amount of one hundred percent (100%) of the Fixed Level Payment, which payments shall be made in accordance with Section 9(e) (*Fixed Level Payments*) and Section 9(g) (Manner of Payment).

(d) Payment of TIFIA Scheduled Debt Service. On each Semi-Annual Payment Date on and after the Debt Service Payment Commencement Date and continuing until but excluding the Level Payment Commencement Date, the Borrower shall pay TIFIA Scheduled Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit G**, as the same may be revised as provided in Section 7 (Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule), which payments shall be made in accordance with Section 9(g) (Manner of Payment); provided, that the Borrower's obligation to pay TIFIA Scheduled Debt Service on any Semi-Annual Payment Date shall be applicable only if and to the extent that funds shall be available therefor on such date in accordance with the provisions of Section 3.02(c) of the Indenture. To the extent that the aggregate amount of TIFIA Scheduled Debt Service actually paid with respect to any Payment Period for the TIFIA Loan in accordance with the provisions hereof shall be less than the aggregate amount of the TIFIA Scheduled Debt Service for such Payment Period determined as provided above, then, with respect to any such unpaid TIFIA Scheduled Debt Service, (i) the portion of such unpaid TIFIA Scheduled Debt Service constituting principal shall be deferred and remain part of the Outstanding TIFIA Loan Balance, (ii) the portion of such unpaid TIFIA Scheduled Debt Service constituting interest shall be (A) capitalized as described in clause (iii) of Section 7(a) (Outstanding TIFIA Loan Balance) and (B) added to the amount of TIFIA Scheduled Debt Service due and payable on the next Semi-Annual Payment Date. Without limiting any obligation under Section 9(c) (TIFIA Mandatory Debt Service), on any Semi-Annual Payment Date as of which previously due TIFIA Scheduled Debt Service remains unpaid, the total amount due and payable in respect of TIFIA Scheduled Debt Service on that Semi-Annual Payment Date (but only if and to the extent that funds shall be available therefor on such date in accordance with Section 3.02(c) of the Indenture) shall be equal to the amount necessary to reduce the Outstanding TIFIA Loan Balance as of such Semi-Annual Payment Date to the amount that would be the Outstanding TIFIA Loan Balance if the Borrower made all TIFIA Scheduled Debt Service payments in full from the Debt Service Payment Commencement Date through such Semi-Annual Payment Date. Notwithstanding anything to the contrary herein, upon the occurrence of a Bankruptcy Related Event with respect to the Borrower, all TIFIA Debt Service shall be treated as TIFIA Mandatory Debt Service for all purposes under the TIFIA Loan Documents and Indenture Documents.

(e) Fixed Level Payments. On each Semi-Annual Payment Date occurring during the Level Payment Period, the Borrower shall make level payments of principal and interest (each a "**Fixed Level Payment**"), each of which payments shall be approximately equal

in amount. The amount of the Fixed Level Payment shall be calculated in such manner that the Outstanding TIFIA Loan Balance as of the Level Payment Commencement Date shall be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the Outstanding TIFIA Loan Balance at the rate per annum set forth in Section 6 (*Interest Rate*) in the absence of an Event of Default, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal of or interest on the TIFIA Loan are made during such period). Within thirty (30) days prior to the beginning of the Level Payment Period, the TIFIA Lender may (or, at the written request of the Borrower, shall) give written notice to the Borrower of the amount of the related Fixed Level Payment, which amount shall be deemed conclusive absent manifest error, but no failure to provide or delay in providing the Borrower with such notice shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents. To the extent that any prepayments of the TIFIA Loan shall be made during the Level Payment Period in addition to the Fixed Level Payments, such prepayments shall be applied to the remaining Outstanding TIFIA Loan Balance and the resulting Fixed Level Payments shall be recalculated as provided in Section 10(c) (*General Prepayment Instructions*) and reflected in a revised **Exhibit G**.

(f) Accrual of Amounts on Interim Payment Dates.

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

(ii) On any such Interim Payment Date, the Borrower shall transfer or otherwise deposit, or cause to be transferred or otherwise deposited, into the TIFIA Loans Debt Service Account:

(A) an amount equal to the amount of TIFIA Mandatory Debt Service (or, from and after the Level Payment Commencement Date, all TIFIA Debt Service) due and payable on the next succeeding Semi-Annual Payment Date (as shown on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*)) multiplied by a fraction, the numerator of which is equal to the number of months contained in the Interim Payment Period ending on such Interim Payment Date and the denominator of which is equal to six (6); and

(B) until the Level Payment Commencement Date, an amount equal to the amount of TIFIA Scheduled Debt Service due and payable on the next succeeding Semi-Annual Payment Date (as shown on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*)) multiplied by a fraction, the numerator of which is equal to the number of months contained in the Interim Payment Period ending on such Interim Payment Date and the denominator of which is equal to six (6); provided, that the Borrower's obligation to transfer or otherwise deposit funds into the TIFIA Loans Debt Service Account pursuant to

this Section 9(f)(ii)(B) shall apply only if and to the extent that funds shall be available therefor on such date in accordance with the provisions of Section 3.02(c) of the Indenture.

(iii) If an Interim Payment Date is other than the first Business Day of a calendar month, the method for calculating any amount required to be transferred or deposited into the TIFIA Loans Debt Service Account pursuant to this Section 9(f) (*Accrual of Amounts on Interim Payment Dates*) shall be determined at such time by the parties hereto.

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

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

(i) TIFIA Bond; Adjustments to Loan Amortization Schedule. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of \$[104,900,000] (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

Section 10. Prepayment.

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

(i) on each Semi-Annual Payment Date occurring on or after the earlier to occur of (A) December 31, 2031 and (B) the date on which Segment 2 is opened for tolled vehicular traffic, in an amount equal to all amounts then on deposit in the TIFIA Loans Prepayment Account, determined in accordance with Section 16(k)(viii) (*Project Accounts; Permitted Investments*);

(ii) following the determination thereof in accordance with the Indenture, in the amount of any Net Loss Proceeds; and

(iii) upon each Semi-Annual Payment Date, if any, as of which the Borrower shall have failed to be in compliance with the Rate Coverage Test for a period of at least six (6) consecutive Semi-Annual Payment Dates (and, if necessary, on each Transfer Date thereafter until the Borrower has regained compliance with the Rate

Coverage Test), in an amount from the Surplus Account, which shall be transferred to the TIFIA Loan Prepayment Account, equal to the lesser of (A) the total amount then on deposit in the Surplus Account and (B) the amount necessary to cause the Borrower to regain compliance with the Rate Coverage Test.

The Borrower shall provide written notice to the TIFIA Lender at least two (2) Business Days prior to the date on which it makes any mandatory prepayment; provided that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred. Each prepayment pursuant to this Section 10(a) (*Mandatory Prepayments*) shall be effected pursuant to Sections 3.02(c) and 3.13. of the Indenture (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

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

(c) General Prepayment Instructions. Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its representative at the principal office of the TIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of such TIFIA Bond, the TIFIA Lender may make a notation on **Exhibit G** indicating the amount of principal of and interest on such TIFIA Bond then being prepaid. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. All such partial prepayments of principal that occur prior to the Level Payment Commencement Date shall be applied to reduce future payments due on the TIFIA Bond pro rata, based on the principal amount due and payable as of any Semi-Annual Payment Date in relation to the aggregate principal payments to be made prior to the Level Payment Commencement Date, as set forth in

Exhibit N. Any such prepayment shall be applied first to payments of TIFIA Scheduled Debt Service and second to payments of TIFIA Mandatory Debt Service. All such partial prepayments of principal that occur after the Level Payment Commencement Date shall be applied pro rata equally to reduce all future payments due on the TIFIA Bond by the same amount. If said monies shall not have been so paid on the prepayment date, such principal amount of such TIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate).

Section 11. [Reserved].

Section 12. Compliance with Laws. The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with all applicable federal and state laws. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. Pursuant to the FHWA Oversight Agreement, CDOT may be responsible for certain Project oversight activities. The Borrower acknowledges receipt of the FHWA Oversight Agreement and hereby agrees to cooperate with CDOT and the FHWA Division Office in carrying out their duties under the FHWA Oversight Agreement. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof.

Section 13. Conditions Precedent.

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

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

(ii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each of the other TIFIA Loan Documents and each Indenture Document and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of this Section 13(a)(ii) (Conditions Precedent to Effectiveness), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

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

to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-2**).

(iv) The Borrower shall have caused the Office of the Attorney General of the State to have rendered to the TIFIA Lender a legal opinion, in form and substance satisfactory to the TIFIA Lender (including those opinions set forth on Exhibit B of the CDOT Direct Agreement).

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

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

(vii) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public Investment Grade Rating to the Initial Senior Obligations and a public rating on the TIFIA Loan and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

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

(ix) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and that such funds shall be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(x) The Borrower shall have delivered to the TIFIA Lender an original fully executed counterpart (or a certified copy) of the Traffic and Revenue Study in form and substance acceptable to the TIFIA Lender, accompanied by a letter from the preparer

of such study, dated as of [____], 2017,⁸ and certifying that the assumptions and projections contained in the Traffic and Revenue Study are reasonable and may be relied upon by the TIFIA Lender.

(xi) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto and task orders thereunder (including the amendment to the CDOT – HPTE IAA contemplated in Section I.1 thereof), in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

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

(xiii) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [●],⁹ (C) demonstrate a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [●],¹⁰ (D) demonstrate a ratio of Pledged Revenues over Borrower's funding obligations pursuant to clauses (i) through (xii) of Section 3.02(c) of the Indenture for each Calculation Period through the Final Maturity Date that is not less than 1.00:1.00, (E) not reflect (1) the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (2) the payment of any interest on any Junior Bonds before the Debt Service Payment Commencement Date, or (3) the commencement of amortization of the principal amount of any Junior Bonds before the commencement of the amortization of the principal amount of the TIFIA Loan, and (F) otherwise be in form and substance acceptable to the TIFIA Lender.

(xiv) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant to [C.R.S. 43-4-806 (2015), C.R.S. 43-4-807 (2015) and Transportation Commission adopted Resolution #TC-15-2-9], dated February 19, 2015, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further

⁸ **Note:** Must be a date not more than 15 days prior to the Effective Date.

⁹ **Note:** Will be taken from Base Case shown in the Application.

¹⁰ **Note:** Will be taken from Base Case shown in the Application.

act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing.

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

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

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

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

(xix) The Borrower shall have delivered to the TIFIA Lender (A) certificates of insurance evidencing (1) that the Borrower or CDOT and each applicable Principal Project Party has obtained or caused to be obtained insurance with respect to the Project and the Borrower, as applicable, that meets the requirements of Section 16(f) (Insurance) and (2) that each liability policy (other than workers' compensation insurance) reflects the TIFIA Lender as an additional insured and (B) at the TIFIA Lender's request, copies of such insurance policies.¹¹

(xx) The Borrower shall have provided to the TIFIA Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified by the Borrower's Authorized Representative: (A) a copy of its

¹¹ **Note to HPTE:** Discuss HPTE's and CDOT's insurance programs (OCIP, self-insurance, etc.). We reviewed the insurance schedule attached to the Bank of America loan agreements.

Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of the State or the state of its formation, to the extent applicable), which Organizational Documents shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower and CDOT to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower and CDOT relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents.

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

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

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

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

(xxv) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as **Exhibit J**.

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

(xxvii) The Borrower shall have caused to be delivered to the TIFIA Lender a certificate, in form and substance satisfactory to the TIFIA Lender, designating CDOT's Authorized Representative (as defined in the CDOT Direct Agreement), and confirming such person's position and incumbency.

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

(i) The Borrower shall have provided to the TIFIA Lender evidence satisfactory to the TIFIA Lender that prior thereto, or simultaneously therewith, a disbursement of Senior Obligation proceeds has occurred such that as of such TIFIA Loan disbursement, the aggregate amount of all disbursements of the TIFIA Loan (including the requested disbursement but excluding any interest that is capitalized in accordance with the terms hereof) shall not exceed, on a percentage basis, the pro rata amount of the TIFIA Loan in relation to the aggregate amount of the Senior Obligations and the TIFIA Loan.

(ii) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 22(a) (*Financial Plan*), which Financial Plan (or update thereto) reflects that amortization of the principal amount of any Senior Obligations and any Junior Bonds does not commence before the Debt Service Payment Commencement Date.

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

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

(v) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that all Governmental Approvals (including any USACE Permit) necessary as

of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(vi) Each of the insurance policies obtained by the Borrower, CDOT and any other applicable Principal Project Party in satisfaction of the conditions in Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

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

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

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

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

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

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

(xiii) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that the funds described in the Financial Plan most recently approved by the TIFIA Lender as being available to pay for Project costs will be sufficient to complete the Project and no facts or circumstances have arisen that would reasonably be likely to cause

such amounts reflected in such Financial Plan not to be available as and when needed to pay such costs.

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

(c) Conditions Related to Initial Senior Obligations: Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate and the TIFIA Lender shall have no obligation hereunder in the event that the issuance of the Initial Senior Obligations and the closing of the transactions related thereto does not occur on or before [___], 2017. The Borrower's obligations under Section 18 and Section 29(c) shall survive any such termination of this Agreement. In no event shall the issuance of the Initial Senior Obligations be deemed to have occurred until each of the following conditions has been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have provided evidence satisfactory to the TIFIA Lender that Initial Senior Obligations in an aggregate principal amount not less than \$[___] have been issued in accordance with the Indenture.

(ii) All conditions contained in the Indenture to the closing of the transaction contemplated thereby shall have been satisfied or waived; provided that, for purposes of this Section 13(c)(ii), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion.

(iii) [The Borrower shall have paid, or shall pay concurrently with the Series 2017 Bonds Closing Date, in full all invoices delivered by the TIFIA Lender to the Borrower as of the 2017 Bonds Closing Date for the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof.]

(iv) None of the ratings provided in satisfaction of the condition precedent specified in Section 13(a)(vii) shall have been reduced, withdrawn or suspended as of the 2017 Bonds Closing Date.

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

(a) Organization; Power and Authority. The Borrower is a government-owned business within CDOT created by FASTER, for the purpose of financing surface transportation infrastructure projects, is duly organized, validly existing and in good standing

under the laws of the State, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents. The Borrower is an enterprise within the meaning of article X, Section 20(2)(d) of the Colorado Constitution.

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

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

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

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

(f) Litigation. As of the Effective Date, except as set forth in **Schedule 14(f)**, there is no action suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to

the knowledge of the Borrower, threatened against or affecting the Project or the ability of the Borrower and CDOT to execute, deliver and perform its respective obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Project, the Borrower, CDOT or the assets, properties or operations of the Borrower or CDOT, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Pledged Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Revised Financial Model, to the extent any Revised Financial Model has been approved by the TIFIA Lender). Neither the Borrower nor CDOT is in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and [C.R.S. 43-4-806 (2015), C.R.S. 43-4-807 (2015) and Transportation Commission adopted Resolution #TC-15-2-9] establish, in favor of the Trustee for the benefit of the TIFIA Lender, the valid and binding Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Trust Estate except for the Permitted Liens associated with Senior Obligations, and not *pari passu* with any obligations. Such rights to collect and use User Fees and other Pledged Revenues are in full force and effect and are not subordinate or junior to the rights of any other Person. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 16(a) (Securing Liens) or in the Indenture Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower and CDOT each has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower, CDOT nor any of their respective principals (as defined

in 2 C.F.R. § 180.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 13(a)(v) (*Conditions Precedent to Effectiveness*).

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

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

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

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

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

(n) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower and CDOT of the Project, and for the operation and management of the C-470 Express Lanes and any other portion of the Project for which operations and maintenance expenses are payable from Pledged Revenues, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(o) Principal Project Contracts. Each Principal Project Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Principal Project

Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Principal Project Contract and each Additional Project Contract required to be delivered to, or requested by, the TIFIA Lender pursuant to Section 16(b) (Copies of Documents) (including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or CDOT or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any Principal Project Contract. Neither the Borrower nor CDOT is in breach of any material term in, or in default under, any Principal Project Contract to which it is a party, and to the knowledge of the Borrower, no other party to any Principal Project Contract is in breach of any material term therein or in default thereunder.

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

(q) OFAC; Anti-Corruption Laws. Neither the Borrower nor CDOT nor, to the knowledge of the Borrower, any Principal Project Party:

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

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

(r) Compliance with Law. The Borrower and CDOT are each in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions related to the Project and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 14(s) (Environmental Matters)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower's knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower, CDOT or, to the Borrower's knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(s) Environmental Matters. Each of the Borrower, CDOT and, to the Borrower's knowledge, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals relating to Environmental Laws that are necessary for the ownership and construction of the Project or, as applicable, the operation, maintenance and repair of the C-470 Express Lanes and each other portion of the Project for which the operations, maintenance or repair costs are payable in whole or in part from Pledged Revenues, have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Other than in connection with the case *Highlands Ranch Neighborhood Coalition v. Colorado Department of Transportation* (Civil Action No. 16-cv-01089) before the U.S. District Court for Colorado, neither the Borrower nor CDOT has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower or CDOT is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the ownership and construction of the Project and the operation, maintenance and repair of the C-470 Express Lanes and the other portions of the Project for which operations, maintenance or repair costs are payable in whole or in part from Pledged Revenues and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower or CDOT with any such Environmental Law or Governmental Approval. The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower or CDOT regarding the Borrower's, CDOT's or the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the ownership and construction of the Project and the operation, maintenance and repair of the C-470 Express Lanes and the other portions of the Project for which operations, maintenance or repair costs are payable in whole or in part from Pledged Revenues.

(t) Sufficient Rights and Utilities. The Borrower and CDOT each possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the performance of the Borrower's and CDOT's respective rights and obligations in connection with the construction, operation, maintenance and repair of the Project. As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower and CDOT sufficient (i) to enable the Borrower and CDOT to exercise its respective rights and perform their respective obligations in connection with the ownership and construction of the Project and the operation, maintenance and repair of the C-470 Express Lanes and the other portions of the Project for which operations, maintenance or repair costs are payable in whole or in part from Pledged Revenues and (ii) to exercise its respective rights and perform its respective obligations under each Principal Project Contract to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(u) Insurance. **Schedule 14(u)** lists all insurance policies and self-insurance arrangements of any nature maintained by the Construction Contractor, the Borrower and CDOT with respect to the Project, as well as a summary of the terms of each such policy. The Construction Contractor, the Borrower and CDOT are each in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower or CDOT self-insures, the Borrower's or CDOT's self-insurance program, as applicable, is actuarially sound and the Borrower or CDOT, as applicable, has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower's or CDOT's self-insurance program, as applicable, is actuarially sound.

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

(w) No Liens. Except for Permitted Liens, neither the Borrower nor CDOT has created, nor is under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the Pledged Revenues, or the properties or assets in relation to the Project.

(x) Intellectual Property. The Borrower or CDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case, necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the

preceding sentence. Excluding the use of commercially available “off-the-shelf” software, to the Borrower’s knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

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

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

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

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

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

(dd) Sovereign Immunity. Neither the Borrower nor CDOT has immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower or CDOT under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower and CDOT hereunder and thereunder. To the extent that Borrower otherwise would have such immunity, the Borrower has effectively waived such immunity pursuant to Section 16(r) (*Immunity*).

(ee) Patriot Act. Neither the Borrower nor CDOT is required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

Section 15. Representations and Warranties of TIFIA Lender. The TIFIA Lender hereby makes the following representations and warranties as of the Effective Date.

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

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

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

Section 16. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(b) Copies of Documents. The Borrower shall furnish to the TIFIA Lender a copy of any draft documents and final offering documents (including any Indenture Documents) and cash flow projections prepared in connection with the incurrence of any Permitted Debt (including any Initial Senior Obligations) or other indebtedness subject to approval by the TIFIA Lender pursuant to Section 17(a) (Indebtedness), in each case, prior to the incurrence of any such Permitted Debt or such other indebtedness, as well as copies of any continuing disclosure

documents, prepared by or on behalf of the Borrower in connection with the incurrence of such Permitted Debt or such other indebtedness, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (i) copies of any draft documents relating to the incurrence of Permitted Debt (other than equipment leases and trade accounts included in such definition) at least thirty (30) days prior to the effective date thereof and (ii) copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof. The Borrower shall provide written notice to the TIFIA Lender of the Borrower's or CDOT's intent to enter into an Additional Project Contract and, if such Additional Project Contract is subject to approval by the TIFIA Lender pursuant to Section 17(e) (*Additional Project Contracts*), shall provide drafts of any such Additional Project Contracts at least thirty (30) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. If the TIFIA Lender requests a copy of any Additional Project Contract that is not subject to approval by the TIFIA Lender, the Borrower shall provide a copy of the final or near final draft of such Additional Project Contract, together with any related contracts, side letters or other understandings, prior to the execution thereof and, if requested by the TIFIA Lender, shall provide to the TIFIA Lender an executed version of such Additional Project Contract, together with any related contracts, side letters or other understandings, promptly following the full execution thereof.

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

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall, and shall cause CDOT to, diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of the Borrower's and CDOT's industry.

(ii) The Borrower shall cause CDOT to ensure that each Construction Contractor complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Construction Contractor to CDOT and to ensure that any letter of credit provided pursuant to any Construction Agreement meets the requirements therefor set forth in such Construction Agreement. The Borrower shall cause CDOT not to waive the surety financial requirements relating to any payment, performance or warranty bond pursuant to any Construction Agreement without the TIFIA Lender's prior written consent.

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

(iv) To the extent that any State and Local Funds the Borrower is eligible to receive for the Project have not been contributed as of the Effective Date, the Borrower shall diligently take all steps necessary to obtain such State and Local Funds and shall apply any State and Local Funds received solely to pay for Total Project Costs

in accordance with any funding restrictions or requirements applicable to such State and Local Funds.

(e) Operations and Maintenance. The Borrower shall, or shall cause CDOT to, (i) operate and maintain the Project (A) in a reasonable and prudent manner and (B) substantially in accordance with the Financial Plan most recently approved by the TIFIA Lender (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Project), and (ii) maintain the Project in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business as and when needed for the construction and operation of the C-470 Express Lanes and any other portion of the Project for which operations and maintenance expenses are payable in whole or in part from Pledged Revenues.

(f) Insurance.

(i) The Borrower shall at all times maintain or cause CDOT to maintain insurance for the construction of the Project, with responsible insurers, as required by the Principal Project Contracts and as is customarily maintained in the United States of America with respect to works and properties of like character, against accident to, loss of or damage to such works or properties, which shall include liability coverage and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Principal Project Party (or shall cause CDOT to cause such Principal Project Party) to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

(ii) The Borrower shall at all times maintain (and cause CDOT to maintain) with responsible insurers or through a program of self-insurance all such insurance on the Project as is customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties.

(iii) To the extent the Borrower or CDOT elects to self-insure, the Borrower shall deliver to the TIFIA Lender annually a written opinion of an accredited actuary that confirms that the Borrower's or CDOT's self-insurance program is actuarially sound.

(iv) The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium, from any Net Loss Proceeds available for prepayment of the TIFIA Loan in accordance with Section 10(a) (*Mandatory Prepayments*).

(v) The Borrower shall (by self-insuring or maintaining with responsible insurers or by a combination thereof) provide, or shall cause CDOT to provide, for workers' compensation insurance for Borrower's and CDOT's workers and

insurance against public liability and property damage to the Project to the extent reasonably necessary to protect the Borrower, CDOT and the TIFIA Lender.

(vi) The Borrower shall cause all liability insurance policies that it or CDOT maintains (and, during the Construction Period, that are maintained by any Construction Contractor) and that are related to the Project, other than workers' compensation insurance, to reflect the TIFIA Lender as an additional insured to the extent of its insurable interest.

(vii) The Borrower shall deliver to the TIFIA Lender all (A) insurance brokers' letters, and (B) certificates of insurance, in each case promptly after Borrower's receipt thereof and in any event no later than when required to be delivered pursuant to the Indenture. Promptly upon request by the TIFIA Lender, the Borrower shall deliver to the TIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower or CDOT in respect of the Project. All such policies shall be available at all reasonable times for inspection by the TIFIA Lender, its agents and representatives.

(viii) The Borrower shall at all times comply with the insurance requirements of the Indenture Documents.

(g) Notice.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event and including any relevant and significant documentation:

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

(B) Opening of Phase 2 and Segment 2: the opening of either Phase 2 or Segment 2 to (1) vehicular traffic and (2) tolled vehicular traffic;

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

(D) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, (2) any judgments against the Borrower with award amounts in excess of \$1,000,000, either individually or in the aggregate, and (3) any material notices or filings in respect of any action, petition, suit or proceeding listed in Schedule 14(f);

(E) Highlands Ranch Litigation: in connection with *Highlands Ranch Neighborhood Coalition v. Colorado Department of Transportation* (Civil Action No. 16-cv-01089) before the U.S. District Court for Colorado and any other proceedings, claims or actions relating thereto, any material filings, any orders, judgments or similar pronouncements from any adjudicatory body related to any of the above-described matters, and any settlement or other agreement reached between CDOT and the plaintiffs in any such matter;

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

(G) USACE Permit: the issuance of any USACE Permit;

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

(I) Insurance Claim: any insurance claims made by the Borrower, CDOT or a Construction Contractor in respect of the Project in excess of \$1,000,000 either individually or in the aggregate, to the extent related to the Project or to the extent the proceeds from such insurance claim would be deposited into a Project Account;

(J) Amendments: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any Principal Project Contract or other Related Document at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(K) Defaults: any material breach or default or event of default on the part of the Borrower, CDOT or any other party under any Principal Project Contract or under any agreement related to Existing Indebtedness;

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

(M) Ramp Up Reserve Account: any release from the Ramp Up Reserve Account or credit against the Ramp Up Reserve Account in accordance with Section 16(1)(ii) (*Rate Coverage*);

(N) Project Changes: any (A) change to the Total Project Costs forecasts in excess of ten percent (10%) of total forecasted Total Project Costs or (B) material change to the Construction Schedule;

(O) Ratings Changes: any change in the rating assigned to the Senior Obligations, the TIFIA Loan, or any Junior Bonds by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, the Borrower, or the Pledged Revenues;

(P) Denial of CDOT O&M Loan Request: any decision by CDOT or the Transportation Commission not to lend all or any portion of the amount requested by the Borrower as a CDOT O&M Loan pursuant to the CDOT – HPTE IAA;

(Q) Tolling Services Agreement Task Orders: any task orders issued pursuant to the Tolling Services Agreement that are relevant to the Project;

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

(S) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

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

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 16(g)(i) (Notice) (other than in Section 16(g)(i)(A) (Substantial Completion), Section 16(g)(i)(B) (Opening of Phase 2 and Segment 2), Section 16(g)(i)(G) (USACE Permit), Section 16(g)(i)(J) (Amendments), Section 16(g)(i)(N) (Ratings Changes) (in the case of a ratings upgrade), or Section 16(g)(i)(Q) (Tolling Services Agreement Task Orders)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth any actions the Borrower proposes to take with respect thereto.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a government-owned business within CDOT, as an "enterprise" for purposes of section 20 article X of the State constitution, and under FASTER and the other laws of the State.

(j) Annual Rating. The Borrower shall, commencing in 2018, no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the Senior Obligations and on the TIFIA Bond by a Nationally Recognized Rating Agency, together with the rating report or letter

delivered by such Nationally Recognized Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.

(k) Project Accounts; Permitted Investments.

(i) The Borrower shall maintain the Senior Bonds Debt Service Reserve Account in an amount equal to the Senior Bonds Debt Service Reserve Account Requirement, the TIFIA Loans Debt Service Reserve Account in an amount equal to the TIFIA Debt Service Reserve Required Balance, and the Junior Bonds Debt Service Reserve Account in an amount equal to the Junior Bonds Debt Service Reserve Account Requirement, in each case in accordance with the provisions of this Agreement and the applicable Indenture Documents. Amounts in the Senior Bonds Debt Service Reserve Account shall be made available to ensure the timely payment of Senior Debt Service on the Senior Obligations, amounts in the TIFIA Loans Debt Service Reserve Account shall be made available to ensure the timely payment of TIFIA Debt Service on the TIFIA Loan and amounts in the Junior Bonds Debt Service Reserve Account shall be made available to ensure the timely payment of Junior Bond Payment Obligations.

(ii) The Borrower shall fund the Ramp Up Reserve Account in the amount of \$6,000,000 by no later than the Substantial Completion Date. Funds shall be withdrawn from the Ramp Up Reserve Account to pay (A) Senior Debt Service or TIFIA Mandatory Debt Service, prior to any withdrawal from the Senior Bonds Debt Service Reserve Account or the TIFIA Loans Debt Service Reserve Account, as applicable and (B) other fees and expenses due and owing to the Trustee under the Indenture Documents or to the TIFIA Lender under the TIFIA Loan Documents. All amounts in the Ramp Up Reserve Account may be released and transferred to the Pledged Revenues Account when the Total Debt Service Coverage Ratio has been greater than [●] for two (2) consecutive Calculation Dates, but in no event shall funds in the Ramp Up Reserve Account be released prior to the third (3rd) anniversary of the Substantial Completion Date

(iii) The Borrower shall fund the Project O&M Reserve Account in the amount of the Project O&M Reserve Requirement by no later than the Substantial Completion Date and shall thereafter deposit amounts in the Project O&M Reserve Account in accordance with the Indenture and the requirements of the definition of Project O&M Reserve Requirement, based on the recommendations of the Engineer.

(iv) The Borrower shall fund the Project Renewal and Replacement Reserve Account in the amount of the Project Renewal and Replacement Requirement by no later than the Substantial Completion Date and shall thereafter deposit amounts in the Project Renewal and Replacement Reserve Account in accordance with the Indenture and the requirements of the definition of Project Renewal and Replacement Requirement, based on the recommendations of the Engineer.

(v) To the extent not otherwise provided in this Section 16(k), the Borrower shall cause the other Reserve Accounts to be funded in such amounts and under such conditions as are required by this Agreement and the Indenture Documents.

(vi) Amounts on deposit in the Project Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in any debt service account or debt service reserve account established under the Indenture, not later than the next Semi-Annual Payment Date, and (B) with respect to any other Project Accounts, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from the applicable Project Account.

(vii) The Borrower may replace all or a portion of the required balance of any Reserve Account, in accordance with the terms of the applicable Indenture Documents, with a Credit Facility provided by a financial institution with an Acceptable Credit Rating, provided that the terms and conditions of any such Credit Facility shall not permit or require recourse to the Borrower or any of its assets to satisfy payment obligations to the Credit Provider or any other Person in connection with such Credit Facility. If at any time an issuer of an Acceptable Letter of Credit securing a Reserve Account ceases to be a Qualified Issuer, the Borrower shall cause such letter of credit to be replaced by a new Acceptable Letter of Credit within thirty (30) Business Days of the date on which the current issuer ceased to be a Qualified Issuer, or the Trustee shall be permitted to immediately draw the full amount of such letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account. Any new Acceptable Letter of Credit shall have the same terms and conditions (including expiration date and face amount) as the letter of credit being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit securing a Reserve Account is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit with a new Acceptable Letter of Credit at least ten (10) Business Days prior to the stated expiry date of the existing letter of credit and such new Acceptable Letter of Credit shall be in an amount equal to at least the amount of expiring letter of credit. If the Borrower fails to provide such new Acceptable Letter of Credit by the date required above, the Trustee shall be permitted to immediately draw the full undrawn amount of the existing letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account.

(viii) Pursuant to Section 3.02(c) of the Indenture and Section 10(a)(i) (*Mandatory Prepayment*), on each Transfer Date occurring on or after the earlier to occur of (A) December 31, 2031 and (B) the date on which Segment 2 is opened for tolled vehicular traffic, the Borrower shall cause fifty percent (50%) of the remaining amount in the Pledged Revenues Account after giving effect to the payments in clauses (i) through (xiii) in **Schedule IV** shall be transferred to the TIFIA Loans Prepayment Account. Thereafter, on each Semi-Annual Payment Date (or on the next Business Day if such date is not Business Day), the Borrower shall cause the Trustee to transfer amounts on deposit in the TIFIA Loans Prepayment Account to the TIFIA Lender to prepay the TIFIA Loan.

(ix) Pursuant to Section 10(a)(iii) (*Mandatory Prepayment*), on the Semi-Annual Payment Date, if any, as of which the Borrower shall have failed to be in compliance with the Rate Coverage Test for a period of at least six (6) consecutive Semi-Annual Payment Dates (and, if necessary, on each Transfer Date thereafter until the

Borrower has regained compliance with the Rate Coverage Test), the Borrower shall utilize amounts on deposit in the Surplus Account to make a mandatory prepayment of the TIFIA Loan in an amount equal to the lesser of (A) the total amount then on deposit in the Surplus Account and (B) the amount necessary to cause the Borrower to regain compliance with the Rate Coverage Test.

(x) Notwithstanding anything herein to the contrary, the failure to cause any of the Reserve Accounts to be funded in such amount and under such conditions as are required by the Indenture or this Loan Agreement on and after the Effective Date shall not be an Event of Default if the reason for such failure is an insufficiency of Pledged Revenues.

(l) Rate Coverage.

(i) The Borrower shall, subject to the remainder of this paragraph, fix, charge and collect rates and charges such that Pledged Revenues in each Calculation Period through the Final Maturity Date shall be projected to produce (A) a Senior Debt Service Coverage Ratio at least equal to 1.35:1.00 in each such Calculation Period, (B) a Total Debt Service Coverage Ratio at least equal to 1.25:1.00 in each such Calculation Period, and (C) a ratio of Pledged Revenues to the sum of all of the Borrower's funding obligations for such Calculation Period pursuant to clauses (i) through (xii) of Section 3.02(c) of the Indenture at least equal to 1.00:1.00 for such Calculation Period (clauses (A), (B) and (C) collectively, the "**Rate Coverage Test**"). If any forecast furnished by the Borrower pursuant hereto (whether pursuant to the Financial Plan or otherwise) demonstrates that projected Pledged Revenues may be inadequate to satisfy the Rate Coverage Test for any Calculation Period until the Final Maturity Date, or if the Borrower fails to satisfy any of the required ratios in the Rate Coverage Test in respect of any Calculation Period then ended, the Borrower shall (x) within thirty (30) days after the date of such forecast, engage the [Traffic Consultant and the Toll Road Consultant] to review and analyze the operations of the C-470 Express Lanes and, to the extent applicable, Segment 2 and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase Pledged Revenues so as to satisfy the Rate Coverage Test, (y) cause the [Traffic Consultant and the Toll Road Consultant] to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (z) either (1) implement the [Traffic Consultant's and the Toll Road Consultant's] recommendation or (2) undertake an alternative course of action after demonstrating to the TIFIA Lender's satisfaction the manifest errors contained in the [Traffic Consultant's and the Toll Road Consultant's] recommended actions, or to the extent agreed upon by the TIFIA Lender, undertake an alternative course of action that will ensure the Borrower's ability to meet its payment obligations under this Agreement. The Borrower's failure to regain compliance with the Rate Coverage Test by the sixth (6th) Semi-Annual Payment Date occurring after the first Semi-Annual Payment Date on which the Borrower failed to satisfy the Rate Coverage Test, shall result in the mandatory prepayment described in Section 10(a)(iii) (Mandatory Prepayments).

(ii) The Borrower shall be credited with amounts available in the Ramp Up Reserve Account for purposes of the Rate Coverage Test in accordance with this Section 16(l)(ii), notwithstanding the fact that such amounts are not included within the definition of Pledged Revenues. Amounts may be released from the Ramp Up Reserve Account as provided in Section 16(k)(ii). The Borrower shall be credited with amounts available in the Ramp Up Reserve Account but not released from the Ramp Up Reserve Account solely to the extent necessary to comply with the Senior Debt Service Coverage Ratio and the Total Debt Service Coverage Ratio requirements of the Rate Coverage Test until such time as the Borrower is permitted to release all funds from the Ramp Up Reserve Account pursuant to Section 16(k)(ii) (*Project Accounts; Permitted Investments*).

(m) Compliance with Law. The Borrower shall comply in all material respects with all applicable material federal and State laws, including all items set forth in **Exhibit E**, to the extent applicable.

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

(o) Hedging.

(i) As a condition to the issuance of any Senior Obligations or Junior Bonds that bear interest at a Variable Interest Rate, the Borrower shall enter into a Qualified Hedge with respect to such Senior Obligations or Junior Bonds and shall maintain such Qualified Hedge in place until the earlier to occur of (i) the maturity date of any such Senior Obligations or Junior Bonds and (ii) the Final Maturity Date. Each Qualified Hedge must have an aggregate stated notional amount of not less than (A) during the Construction Period, at least ninety percent (90%) and not more than one hundred ten percent (110%) of the aggregate principal amount of the Variable Interest Rate Bonds projected to be outstanding during such time period and (B) at all other times, at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the aggregate principal amount of the Variable Interest Rate Bonds projected to be outstanding until the maturity of such Variable Interest Rate Bonds. Any such Qualified Hedge shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of the applicable Variable Interest Rate Bonds subject to such Qualified Hedge. Such Qualified Hedge shall have a stated maturity or termination date

not earlier than the earlier to occur of (x) the Final Maturity Date and (y) the final maturity date of the Variable Interest Rate Bonds subject to such Qualified Hedge.

(ii) Each Qualified Hedge shall provide for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Qualified Hedge Provider. The Borrower's obligations to pay Hedging Obligations and Hedging Termination Obligations shall be from the sources and in the priority specified in the Indenture Documents. The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge that for any reason terminates before the final maturity date of the Variable Interest Rate Bonds subject to such Qualified Hedge, (A) a Qualified Hedge is in full force and effect or (B) the Variable Interest Rate Bonds have been converted to a fixed rate, in each case in accordance with this Agreement and the Indenture Documents.

(iii) The Trustee shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower's obligations under the TIFIA Loan Documents. The Hedging Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Trustee for deposit and disbursement in accordance with the Indenture Documents.

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

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

(p) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date,

provide to the TIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(q) Events of Loss; Loss Proceeds.

(i) If an Event of Loss shall occur with respect to the Project, the Borrower shall (or shall cause CDOT to) (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all Loss Proceeds stemming from such event in accordance with Section 16(q)(ii) (*Event of Loss; Loss Proceeds*) and, to the extent applicable, Section 10(a)(ii) (*Mandatory Prepayments*).

(ii) The Borrower shall apply all Loss Proceeds to repair, rebuild or replace the damaged portion of the Project to a condition that is at least substantially similar to the Project's condition prior to the applicable Event of Loss and that permits the Project's operations to continue or recommence at least at substantially the same levels as were maintained prior to such Event of Loss. The Borrower shall cause the relevant insurers, reinsurers and Governmental Authorities, as applicable, to pay all Loss Proceeds directly to the Trustee as loss payee and, if paid to the Borrower, shall be received in trust and for the benefit of the Trustee segregated from other funds of the Borrower, and shall be paid over to the Trustee in the same form as received (with any necessary endorsement).

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

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

(t) CDOT O&M Loans. The Borrower shall timely request a loan from CDOT pursuant to and subject to the terms and conditions of the CDOT – HPTE IAA for Project O&M Expenses for any month in any Borrower Fiscal Year if the projected Project O&M Expenses for such month are anticipated to exceed the aggregate funds available in the Project O&M Account and the Project O&M Reserve Account. The Borrower shall deliver to the TIFIA Lender a copy of any such request for a CDOT O&M Loan within three (3) Business Days after the Borrower submits such request to CDOT or the Transportation Commission. The Borrower shall deliver written notice to the TIFIA Lender of any notice from CDOT or the Transportation Commission regarding any such request for a CDOT O&M Loan. The Borrower shall deliver to the TIFIA Lender copies of any CDOT O&M Loan Agreements and shall not enter into any CDOT O&M Loan Agreement that contains terms and conditions that differ in any material

respect from the terms set forth in the “Form of CDOT Backup Loan Agreement” attached as Exhibit A to the CDOT – HPTE IAA without the TIFIA Lender’s prior written consent.

(u) Tolling Services Agreement. The Borrower shall enter into an extension of the current Tolling Services Agreement or a replacement to the Tolling Services Agreement in effect as of the Effective Date, in each case by no later than three (3) months prior to the stated expiration of the current Tolling Services Agreement. Thereafter, the Borrower shall enter into an extension or replacement Tolling Services Agreement by no later than three (3) months prior to the stated expiration of the current Tolling Services Agreement. Any extended or replacement Tolling Services Agreement contemplated by this Section 16(u) that is not on the same terms and conditions in all material respects as the then-current Tolling Services Agreement shall be subject to the prior written consent of the TIFIA Lender.

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

(a) Indebtedness.

(i) Except for Permitted Debt, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness of any kind that is payable from Pledged Revenues or other elements of the Trust Estate; provided that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Trust Estate, including Permitted Debt, without the prior written consent of the TIFIA Lender, following the occurrence, and during the continuation, of an Event of Default.

(ii) The Borrower shall not issue (A) Junior Bonds that require the payment of interest on such Junior Bonds, as applicable, prior to the Debt Service Payment Commencement Date, (B) Senior Obligations or Junior Bonds that require the commencement of amortization of the principal amount of such Senior Obligations or Junior Bonds, as applicable, prior to the commencement of amortization of the principal amount of the TIFIA Loan, or (C) any Junior Bonds that are subject to acceleration upon an event of default thereunder or otherwise.

(iii) Prior to the incurrence of Permitted Debt described in clauses (c) or (f) of the definition thereof, the Borrower shall provide to the TIFIA Lender a certificate signed by the Borrower’s Authorized Representative, demonstrating to the TIFIA Lender’s satisfaction that such proposed indebtedness is authorized pursuant to this Section 17(a) (Indebtedness) and satisfies the applicable requirements under the definitions of “Permitted Debt” and “Additional Senior Obligations,” as applicable.

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person (including CDOT) to, without the prior written consent of the TIFIA Lender, either (i) extinguish or impair the Liens on the Trust Estate granted pursuant to the Indenture, (ii) amend, modify, replace, or supplement any Related Document in a manner

that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (iv) amend the Indenture, pursuant to Section 7.01(p) thereof or otherwise, to facilitate the issuance of Bonds that are payable from the Trust Estate on a basis subordinate to any Senior Obligations or TIFIA Loans; (v) amend any CDOT O&M Loan Agreement to allow for acceleration of any CDOT O&M Loans thereunder; or (vi) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any Principal Project Contract except for a termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender's determination). Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification or supplement to any Related Document within five (5) Business Days after execution thereof.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Project, the Trust Estate, the Pledged Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign (and shall not permit CDOT to assign) any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's or CDOT's rights or privileges under any Principal Project Contract, unless pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) Restricted Payments and Transfers.

(i) Repayment of CDOT O&M Loans. The Borrower shall not make any payments to CDOT pursuant to any CDOT O&M Loan Agreement unless, as of any proposed date for such payment, the Borrower shall have paid to the TIFIA Lender all TIFIA Debt Service (including all TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service) that has become due and payable on such date or on any date prior to such proposed payment, including any TIFIA Scheduled Debt Service not paid as of the originally scheduled date for payment of such TIFIA Scheduled Debt Service and still unpaid.

(ii) Other Restricted Payments. The Borrower shall not use (nor permit CDOT to use) Pledged Revenues (A) to make any payment in respect of any indebtedness of the Borrower (including Existing Indebtedness), other than Permitted Debt, or (B) to pay for costs associated with any project or facility other than the Project and Segment 2.

(iii) Surplus Fund. At any time when the Borrower is not in compliance with the Rate Coverage Test (whether in the current, or any future, Calculation Period), the Borrower shall not utilize any amounts in the Surplus Fund for any purpose other than those described in clauses (i) through (ix) of Section 3.14(c) of the Indenture (as of the date of this Agreement).

(e) Additional Project Contracts. The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) that commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower of, amounts that either: (i) exceed \$1,000,000 in any Borrower Fiscal Year, or (ii) alone or when aggregated with the other Total Project Costs or Project O&M Expenses, as applicable, in the same line item of the applicable budget set forth in the Financial Plan most recently approved by the TIFIA Lender, would cause aggregate Total Project Costs or Project O&M Expenses, as applicable, for such line item in any Borrower Fiscal Year to exceed the amounts for such line item for any Borrower Fiscal Year reflected in the budget in the Financial Plan most recently approved by the TIFIA Lender.

(f) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the Project, a substantial portion of the assets included in the Project, or its rights and obligations under any Related Document, in each case unless such sale, lease or assignment (i) could not reasonably be expected to result in a Material Adverse Effect, and (ii) is upon terms and conditions approved in writing by the TIFIA Lender in its sole discretion. The TIFIA Lender acknowledges that the Borrower may pursue a public-private partnership with a private entity with respect to all or a portion of the Project and the Borrower acknowledges that an assignment of this Agreement in connection therewith will require the prior written approval of the TIFIA Lender.

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

(h) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, the Borrower shall not (and shall cause CDOT not to) (i) sell or transfer any property or assets constituting part of the Project to any other Governmental Authority, (ii) solely with respect to the Borrower, purchase or acquire property or assets of another Governmental Authority using Pledged Revenues, or (iii) otherwise engage in any other transactions in connection with the Project with, any other Governmental Authority (including any other Governmental Authority of or in the State) that (in each case of clauses (i), (ii) and (iii)) could reasonably be expected to result in a Material Adverse Effect.

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

(j) Change in Legal Structure; Mergers and Acquisitions; No Fundamental Change. The Borrower shall not, and shall not agree to:

(i) use Pledged Revenues to acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial

ownership interests in, any Person, other than purchases or other acquisitions of inventory or materials or spare parts or any Renewal and Replacement, each in the ordinary course of business in compliance with the annual budget set forth in the Financial Plan most recently approved by the TIFIA Lender;

(ii) reorganize, consolidate with, or merge into another Person unless (A) such merger or consolidation is with or into another entity established and Controlled by CDOT, and in each case, including reorganization, does not adversely affect or impair to any extent or in any manner (1) the Pledged Revenues or other elements of the Trust Estate, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender; or

(iii) change the fundamental nature of the C-470 Express Lanes as lanes made available to the public on a non-exclusive basis for vehicular transportation, and subject to the charging and collection of tolls for the use of such lanes.

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

(l) OFAC Compliance. The Borrower shall not (and shall cause CDOT not to):

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

(ii) be a Person (A) that is charged with, or that has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws, (B) that is convicted of any violation of, is subject to civil or criminal penalties pursuant to, has any of its property seized or forfeited under, or enters into any agreement with the Government or a state or local government related to violations of, any such laws, (C) that is named on the list of "Special Designated Nationals and Blocked Persons" maintained by OFAC (or any successor Government office or list), or any similar list

maintained by the United States Department of State (or any successor Government office or list), (D) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law, (E) that is owned, Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this Section 17(1)(ii), or (F) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States of America and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

The Borrower shall not knowingly make a payment, directly or indirectly, to any Principal Project Party that has violated any of the laws referenced in Section 17(1)(i) or that is a Person described in Section 17(1)(ii).

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

Section 18. Indemnification. To the extent permitted by State law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent or representative of the TIFIA Lender (each such Person being herein referred to as an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower’s expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 18 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 18. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any

Indemnatee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnatee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 18 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 18 shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 18) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

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

Section 20. Events of Default and Remedies.

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

(i) Payment Default. The Borrower shall fail to pay any of the principal amount of or interest on the TIFIA Loan (including TIFIA Scheduled Debt Service, if any, required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*), and any mandatory prepayment required pursuant to the provisions of Section 10(a) (*Mandatory Prepayments*) but excluding any TIFIA Scheduled Debt Service deferred in accordance with Section 9(d) (*Payment of TIFIA Scheduled Debt Service*), but only to the extent such deferral is due to insufficient funds), when and as the payment thereof shall be required under this Agreement or the TIFIA Bond or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower or CDOT shall fail to observe or perform any covenant, agreement or obligation of the Borrower under any TIFIA Loan Document to which it is a party (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, or (B) the Borrower's or CDOT's knowledge, as applicable, of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower or CDOT, as applicable, shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Development Default. A Development Default shall occur and such Development Default shall not be cured within thirty (30) days thereafter; provided, that no Event of Default shall be deemed to have occurred and be continuing by reason of a Development Default pursuant to clause (a) of the definition thereof if, and for so long as, (A) within such thirty (30) day period, the Borrower demonstrates to the TIFIA Lender's reasonable satisfaction (which demonstration shall include certification by the Engineer) that (1) CDOT is proceeding with the construction of the Project with due diligence and will achieve Substantial Completion by the Projected Substantial Completion Date and (2) the Borrower has sufficient funds to pay all construction costs necessary to achieve Substantial Completion by the Projected Substantial Completion Date and (B) CDOT diligently pursues completion of the Project and does achieve Substantial Completion on or prior to the Projected Substantial Completion Date; provided, that the cure rights described in this sentence may be exercised only once. If a Development Default occurs and is not cured, to the extent provided in the preceding sentence, the TIFIA Lender may (A) suspend the disbursement of TIFIA Loan proceeds under this Agreement and (B) pursue such other remedies as provided in this Section 20. If so requested by the TIFIA Lender in connection with a Development Default, the Borrower shall immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.

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

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 14(h) (No Debarment), Section 14(j) (Compliance with Federal Requirements), Section 14(k) (Transportation Improvement Program), Section 14(q) (OFAC; Anti-Corruption Laws), or Section 14(ee) (Patriot Act), or Section 5(j) (OFAC; Anti-Corruption Laws) of the CDOT Direct Agreement;

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

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

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

(F) the Borrower (or CDOT, if the applicable misrepresentation is in respect of CDOT) diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Other Indebtedness. Any acceleration shall occur of the maturity of any Senior Obligation, Junior Bond or Existing Indebtedness, or any such Senior Obligations, Junior Bonds or Existing Indebtedness shall not be paid in full upon the final maturity thereof; provided, that notwithstanding the foregoing, no acceleration or non-payment of any Existing Indebtedness shall constitute an Event of Default pursuant to this Section 20(a)(v) unless the Borrower shall be obligated to repay or shall repay any portion of such Existing Indebtedness with Pledged Revenues or from the Trust Estate.

(vi) Cross Default. (A) Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the Indenture Documents, or made in or delivered pursuant to the documents under which any Senior Obligation, Junior Bond Payment Obligation or Existing Indebtedness is created or incurred (the “**Other Loan Documents**”), shall prove to be false or misleading in any material respect (each an “**Other Indebtedness Misrepresentation Default**”), or any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Indenture Documents or the Other Loan Documents, and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Indenture Documents or the Other Loan Documents (as the case may be) with respect to such default (each an “**Other Indebtedness Covenant Default**”), if the effect of such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default shall be to permit the immediate acceleration of the maturity of any or all of the Senior Obligations, Junior Bonds or Existing Indebtedness, as applicable, and, in the case of any such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default, the Borrower shall have failed to cure such

Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of such Senior Obligations, Junior Bonds or Existing Indebtedness; provided, that notwithstanding the foregoing, no event of default under any Existing Indebtedness shall constitute an Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default unless the Borrower shall be obligated to repay or shall repay any portion of such Existing Indebtedness with Pledged Revenues or from the Trust Estate.

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

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

(viii) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a government-owned business within CDOT, as an “enterprise” for purposes of section 20 article X of the State constitution, and under FASTER and the other laws of the State, unless at or prior to the time the Borrower ceases to exist in such form a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law with the same rights and privileges as the Borrower had as of the Effective Date and has succeeded to the assets of the Borrower and has

assumed all of the obligations of the Borrower under the TIFIA Loan Documents and the Indenture Documents, including the payment of all Secured Obligations.

(ix) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or CDOT or (B) a Bankruptcy Related Event shall occur with respect to any Principal Project Party provided, that no Event of Default shall be deemed to have occurred or be continuing under this clause (B) if, with respect to a Bankruptcy Related Event of a Principal Project Party, such Principal Project Party is replaced within ninety (90) days after the occurrence of such Bankruptcy Related Event by a new Principal Project Party that (I) possesses similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced, considered as of the time the applicable Principal Project Contract was executed, as reasonably acceptable to the TIFIA Lender, (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (III) is not, at the time of such replacement, in violation of any applicable laws referenced in Section 14(q) (*OFAC; Anti-Corruption Laws*), and is in compliance with all applicable laws referenced in Section 14(r) (*Compliance with Law*) and Section 14(s) (*Environmental Matters*), (IV) is bound under a contract containing substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender), and (V) is capable (in the TIFIA Lender's reasonable determination) of completing the scope of work of the replaced Principal Project Party in such a manner so that the Project is reasonably expected to be completed in accordance with the Construction Schedule and Project Budget set forth in the Financial Plan most recently approved by the TIFIA Lender.

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

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

(xii) Cessation of Operations. Operation of the Project shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower or CDOT (and which the Borrower and CDOT could not reasonably have avoided or mitigated) and the Borrower or CDOT shall either be self-insured in an amount sufficient to cover, or shall have in force an insurance policy or policies under which the Borrower or CDOT is entitled to recover amounts sufficient to pay (and may

use such amounts to pay) all Senior Debt Service, TIFIA Debt Service and costs and expenses of the Borrower during such cessation of operations.

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

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

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

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

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

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

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

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

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

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

(d) Copies of Senior Debt Related Notices. The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Nationally Recognized Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Pledged Revenues, (ii) all notices and other written communications, other than those that are non-substantive or

ministerial in nature, received by it from the Trustee or any Owner, and (iii) all reports, notices and other written materials, other than those that are non-substantive or ministerial in nature, required to be sent to the Trustee or any Owner under the Indenture Documents, including all such notices, other than those that are non-substantive or ministerial in nature, relating to any of the Principal Project Contracts; unless, in each case, the TIFIA Lender notifies the Borrower that any such reports, notices and/or other written materials no longer need to be provided.

(e) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in calendar year 2017 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 C.F.R. § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 22. Financial Plan, Statements, and Reports.

(a) Financial Plan. The Borrower shall provide to the TIFIA Lender and the FHWA Division Office, within sixty (60) days after the Effective Date and annually thereafter not later than ninety (90) days after the beginning of each Borrower Fiscal Year, a Financial Plan. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model. The Financial Plan shall not reflect amortization of Senior Obligations or any Junior Bonds until such time as all currently accruing interest on the TIFIA Loan is being paid in full. The initial and each subsequent Financial Plan delivered hereunder shall be subject to approval by the TIFIA Lender.

(i) The Financial Plan shall be prepared in accordance with recognized financial reporting standards, such as those in the “Guide for Prospective Financial Information” of the American Institute of Certified Public Accountants, shall meet FHWA’s Major Project Financial Plan requirements, as amended from time to time, and shall be in form and substance satisfactory to the TIFIA Lender.

(ii) The Financial Plan shall include: (A) a certificate signed by the Borrower’s Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower’s knowledge and belief; (B) a certificate signed by the Borrower’s Authorized Representative demonstrating that annual projected Pledged Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Rate Coverage Test established pursuant to Section 16(l) (*Rate Coverage*); and (C) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, in substantially the form of the Base Case Financial Model, based upon assumptions and projections with respect to the Pledged Revenues, expenses and other financial aspects of the Project that shall reflect the prior experience and current status of the Project, and the

expectations of the Borrower with respect to the Project, as of the most recent practicable date prior to the delivery of such Revised Financial Model.

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

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the preceding Financial Plan;

(B) provide updates to the Construction Schedule, including an update, if any, to the Projected Substantial Completion Date and an explanation of any such adjustment;

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

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

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

(F) based on the updated cash flow schedule, provide projected Senior Debt Service Coverage Ratios and Total Debt Service Coverage Ratios through the Final Maturity Date;

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

(H) provide the total value of approved changes in Project design or scope, and provide a listing of each individual change valued at \$2,500,000 or more, setting forth the rationale or need for the proposed change and describing the impact of such change on the Project;

(I) to the extent that any Hedging Transactions are then in effect, report on the notional amounts covered by such Hedging Transactions; and

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

(iv) For the period following the Substantial Completion Date until repayment of the TIFIA Loan in full, the Financial Plan shall:

(A) provide an updated cash flow schedule showing annual cash inflows (Pledged Revenues, interest and other income) and outflows (Project O&M Expenses, Renewal and Replacement Costs, Senior Debt Service, TIFIA Debt Service, replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls;

(B) report on variances during the prior Borrower Fiscal Year between the actual Project O&M Expenses and Renewal and Replacement Costs incurred and the budgeted Project O&M Expenses and Renewal and Replacement Costs as shown in the Financial Plan for such prior Borrower Fiscal Year, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more;

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

(D) provide an updated budget for Project O&M Expenses and Renewal and Replacement Costs for the current Borrower Fiscal Year;

(E) provide an updated schedule of actual and projected Pledged Revenues, showing actual and projected Senior Debt Service Coverage Ratios and Total Debt Service Coverage Ratios, and report on variances during the prior Borrower Fiscal Year between the Pledged Revenues actually received and the budgeted Pledged Revenues as shown in the Financial Plan for such prior Borrower Fiscal Year, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more;

(F) provide a schedule of then current toll rates, receipts, and charges and all returns, fees or moneys constituting Pledged Revenues and planned increases thereto;

(G) to the extent that any Hedging Transactions are then in effect, report on the notional amounts and mark to market values under such Hedging Transactions; and

(H) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative executive summary of the topics described in clauses (A) through (J) above since the Effective Date and since the preceding Financial Plan, including in reasonable detail (i) an explanation of any variances in costs or revenues in comparison to the Base Case Financial Model and the preceding Financial Plan, and (ii) a description of any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof, including traffic and revenue reports, operational contracts, and third-party transactions.

(b) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide (or shall cause CDOT to provide) the TIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than \$2,500,000, which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the TIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(c) Financial Statements. The Borrower shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

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

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

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

Section 23. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. CDOT shall be responsible for administering construction oversight of the Project in accordance with the Design-Build Contract in accordance with the FHWA Oversight Agreement. CDOT's oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the FHWA Oversight Agreement, which may be amended from time to time upon mutual agreement of CDOT and the FHWA Division Office. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender and the FHWA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender, or its agents, including any engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender the documentation described below.

(i) Monthly Construction Progress Report. On or before the last Business Day of any calendar month during the Construction Period, a report executed by a Borrower's Authorized Representative that:

(A) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar month and the amount of Total Project Costs estimated to be required to complete the Project;

(B) provides a demonstration that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or

conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project;

(C) provides an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule;

(D) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently approved by the TIFIA Lender;

(E) provides a detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems;

(F) specifies the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule;

(G) specifies any proposed or pending change orders;

(H) specifies any material changes or deviations from the Borrower's land procurement plans or schedule;

(I) includes a copy of each report delivered by a Construction Contractor to the Borrower that has not previously been delivered to the TIFIA Lender in a prior report delivered pursuant to this Section 23(b)(i) (*Monthly Construction Progress Report*); and

(J) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause the Construction Contractors to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any Construction Contractor's performance of its obligations under the Construction Agreement to which such Construction Contractor is a party.

(ii) Quarterly Traffic and Operating Report. For the period commencing after the Substantial Completion Date, deliver to the TIFIA Lender, not later than ninety (90)¹² days after the end of each financial quarter, a traffic and operating

¹² **Note to HPTE:** Discuss timing on when you receive reports from E-470.

report showing (A) the operating data for the Project for the previous financial quarter, including total Pledged Revenues received and total Project O&M Expenses and Renewal and Replacement Costs incurred, (B) the variances for such period between the Pledged Revenues actually received and the budgeted Pledged Revenues as shown in the Financial Plan most recently approved by the TIFIA Lender, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more, and (C) the variances for such period between the actual Project O&M Expenses incurred and the budgeted Project O&M Expenses as shown in the Financial Plan, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more.

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

(iv) Engineer's Report. Promptly after the receipt or filing thereof (but in no event later than thirty (30) days after such receipt or filing), a copy of each Engineer's Report.

(v) Annual Reports. The Borrower shall provide to the TIFIA Lender copies of any annual reports submitted to the State legislature by or on behalf of the Borrower, as required by section 43-4-806 of FASTER.

(c) Project Operations. For the period following the Substantial Completion Date, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and, as the TIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation, maintenance, and safety services for the Project. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation, or other information requested by the TIFIA Lender. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender, to carry out the provisions of this Section 23(c), and the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring, including the costs of any financial oversight advisor, shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

(d) Engineer. The Borrower shall retain (or shall cause the Transportation Commission to retain) an Engineer throughout the term of this Agreement. The Engineer shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower of its obligations under this Agreement and the Related Documents. The Borrower may replace the Engineer, subject to the TIFIA Lender's right to object to any replacement Engineer in accordance with this Section 23(d). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days advance written notice of any

proposed replacement of the Engineer, together with supporting information concerning the qualifications of the proposed replacement Engineer. The proposed replacement Engineer shall become the Engineer thirty (30) Business Days following the date of the notice provided by the Borrower under this Section 23(d), unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Borrower's notice. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed replacement Engineer. The Borrower shall pay (or cause payment) for all services performed by the Engineer.

Section 24. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

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

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

Section 27. TIFIA Lender's Authorized Representative.

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

(b) Pursuant to the delegation of Authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, and the further delegation of authority, dated August 31, 2016 (the "**Delegation**"), the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the

Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

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

Section 29. Fees and Expenses.

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

(b) In establishing the amount of the fee, the TIFIA Lender will adjust the previous year's base amount in proportion to the percentage change in CPI. For the FFY 2018 calculation, the TIFIA Lender will use the FFY 2017 base amount of \$13,000, which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

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

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

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

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

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

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

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

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

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

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

Section 35. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given

by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 36. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 37. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

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

with copies to (through the date of Substantial Completion): Federal Highway Administration
Colorado Division Office
12300 W. Dakota Avenue, Suite 180
Lakewood, Colorado 80228
Attention: Division Administrator
Telephone: 720-963-3000
Facsimile: 720-963-3001
E-mail: Colorado.fhwa@dot.gov

If to Borrower: Colorado High Performance Transportation
Enterprise
4201 E. Arkansas Avenue, #284
Denver, Colorado 80222
Attention: David Spector, Director
Telephone: 303-757-9607
Facsimile: 303-757-9656
E-mail: [_____]

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(g) (*Manner of Payment*) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time-to-time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 37 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 37 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

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

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

Section 40. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

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

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

SCHEDULE I

PROJECT BUDGET

[To be provided by Borrower]

SCHEDULE II
CONSTRUCTION SCHEDULE
[To be provided by Borrower]

SCHEDULE III
EXISTING INDEBTEDNESS
[To be provided by Borrower]

SCHEDULE IV

SECTION 3.02(c) OF THE INDENTURE

[To be provided by Borrower]

SCHEDULE 14(f)

LITIGATION

SCHEDULE 14(u)

INSURANCE

[To be provided by Borrower]

EXHIBIT A

FORM OF TIFIA BOND¹³

**COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE**

C-470 EXPRESS LANES PROJECT

**(TIFIA Project Number)
TIFIA BOND**

**Maximum Principal Amount: \$[104,900,000]
(excluding capitalized interest)**

Registered No. ___

Dated Date
[___], 2017

Final Maturity Date

Interest Rate

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business within the Colorado Department of Transportation created by the Funding Advancements for Surface Transportation and Economic Recovery Act of 2009, title 43, article 4, part 8, Colorado Revised Statutes, as amended (“**FASTER**”), for the purpose of financing Surface Transportation Infrastructure Projects (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

¹³ **Note:** Language from Bond Counsel to be inserted once finalized.

Payments hereon are to be made in accordance with Section 9(g) (*Manner of Payment*) and Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts.

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

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

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

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

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

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE has caused this TIFIA Bond to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

**COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE**

(SEAL)

By _____

Name: _____

Title: _____

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION

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

[NAME OF TRUSTEE]

By: _____
(Authorized Signer)

(FORM OF ASSIGNMENT)

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

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

the within note and all rights thereunder.

Dated: _____

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

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

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

EXHIBIT C

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

The undersigned, on behalf of the Colorado High Performance Transportation Enterprise, hereby certifies that the Colorado High Performance Transportation Enterprise has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995):

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

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

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

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

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement, dated as of [____], 2017, between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

**COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE¹⁴**

By: _____

Name:

Title:

¹⁴ To be executed by Borrower's Authorized Representative.

EXHIBIT D

REQUISITION PROCEDURES

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

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

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

Section 2. Rejection. A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;

¹⁵ **Note:** Conform dates to Section 4(c).

- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by the Engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

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

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

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

- (a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing; or
- (b) the Borrower:
 - (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or
 - (ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or with good engineering practices, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or
 - (iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or
 - (iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) or Section 13(b) (*Conditions Precedent to All Disbursements*) of the TIFIA Loan Agreement (or, with respect to the initial disbursements, the conditions set forth in Section 13(b) (*Conditions Precedent to First Disbursement*)); or

Exhibit D-2

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

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

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

Federal Highway Administration
Colorado Division Office
12300 Dakota Avenue
Lakewood, Colorado 80228
Attention: Division Administrator

Re: C-470 EXPRESS LANES PROJECT (TIFIA – 20__)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2017 (the “**TIFIA Loan Agreement**”), by and between COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[_____] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [_____].
2. The requested date of disbursement is [_____] 15, 20[___] (the “**Disbursement Date**”)[, which is the first Business Day following [_____] 15, 20[____]].
3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, \$[_____]. The amounts previously disbursed and to be disbursed under the Indenture Documents Agreements as of the date of the requested disbursement equal, in the aggregate, \$[_____]. The amounts previously disbursed and to be disbursed under the Indenture as of the date of the requested disbursement equal, in the aggregate, \$[_____].
4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.

Exhibit D-4

5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan, and the amount of this Requisition together with the sum of all disbursements of TIFIA Loan proceeds made and to be made for the current year will not exceed the cumulative disbursements through the end of the current year as set forth in the Anticipated TIFIA Loan Disbursement Schedule.
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
7. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development and construction of the Project and the operation and maintenance of the C-470 Express Lanes and each other portion the Project for which operations and maintenance expenses are payable in whole or in part from Pledged Revenues, and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
8. Each of the insurance policies obtained by the Borrower or CDOT in satisfaction of the condition in Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the TIFIA Lender and the FHWA Division Office and with good engineering practices.
10. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document and the representations and warranties of CDOT set forth in the CDOT Direct Agreement are in each case true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [_____, 20__] and is continuing.¹⁶

¹⁶ Insert the date on which the Borrower submitted the Application to the TIFIA Lender.

13. [A copy of the most recent certificate or report of the Engineer delivered pursuant to Section [4.06] of the Indenture has been delivered to each of the above named addressees.]
14. A copy of the monthly construction progress report pursuant to Section 23(b)(i) (*Monthly Construction Progress Report*) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1)(1), to the extent the Government deems appropriate.
16. A copy of this requisition has been delivered to each of the above named addressees.
17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Trustee.]

Date: _____

**COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE¹⁷**

By: _____

Name:

Title: _____

¹⁷ To be executed by the Borrower's Authorized Representative.

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

Colorado High Performance
Transportation Enterprise
4201 E. Arkansas Avenue, #284
Denver, Colorado 80222

Re: Receipt of Requisition for Disbursement of TIFIA Loan Proceeds

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2017, by and between COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), the undersigned authorized representative of the TIFIA Lender hereby acknowledges receipt of the attached Requisition for Disbursement of TIFIA Loan proceeds (the “**Requisition**”) from the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection therewith, we hereby represent and certify the following:

1. The date of receipt of the Requisition is [_____].
2. Unless this Requisition is denied, disbursement shall be made on or before [_____].

Date: [__]

On behalf of the TIFIA Lender’s Authorized Representative

Name:

Title:

APPENDIX THREE TO EXHIBIT D
[APPROVAL/DISAPPROVAL] OF THE TIFIA LENDER
(To be delivered to the Borrower)

Requisition Number [●] is [approved in the amount of \$[●]] [approved in part in the amount of \$[●]] [not approved]¹⁸ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2017, by and between Colorado High Performance Transportation Enterprise (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

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

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

By: _____
TIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

¹⁸ Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX THREE TO EXHIBIT D

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

EXHIBIT E

COMPLIANCE WITH LAWS

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

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 C.F.R. § 35; 29 C.F.R. § 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*) and 49 C.F.R. § 21;
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. § 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*);
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*, as amended by Pub. L. 92-500);
- (ix) The environmental mitigation requirements and commitments made by the Borrower that result in TIFIA Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. § 4332(2)(C)) and issuance of the Record of Decision for the Project;
- (x) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (xi) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xii) The health and safety requirements set forth in 23 C.F.R. § 635.108;
- (xiii) The prevailing wage requirements set forth in 40 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. § 5, 23 C.F.R. §§ 635.117(f) and 635.118, and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- (xiv) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 C.F.R. § 635.410);
- (xv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 C.F.R.; and
- (xvi) The applicable requirements of 49 C.F.R. § 26 relating to the Disadvantaged Business Enterprise program.

EXHIBIT F
FHWA OVERSIGHT AGREEMENT

EXHIBIT G

MANDATORY AND SCHEDULED TIFIA DEBT SERVICE

EXHIBIT H-1

OPINIONS REQUIRED OF COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that: (a) the Borrower is duly formed, validly existing, and in good standing under the laws of the State of Colorado and is an “enterprise” under FASTER; (b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower; (f) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel’s knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; (g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to counsel’s knowledge after due inquiry, there are no pending actions, suits, proceedings or investigations against the Borrower or any other party by or before any court, arbitrator or any other governmental authority in connection with the Related Documents or the Project other than the case Highlands Ranch Neighborhood Coalition v. Colorado Department of Transportation (Civil Action No. 16-cv-01089) before the U.S. District Court for Colorado.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL

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

EXHIBIT I
FORECAST OF PLEDGED REVENUES

EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

Colorado High Performance Transportation Enterprise

**TIFIA Bond,
C-470 Express Lanes Project
(TIFIA – 20__)**

The undersigned, [_____] (the “*Trustee*”), by its duly appointed, qualified and acting [_____] certifies with respect to the above referenced bond (the “*TIFIA Bond*”) dated as of [_____] 2017, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of [_____].
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained and are in full force and effect.
3. That the documents pertaining to the issuance of the TIFIA Bond to which the Trustee is a party were executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture (“*Trusts*”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect

today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section [____] of that certain Indenture (the “**Indenture**”), dated as of [____], 201[6], between the Colorado High Performance Transportation Enterprise (the “**Borrower**”) and the Trustee.
7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [____], 2017 (the “**TIFIA Loan Agreement**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Bondholder**”).
8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and of Bond Registrar and Paying Agent for and in respect of the TIFIA Bond as set forth in the Indenture and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Section [____] of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Section [____] of the Indenture.
9. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Indenture (including, but not limited to, [*insert name of account designated for TIFIA Debt Service*]) have been established as provided in the Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [_____], 2017

[TRUSTEE]

By: _____
Its:

ANNEX ONE TO EXHIBIT J
OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT J
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT K
FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2017 (the "TIFIA Loan Agreement"), by and among Colorado High Performance Transportation Enterprise (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

The undersigned, [____], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 13(a)(ii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit A are complete and fully executed copies of each TIFIA Loan Document (other than the TIFIA Loan Agreement) and each Indenture Document, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the TIFIA Lender in its sole discretion;
- (b) pursuant to Section 13(a)(viii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (c) pursuant to Section 13(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit C is a true, correct and complete copy of the Borrower's Traffic and Revenue Study, accompanied by a letter from the preparer of such study, certifying that the assumptions and projections contained in the Traffic and Revenue Study are reasonable and may be relied upon by the TIFIA Lender;
- (d) pursuant to Section 13(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit D are true, correct and complete copies of each Principal Project Contract that has been executed on or prior to the Effective Date (as listed below), and each such Principal Project Contract is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Exhibit D:
 - 1. Design-Build Contract;
 - 2. Tolling Services Agreement;
 - 3. CDOT – HPTE IAA;

4. MOU; and
 5. [Other]
- (e) the Borrower has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (f) pursuant to Section 13(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit E is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [●], (iii) demonstrates a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [●], (iv) demonstrate a ratio of Pledged Revenues over Borrower's funding obligations pursuant to clauses (i) through [] of Section 3.02(c) of the Indenture for each Calculation Period through the Final Maturity Date that is not less than [●], and (v) does not reflect (1) the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (2) the payment of any interest on any Junior Bonds before the Debt Service Payment Commencement Date, or (3) the commencement of amortization of the principal amount of any Junior Bonds before the commencement of amortization of the principal amount of the TIFIA Loan;
- (g) pursuant to Section 13(a)(xvi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit F is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;
- (h) pursuant to Section 13(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is [] and attached hereto as Exhibit G-1 is evidence thereof, (ii) the Borrower's Data Universal Numbering System number is [], and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as Exhibit G-2 is evidence of each of (ii) and (iii);
- (i) pursuant to Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit H are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of Section 13(a)(xix) of the TIFIA Loan Agreement;
- (j) pursuant to Section 13(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as (i) Exhibit I-1 is a copy of the Borrower's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and

effect and have not been amended since the date of the last amendment thereto shown on the certificate, (ii) Exhibit I-2 is a copy of all resolutions authorizing the Borrower and CDOT to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which the Borrower or CDOT, respectively, is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower and CDOT, as applicable, relating to the matters described therein, and (iii) as Exhibit I-3 is a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents;

- (k) pursuant to Section 13(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as Exhibit J are complete and fully executed copies of each performance security instrument delivered to or by the Borrower or CDOT pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instruments is in compliance with the requirements for such performance security instrument pursuant to the applicable Principal Project Contract and is in full force and effect;
- (l) the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party and the representations and warranties of CDOT set forth in the CDOT Direct Agreement are in each case true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;
- (m) (i) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs; and
- (n) [*other attachments and provisions, as may apply to the specific TIFIA Loan Agreement*].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

[_____]

By: _____

Name:

Title: Authorized Person

[Signature Page to Omnibus Certificate of the Borrower]
Exhibit K-4

EXHIBIT B TO EXHIBIT K

INCUMBENCY CERTIFICATE

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

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [____], 2017.

[_____]

By: _____
Name:
Title:

EXHIBIT L
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

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

Project: C-470 Express Lanes Project (TIFIA – 20__)

Dear Director:

This Notice is provided pursuant to Section 16(g)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “TIFIA Loan Agreement”), dated as of [___], 2017 by and between Colorado High Performance Transportation Enterprise (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

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

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

- (a) on [*insert date Substantial Completion requirements were satisfied*], the Project satisfied each of the requirements for Substantial Completion set forth in that certain Design-Build Contract, dated as of June 16, 2016, between the Colorado Department of Transportation and Flatiron | AECOM LLC;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

[Borrower’s Authorized Representative]

Name:
Title:

EXHIBIT N

TIFIA Loan Reamortization Methodology
1426261.07C-WASSR01A - MSW