

TEXAS TRANSPORTATION COMMISSION

DALLAS, JOHNSON, AND TARRANT Counties

MINUTE ORDER

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DALLAS AND FORT WORTH Districts

The Texas Department of Transportation (department) and the North Texas Tollway Authority (NTTA) have been proceeding with the development of a toll project that will extend SH 161 from SH 183 south to I-20 through the cities of Irving and Grand Prairie (SH 161 Project), and with the development of the SH 121 toll project from the Fort Worth Central Business District at I-30 to US 67 in Johnson County (Southwest Parkway/Chisholm Trail Project). The SH 161 Project is located within the boundaries of the NTTA, and the SH 161 Project is subject to the market valuation provisions set forth in Transportation Code, §228.0111.

The department and the NTTA have been working together to identify an approach to provide for the funding and development of the SH 161 Project and other transportation improvements within the boundaries of the NTTA and adjacent counties.

The department and the NTTA entered into an Agreement Regarding a Negotiated Value for SH 161 dated April 19, 2008 (Negotiated Value Agreement), pursuant to which the NTTA and the department waived the requirement under Transportation Code, §228.0111 to develop a market valuation for the SH 161 Project and agreed to a negotiated value of \$1.068 billion for the SH 161 Project, with a \$458 million upfront payment (acquisition payment).

Transportation Code, §228.0111(g) grants the NTTA the first option to develop, finance, construct and operate the SH 161 Project, and gives the NTTA six months after the date the negotiated value for the SH 161 Project was mutually approved to decide whether to exercise that option.

The department and the NTTA have negotiated a term sheet for providing financial assistance to the NTTA for the SH 161 Project, for the NTTA delivery of the SH 161 Project, and for the disposition of the Southwest Parkway/Chisholm Trail Project (Term Sheet) by which the department and the NTTA outlined a transaction to, among other things, strengthen the ability of the NTTA to undertake additional projects if the NTTA elects to undertake the SH 161 Project.

Under the Term Sheet, the NTTA would be obligated to design, construct, operate, maintain and finance development of the SH 161 Project in accordance with the Negotiated Value Agreement, except as modified by the Term Sheet (and, pursuant to the Term Sheet, as modified by the project agreement).

The Term Sheet also provides for the NTTA's development of the Southwest Parkway/Chisholm Trail Project as a single project, subject to the NTTA establishing its feasibility and to potential phasing of development. To support the delivery of the Southwest Parkway/Chisholm Trail Project, the department and the NTTA would waive the requirement to develop a market valuation for the southern section of the Southwest Parkway/Chisholm Trail Project (the northern section is exempt from the market valuation requirement), and will cooperatively develop and evaluate strategies to support and accelerate the financial feasibility of the combined project.

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On October 15, 2008, the NTTA's Board of Directors (1) accepted the Term Sheet without qualification or condition, (2) elected to exercise the NTTA's option to develop, finance, construct, and operate the SH 161 Project pursuant to the Negotiated Value Agreement, as modified by the Term Sheet, and (3) authorized the executive director of the NTTA to negotiate with the department the project agreement for the SH 161 Project. The department and the NTTA have entered into the project agreement for the SH 161 Project, effective July 30, 2009.

Transportation Code, §366.301 authorizes the department to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system by the NTTA on terms agreed to by the department and the NTTA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the Texas Transportation Commission (commission).

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §27.50-27.58 to prescribe conditions for the commission's financing of a toll facility of a public or private entity (toll equity rules).

In Minute Order 111557, dated October 30, 2008, the commission approved the Term Sheet and, pursuant to the Term Sheet and the requirements of Transportation Code, §222.103 and Title 43, Texas Administrative Code, §27.50-27.58, granted preliminary approval of a toll equity loan in an aggregate amount in nominal dollars not to exceed the facility costs associated with the SH 161 Project over 52 years, under mutually approved projections set forth in the official statement and including a commercially reasonable contingency for design and construction cost overruns, eligible to be paid from the state highway fund under applicable law, and which may only include costs for (1) design and construction, (2) operations and maintenance, (3) major maintenance, (4) capital expenditures, and (5) the acquisition payment.

Subsequent to the adoption of Minute Order 111557, the commission directed department staff to work cooperatively with the staffs of the NTTA and the North Central Texas Council of Governments (NCTCOG) to develop possible alternatives for developing and implementing both the SH 161 Project and the Southwest Parkway/Chisholm Trail Project. The commission and the department support the development of both projects by the NTTA through the use of appropriate funding mechanisms.

In Minute Order 112114, dated January 28, 2010, the commission authorized the executive director of the department to proceed with negotiations with the NTTA and the Regional Transportation Council of the NCTCOG for (1) the development and implementation by the NTTA of the SH 161 Project and the Southwest Parkway/Chisholm Trail Project in a manner that minimizes the risk to the State Highway Fund and (2) financial assistance to the NTTA for the SH 161 Project and the Southwest Parkway/Chisholm Trail Project, subject to the NTTA's compliance with all of the prerequisites for developing those projects and obtaining such financial assistance, including the submittal of one or more requests for financing to the department and required commission approvals.

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Minute Order 112114 further provides that, subject to satisfactory completion of negotiations and other prerequisites, the department is authorized and directed to present, for the commission's consideration, minute orders providing for the NTTA's development and implementation of the SH 161 Project and the Southwest Parkway/Chisholm Trail Project, and for providing financial assistance to the NTTA for those projects consistent with the provisions of that order.

In accordance with Section 27.54 of the toll equity rules, negotiations have been completed and the form of the agreed Toll Equity Loan Agreement relating to the SH 161 Project is attached as Exhibit A to this order. The Toll Equity Loan Agreement provides for the establishment of a toll equity loan commitment upon fulfillment of the applicable conditions precedent set forth in the agreement, in a maximum aggregate amount not to exceed \$4,093,677,822.

The department previously conducted environmental studies and analyses of the SH 161 Project, and has secured environmental clearance in the form of a Re-evaluation of the Supplemental Final Environmental Impact Statement for SH 161, which was approved by the Federal Highway Administration on February 29, 2008.

Development of the SH 161 Project is a crucial element in responding to considerable population increases and associated development that has resulted in traffic increases that have created significant congestion in the SH 161 area and across the region. The SH 161 Project is designed to improve the transportation network and level of service in the SH 161 area and region, particularly by serving as a reliever route to SH 360.

The financial assistance for the SH 161 Project is critical to the NTTA's overall plan of finance. The successful funding of the SH 161 Project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by providing for the timely completion of the SH 161 Project, which will enhance mobility and operational efficiency, decrease congestion, increase safety, increase economic development opportunities, decrease travel time, decrease air pollution, and enhance quality of life in the SH 161 corridor. Without the department's assistance, the timeline to complete the SH 161 Project and realize those benefits could be delayed.

The financial assistance for the SH 161 Project should lower the NTTA's capital costs, which will reduce the amount of equity from the NTTA System that will be necessary to complete the SH 161 Project. This will allow the NTTA to use that equity for other toll projects within its region, such as the Southwest Parkway/Chisholm Trail Project.

The SH 161 Project will expand the availability of funding for transportation projects or reduce direct state costs through the NTTA's issuance of bonds to finance project costs, and the potential payment of certain project expenses by the NTTA System's Capital Improvement Fund. The SH 161 Project and the NTTA are anticipated to have sufficient revenues to assure repayment of any loan from the department.

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The SH 161 Project is consistent with the approved Statewide Transportation Plan, the Statewide Transportation Improvement Program, and the approved plan of the NCTCOG, the metropolitan planning organization for the Dallas-Fort Worth region, and will be consistent with the transportation improvement program of the NCTCOG and with the State Implementation Plan.

Based on the above information, the commission has determined that providing financial assistance will prudently provide for the protection of public funds, and the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate adverse environmental impacts.

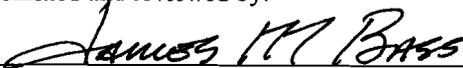
NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the North Texas Tollway Authority meets the requirements of 43 TAC §27.53 and §27.54 and, in accordance with those provisions, the commission grants final approval of financial assistance for the SH 161 Project in an aggregate amount in nominal dollars not to exceed \$4,093,677,822, and authorizes the executive director of the department to enter into the Toll Equity Loan Agreement relating to the SH 161 Project with the North Texas Tollway Authority, the form of which is attached as Exhibit A to this order, with such changes as the executive director may approve.

IT IS FURTHER ORDERED that any advance under the toll equity loan commitment for the SH 161 Project shall be charged to the UTP programs of the Regional Transportation Council of the NCTCOG.

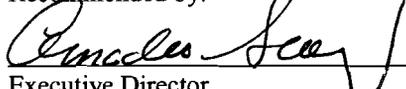
IT IS FURTHER ORDERED that if the NTTA fails to pay, as provided under Section 2.06 of the Toll Equity Loan Agreement, a revenue share amount equal to three percent of a fiscal year's Maximum Available Annual Amount, as defined in the Toll Equity Loan Agreement, then interest will accrue on such unpaid amounts at the same rates of interest that are applied to the unpaid amounts of any advance under the Toll Equity Loan Commitment.

IT IS FURTHER ORDERED that the department is authorized and directed to present, for the commission's consideration, minute orders providing for an amendment and supplement to the Toll Equity Loan Agreement to increase the amount of the toll equity loan commitment to include eligible facility costs associated with the Southwest Parkway/Chisholm Trail Project. Such increase may only be for the Southwest Parkway/Chisholm Trail Project, and shall be in accordance with the terms of the minute orders providing for the commission's approval, and as provided in the Toll Equity Loan Agreement and in a supplement to the Toll Equity Loan Agreement or in an amended and restated Toll Equity Loan Agreement, in a form and with such terms and provisions as agreed to by the department and the NTTA.

Submitted and reviewed by:


Chief Financial Officer

Recommended by:


Executive Director
112141 FEB 24 10

Minute Number Date Passed

TOLL EQUITY LOAN AGREEMENT

dated as of _____, 2010

between

North Texas Tollway Authority,
as Borrower,

and

Texas Department of Transportation,
as TxDOT,

relating to

SH 161 PROJECT

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Scenario 1C Southwest Parkway/Chisholm Trail Project Description

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Appendix A Form of Toll Equity Loan Note

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Appendix D Project Budget

Appendix E Funds and Accounts

Appendix F Form of Certificate of Borrower Re Satisfaction of Section 3.02 Conditions

TOLL EQUITY LOAN AGREEMENT

This TOLL EQUITY LOAN AGREEMENT (this "Agreement"), dated as of _____, 2010 (the "Effective Date") is made by and between the North Texas Tollway Authority (the "Borrower") and the Texas Transportation Commission, acting by and through the Texas Department of Transportation ("TxDOT"), and constitutes a credit agreement under Chapter 1371, Texas Government Code.

PRELIMINARY STATEMENTS:

(1) On April 19, 2008, the Borrower and TxDOT entered into the Agreement Regarding a Negotiated Value for State Highway 161 (the "Negotiated Value Agreement").

(2) Pursuant to the Negotiated Value Agreement, the parties agreed to certain matters relating to the development, construction, operation, maintenance and financing of the SH 161 corridor extending from SH 183 South to IH 20 along the western boundary of Dallas County, a total length of approximately eleven and one-half (11.5) miles as a "turnpike project" under Chapter 366, Texas Transportation Code, off of the state highway system (the "Project").

(3) On July 30, 2009, the Borrower and TxDOT entered into that certain Project Agreement State Highway 161 (the "Project Agreement") assigning certain rights and responsibilities with respect to the development, construction, operation, maintenance and financing of the Project in accordance with the Negotiated Value Agreement as modified by the Project Agreement.

(4) In order to provide financing for a portion of the development and construction of the Project and to make certain payments to TxDOT under and pursuant to the Project Agreement, the Borrower intends to issue, pursuant to a Trust Agreement, to be dated on or about the Closing Date, between the Trustee (as defined herein) and the Borrower (said Trust Agreement and any amendments or supplements thereto, the "Trust Agreement"), the Borrower's first tier revenue bonds for the Project (the "Series 2010 First Tier Bonds"), and the Borrower's second tier revenue bonds for the Project (the "Series 2010 TIFIA Bonds") which evidence a loan from the United States Department of Transportation to the Borrower pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998 (defined in the Trust Agreement as the "TIFIA Loan").

(5) To provide support for the Borrower's efforts to develop, construct, operate, maintain and provide financing for the Project, TxDOT has agreed to establish a toll equity loan commitment in favor of the Trustee on the Borrower's behalf (the "Toll Equity Loan Commitment") all in accordance with that certain Final Term Sheet for TxDOT Toll Equity Loan for SH 161 Project, NTTA Project Delivery, and Disposition of

Southwest Parkway and Chisholm Trail (the "Final Term Sheet") and the terms of this Agreement.

(6) TxDOT is entering into this Agreement pursuant to the provisions of Section 222.103, Texas Transportation Code, and Texas Administrative Code Title 23, Part 1, Chapter 27, Subchapter E.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, including the covenants, terms and conditions hereinafter appearing and in order to induce TxDOT to establish the Toll Equity Loan Commitment, the parties agree as follows:

ARTICLE I. **DEFINITIONS**

Section 1.01 Certain Defined Terms. Capitalized terms used in this Agreement shall have the meanings set forth in this Section 1.01 below (such meanings to be equally applicable to both the singular and plural forms of the terms defined). All other capitalized terms to the extent not otherwise defined herein shall have the respective meanings given to them in the Trust Agreement or the Project Agreement, as applicable. In the event of any conflict in definitions between the Trust Agreement and the Project Agreement, the terms contained in the Project Agreement shall control; provided that if such terms relate to the terms or amount of payment of principal of or interest on the Senior Project Debt or the pledge of Revenues or other security provided to the holders of the Senior Project Debt, the terms of the Trust Agreement shall control.

"Account Control Agreement" means an agreement between the Borrower and a financial institution regarding the establishment of the Operating Fund, Major Maintenance Fund and Capital Expenditures Fund as described in Appendix E attached hereto, which acknowledges the permitted use of amounts on deposit in such funds and TxDOT's right to direct the use of amounts on deposit in such funds in the event of a default by the Borrower and the exercise of remedies by TxDOT as provided herein.

"Additional Senior Project Debt" means any Project Debt issued by the Borrower to finance the construction of the Project Capacity Improvements as provided herein.

"Agreement" means this Toll Equity Loan Agreement and any amendments or supplements hereto in accordance with the terms hereof.

"Annual Operating Budget" has the meaning set forth in Section 5.01(d) hereof.

"Bankruptcy Event" means (a) commencement by a Person of any case or other proceeding (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation,

dissolution, composition or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or seeking to make a general assignment for the benefit of its creditors; or (b) commencement against such Person of any case or other proceeding of a nature referred to in clause (a) above which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged or unbonded for a period of 60 days; or (c) commencement against such Person of any case or other proceeding seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (d) such Person shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (a), (b) or (c) above; or (e) such Person shall admit in writing its inability to pay its debts as they become due.

“Base Price Index” means the CPI for August, 2009.

“Bond Purchase Contract” means the Bond Purchase Contract between the Borrower and the initial purchaser(s) of the Series 2010 First Tier Bonds.

“Borrower” means North Texas Tollway Authority.

“Borrower's Accountant” means any nationally recognized accounting firm reasonably acceptable to TxDOT.

“Capital Expenditures” means amounts, other than Project Costs, but including Costs of Project Capacity Improvements, properly capitalized on the books and records of the Authority in accordance with GAAP for the cost of designing, constructing, improving and reconstructing improvements and betterments to all parts of the Project, as determined by the Borrower, including, but not limited to, expenditures made pursuant to lease-purchase arrangements, additional lanes, tunnels, interchanges, toll plazas, toll gantries, bridges, connecting roads, transit interface facilities, safety rails, safety improvements, illumination, signage, and any equipment and other improvements, including technological equipment, hardware and software, deemed necessary or desirable by the Borrower, *provided, however*, that Capital Expenditures shall not include Operating Expenses or Major Maintenance Expenses.

“Closing Date” means the date the Series 2010 Project Debt is issued, authenticated and delivered in accordance with the Trust Agreement.

“CPI” means the Consumer Price Index based on All Urban Consumers (CPI-U) applicable to the South Urban area, published by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency thereto, or any other measure thereafter employed by said Bureau or agency in lieu of such index that measures the cost of living in such geographic area.

“Default” means each event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

“Design-Build Contract” means the Design/Build Agreement (SH 161 Project) bearing contract No. 02622-SH161—00-DB-PM between the Borrower and the Design-Build Contractor.

“Design-Build Contractor” means Prairie Link Constructors Joint Venture, or its successor or assign, in its capacity as the company with primary responsibility to provide design and construction services under the Design-Build Contract.

“Direct Agreement” means the direct agreement entered into between TxDOT, the Borrower and the Design-Build Contractor or the contingent assignment of the Borrower’s rights to TxDOT as consented to by the Design-Build Contractor, all in relation to the Design-Build Contract.

“Draw Period” means each 12-month period (September 1 to August 31) set forth in Appendix B attached hereto.

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Eligible Costs” means amounts expended or incurred, or reasonably anticipated to be expended or incurred, by the Borrower for Project Costs, Capital Expenditures, Major Maintenance and Operating Expenses (not to exceed amounts set forth in the Project Budget) and for the Upfront Payment.

“Environmental Claim” means any notice, claim or demand (collectively, a “claim”) by any Person alleging or asserting liability for investigatory costs, cleanup or other remedial costs, legal costs, environmental consulting costs, governmental response costs, damages to natural resources or other property, personal injuries, fines or penalties related to (a) the presence, or release into the environment, of any Hazardous Substance located within the right of way or emanating from the right of way relating to the construction, operation or maintenance of the Project, whether or not owned by the Person against whom such claim is made, or (b) any violation of, or alleged violation of, or liability arising under any Environmental laws that relate to the construction, operation or maintenance of the Project. The term “Environmental Claim” shall include, without limitation, any claim by any Person or Government Authority for investigation, enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental laws, and any claim by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief under any Environmental laws that relate to construction, operation or maintenance of the Project.

“Environmental laws” means any laws as modified and supplemented and in effect from time to time regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health or other living

organisms, the environment, Hazardous Substances or natural resources related to the environment, or may at any time hereafter be, in effect, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 et seq., the Resource Conservation and Recovery Act, 42 USC 6901 et seq., the Federal Clean Water Act, 33 USC Section 1351 et seq., the Occupational Safety and Health Act, 29 USC Section 651 et seq., as currently in force or as hereafter amended.

“Event of Default” (a) with respect to the Borrower, has the meaning assigned to that term in Section 6.01 of this Agreement, and (b) with respect to TxDOT, has the meaning assigned to that term in Section 7.05 of this Agreement.

“Finance Documents” means each of the Trust Agreement, the Series 2010 First Tier Bonds, this Agreement, the TIFIA Loan Agreement, the Series 2010 TIFIA Bond, the Master Custodial Account Agreement and the Toll Equity Loan Note.

“Financial Model” means the financial model prepared by the Borrower as of the dates specified in Section 3.01(b) hereof and delivered to TxDOT as provided in Section 3.01(b) hereof which contains the details of the proposed Series 2010 Project Debt, the Project Budget, the Maximum Available Annual Amount and the Maximum Available Aggregate Amount. The Financial Model delivered following the Pricing Date and again following the date of the execution of the term sheet relating to the TIFIA Loan by the TIFIA Lender shall reflect the final terms and provisions applicable to the Series 2010 Project Debt.

“Fiscal Year” means, presently, each 12-month period ending August 31, or any other period agreed to by the Borrower and TxDOT as the Fiscal Year for the Project.

“force majeure” has the meaning set forth in the last paragraph of Section 6.01 hereof.

“Future Offering Document” means any offering document delivered in connection with the sale and delivery of any Additional Senior Project Debt or Refunding Bonds.

“Generally Accepted Accounting Principles” or “GAAP” means those principles of accounting promulgated by the Financial Accounting Standards Board, the Governmental Accounting Standards Board or the standards of the Office of Management and Budget Circular A-133, Audits of States, Local Government and Non-profit Organizations, as applicable, or which have other substantial authoritative support and are applicable in the circumstances as of the date of a report, as such principles are from time to time supplemented and amended.

“Governmental Approval” means all authorizations, covenants, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and

declarations of or with any Governmental Authority, including to the extent required under Environmental laws.

“Government Authority” means any court, federal, state or local government, department, commission, board, bureau, agency or other regulatory or governmental authority.

“Guaranteed Substantial Completion Date” means October 11, 2012, but subject to a day-for-day extension for each day after March 1, 2010 until the final execution of the Highway Underpass and New At-Grade Crossing Railroad License and Force Account Agreement as contemplated in Section 7(a) of the Project Agreement.

“Hazardous Substances” means but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is at the time of the application of this definition, or could be considered as a public health matter, a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental laws or which is classified as “hazardous” or “toxic,” a “pollutant” or a “contaminant” or words of similar import under applicable Environmental laws (including but not limited to gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation and naturally asbestos-containing soils or sulfidic geological materials).

“Insurance Consultant” means such insurance consultant appointed under the provisions of this Agreement.

“Interest Rate” means for any day, the rate per annum equal to the ten-year “Aaa (pure)” rate provided by Municipal Market Data and published in The Bond Buyer under the caption “Municipal Market Data General Obligation Yields” prior to the end of the day on the date of the making of an advance under the Toll Equity Loan Commitment, plus 100 basis points; provided, however, if the ten year “Aaa (pure)” rate is no longer provided by Municipal Market Data, the rate to be used in its place shall be that rate which most closely replicates such rate, as agreed to by the Borrower and TxDOT; provided further, however, that the rate shall never exceed the Maximum Rate.

“LIBOR” means the offered rate per annum (rounded up to the nearest one one-thousandth of one percent (0.001%) for deposits in U.S. dollars for a one-month period that appears on the Telerate Page 3750 at approximately 11:00 a.m., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market.

“Major Maintenance Expenses” means the reasonable and necessary expenses (but excluding non-cash expenses such as depreciation, depletion and amortization) of repair and maintenance of the Project that do not occur at annual or shorter periods, as

determined by the Borrower, including, without limiting the generality of the foregoing, periodic roadway resurfacing and repair, replacement of toll collection, vehicle identification, toll integration and video enforcement equipment, and all administrative and engineering expenses relating to the repair and maintenance of the Project and any other maintenance expenses required to be paid by the Borrower, *provided, however*, that Major Maintenance Expenses shall exclude Capital Expenditures and Operating Expenses.

“Master Custodial Account Agreement” means that certain master custodial account agreement by and between the Borrower and Wells Fargo Bank, NA, relating to the deposit and transfer of Project Revenues.

“Material Adverse Effect” means a material adverse effect on (i) the operations or financial condition of the Project, (ii) the authority or ability of the Borrower to perform any of its obligations under this Agreement or any Transaction Document, or (iii) the validity or enforceability against the Borrower of this Agreement or any Transaction Document.

“Maturity Date” means each date on which a principal amount of the Senior Project Debt is due and payable.

“Maximum Available Aggregate Amount” means the maximum amount of nominal funds available to the Borrower in the form of advances under the Toll Equity Loan Commitment in accordance with the terms of this Agreement and as set forth in Section 2.01 hereof.

“Maximum Available Annual Amount” means the maximum amount of nominal funds available to the Borrower in the form of advances under the Toll Equity Loan Commitment in any given Draw Period in accordance with the terms of this Agreement and as set forth in Appendix B attached hereto.

“Maximum Permitted Amount” means the lesser of (i) debt service payments associated with the Senior Project Debt for the applicable period for which an advance is requested, plus Operating Expenses, Major Maintenance Expenses and Capital Expenditures up to the amounts for the applicable period as set forth in the Project Budget, but minus balances available in the Capitalized Interest Fund for the payment of interest on the Series 2010 First Tier Bonds for the applicable period to the extent that a portion of a requested advance is to be used to pay interest on the Series 2010 First Tier Bonds, minus any Revenues deposited into the Revenue Fund during the applicable period, minus any available amounts in the Annual Operating Budget Account of the Operating Fund, Annual Operating Budget Account of the Major Maintenance Fund, Annual Operating Budget Account of the Capital Expenditures Fund, Major Maintenance Reserve Fund, Rate Stabilization Fund, Capital Expenditures Reserve Fund and General Fund; and (ii) the Maximum Available Annual Amount for the applicable period for which an advance is requested, minus balances in the

Capitalized Interest Fund for the payment of interest on the Series 2010 First Tier Bonds for the applicable period to the extent that a portion of a requested advance is to be used to pay interest on the Series 2010 First Tier Bonds, minus any Revenues deposited into the Revenue Fund during the applicable period, minus any available amounts in the Annual Operating Budget Account of the Operating Fund, Annual Operating Budget Account of the Major Maintenance Fund, Annual Operating Budget Account of the Capital Expenditures Fund, Major Maintenance Reserve Fund, Rate Stabilization Fund, Capital Expenditures Reserve Fund and General Fund.

"Maximum Rate" means the maximum net effective interest rate permitted by applicable law to be paid on obligations issued or incurred by the Borrower in the exercise of its borrowing powers as prescribed in Chapter 1204, Texas Government Code, as amended, or any successor statute, determined on the basis of a weighted average interest cost for all advances.

"Note Issuance Date" means the date the Toll Equity Loan Note is issued by the Borrower after satisfaction of the requirements set forth in Section 3.01 hereof.

"Note Maturity Date" means for the principal amount of each advance under the Toll Equity Loan Commitment the date which is 40 years after the Closing Date.

"Official Statement" means the Official Statement, relating to the Series 2010 First Tier Bonds, together with any supplements thereto.

"Operating Expenses" means all reasonable current expenses incurred and paid or payable by the Borrower in relation to the Project, including without limitation costs for operation, maintenance and repair, consumables, payments under any lease or rental payments properly considered to be operating expenses, payments pursuant to the agreements for the management, operation and maintenance of the Project, taxes, premiums payable on any insurance, payments for oversight services, all administrative, engineering and policing costs, costs for any security, toll collection and enforcement expenses, fees and expenses of the Trustee, the Paying Agent, the Traffic Engineers, the Consulting Engineers, the Insurance Consultant, legal and accounting expenses, and any other reasonable expense paid for the operations and maintenance of the Project; *provided, however,* that Operating Expenses shall not include Capital Expenditures, Major Maintenance Expenses, Debt Service Requirements, the redemption price of any Bond, and any non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

"Operating Period" means the date beginning on the Service Commencement Date and ending on the Termination Date.

"Outstanding" shall have the meaning ascribed to such term in the Trust Agreement.

“Permitted Ancillary Projects” means a contract or lease with a Person for the use of part of the Project, including the right-of-way adjoining the paved portion, for a gas station, garage, store, hotel, restaurant, parking facility, train station, railroad track, billboard, telephone line or facility, telecommunication line or facility, data transmission line or facility, or electric line or facility.

“Permitted Investments” shall have the meaning ascribed to such term in the Trust Agreement.

“Person” means any individual, joint venture, corporation, company, voluntary association, partnership, limited liability company, trust, joint stock company, unincorporated organization, association, government, or any agency, instrumentality, or political subdivision thereof, or any other form of entity.

“Preliminary Official Statement” means the Preliminary Official Statement, relating to the Series 2010 First Tier Bonds, together with any supplements thereto.

“Pricing Date” means the date of the execution of the Bond Purchase Contract.

“Project” shall have the meaning given to such term in paragraph 2 of the Preliminary Statements hereto.

“Project Agreement” shall have the meaning given to such term in paragraph 3 of the Preliminary Statements hereto.

“Project Agreement Standards” means the minimum standards for operation and maintenance of the Project set forth in the Project Agreement; provided that the Borrower’s “System-wide Design Guidelines” for landscaping and aesthetics that the Borrower is permitted to implement under Section 9(b) of the Project Agreement shall not be considered to be minimum standards and the Borrower’s “Roadside Customer Service” shall be considered to be minimum standards.

“Project Budget” means the amounts estimated to be spent in each year for Project Costs, Operating Expenses, Major Maintenance Expenses and Capital Expenditures, mutually approved by the Borrower and TxDOT as of the date hereof as set forth in Appendix D attached hereto.

“Project Capacity Improvements” means the capacity improvements to the Project as required under Section 8(e) of the Project Agreement and provided in Exhibit D to the Project Agreement.

“Project Costs” means Costs for initial construction of the Project.

“Project Debt” means any bond, note or other evidence of indebtedness secured by Revenues and/or amounts held in any fund or account and pledged under the Trust Agreement.

“Project Documents” means, collectively, the Project Agreement and the Design-Build Contract.

“Project Revenues” means all tolls, fees or charges collected or received for the use of the Project as well as fines and penalties and interest thereon collected as a result of a failure to pay any tolls, fees or charges for the use of the Project; provided, however, that any of the amounts described above collected or received by the Borrower and required to be paid to TxDOT as revenue sharing payments pursuant to the Project Agreement shall not constitute “Project Revenues” for the purposes of this Agreement or the Trust Agreement.

“Project Reserve Funds” means each of the Revenue Fund, First Tier Debt Service Fund, Second Tier Debt Service Fund, Major Maintenance Reserve Fund, Capital Expenditures Reserve Fund, Rate Stabilization Fund and General Fund as described and defined in the Trust Agreement.

“Refunding Bonds” means any bond issued to redeem or defease, in whole or in part, the outstanding principal amount of the Senior Project Debt, the interest on and principal of which is eligible to be paid from advances under the Toll Equity Loan Commitment.

“Revenues” means Project Revenues, investment income from amounts on deposit in the Trust Agreement Funds, business interruption insurance payments, liquidated damages and any other amounts received by the Borrower relating to the use and operation of the Project; provided, however, that any of the amounts described above collected by the Borrower and required to be paid to TxDOT as revenue sharing payments pursuant to the Project Agreement shall not constitute “Revenues” for the purposes of this Agreement or the Trust Agreement.

“Senior Project Debt” means as at any date, the Series 2010 Project Debt and any Additional Senior Project Debt and Refunding Bonds incurred as of such date and as permitted in this Agreement.

“Series 2010 First Tier Bonds” has the meaning assigned to that term in paragraph (4) of the Preliminary Statements hereof.

“Series 2010 Project Debt” means the Series 2010 First Tier Bonds and the Series 2010 TIFIA Bonds.

“Series 2010 TIFIA Bonds” has the meaning assigned to that term in paragraph (4) of the Preliminary Statements hereof.

“Service Commencement Date” means the date when all Phases of the Project are open for normal and continuous operations and use by the traveling public.

“Substantial Completion” means the date when the Borrower has completed or caused the completion of all acquisition, equipping and construction of the Authority Structures, other than the low volume direct connectors in Phase 4, in accordance with the requirements of the Project Agreement, such that the Authority Structures, other than the low volume direct connectors in Phase 4, are in a condition that the Project can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable electronic toll collection system meeting the technical standards of the Project Agreement.

“SWP/CT Project” means the proposed tollway project known as the Scenario 1C Southwest Parkway/Chisholm Trail project more particularly described in Exhibit 1 attached to this Agreement.

“Term” means the period of time between the Effective Date and the Termination Date.

“Termination Date” means the earlier of (i) the final Maturity Date of the Senior Project Debt or (ii) the date of the defeasance or refunding in whole of the Senior Project Debt, the effect of which is to terminate the Toll Equity Loan Commitment.

“TIFIA Lender” means the United States Department of Transportation, acting through the Federal Highways Administration.

“TIFIA Loan” has the meaning assigned to that term in paragraph (4) of the Preliminary Statements hereof.

“TIFIA Loan Agreement” means the agreement between the Borrower and the TIFIA Lender relating to the TIFIA Loan.

“Toll Equity Loan” means the aggregate outstanding amount of all advances drawn under the Toll Equity Loan Commitment, as provided in this Agreement.

“Toll Equity Loan Commitment” means the obligation on the part of TxDOT to make advances of funds available to the Trustee on behalf of the Borrower as provided in Section 2.01 hereof, subject to the requirements of this Agreement.

“Toll Equity Loan Commitment Establishment Date” means the date on which the Toll Equity Loan Commitment is established in favor of the Trustee on behalf of the Borrower as described in Section 2.01 hereof.

“Toll Equity Loan Note” means the promissory note executed by Borrower in favor of TxDOT evidencing the Toll Equity Loan, substantially in the form of Appendix A attached hereto.

“Toll Rate Schedule” means the schedule of tolls, fees or charges to be collected for the use of the Project established from time to time by the Borrower in accordance

hereof. The Financial Model that the Borrower delivers within two Business Days after the Pricing Date pursuant to Section 3.01(b) hereof shall recalculate the Maximum Available Annual Amounts to take into account the pricing of the Series 2010 Project Debt, which recalculation shall be subject to TxDOT's approval. Upon TxDOT's approval of such recalculated Maximum Available Annual Amounts, and provided such amounts satisfy the condition precedent set forth in Section 3.01(b) hereof, the parties shall replace Appendix B attached hereto with a new Appendix B setting forth the approved amounts.

Section 2.02 Term of the Toll Equity Loan Commitment. Once established pursuant to Section 2.01 hereof, the Toll Equity Loan Commitment shall remain in effect until the Termination Date. No extension of the Toll Equity Loan Commitment beyond the Termination Date shall be permitted.

Section 2.03 Toll Equity Loan. After TxDOT receives a request from the Trustee as provided in the Trust Agreement in the form of Appendix A to the Trust Agreement (each, a "Trustee Request") TxDOT shall make a corresponding advance under the Toll Equity Loan Commitment to the Borrower within three Business Days after receipt of the Trustee request, the proceeds of which shall be deposited with the Trustee in the fund or account held under the Trust Agreement as identified in such Trustee Request; provided that in no event shall the amount of the advance exceed the Maximum Permitted Amount, or, when added to other amounts advanced under the Toll Equity Loan Commitment during the current Draw Period, the Maximum Available Annual Amount. The Borrower shall deliver to TxDOT a certificate in the form of Appendix C attached hereto on the same day as any such Trustee request, provided that TxDOT's obligation to make any advance shall not be conditioned on receipt of such Borrower's certificate. Each advance under the Toll Equity Loan Commitment shall be evidenced in the Toll Equity Loan Note which shall set forth the date of the advance, the principal amount, Interest Rate and maturity date therefor. TxDOT shall make such advances under the Toll Equity Loan Commitment from time to time during the Term of the Toll Equity Loan Commitment Period up to the Maximum Available Aggregate Amount starting on the date the Toll Equity Loan Note is delivered to TxDOT, but not to exceed with any advance, taking into account all prior advances, the aggregate amount of Eligible Costs. If the principal amount of advances under the Toll Equity Loan Commitment made in a given Draw Period is less than the Maximum Available Annual Amount for such Draw Period (or if no Toll Equity Loans have been made in such Draw Period), the difference shall not be carried forward and may not be applied to increase the amount available to be advanced in any future Draw Period. The unpaid amount of each advance under the Toll Equity Loan Commitment shall bear interest from the date of such advance to the date on which such advance and the interest thereon are repaid in full at a rate per annum equal to the Interest Rate in effect on the day such advance is made.

TxDOT may rely on the certificate, in the form of Appendix C attached hereto, as to compliance with the limitations on advances as set forth in this section, provided that within 30 days of any advance under the Toll Equity Loan Commitment, TxDOT shall

have the right to request and the Borrower shall provide written documentation, including copies of invoices, reports or notices from the Trustee, any vendor or supplier of goods or services to the Project or others, in support of the need for the advance and the use of the proceeds of advances.

Any advances under the Toll Equity Loan Commitment relating to amounts anticipated to be expended or incurred by the Borrower must be accompanied by documentation or other evidence demonstrating to the reasonable satisfaction of TxDOT that such amounts are reasonably likely to be expended or incurred, provided that, after Substantial Completion and subject to the following paragraph, amounts in the Project Budget for subsequent years shall be considered to be amounts reasonably anticipated to be expended or incurred.

Five years after Substantial Completion, and at the end of each year thereafter, (i) the amount of Operating Expenses for the immediately preceding five year period as a percentage of the Project Budget amounts for that period shall be calculated and, if such percentage (the "calculated percentage") is less than 100%, the amount considered to be reasonably anticipated to be expended or incurred for each year thereafter will be the Project Budget amount for each year thereafter multiplied by the calculated percentage, (ii) the amount of Major Maintenance Expenses reasonably anticipated to be expended or incurred for each year thereafter will be the amount of Major Maintenance in the Project Budget, after taking into account any advancement or deferment of Major Maintenance in the Project Budget, and (iii) the amount of Capital Expenditures reasonably anticipated to be expended or incurred for each year thereafter will be the amount of Capital Expenditures in the Project Budget taking into account any advancement or deferment of Capital Expenditures in the Project Budget.

Costs paid or reimbursed using the proceeds of advances under the Toll Equity Loan Commitment must be paid or reimbursed in accordance with applicable state and federal laws, including the cost principles established in OMB Circular A-87 that specify that costs must be allowable, reasonable and allocable to the Project.

Section 2.04 Repayment of Principal of and Interest on Toll Equity Loan; Interest on Overdue Amounts. Borrower shall make payments of principal and interest to TxDOT according to the provisions of this Agreement, the Trust Agreement and the Toll Equity Loan Note. Interest on Toll Equity Loan shall be paid on the first Business Day of each month first from Revenues available in the Third Tier Interest Account then from amounts in the Revenue Fund (subject to clause (c) under the caption "Revenue Fund; Agreements with other Turnpikes" in Appendix E attached hereto), the General Fund, the Capital Expenditures Reserve Fund, the Major Maintenance Reserve Fund, the Annual Operating Budget Account of the Capital Expenditures Fund, the Annual Operating Budget Account of the Major Maintenance Fund, Rate Stabilization Fund and the Annual Operating Budget Account of the Operating Fund, all based on the order in which advances under the Toll Equity Loan Commitment were made. The amount of interest on any advance under the Toll Equity Loan Commitment which is not

paid as of March 1 and September 1 of each year due to an insufficient amount of Revenues or other amounts available therefor as provided in the Trust Agreement shall be compounded semi-annually and shall bear interest at the same rate applicable to such advance.

If all or a portion of any amount payable hereunder by Borrower (other than principal of and interest on the Toll Equity Loan) shall not be paid when due, the amount shall bear interest at a floating rate per annum which is equal to LIBOR plus 200 basis points, determined on the first Business Day of each month from the date of such non-payment until such overdue amount is paid in full (as well after as before judgment), provided that such interest rate shall not exceed the Maximum Rate.

Borrower shall return or direct the Trustee to return to TxDOT any amounts included in an advance under the Toll Equity Loan Commitment which are in excess of the Maximum Permitted Amount for an advance, the Maximum Available Annual Amount for a Draw Period or the Maximum Available Aggregate Amount immediately upon becoming aware of such amounts, and any such amount returned to TxDOT shall reduce the amount of principal of the Toll Equity Loan Note. Borrower shall pay interest on any such amount commencing on the date of the applicable advance under the Toll Equity Loan Commitment at the Interest Rate applicable to such advance until the earlier of the date the Borrower became aware of such amounts or 60 days after the date the Borrower receives notice from TxDOT or the Trustee demanding return of such amount, and thereafter at the interest rate set forth in immediately preceding paragraph of this Section 2.04.

Section 2.05 Prepayment.

(a) Voluntary Prepayment. Borrower may prepay any amount of principal of the Toll Equity Loan, without premium or penalty, upon at least two Business Days' notice to TxDOT specifying the date and amount of prepayment. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, unless such notice is revoked by the Borrower on or prior to the prepayment date specified therein. Upon such prepayment, unpaid amounts of interest and principal shall continue unaffected and the Toll Equity Loan Note shall be adjusted to reflect the amount of principal prepaid. Amounts prepaid may not be reborrowed.

(b) Mandatory Prepayment. The principal amount of the Toll Equity Loan shall be prepaid prior to maturity on the first Business Day of each month in the order in which advances under the Toll Equity Loan Commitment were made, but solely from and to the extent of funds available therefor held in the Third Tier Principal Account of the Third Tier Debt Service Fund created and maintained pursuant to the Trust Agreement.

(c) Borrower Receipt of Condemnation and Insurance Proceeds.

(i) Insurance Proceeds. The Borrower shall pay any insurance proceeds it receives under builders all risk, property all risk and business interruption insurance to the Trustee for deposit into the Revenue Fund to the extent attributable to the debt service and fixed expense component of the business interruption insurance proceeds. Otherwise, such insurance proceeds shall be deposited to the Construction Fund and used for any repairs or modifications of the Project necessary or desirable as a result of damage or destruction to the Project. If no such repairs or modifications are necessary or desirable, or if any funds remain in the Construction Fund after completion of all such repairs and modifications, the proceeds of such insurance or remaining proceeds, as applicable, shall be deposited to the Revenue Fund and applied as provided in the Trust Agreement.

The Borrower shall direct that the Design-Build Contractor pay insurance proceeds payable to the Borrower under such policies maintained by the Design-Build Contractor pursuant to the Design-Build Contract directly to the Trustee for deposit into the Revenue Fund to the extent attributable to the debt service and fixed expense component of the business interruption insurance proceeds. Otherwise, such insurance proceeds shall be deposited to the Construction Fund.

(ii) Condemnation Proceeds. In the event the Borrower receives any payment or other proceeds in respect of a total or partial condemnation of the Project, it shall cause such proceeds to be deposited to the Construction Fund and utilized for any repairs or modifications of the Project necessary or desirable as a result of such condemnation. If no such repairs or modifications are necessary or desirable, the proceeds of such condemnation shall be deposited to the Revenue Fund and applied as provided in the Trust Agreement.

Section 2.06 Release of Toll Equity Loan Commitment.

TxDOT's obligation to establish and maintain the Toll Equity Loan Commitment and make any advances thereunder will terminate upon the receipt of notice from the Borrower that a refunding, payment or legal defeasance of all of the outstanding principal amount of and any unpaid interest on the Senior Project Debt has occurred.

Commencing on the 5th anniversary of the Service Commencement Date the parties will meet on a periodic basis to discuss the potential for the termination of the Toll Equity Loan Commitment with the goal of accomplishing such termination at the earliest practicable date through a defeasance and refunding of the Senior Project Debt as set forth in the Final Term Sheet approved by, and attached thereto as Exhibit

A, Minute Order No. 111557 of the Texas Transportation Commission adopted October 30, 2008. If at any time after such 5th anniversary date the Borrower is able to issue debt secured by Project Revenues that is rated investment grade by at least two of the national rating agencies without the Toll Equity Loan Commitment and without support from the NTTA System or any other roadways or assets of the Borrower in a principal amount along with other funds held in the Project Reserve Funds (other than the Major Maintenance Reserve Fund and Capital Expenditures Reserve Fund) sufficient to pay or defease all outstanding Senior Project Debt and amounts owed to TxDOT under the Toll Equity Note and this Agreement, the Borrower shall use good faith efforts to issue such debt and cause a termination of the Toll Equity Loan Commitment.

On the first day of the Fiscal Year following the 10th anniversary of the Effective Date and on the first day of each Fiscal Year thereafter, the Borrower shall pay to TxDOT, from unencumbered amounts on deposit in the General Fund, a non-refundable amount equal to three percent of that Fiscal Year's Maximum Available Annual Amount. Accrued amounts shall not be due and payable, and failure to pay such amounts shall not constitute a default under this Agreement, unless sufficient unencumbered funds are on deposit in the General Fund to make such payment; provided that in any event any accrued unpaid amounts shall be due and payable in full on the Termination Date.

Section 2.07 Place and Manner of Payments. All payments by the Borrower to TxDOT under this Agreement shall be made in lawful currency of the United States by wire transfer in immediately available funds on or prior to 2:00 p.m. on the date such payment is due, to the following account:

Texas Comptroller of Public Accounts
ABA Number: 114900164
Account Name: Texas Comptroller of Public Accounts
Account Number: 463600001
Attention: 601-Texas Department of Transportation,
Chema Sanchez, Diana Ruiz, and Coleta Dille
Reference: North Texas Tollway Authority, SH 161

or as TxDOT may otherwise stipulate by notice to the Borrower. Any such payments received after 2:00 p.m. on any day will be deemed to have been received on the next succeeding Business Day. If any payment becomes due and payable on a day other than a Business Day, unless sooner paid such payment shall be extended to the next succeeding Business Day and interest thereon shall be payable at the then applicable rate during such extension. TxDOT acknowledges and agrees that any such payments may be made by the Trustee on behalf of the Borrower from funds on deposit under the Trust Agreement.

Section 2.08 Obligations Absolute. Subject to Section 8.14 hereof, the obligations of the Borrower under this Article shall be absolute, unconditional and

irrevocable, shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation, the following circumstances: (i) any lack of validity or enforceability of any Finance Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from any Finance Documents or any agreement or document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Trustee (or any Person for whom the Trustee may be acting), TxDOT, or any other Person, whether in connection with this Agreement, the transactions described herein or any unrelated transaction.

Section 2.09 Security.

(a) Security Under the Trust Agreement. The Toll Equity Loan Note is a special obligation of the Borrower payable from and secured solely by the funds pledged therefor pursuant to the Trust Agreement. The Toll Equity Loan Note and all other payment obligations of the Borrower owed to TxDOT under this Agreement constitute Third Tier Obligations under the Trust Agreement so long as Senior Project Debt is Outstanding, and thereafter shall constitute First Tier Obligations under the Trust Agreement. Revenues shall be transmitted to the Trustee and used along with the other amounts held in the funds and accounts established under the Trust Agreement in accordance with the provisions of the Trust Agreement and as described in Appendix E attached hereto.

(b) No Termination of the Trust Agreement. The Trust Agreement shall not terminate or be discharged until all sums owing hereunder are paid in full.

ARTICLE III.

CONDITIONS OF ESTABLISHING TOLL EQUITY LOAN COMMITMENT

Section 3.01 Condition Precedent to Establishment of the Toll Equity Loan Commitment. The obligation of TxDOT to establish the Toll Equity Loan Commitment is subject to the condition precedent that TxDOT shall have received, from or on behalf of the Borrower, on or before the Toll Equity Loan Commitment Establishment Date, the following, each in form and substance satisfactory to TxDOT (and on the Closing Date TxDOT shall deliver to the Borrower a certificate that all conditions precedent to the establishment of the Toll Equity Loan Commitment have been satisfied or expressly waived):

(a) Documents to Be Delivered. Either an original or a copy of each of the following documents to be delivered on or before the Pricing Date or the Closing Date, as indicated:

- (i) this Agreement (on or before the Closing Date);

(ii) the Master Custodial Account Agreement (on or before the Closing Date);

(iii) each other Finance Document, together with any exhibit or schedule thereto and any document entered into in accordance therewith (on or before the Closing Date);

(iv) each Project Document, together with any exhibit or schedule thereto and any document entered into in accordance therewith or in order to support the obligations of any party thereunder (on or before the Closing Date);

(v) the Account Control Agreement (on or before the Closing Date);

(vi) the Direct Agreement (on or before the Closing Date); and

(vii) the Preliminary Official Statement (on or before the Pricing Date) and the Official Statement (on or before the Closing Date);

each of which shall have been duly authorized, executed and delivered by the parties thereto, and, except for the Preliminary Official Statement and the Official Statement, shall be in full force and effect and, to the extent that a copy is provided, accompanied by a certificate by an authorized officer of the Borrower certifying as of the Toll Equity Loan Commitment Establishment Date that each such copy that is delivered to TxDOT is a true, complete and correct copy thereof, as amended as of the Toll Equity Loan Commitment Establishment Date.

(b) Financial Model. At least (i) five Business Days but no more than ten Business Days prior to the Pricing Date and within two Business Days after the Pricing Date and (ii) five Business Days but no more than ten Business Days prior to the date of the execution of the term sheet relating to the TIFIA Loan and within two Business Days after the date of the execution of the term sheet relating to the TIFIA Loan, an electronic copy of the Financial Model, demonstrating, among other matters, that (x) the payment of principal of and interest on the Series 2010 Project Debt (other than interest to be paid for from Series 2010 Project Debt) and modeled Additional Senior Project Debt plus the Project Budget amounts, other than Project Costs and Capital Expenditures if and to the extent paid for from Series 2010 Project Debt, modeled Additional Senior Project Debt, the Capital Expenditure Reserve Fund or the General Fund, and after adjustment for amounts available in the Major Maintenance Reserve Fund, do not exceed 100% of the projected Project Revenues in any year, (y) at all times there will be an unencumbered fund balance in the General

Fund and (z) at no time will there be an advance anticipated to be required under the Toll Equity Loan Commitment.

(c) Insurance Report. On or before the Closing Date, a report prepared by the Insurance Consultant to the effect that all insurance policies required to be maintained by the Borrower under Section 5.05(g) of this Agreement are in full force and effect, the premiums due thereon have been paid (if applicable), that such policies otherwise conform with the requirements specified in this Agreement and that the types and coverages provided by such policies are adequate in relation to the Project.

(d) Opinions. On or before the Closing Date, legal opinions from general counsel for the Borrower and the Trustee, and reliance letters regarding legal opinions from general counsel for the Design-Build Contractor, each in form and substance acceptable to TxDOT.

(e) Authorization and Authority. On or before the Closing Date, in relation to each of the Borrower and the Design-Build Contractor, an original or a copy certified by an authorized officer of the relevant Person to be true, complete and correct of (i) the authorizing resolutions of its board of directors, general partners, or managing member or manager, as applicable, authorizing the transactions contemplated hereunder and under the Transaction Documents to which such Person is or is intended to be a party and in the case of the Borrower, designating the Board Representative, together with a certificate that no such authorization has been amended or revoked. In relation to the Borrower, on or before the Closing Date (i) an incumbency certificate of the Borrower, and (ii) the Borrower's most recent unaudited and (if available) audited financial statements.

(f) Governmental Approvals. On or before the Closing Date, TxDOT shall have received a copy of each Governmental Approval listed in Schedule 3.01(f) attached hereto, together with a certificate by a Board Representative certifying as of the Toll Equity Loan Commitment Establishment Date that such schedule of Governmental Approvals sets forth all Governmental Approvals that are necessary for the work being performed under the Design-Build Contract as of the Toll Equity Loan Commitment Establishment Date.

(g) Consultant Reports. On or before the Pricing Date, copies of the following, each in form and substance satisfactory to TxDOT:

(i) a final report of the Traffic Engineer dated not earlier than 90 days before the Pricing Date; and

(ii) a final report of the Consulting Engineer dated not earlier than 90 days before the Pricing Date concluding, among other things, that

the Project Budget for Project Costs and the time frame to achieve Substantial Completion (which the report shall indicate will fall not later than 90 days after the Guaranteed Substantial Completion Date) are reasonable, subject to such conditions that are customary for such reports.

(h) UPRR Agreement. On or before the Pricing Date, the final executed Highway Underpass and New At-Grade Crossing Railroad License and Force Account Agreement as contemplated in Section 7(a) of the Project Agreement.

Section 3.02 Additional Conditions Precedent. The obligation of TxDOT to establish the Toll Equity Loan Commitment shall be subject to the satisfaction or waiver by TxDOT of the following additional conditions precedent; provided that, the Borrower shall be deemed to have satisfied the conditions set forth in this Section 3.02(a) to (f) (and as to (f) only as to Borrower) to the extent they have been certified in writing by Borrower's Representative in a certificate in the form attached hereto as Appendix F:

(a) Bond Purchase Contract. All conditions precedent to the occurrence of the Closing Date (as defined in the Bond Purchase Contract) under the Bond Purchase Contract shall have been satisfied or waived by underwriter, other than any conditions solely requiring the satisfaction of all conditions to the establishment of the Toll Equity Loan Commitment.

(b) TIFIA Loan. All conditions precedent to the making of the first disbursement under the TIFIA Loan Agreement shall have been satisfied or waived by the United States Department of Transportation, other than any conditions solely requiring the satisfaction of all conditions to the issuance of the Series 2010 First Tier Bonds or of the Toll Equity Loan Commitment.

(c) No Default or Event of Default. No "Event of Default" under and as defined in the Trust Agreement shall have occurred and no "Authority Default" on the part of the Borrower under and as defined in the Project Agreement shall have occurred and be continuing beyond the cure period provided in the Project Agreement.

(d) Representations and Warranties. The representations and warranties given by the Borrower herein shall be true and correct in all material respects on and as of the Toll Equity Loan Commitment Establishment Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(e) No Default or Event of Default. No Default with respect to the Borrower shall have occurred and be continuing or shall occur as a result of the establishment of the Toll Equity Loan Commitment, and no Event of Default with respect to the Borrower shall have occurred or shall occur as a result of the establishment of the Toll Equity Loan Commitment.

(f) No Material Adverse Effect. No event, development or circumstance shall have occurred or shall have become known to TxDOT or to the Borrower that has had or could reasonably be expected to have a Material Adverse Effect on the Project.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of the Borrower. The Borrower represents and warrants as of the date hereof and as of the Toll Equity Loan Commitment Establishment Date (except to the extent that any representation and warranty set forth below specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date) as follows:

(a) The Borrower has the requisite power and authority; has obtained all necessary consents, approvals, authorizations and orders of any Government Authority or regulatory authority; and has taken all actions necessary to (1) enter into, deliver and perform its obligations under this Agreement and each Finance Document and each Transaction Document to which it is a party and the transactions contemplated hereby and thereby, and (2) carry out its activities as now conducted and as proposed to be conducted immediately following execution and delivery of this Agreement, the Finance Documents and the other Transaction Documents.

(b) The Borrower has duly authorized the execution and delivery of each Transaction Document to which it is a party, the performance of its obligations hereunder and the incurrence of the debt made available to it under each Finance Document. The authorization has not been repealed, revoked, rescinded or amended and is in full force and effect.

(c) The execution and delivery by the Borrower of each Transaction Document to which it is a party, and the compliance with the terms and conditions thereof will not, in any material respect, (1) violate any existing law applicable to it or (2) result in default under the Trust Agreement, or any mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which any of its assets are subject.

(d) There is no litigation at law or in equity or any proceeding before any Government Authority involving the Borrower pending or, to the knowledge of the Borrower, threatened, that could reasonably be expected to have a material adverse effect on the operations or financial condition of the Borrower.

(e) The execution and delivery by the Borrower of each Transaction Document to which it is a party, the performance by the Borrower of its obligations hereunder and thereunder and the consummation of the transactions herein and therein contemplated do not and will not in any material respect conflict with, or constitute a breach or result in a violation of the Borrower's statutory authority, any agreement or other instrument to which the Borrower is a party or by which it is bound or any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or Government Authority having jurisdiction over the Borrower or its property and will not result in or require the creation or imposition of any security interest on any of the Borrower's property or the Trust Estate other than the security interests created pursuant to the Trust Agreement.

(f) The Borrower has obtained or caused to be obtained all consents, approvals, authorizations and orders of any Government Authority or regulatory authority that (1) are required to be obtained by the Borrower as a condition precedent to the execution and delivery of each Transaction Document to which it is a party, or (2) are required for the operation of the Project or the performance by the Borrower of its obligations under any Transaction Document to which it is a party or for the grant by the Borrower of the security interest under the Trust Agreement and all such consents, approvals, authorizations and orders of any governmental or regulatory authority are in full force and effect.

(g) The Borrower will fully and faithfully perform all the duties and obligations which it has covenanted and agreed in the Trust Agreement.

(h) Each Transaction Document to which it is a party constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with the terms thereof, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws or judicial action affecting the enforcement of creditors' rights generally and the application of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

(i) No Default or Event of Default with respect to the Borrower has occurred and is continuing and no "Event of Default" (as defined in Section 802 of the Trust Agreement) and no "Authority Default" under and as

defined in the Project Agreement has occurred and is continuing and no event has occurred that would be (with the expiry of any applicable grace period, the giving of notice or the making of any determination under any such loan agreement or any combination of them) a default thereunder.

(j) The Borrower does not have any Project Debt other than the Series 2010 First Tier Bonds, the Series 2010 TIFIA Bond and the Toll Equity Loan Note.

(k) All insurance required to be maintained as of the date hereof by the Borrower or the Design-Build Contractor pursuant to the Project Agreement and the Design-Build Contract has been obtained and is in full force and effect.

(l) The Trust Agreement including the right of the Trustee to retain Revenues is effective to create and perfect a legally valid and enforceable interest in the Borrower's rights in the Revenues.

(m) Each Project Document which has been executed and delivered to TxDOT is in full force and effect, the Borrower is not in default under any of such agreements or contracts, and to the knowledge of the Borrower, no third party to any of such agreements or contracts is in default thereunder, except as, in either case, could not reasonably be expected to have a Material Adverse Effect.

(n) No Bankruptcy Event has occurred or is continuing with respect to the Borrower.

(o) True and complete copies of all Transaction Documents have been delivered to TxDOT, and the Borrower is not party to any other material Project-related agreements.

(p) To the best knowledge of the Borrower, development and construction of the Authority Structures is being carried out in compliance in all material respects with all Environmental laws and the Borrower (i) has provided or made available to TxDOT copies of all material environmental due diligence reports or analyses prepared by it or on its behalf and (ii) has obtained all environmental permits required to be obtained by it with respect to the Authority Structures and all such permits are in full force and effect, except, in each case, for any environmental permits (x) where the failure to obtain such environmental permits could not reasonably be expected to have a Material Adverse Effect, or (y) which are not required at the current state of development of the Authority Structures.

(q) None of the information in any agreement, document, certificate, exhibit, financial statement, book, record, material or report or other

written information furnished by the Borrower, when taken as a whole, contained any untrue statement of material fact or omitted to state a material fact necessary in order to make the statements contained therein not materially misleading; except for any projections that may have been included therein; and provided, that the Borrower does not represent as to the accuracy of the information provided by TxDOT or the statements made in the reports by the Consulting Engineer, the Traffic Engineer or any other advisor or consultant providing services to the Project; and provided, further, that no representation or warranty is made as to any forecasts, projections, opinions or other forward looking statements.

(r) The Borrower is not aware of any builders' liens or analogous claims for payments which are overdue with respect to work or services to be performed or materials supplied in connection with the Authority Structures, which claim has not been fully satisfied, and, if registered, duly discharged or vacated, unless there is a bona fide dispute and adequate security as required by law or ruling of a court has been posted.

(s) Since the date of the most recent financial statements of the Borrower prior to the Toll Equity Loan Commitment Establishment Date, no event has occurred which could reasonably be expected to have a Material Adverse Effect or which could reasonably be expected to have a material adverse effect on the operations or financial condition of the Borrower. Since the date of the Project Agreement, there has been no change to the nature, scope or any other aspect of the Project pursuant to any requirement or instruction of any Government Authority of which the Borrower has received actual or constructive knowledge.

(t) The Borrower has not received any communications from, nor is aware of any proceeding by, any Government Authority that could reasonably be expected to result in termination or revocation of the Borrower's right and authority to operate the Project or a Material Adverse Effect.

(u) To the actual knowledge of the Borrower without inquiry or investigation, no Bankruptcy Event has occurred or is continuing with respect to the Design-Build Contractor.

(v) To the extent applicable, the most recent financial statements of the Borrower delivered to TxDOT, have been prepared in conformity with GAAP and present fairly, in all material respects, the financial condition of the Borrower as of the date thereof.

(w) To the best knowledge of the Borrower, the development and construction of the Authority Structures is being carried out in compliance in all material respects with all Environmental laws and, to the knowledge of the

Borrower, there are no Environmental Claims with respect to the Authority Structures, except to the extent that noncompliance with such claims could not reasonably be expected to give rise to a Material Adverse Effect. To the Borrower's knowledge (x) there are no Hazardous Substances on the Project, the presence of which Hazardous Substance would cause the Borrower to be in material violation of any applicable laws and (y) it has no current liability on its part, whether contingent or otherwise, arising out of or resulting from the release or discharge on or to the Project of any Hazardous Substance, except to the extent such liability could not reasonably be expected to give rise to a Material Adverse Effect.

(x) All insurance required to be maintained by the Borrower as of the date hereof pursuant to the requirements in Section 5.05(g) of this Agreement and the Trust Agreement has been obtained and is in full force and effect. All premiums due and payable in connection therewith have been paid and such insurance complies in full with the insurance required to be maintained by the Borrower pursuant to Section 5.05(g) of this Agreement and the Trust Agreement.

(y) There are no material disputes under any Transaction Document that could reasonably be expected to have a Material Adverse Effect.

(z) The Official Statement does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make such statements therein, in light of the circumstances under which they were made, not misleading, in each case to the extent such statements and facts (i) relate to the Borrower or the Project or (ii) are otherwise known, following reasonably diligent inquiry, to the Borrower; provided, that (x) this representation does not apply to any information in the Official Statement regarding TxDOT, the United States Department of Transportation or the Transportation Infrastructure Finance Innovation Act of 1998, as amended, and (y) this representation does not apply to any extent to the section thereof entitled "Tax Matters", the traffic and revenue study report, and the engineer's report.

Section 4.02 Representations and Warranties of TxDOT.TxDOT represents and warrants as of the date hereof, the Toll Equity Loan Commitment Establishment Date and as of each advance under the Toll Equity Loan Commitment (except to the extent that any representation and warranty set forth below specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date) as follows:

(a) TxDOT has all requisite power and authority to establish the Toll Equity Loan Commitment, to make advances to the Borrower under the Toll Equity Loan Commitment and to perform any and all of its obligations under the Transaction Documents to which it is a party.

(b) The Transaction Documents to which TxDOT is a party have been duly authorized, executed and delivered by TxDOT, and are legally valid and binding agreements of TxDOT, enforceable in accordance with their terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws or judicial action affecting the enforcement of creditors' rights generally and the application of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

(c) TxDOT has obtained or caused to be obtained all consents, authorizations or approvals of any Government Authority that is required in connection with TxDOT's execution and delivery of this Agreement or the performance of TxDOT's obligations under the Transaction Documents to which it is a party.

(d) There is no litigation at law or in equity or any proceeding before any Governmental Authority involving TxDOT pending, or, to the knowledge of TxDOT, threatened, that could reasonably be expected to materially affect the performance of its obligations under the Transaction Documents to which it is a party.

(e) The officer of TxDOT executing this Agreement and the Transaction Documents to which TxDOT is a party is duly and properly in office and fully authorized to execute the same on behalf of TxDOT.

(f) None of the information in any agreement, document, certificate, exhibit, financial statement or other information furnished by TxDOT, when taken as a whole, contained any untrue statement of material fact or omitted to state a material fact necessary in order to make the statements contained therein not materially misleading.

(g) To the extent such statements and facts relate to TxDOT, the Official Statement does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make such statements therein, in light of the circumstances under which they were made, not misleading.

(h) No "TxDOT Default" under and as defined in the Project Agreement has occurred and is continuing and no event has occurred that would be (with the expiry of any applicable grace period, the giving of notice or the making of any determination under any such loan agreement or any combination of them) a default thereunder.

(i) TxDOT is not aware of any builders' liens or analogous claims for payments which are overdue with respect to work or services to be

performed or materials supplied in connection with the portions of the Project for which TxDOT is responsible for under the terms of the Project Agreement, which claim has not been fully satisfied, and, if registered, duly discharged or vacated, unless there is a bona fide dispute and adequate security as required by law or ruling of a court has been posted.

ARTICLE V.
COVENANTS OF THE BORROWER

Until the Termination Date, subject to Section 5.09 hereof, the Borrower shall comply with the following:

Section 5.01 Operations; Limitation on Use of Funds to Pay for Certain Operation and Maintenance Expenses and Capital Expenditures.

(a) Operation and Maintenance. The Borrower shall maintain and operate the Project in an efficient and economical manner and at all times maintain the same in good repair, working order and in sound operating condition and in accordance with the Project Agreement and in compliance in all material respects with applicable laws and Governmental Approvals and make all necessary repairs, renewals and replacements, in each case, in accordance in all material respects with the Project Agreement and in compliance in all material respects with applicable laws and the terms of the insurance required under Section 5.05(g) hereof.

(b) Limitation on Use of Funds to Pay for Certain Operation and Maintenance Expenses and Capital Expenditures. In no event shall the proceeds of advances under the Toll Equity Loan Commitment be used to pay for Operating Expenses, Major Maintenance Expenses or Capital Expenditures in excess of the Project Budget or to operate and maintain the Project to standards higher than the Project Agreement Standards, and Borrower shall use any other legally available funds for such purposes.

In no event shall Revenues or amounts on deposit in the Trust Agreement Funds be used to pay for Operating Expenses, Major Maintenance Expenses or Capital Expenditures relating to the operation and maintenance of the Project to standards higher than the Project Agreement Standards, and Borrower shall use any other legally available funds for such purposes.

(c) Quarterly Report re Operating Expenses, Maintenance Costs and Capital Expenditures. Not later than 45 days after the end of each fiscal quarter of each Fiscal Year, beginning three months after the Effective Date, the Borrower shall deliver to TxDOT a report showing (i) the operating data for the Project for the previous quarter and for the year to date, including

total Revenues for the Project, total Operating Expenses incurred, total Major Maintenance Expenses incurred and total Capital Expenditures incurred, (ii) the variances of 5% or more for such periods between (1) the actual Revenues and the projected Revenues set forth in the Annual Operating Budget, (2) the actual Revenues and the Maximum Available Annual Amount; and (3) the actual Operating Expenses, Major Maintenance Expenses and Capital Expenditures incurred and the Annual Operating Budget (as defined in the next section) and the Project Budget, together with a brief narrative explanation of the reasons for any such variance, (iii) reports on quarterly traffic and average toll figures, and (iv) if an Event of Default with respect to the Borrower exists, such other operating and traffic information as TxDOT may reasonably request.

(d) Annual Operating Budget.

(i) Not less than 60 and not more than 90 days before the commencement of each Fiscal Year, the Borrower shall submit to TxDOT for its review an operating plan and budget for the Project (collectively, an "Annual Operating Budget"). Each Annual Operating Budget shall specify in reasonable detail all projected Revenues, Operating Expenses, Major Maintenance Expenses and Capital Expenditures and any projected advances under the Toll Equity Loan Commitment for such period on a monthly basis. The Annual Operating Budget shall specify (A) the projected Operating Expenses, Major Maintenance Expenses and Capital Expenditures relating to the operation, maintenance and improvement of the Project as compared to the Project Budget for the Fiscal Year, (B) the projected Operating Expenses, Major Maintenance Expenses and Capital Expenditures relating to the operation, maintenance and improvement of the Project in excess of the Project Budget but to be incurred while performing at the Project Agreement Standards, and (C) the projected Operating Expenses, Major Maintenance Expenses and Capital Expenditures relating to the operation, maintenance and improvement of the Project in excess of the Project Budget and to be incurred while performing in excess of the Project Agreement Standards and the sources of payment for such costs. The Annual Operating Budget shall be accompanied by a certificate of the Chief Financial Officer of the Borrower certifying that the Annual Operating Budget has been prepared in accordance with the requirements of this Agreement and the Project Agreement, including, without limitation, the requirement that no Revenues or other amounts on deposit in the Trust Agreement Funds are projected to be used to pay for Operating Expenses, Major Maintenance Expenses or Capital Expenses relating to the operation, maintenance, or improvement of the Project according to standards higher than the Project Agreement Standards. The Borrower agrees to submit to TxDOT for its review any amendments, supplements or modifications to the Annual Operating Budget accompanied by the same certification of the Chief Financial Officer of Borrower relating to the matters described in such amendment, supplement or modification.

(ii) At any time during the Fiscal Year TxDOT shall have the right to conduct an audit of the Borrower's compliance with the requirements of this Agreement as it relates to the Annual Operating Budget and the certifications of the Chief Financial Officer submitted in connection therewith as described above. If the results of the audit conclude that the Borrower is not in compliance with the requirements of this Agreement relating to the operation, maintenance and improvement of the Project, the auditor will provide to TxDOT and Borrower a detailed explanation of why the Borrower is not in compliance and TxDOT shall have a period of 45 days after receipt of such explanation to notify the Borrower that, in TxDOT's reasonable opinion, the Annual Operating Budget that was the subject of the audit does not substantially comply with the requirements of this Agreement and shall specify in reasonable detail the reasons for such notification; if no such notification in accordance with the foregoing is provided within the time period specified above, then the Annual Operating Budget shall be deemed to substantially comply with the requirements of this Agreement. Any dispute between the parties regarding the substantial compliance of the Annual Operating Budget with this Agreement shall be resolved using the dispute resolution procedures described in Section 8.13 hereof.

(iii) Upon a final determination that the Borrower has failed to comply with the requirements of this Agreement in connection with the expenditure of funds for the operation, maintenance or improvement of the Project, the Borrower shall repay to the Trustee the amount of such expenditures within 60 days of such final determination and shall take all actions required to amend, modify or supplement the current Annual Operating Budget to comply with the results of the dispute resolution process.

(iv) Subject to this Section 5.01(c), the Borrower shall operate the Project substantially in accordance with the Annual Operating Budget. Subject to the limitations set forth in Section 5.01(b) hereof, the Borrower shall have the right to make expenditures in respect of Operating Expenses, as well as Major Maintenance Expenses and other Capital Expenditures, without any consent or approval of TxDOT, if such costs exceed the amount budgeted for such costs in the applicable Annual Operating Budget; provided that, the Borrower will provide notice to TxDOT if such costs exceed the aggregate amount budgeted for such costs in the applicable Annual Operating Budget by an amount equal to or above 105% of such aggregate budgeted amount.

Section 5.02 Reporting and Cooperation.

(a) Accounts and Financial Reporting.

(i) The Borrower shall keep proper books of records and accounts in which complete and correct entries shall be made of

transactions relating to the Project and the Borrower's performance or observance of its obligations under this Agreement in accordance with GAAP or pursuant to applicable federal or state laws or regulations, and with all other applicable federal and state requirements then in effect for entities similar to the Borrower and enterprises similar to the Project.

(ii) TxDOT shall receive copies of any periodic statements regarding Trust Agreement Fund balances and transfers, as well as the investment of any amounts deposited in the Trust Agreement Funds, from the Trustee.

(iii) The Borrower shall employ the Borrower's Accountant to audit its annual financial statements relating to the Project. In the event that the Borrower's Accountant should at any time cease to be its independent public accountant for any reason, the Borrower shall as soon as practicable appoint, and thereafter maintain, as its accountants, a nationally recognized firm reasonably acceptable to TxDOT. Concurrent with such appointment, the Borrower shall authorize such accountants to communicate directly with TxDOT and to respond within a reasonable period of time to queries of TxDOT regarding the Borrower's accounts and operations in connection with the exercise by TxDOT of its rights to review the books, records and papers of the Borrower as set forth in Section 5.02(e) below and to receive and review the audited financial statements of the Project as set forth in Section 5.02(a)(iv)(B) below. The Borrower shall be given notice by TxDOT of any such meetings or telephone communications with such accountants at least 5 Business Days' prior to the date scheduled for such meetings or telephone communications, and Borrower shall have a reasonable opportunity to participate in such meetings or telephone communications and shall be copied on such communications by email when they are in writing.

(iv) The Borrower shall deliver the following financial information to TxDOT:

(A) as soon as available and, in any event, within 45 days after the end of each fiscal quarter of the Borrower, unaudited consolidated financial statements relating to the Project, including an unaudited balance sheet and an unaudited statement of income, all prepared in accordance with GAAP;

(B) as soon as available, and in any event no more than 140 days after the close of each Fiscal Year (1) the audited annual financial statement of the Project prepared in accordance with GAAP and with all other applicable federal and state requirements, and (2) a certificate of the auditors setting forth that they have examined such statements and have conducted a general review of accounting

procedures and such tests of accounting records and other supporting evidence as they consider necessary and confirming that in their opinion such statements present fairly the financial position of the Project and the results of the operations of the Project for the Fiscal Year reported on and have been prepared in accordance with GAAP;

(C) the audited financial statements of the Borrower prepared in accordance with GAAP as soon as available after the end of each fiscal year of the Borrower; and

(D) simultaneously with the delivery of each set of financial statements referred to in sub-clause (B) above, a certificate of an officer of the Borrower confirming that such financial statements fairly present the financial condition of the Project and the results of the operations for the periods covered.

(v) The Borrower shall retain all work papers and reports for a minimum of 4 years from the date of the audit reports referred to in Sections 5.02(a)(iv)(B) and (C) hereof, unless TxDOT notifies the Borrower in writing to extend the retention period. If requested by TxDOT, audit work papers shall be made available to TxDOT to the extent available to the Borrower within 30 days of request, at any time during the retention period. The Borrower shall retain all original Project files, records, accounts and supporting documents until the later of the Termination Date or the date all amounts due and payable under the Toll Equity Loan Note have been repaid, or for the period of time required by applicable federal and state law, if longer, unless relieved of this requirement by TxDOT in writing.

(b) Covenant Re Traffic Engineer.

(i) The Borrower covenants to keep in effect a Toll Rate Schedule that will produce Project Revenues such that the General Fund or the Capital Expenditures Reserve Fund will have an unencumbered fund balance at the end of each Fiscal Year. If (A) the then updated Financial Model indicates that there will not be an unencumbered fund balance in the General Fund or the Capital Expenditures Reserve Fund at the end of each of the next five Fiscal Years, or (B) if the General Fund or the Capital Expenditures Reserve Fund does not have an unencumbered fund balance at the end of any Fiscal Year, the Borrower shall: (a) promptly engage the Traffic Engineers to within 90 days after such event review and analyze the Toll Rate Schedule then in effect and recommend revisions to the Toll Rate Schedule to (1) increase the Project Revenues in a manner that will enable Borrower to realize at the earliest feasible time but in no event later than the end of the Fiscal Year following the Fiscal Year in which the Traffic Engineer was engaged Project Revenues in an amount sufficient so that the updated Financial Model prepared in accordance with

Section 5.02(b)(iii) hereof does not indicate at the end of any of the next five Fiscal Years a reduction in the unencumbered balance in the General Fund or the Capital Expenditures Reserve Fund from the end of the prior Fiscal Year, and (2) increase Project Revenues in a manner that will enable the Borrower to realize an unencumbered balance in the General Fund or the Capital Expenditures Reserve Fund no later than the end of the fifth Fiscal Year following the Fiscal Year in which the Traffic Engineer was engaged, and (b) within 60 days of receipt of the Traffic Engineer's written recommendations either implement the Traffic Engineer's recommendations or undertake an alternative plan which in the reasonable opinion of the Borrower is likely to generate equivalent or greater Project Revenues than the Traffic Engineer's recommended actions; provided that if the Borrower undertakes such an alternative plan and the unencumbered balance in the General Fund or the Capital Expenditures Reserve Fund at the end of the next Fiscal Year is reduced from the unencumbered balance at the end of the Fiscal Year in which the Traffic Engineer was engaged (other than as a result of the expenditure of such funds for Capital Expenditures), TxDOT may institute and prosecute in a court of competent jurisdiction an appropriate action to compel the Borrower to comply with its covenants in this Section 5.02(b)(i).

(ii) The Borrower shall cause the Traffic Engineers to prepare new traffic and revenue reports or report updates for the Project on the same schedule as for similar reports or report updates for the Borrower's currently existing system of turnpike projects (which requirement may be waived by TxDOT at Borrower's request, which waiver will not be unreasonably withheld) but not less frequently than once every two years after the Service Commencement Date and shall promptly provide TxDOT with copies of any other reports or report updates prepared by the Traffic Engineers for the Project and, after acceptance by the Borrower's board of directors, for the Borrower's currently existing system of turnpike projects. Upon receipt of the Traffic Engineers traffic and revenue reports or report updates for the Project, Borrower shall prepare and provide to TxDOT an updated Financial Model incorporating such updated Project Revenue projections and indicating the expected unencumbered General Fund and the Capital Expenditures Reserve Fund balances in each Fiscal Year, and the amount, date and use of any expected advances under the Toll Equity Loan Commitment and the dates of payment of principal of and interest on such advances in any Fiscal Year. On receipt of such updated Financial Model TxDOT may, in its sole discretion, instruct the Borrower to apply for investment grade ratings in accordance with Section 2.06 hereof, and the Borrower shall comply with such instruction.

(iii) In the event the Traffic Engineer is engaged pursuant to Section 5.02(b)(i) hereof, the Borrower shall prepare an updated Financial Model incorporating such updated Project Revenue projections and indicating the expected unencumbered General Fund and the Capital

Expenditures Reserve Fund balances in each Fiscal Year, and the amount, date and use of any expected advances under the Toll Equity Loan Commitment and the dates of payment of principal of and interest on such advances in any Fiscal Year.

(iv) Anything in this Agreement to the contrary notwithstanding, if the Borrower implements the Traffic Engineer's recommended revisions to the Toll Rate Schedule it shall not constitute an Event of Default if the General Fund or the Capital Expenditures Reserve Fund does not have an unencumbered balance at the end of any Fiscal Year.

(c) Consultant Reports; Appointment of Replacement Consultants.

(i) The Borrower shall cause the Consulting Engineer to make an inspection of the Project on or before the 90th day prior to the end of each Fiscal Year and to submit to the Borrower a report setting forth (a) their findings whether the Project has been maintained in good repair, working order and condition, and (b) their advice and recommendations as to the proper maintenance, repair, and operation of the Project during the ensuing Fiscal Year and an estimate of the amount of money necessary for such purposes, including their recommendations as to the total amounts and classifications of items and amounts that should be provided for Operating Expenses and Major Maintenance Expenses in the Annual Operating Budget for the next ensuing Fiscal Year. Copies of such reports shall be filed with the Trustee, the Borrower and TxDOT.

(ii) **The Borrower covenants that, at least once in every six-month period during the construction of any portion of the Project which it finances in whole or in part with Senior Project Debt, it will cause the Consulting Engineers to prepare a progress report in connection with such construction, including their then current estimates of:**

(A) **the date on which the Project or portion thereof will be opened for traffic, unless such Project or portion thereof shall have been opened for traffic prior to the date of such report,**

(B) **the date on which the construction of the Project or portion thereof will be completed,**

(C) **the cost of the Project or portion thereof but excluding any Senior Project Debt discount and the interest during construction and for one year after completion of construction, and**

(D) the amount of funds required each six months during the remaining estimated period of construction to meet the aforesaid cost of such Project or portion thereof exclusive of funds provided for construction contingencies, and accompanied by a progress schedule for such construction, and further including, as to construction, comparisons between the actual times elapsed and the actual costs, and the original estimates of such times and costs. Copies of such progress reports shall be filed with the Trustee, the Borrower and TxDOT.

(iii) The Borrower shall cause the Insurance Consultant to provide, within 60 days prior to the Service Commencement Date, a supplemental insurance report confirming that the insurance to be maintained during the Operating Period complies with the requirements of Section 5.05(g) hereof.

(d) Cooperation with Consultants. The Borrower shall (i) cooperate in all reasonable respects with all consultants retained by TxDOT in connection with the transactions contemplated by the Transaction Documents, (ii) provide each consultant with all information reasonably requested and reasonably required by such consultant in connection with the performance of its obligations under the Transaction Documents, and (iii) consult with TxDOT regarding the reports of each consultant as reasonably requested by TxDOT.

(e) Access to the Project. No more than once in any 6-month period if the Borrower is not in default under this Agreement and more frequently in the sole discretion of TxDOT if an Event of Default or Default with respect to the Borrower has occurred and is continuing, the Borrower shall give TxDOT and its consultants and representatives access to the Project and all books, records and accounts related to the Project, at any reasonable time and as often as may reasonably be requested, and, so long as no Event of Default or Default with respect to the Borrower has occurred and is continuing, upon reasonable prior notice to the Borrower, in each case during official business hours and in a manner that cannot reasonably be expected materially to interfere with or disrupt the performance by the Borrower or any other party of its obligations with respect to the construction and operation of the Project, and permit the Trustee and TxDOT and their consultants and representatives to examine and make abstracts from any of its books, accounts and records relating to the Project and to make copies and memoranda thereof, to discuss the Project and the business, accounts, operations, properties and financial and other conditions of the Borrower as, in any case, related to the Project, including, without limitation, the allocation of the costs of the operation, maintenance and improvement of the Project in relation to the costs of the operation, maintenance and improvement of the Borrower's system, with officers

and employees of the Borrower and with the Borrower's Accountant and to witness the performance and other tests conducted pursuant to any Project Document. The Borrower shall have the right to participate in any discussions with the Borrower's Accountant. The Borrower shall offer all reasonable assistance to such Persons in connection with any such visit. Upon the occurrence and during the continuance of an Event of Default or a Default with respect to the Borrower, if the Trustee or TxDOT requests that any of its consultants or representatives be permitted to make such visit, the reasonable fees and expenses of the Trustee, TxDOT, and their consultants and representatives in connection with such visit shall be paid for by the Borrower. The Borrower shall not be required to give any of TxDOT's consultants or representatives access to the Project or any books, records or accounts related to the Project unless TxDOT provides to the Borrower a confidentiality and non-disclosure agreement in form and substance acceptable to the Borrower that is either: (1) executed by such consultant or representative, or (2) is a requirement of the consultant's engagement agreement with TxDOT that is agreed to by the consultant on behalf of all employees and representatives of the consultant, and TxDOT shall not provide to such consultant or representative any such books, records or accounts until such confidentiality and non-disclosure agreement is executed by such consultant or representative. TxDOT shall ensure that each of its employees is bound to keep all of the books, records and accounts related to the Project confidential and shall enforce any such obligation against the employees. TxDOT shall enforce the provisions of any confidentiality and non-disclosure agreement executed by TxDOT's consultants and representatives in connection with their access to the Project and their inspection of all books and records and other information related to the Project as provided in this Section 5.02(e), and TxDOT and its employees, consultants and representatives shall, except as otherwise permitted under this Section 5.02(e), keep all information obtained through such access and inspection confidential. Nothing contained herein shall preclude TxDOT or one of its employees, consultants or representatives from producing or otherwise disclosing any information obtained through such access and inspection under compulsion of court order or subpoena, as required in connection with a judicial, administrative or regulatory proceeding in which it or a partner, officer, director, employee or affiliate is involved, as required pursuant to inquiry or demand by a regulatory authority having jurisdiction over it or its affiliates or as otherwise required by law, including the Texas Public Information Act, Chapter 552 of the Government Code. TxDOT and/or each consultant or representative shall notify NTTA in the event of receipt of any request, subpoena, court order or other requirement to disclose any part of such information in connection with a legal, regulatory or other proceeding. Any information obtained through such access and inspection shall not be considered confidential if such information: (1) is lawfully in the public domain at the time it is transmitted or later becomes part of the public domain without fault of TxDOT or its employees, consultants or representatives; (2) has been independently developed by TxDOT or its employees, consultants

or representatives without violation of this Section 5.02(e); (3) is independently known to TxDOT or its employees, consultants or representatives at the time of receipt through no unlawful act of TxDOT or its employees, consultants or representatives; (4) is disclosed by TxDOT or its employees, consultants or representatives with the prior written approval of the NTTA; or (5) becomes known to TxDOT or its employees, consultants or representatives from a source other than the NTTA, which source is (A) not subject to any restriction on disclosure or (B) not known by TxDOT or its employees, consultants or representatives to be bound by a confidentiality obligation directly or indirectly to the NTTA or TxDOT or to otherwise be in breach of any legal or contractual obligation not to disclose such information.

(f) Continuing Disclosure Reports and Notices. The Borrower shall give TxDOT copies of all annual financial reports and material events notices submitted by Borrower in connection with its compliance with any continuing disclosure undertaking entered into with respect to the Project Debt as required under Rule 15c2-12 adopted by the Securities and Exchange Commission and in connection with the requirements of the TIFIA Loan Agreement..

(g) Replacement of Consultants. If at any time the Consulting Engineer, the Insurance Consultant or the Traffic Engineer should resign or the Borrower desires to remove any or all of such consultants, Borrower shall give notice to TxDOT 30 days prior to the effective date of such resignation (to the extent known) or removal and as soon as practical and in compliance with applicable laws and Borrower's policies shall appoint a successor consultant that satisfies the eligibility criteria for such consultant as provided in this Agreement and TxDOT shall have the right to approve of the successor consultant, which approval shall not be unreasonably withheld.

(h) Meetings or Other Communication with the TIFIA Lender and Rating Agencies. The Borrower will give TxDOT (i) notice as soon as practical prior to any meeting or telephonic conference with the TIFIA Lender and the rating agencies with whom the Borrower is seeking or has obtained ratings with respect to the Senior Project Debt is scheduled, but, to the extent practical, not less than three business days prior to such meeting or telephonic conference, (ii) copies of any written communication, documents or other materials with the TIFIA Lender or such rating agencies a reasonable amount of time prior to distribution of such written communication, documents or other materials to the TIFIA Lender or such rating agencies, and (iii) to the extent practical, reasonable notice for telephonic communications other than telephonic conferences. For purposes of this subsection, a telephonic conference means any telephonic communication involving more than two persons arranged in

advance. TxDOT at its sole discretion will have the opportunity to participate in any such meetings or telephonic communications and to provide comments during any such meetings or telephonic communications and with respect to any such written communications. If TxDOT is unable to participate or chooses not to participate, Borrower, if requested by TxDOT, will provide a written summary of the matters discussed.

Section 5.03 Trust Agreement Funds.

(a) Establishment and Maintenance.

(i) The Borrower shall not maintain or permit to be maintained any funds or accounts other than the Trust Agreement Funds, including the Project Reserve Funds.

(ii) The Borrower shall fund, maintain, and make use of the Trust Agreement Funds, including the Project Reserve Funds in accordance with the terms and conditions set forth in the Trust Agreement.

(b) Payment of Revenues to the Revenue Fund.

(i) The Borrower at all times shall maintain arrangements satisfactory to TxDOT to ensure that all Revenues (excepting investment earnings on amounts on deposit in the Trust Agreement Funds) are collected and deposited to the Revenue Fund daily, to the extent practicable either directly or indirectly through payment mechanisms reasonably satisfactory to TxDOT.

Section 5.04 Assets and Interests.

(a) Sale or Encumbrance of Interests. The Borrower shall not except as otherwise permitted under clause (b) below, sell or otherwise dispose of all or any part of its interests hereunder or with respect to the Project unless TxDOT determines that such sale or other disposal is not materially adverse to the rights of the parties secured under the Trust Agreement; provided, further, that the Borrower will not enter into any franchise, lease or concession agreement with respect to the Project other than for Permitted Ancillary Projects without TxDOT's consent so long as there are any amounts outstanding under the Toll Equity Loan Note. The Borrower shall not create, incur, assume, permit or suffer to exist any security interest upon or with respect to the Project or the Revenues, other than as permitted under this Agreement or under or pursuant to the Trust Agreement.

(b) Preservation of Assets. The Borrower shall maintain its Project-related property in good condition and from time to time make all repairs

and replacements thereto as required in accordance with normal industry practice. The Borrower shall not convey, sell, assign, transfer, lease or otherwise dispose of, in one transaction or a series of related transactions, any Project-related property or assets in excess of \$5,000,000 (as such amount shall be adjusted annually after the Closing Date in proportion to any increase or decrease in the CPI over the Base Price Index) per year in the aggregate except:

(i) sales, transfers or other dispositions of obsolete, worn out or defective equipment that is promptly replaced by the Borrower with suitable substitute equipment of substantially the same character and quality and at least equivalent useful life and utility except to the extent that the failure to replace such equipment could not reasonably be expected to have a Material Adverse Effect;

(ii) sales, transfers or other dispositions of equipment or other property in the ordinary course of business; and

(iii) sales, transfers or other dispositions of any Permitted Investment.

(c) Builder's Liens. The Borrower shall use commercially reasonable efforts to cause the Design-Build Contractor to comply with all applicable builders' lien legislation and to pay or cause to be paid when due all claims and demands of contractors, subcontractors, laborers, suppliers of material, builders, workmen and others which, if unpaid, might result in the creation of a builders' lien, prior claim, legal pledge or analogous claim against the Project or any part thereof or on the revenue, income or profits arising therefrom, unless there is a bona fide dispute and adequate security has been posted.

Section 5.05 Compliance, Insurance and Other Agreements.

(a) Compliance with Law. The Borrower shall comply with all laws (including, without limitation, Environmental laws) relating to the Project Debt, the Project, the organization and operation of the Borrower and the subject matter of any Finance Document.

(b) Approvals; Governmental Authorizations. At all times, the Borrower shall obtain on a timely basis and thereafter maintain in full force and effect all Governmental Approvals necessary (a) for the use, operation and maintenance of the Project, and (b) to comply with its obligations under the Transaction Documents, except in either case where the failure to obtain or maintain any such Governmental Approval could not reasonably be expected to have a Material Adverse Effect.

(c) Transaction Documents.

(i) The Borrower shall (i) perform and observe in all material respects all of its covenants and its other obligations contained in each Transaction Document to which it is a party and (ii) use reasonable efforts to enforce against any other party thereto each material covenant or obligation of such party in each Transaction Document in accordance with its terms.

(ii) The Borrower shall not terminate, or allow to expire (other than in accordance with its terms), or assign, or amend or modify, or waive timely performance by any other party of material covenants under, any Transaction Document, provided that:

(A) any such termination, amendment, modification or waiver shall be permitted if such termination, amendment, modification or waiver could not reasonably be expected to result in a Material Adverse Effect; and

(B) any such termination, amendment, modification or waiver shall be permitted if it is approved in writing by TxDOT, such approval not to be unreasonably withheld.

(iii) If the Design-Build Contract, or any counterparty to the Design-Build Contract, is replaced, to the extent that there was a Direct Agreement prior to such replacement, the Borrower shall cause a new (or amended and restated, as the case may be) Direct Agreement to be entered into by any third party to such Design-Build Contract, in form and substance reasonably satisfactory to TxDOT.

(iv) If a Bankruptcy Event with respect to the Design-Build Contractor should occur, Borrower shall take any and all actions provided under the Design-Build Contract and available under the proceedings relating to the Bankruptcy Event that are reasonably required to minimize any suspension or delay in the construction of the Authority Structures, including, without limitation, enforcing the Design-Build Contract against the Design-Build Contractor, seeking a replacement design-build contractor that will assume the obligations of the Design-Build Contractor under the Design-Build Contract or entering into a new design-build contract with the consent of TxDOT which consent shall not be unreasonably withheld. Borrower will give TxDOT copies of any notices received or given by Borrower in connection with such Bankruptcy Event, and TxDOT shall have the opportunity to participate in any meetings, proceedings, settlements, or other activities relating to such Bankruptcy Event.

(d) Use of Proceeds and Amounts Remaining in the Construction Fund After Completion of the Authority Structures. The Borrower

shall not cause any proceeds of the Senior Project Debt or any Toll Equity Loan to be expended for any purpose other than pursuant to the Trust Agreement and this Agreement.

Any amounts remaining in the Series 2010 Construction Account and the TIFIA Construction Account of the Construction Fund held by the Trustee under the Trust Agreement after submission to the Trustee by the Borrower of a final completion certificate with regard to construction of the Authority Structures shall remain in such accounts and shall be used to pay for Project Capacity Improvements; provided, if and to the extent such use of such amounts on deposit in the Series 2010 Construction Account is not permitted by applicable federal tax laws or regulations, at the option and direction of the Borrower such amounts shall be used by the Trustee to redeem, defease or purchase and cancel Outstanding Senior Project Debt. Any amounts remaining in the CIF Account of the Construction Fund after submission of said final completion certificate shall be transferred to the Borrower. If the Borrower commits to develop the SWP/CT Project, the Borrower shall provide as the first contribution of equity to develop the SWP/CT Project an amount equal to the difference between \$400 million and the amount of funds actually expended by the Borrower from the CIF Account for the Project or otherwise contributed by Borrower from the Borrower's turnpike system to pay for the cost of the Project; provided, however, if the Borrower has not committed to develop the SWP/CT Trail Project at the time Borrower is required to build the Project Capacity Improvements, Borrower shall deposit an amount of funds from the Borrower's turnpike system equal to such remaining amounts that were transferred to the Borrower from the CIF Construction Account to the Construction Fund to fund the Project Capacity Improvements prior to the issuance of Additional Senior Project Debt for the Project Capacity Improvements as provided in Section 5.06(c) hereof.

(e) Change Orders. The Borrower shall not enter into any Change Order (as defined in the Design-Build Contract) or any Scope Change (as defined in the Design-Build Contract) except in compliance with the applicable requirements of federal law and the Project Agreement. The Borrower shall not enter into any Change Order or any Scope Change and involving (i) a request to extend performance under the Design-Build Contract for a period of more than one month or which when aggregated with other requests would extend performance under the Design-Build contract for a total of three months or (ii) expenditure of more than \$5,000,000 individually or which when aggregated with amounts for all other Change Orders that were initiated or requested by the Borrower and already entered into would mean that in excess of \$20,000,000 would have been spent on such Change Orders, without the prior written consent of TxDOT, which consent shall not be unreasonably withheld. The Borrower shall promptly provide TxDOT with notice of any proposed Change Order or Scope Change and TxDOT shall have a period of

three Business Days to give consent or notify Borrower that it will not consent to the proposed Change Order or Scope Change and consent shall be deemed given if Borrower does not receive notice from TxDOT that it does not consent to the proposed Change Order or Scope Change within such period. Notwithstanding the foregoing, no consent shall be required for any Change Order or associated Scope Change directed by TxDOT under the Project Agreement. Nothing herein shall limit, modify or otherwise affect the requirements of federal law and the Project Oversight Agreement with regard to the review and concurrence of changes, supplements or modifications of the Design-Build Contract.

(f) Tolling System. The Borrower shall ensure that, on or prior to the Service Commencement Date, all electronic tolling system hardware necessary to operate the Project in compliance with the requirements of the Project Agreement will be installed and operational.

(g) Insurance.

(i) The Borrower covenants that it will cause the Insurance Consultant to make an inspection of the Project on or before the 90th day prior to the end of each Fiscal Year and to submit to the Borrower a report setting forth their reasonable advice and recommendations as to the amounts and types of insurance which should be carried during the ensuing Fiscal Year with respect to the Project, which advice and recommendations shall be based on those amounts and types customarily maintained with respect to works and properties of like character. Copies of such report (which may be incorporated in one or more other reports of the Insurance Consultant) shall be filed with the Trustee, the Borrower and TxDOT. Such policies shall: (A) name the Trustee as sole/first loss payee (pending any existing contractual overrides) with an acceptable mortgagee/lenders loss payable clause on all delay in start up and business interruption and property insurance during construction and operations (as applicable), and as a loss payee as its interests may appear on the builders all risk insurance and any other applicable first party policies during construction; and (B) provide that the insurance (1) is primary for the benefit of the Trustee as additional insured on all insurance coverages except for workers compensation and professional indemnity, (2) includes a waiver of subrogation in its favor, and (3) requires that it will be provided with 30 days notice of cancellation (10 days for non-payment of premium).

(ii) The Borrower covenants that it will follow the recommendations of the Insurance Consultant with respect to insurance, and will carry with a qualified and responsible insurance company or companies such insurance with respect to the Project as is then required by law and otherwise as is recommended by the Insurance Consultant, provided that if such insurance ceases to be available on a commercially reasonable basis, the Borrower shall

propose an independent insurance expert reasonably acceptable to TxDOT for purposes of reviewing the available insurance coverages and amounts and recommend modifications or reasonable acceptable substitutions for such requirements.

(iii) Notwithstanding anything else contained herein, the Borrower may, upon the recommendation of the Insurance Consultant and with the consent of TxDOT, establish programs for self insurance against various risks and losses, to the extent and in the manner as may be deemed advisable.

(iv) Within the first three (3) months of each Fiscal Year the Borrower shall mail to the Insurance Consultant, the Trustee and TxDOT a schedule of all insurance policies or self insurance plans referred to herein which are then in effect, stating with respect to each policy the name of the insurer, the amount, number and expiration date, and the hazards and risks covered thereby, and also stating the details of each self insurance program established by the Borrower. All such insurance policies shall be open to the inspection of TxDOT, the Trustee, and their representatives at all reasonable times. The Trustee is hereby authorized, but is not obligated, in its own name to demand, collect, sue and receipt for any insurance money which may become due and payable under any policies payable to it.

(v) Any appraisal or adjustment of any loss or damage under any policy payable to the Trustee and any settlement or payment of indemnity under such policy which may be agreed upon between the Borrower and any insurer shall be evidenced to the Trustee by a certificate, signed by any two Board Representatives, which certificate may be relied upon by the Trustee as conclusive. The Trustee shall in no way be liable or responsible for the collection of insurance money in case of any loss or damage.

(vi) Any insurance required under this Agreement may be included in a blanket insurance policy obtained by the Borrower.

(vii) The Borrower shall not do anything, or permit anything to be done, which would result in any insurance lapsing or otherwise being rendered void, voidable or ineffective and shall not cancel or vary any policy of insurance without the approval of TxDOT (such approval not to be unreasonably withheld).

(h) Further Assurances and Corrective Instruments. The Borrower agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to the Trust Agreement and such further instruments as may reasonably be required for carrying out the expressed intention of the Trust Agreement and this Agreement and as may be necessary or desirable for

assuring, conveying, granting, assigning, securing and confirming the security interests (whether now existing or hereafter arising) granted by or on behalf of the Borrower to the Trustee, pursuant to the Trust Agreement, or intended so to be granted pursuant to the Trust Agreement, or which the Borrower may become bound to grant, and the subject of each such security interest is and will be free and clear of any other security interest thereon or with respect thereto prior to, or of equal rank with the security interests created by the Trust Agreement, other than liens entitled to priority as a matter of Law, this Agreement or the Trust Agreement, and all corporate action on the part of the Borrower to that end shall be duly and validly taken at such times. The Borrower shall, at all times, to the extent permitted by Law, defend, preserve and protect the security interests granted pursuant to the Trust Agreement and all the rights of the Trustee under the Trust Agreement against all claims and demands of all Persons whomsoever.

Section 5.06 Senior Project Debt; Refunding of Senior Project Debt; Additional Debt.

(a) Senior Project Debt. The Borrower shall issue all of the Series 2010 First Tier Bonds and enter into the TIFIA Loan all on the Closing Date and in compliance with the terms and conditions of the Trust Agreement and the TIFIA Loan Agreement, respectively. Series 2010 Project Debt shall only be issued as fixed rate debt. The Borrower shall deposit proceeds of the Series 2010 First Tier Bonds and the TIFIA Loan with the Trustee in an amount sufficient, after taking into account amounts required to be deposited by the Borrower from sources other than Project Debt, to pay for (i) Project Costs as set forth in the Project Budget, including the contingency in an amount set forth in the Project Budget, (ii) the Upfront Payment, and (iii) all amounts required to be deposited in Trust Agreement Funds as provided in Appendix E attached hereto.

(b) Refunding of Senior Project Debt.

(i) All potential refundings of Senior Project Debt with Project Debt will be subject to the approval of TxDOT so long as the Toll Equity Loan Commitment will not be terminated in conjunction with such refunding or any amount due and payable under the Toll Equity Loan Note would be outstanding after the issuance of such refunding obligations.

(ii) A refunding of Senior Project Debt with Project Debt may occur only in order to either (A) achieve debt service savings in each year that the Senior Project Debt is outstanding, or (B) terminate TxDOT's obligation to provide advances under the Toll Equity Loan Commitment or pay off in full any amounts due and payable under the Toll Equity Loan Note.

(iii) Unless expressly approved by TxDOT, no refunding transaction involving Project Debt that extends the final maturity of the Series 2010 First Tier Bonds or the TIFIA Loan beyond their original final Maturity Date shall be permitted so long as the Toll Equity Loan Commitment will not be terminated in conjunction with such refunding or any amount due and payable under the Toll Equity Loan Note would be outstanding after the issuance of the refunding obligations.

(iv) Refunding Bonds may only be issued as fixed rate obligations.

(c) Additional Project Debt. The issuance of Senior Project Debt (other than the Series 2010 Project Debt, the Additional Senior Project Debt as provided in this Section 5.06(c) and Refunding Bonds under the circumstances described in Section 5.06(b) hereof) is not permitted. Additional Senior Project Debt in one or more series bearing interest at a fixed rate and with a final maturity no longer than two years after the final maturity of the Series 2010 Project Debt, but in no event longer than 40 years after the execution of this Agreement, may be issued by the Borrower at one time or from time to time but only to finance the costs relating to the Project Capacity Improvements in principal amounts that will produce net proceeds in an aggregate amount not to exceed \$53,302,298, plus an amount sufficient to pay the costs of issuance of such Additional Senior Project Debt (the "Aggregate Maximum Principal Amount"); provided that prior to the issuance of such Additional Senior Project Debt Borrower shall first use funds on deposit in the Construction Fund, the Capital Expenditures Reserve Fund, and the General Fund, in that order of priority, to pay such costs of the Project Capacity Improvements. If the Borrower issues Additional Senior Project Debt to pay for the Project Capacity Improvements, the Borrower shall not be entitled to obtain advances under the Toll Equity Loan Commitment to also pay for the cost of the Project Capacity Improvements if the principal amount of the Additional Senior Project Debt and the amount of such advance would exceed \$53,302,298.

In addition to the Additional Senior Project Debt, the Borrower may issue Project Debt to finance costs of the Project payable from, or secured by, moneys in the General Fund, provided that any such lien or charge is junior and subordinate in all respects to the lien and charge of the bonds, notes and other obligations secured by the Trust Agreement, including the Senior Project Debt, the Toll Equity Loan and the Borrower's other payment obligations under this Agreement.

Section 5.07 Sources of Funds. Borrower shall be responsible for obtaining funding from sources other than Senior Project Debt or advances under the Toll Equity Loan Commitment in the event Project Costs, Capital Expenditures, the Upfront Payment and Operating Expenses and Major Maintenance Expenses are higher than

the Project Budget. Commencing one year after the Service Commencement Date, Borrower may be reimbursed out of moneys in the General Fund for Operating Expenses, Major Maintenance Expenses and Capital Expenditures made by the Borrower for such purposes from such other sources. Furthermore, in the event the Borrower elects to operate and maintain the Project in accordance with standards higher than the Project Agreement Standards, Borrower shall be responsible for obtaining funding for the increased costs associated with operating and maintaining the Project to such higher level from sources other than Project Debt, advances under the Toll Equity Loan Commitment, Revenues or the Trust Agreement Funds and shall not be reimbursed for the payment of such increased costs from Project Debt, advances under the Toll Equity Loan Commitment, Revenues or the Trust Agreement Funds.

Section 5.08 Miscellaneous.

(a) Payment of Lawful Claims. The Borrower shall, from moneys available therefor in the Trust Estate or other legally available moneys, pay or cause to be discharged, or make adequate provision to satisfy and discharge, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the Trust Estate; provided, however, that nothing in this Section 5.08 shall require the Borrower to pay or cause to be discharged, or make provision for, any such lien or charge the validity of which is being contested in good faith by appropriate legal proceedings.

(b) Board Representatives. Whenever under the provisions of this Agreement or the Trust Agreement the approval of the Borrower is required or the Borrower is required to take some action at another party's request, such approval or such request shall be given for the Borrower by a Board Representative.

(c) Notices. The Borrower shall promptly, and in any event within ten Business Days after such party acquires notice or obtains actual knowledge thereof, give TxDOT notice of any of or, with respect to (vi), (vii), (x) and (xiii) below, copies of, the following, setting forth reasonable details of any event under (i) to (v), (viii), (ix), (xi) or (xii) below (and the Borrower shall concurrently provide to the Consulting Engineer a copy of any such notice or copy, to the extent the applicable event occurs during the period that the Project is under construction):

(i) any Event of Default as defined in the Trust Agreement or any event which, given notice or the passage of time or both, would constitute a "Default" as defined in the Trust Agreement;

(ii) the filing of any actual litigation, suit or action, or the delivery to the Borrower of any written claim against the Revenues or the Project in excess of \$10,000,000 (as such amount shall be adjusted annually after the Closing Date in proportion to any increase or decrease in the CPI over the Base Price Index) and which could reasonably be expected to have a Material Adverse Effect;

(iii) any proposal to suspend or abandon the Project;

(iv) any material default or event of default under any Transaction Document;

(v) the unavailability of any required insurance on commercially available terms;

(vi) any material notices given under the Trust Agreement or the Design-Build Contract by the Borrower or received by the Borrower under the Trust Agreement or the Design-Build Contract from any party thereto;

(vii) copies of construction progress reports as such reports are received from the Design-Build Contractor to the extent such reports are required to be delivered under the Design-Build Contract;

(viii) any (A) written notice to the Borrower indicating that any material Governmental Approval with respect to the Project will not be granted or renewed, or will not be granted or renewed in time to allow continued operation of the Project in compliance with all material laws, or will be granted or renewed on terms materially more burdensome than proposed, or will be terminated, revoked or suspended and (B) casualty, damage or loss to the Project, whether or not insured, through fire, theft, other hazard or casualty insurance in excess of \$5,000,000 (as such amount shall be adjusted annually after the Closing Date in proportion to any increase or decrease in the CPI over the Base Price Index) for any one casualty or loss or in the aggregate in any Fiscal Year;

(ix) any cancellation, notice of threatened or potential cancellation or material change in the terms, coverage or amounts of any insurance required to be maintained under Section 5.05(g) hereof or any claim under any insurance policy;

(x) any written notice of the occurrence of any event giving rise (or that could reasonably be expected to give rise) to a material claim under any insurance required to be maintained under Section 5.05(g) hereof, with copies of any material documents relating thereto (including copies of any such claim) in the possession or control of the Borrower;

(xi) any notice of any event of default or termination or cancellation given or received under any Project Document, or any request for any material amendment of, supplement to or other modification of any Project Document, or any event, circumstance or occurrence which might lead the Borrower or any other party thereto to terminate any Project Document;

(xii) any event of force majeure (howsoever described) under the Design-Build Contract or any other event entitling the Design-Build Contractor to suspend performance of any obligation thereunder; or

(xiii) any notice of occurrence of Substantial Completion and certificate of Final Acceptance (as such terms are defined in the Design-Build Contract) delivered by the Borrower pursuant to the Design-Build Contract.

(d) Calculation of CPI Changes. Annually, within 30 days after each September 1, commencing September 1, 2010, the Borrower shall calculate the increase or decrease in the CPI over the Base Price Index as of such September 1, and shall notify TxDOT of the amount of such increase or decrease. Such calculation shall be binding absent manifest error.

Section 5.09 Covenants to Remain In Effect. If at the final maturity date of the Toll Equity Loan Note, amounts due thereunder remain unpaid, the provisions of this Article V, as applicable, shall remain in effect until such time as all amounts owing have been paid.

ARTICLE VI. EVENTS OF DEFAULT BY THE BORROWER

Section 6.01 Events of Default. The occurrence of any of the following events shall be an "Event of Default" hereunder:

(a) Failure by the Borrower to pay, from funds available therefor under the Trust Agreement, when due any amount payable under the Toll Equity Loan Note.

(b) Failure by the Borrower to make (i) any payment, to the extent funds are available under the Trust Agreement, to TxDOT or as otherwise required to be paid from funds available under the Trust Agreement or any other legally available source of funds of the Borrower as required under this Agreement, including, without limitation, repayment upon demand of TxDOT of the amount of any Revenues that were improperly used to pay Operating Expenses, Major Maintenance Expenses or Capital Expenditures in violation of this Agreement, except as set forth in Section 6.01(a) hereof, within ten Business Days from the date on which it was due, or (ii) any payment required to be paid under any Senior Project Debt of the Borrower; provided, however,

that any failure pursuant to this clause (ii) shall not constitute an Event of Default if the failure to make such payment results from a failure by TxDOT to advance funds in accordance with the provisions of this Agreement.

(c) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement or under any Senior Project Debt, other than as referred to in Section 6.01(a), (b) or (m) hereof, for a period of 60 days after the earlier of (i) the Borrower acquiring actual knowledge of such occurrence or (ii) notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by TxDOT, unless TxDOT shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice is capable of cure but cannot reasonably be cured within the applicable period, the Borrower shall be entitled to a further extension of time reasonably necessary to remedy such failure so long as corrective action is instituted by the Borrower within the applicable period and is diligently pursued until such failure is corrected.

(d) Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to this Agreement or any other Finance Documents shall prove to have been false or misleading in any material respect when made and, if such misrepresentation is capable of being cured, such misrepresentation has not been cured within 60 days after the earlier of (i) the Borrower acquires actual knowledge of such failure and (ii) the Borrower's receipt of notice from TxDOT of such failure.

(e) the Borrower shall fail to perform or observe any material covenant, agreement or obligation under any Project Document (unless such failure could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such failure or to obtain an effective written waiver thereof within the earlier of (A) 60 days after receipt of notice thereof from TxDOT and (B) the expiry of any applicable grace period relating to such covenant, agreement or obligation, provided, however, that with respect to this subsection (e), if such cure or waiver cannot reasonably be obtained within the applicable period, the Borrower shall be entitled to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until such failure is corrected.

(f) One or more judgments for the payment of money in an aggregate amount in excess of \$10,000,000 (as such amount shall be adjusted annually after the Closing Date in proportion to any increase or decrease in the CPI over the Base Price Index) shall be rendered against (i) the Revenues or the Project and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon the

Revenues or the Project to enforce any such judgment or is not adequately covered by insurance or a performance bond for a period of 30 days, or (ii) the Borrower and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, to the extent that it is reasonably likely to have a Material Adverse Effect or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment or is not adequately covered by insurance or a performance bond for a period of 30 days, to the extent that it is reasonably likely to have a Material Adverse Effect.

(g) A Bankruptcy Event occurs with respect to the Borrower.

(h) The Project Agreement shall expire or be terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall cease to be in full force and effect.

(i) The Borrower fails to obtain, renew, maintain or comply with all material Governmental Approvals, as and when required by it, in connection with the Project or the entering into of any Finance Document or any Project Document, and such failure could reasonably be expected to have a Material Adverse Effect; unless such failure is remedied within 60 days after TxDOT giving notice thereof to the Borrower, or such longer period as TxDOT may allow, not to exceed 180 days.

(j) The Trust Agreement ceases, except in accordance with its terms, to be effective to grant a perfected security interest on the collateral described therein (other than on an immaterial portion thereof), other than as a result of actions or failure to act by the Trustee.

(k) The Borrower fails to operate and maintain the Project in accordance with the Project Agreement and such failure could reasonably be expected to have a Material Adverse Effect; unless such failure is remedied within 30 days after TxDOT giving notice thereof to the Borrower, provided, however, that if said default is such that it cannot by its nature with due diligence be cured within the said 30-day period but can be cured, it shall not constitute an Event of Default if curative action is commenced by the Borrower within said 30-day period and diligently pursued until the default is cured.

(l) Substantial Completion has not occurred by the date that occurs twelve months after the Guaranteed Substantial Completion Date.

(m) Any insurance required under Section 5.05(g) hereof is not, or ceases to be, in full force and effect at any time when it is required to be in effect, or any such insurance is avoided or any insurer avoids, suspends or

otherwise reduces its liability under any policy relating to any such insurance or any insurer of any insurance is not bound, or ceases to be bound, to meet its obligations in full under any such insurance, and any such event could reasonably be expected to have a Material Adverse Effect, unless (i) such insurance is (prior to its cessation) replaced by insurance on substantially similar terms and in form and substance, and with insurers recommended by the Insurance Consultant, or (ii) the risks covered by such insurance are uninsurable or such insurance is determined to be not commercially available in the insurance market, and the Borrower has agreed to the means by which the risk should be managed as recommended by the Insurance Consultant.

(n) Prior to Substantial Completion, the construction of the Authority Structures is abandoned; provided that, for the purposes of this Section 6.01(n), abandonment of the construction of the Authority Structures is deemed to have occurred if no significant construction (taking into account the construction schedule and permitted delay as a result of force majeure) is carried out without reasonable cause, for a continuous period of 90 days.

(o) The operation or maintenance of the Project or any material part thereof is suspended or abandoned; provided that, for the purposes of this Section 6.01(o), suspension or abandonment of the Project is deemed to have occurred, after the Service Commencement Date, if the Borrower fails, without reasonable cause, to operate the Project (taking into account force majeure) for a continuous period of 90 days.

(p) The occurrence of an "Event of Default" under and as defined in the Trust Agreement occurs.

The provisions of this Section 6.01 are subject to the following limitation: if by reason of force majeure the Borrower is unable in whole or in part to carry out any of its agreements contained herein (other than its payment obligations contained herein), the Borrower shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein means, without limitation, the following which occur within the proximity of the Project: acts of God; strikes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State of Texas or, with the exception of the Borrower, of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; and any other cause or event not reasonably within the control of the Borrower. The Borrower agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement, provided that the settlement of strikes and other industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to settle strikes, lockouts and

other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

Section 6.02 Remedies upon an Event of Default.

(a) Upon or after the occurrence of an Event of Default under Section 6.01 hereof, TxDOT may, without prior notice unless otherwise specified in this Section 6.02, demand or presentment, and to the extent permitted by applicable law, do any or all of the following:

(i) have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income and other records of the Borrower relating to the Project, including, without limitation, any such accounts, data and income and other records concerning the costs of operating and maintaining the Borrower's system which are allocated to the operation and maintenance of the Project or payable from Revenues or other amounts held in the Trust Agreement Funds, during regular working hours of the Borrower if reasonably necessary in the opinion of TxDOT;

(ii) by suit, action or proceeding in equity, enjoin any acts or things which are unlawful or the violation of any rights of TxDOT and the Trustee;

(iii) seek an action in mandamus against the Borrower and/or seek the appointment of a receiver;

(iv) Upon the occurrence and continuance of an Event of Default under Section 6.01(k) hereof for a period of 60 days or (o), upon notice to Borrower but without waiving or releasing Borrower from any obligations, TxDOT shall have the right but not the obligation to step-in and undertake the operation and maintenance of the Project using any and all reasonable means necessary to operate and maintain the Project substantially in accordance with the requirements of the Project Agreement and to pay or direct the Trustee or other depository as applicable to pay or reimburse TxDOT for the costs thereof out of funds and accounts in the Operating Fund, Major Maintenance Fund, Capital Expenditure Fund and General Fund, in that order of priority, and should such costs amount to more than the total available in such funds at the time of the request for payment, then TxDOT shall have the right (but not the obligation) to pay such additional costs by expenditure of TxDOT's funds for which it shall be entitled to reimbursement from any future deposits to the funds described in this Section 6.02(a)(iv) provided such reimbursements shall be made first from the General Fund; provided further that, in the event TxDOT exercises its right to step-in and undertake the operation and maintenance of the Project as provided in this Section 6.02(a)(iv), the Borrower shall have the right to resume the

operation and maintenance of the Project in compliance with the requirements of this Agreement and the Project Agreement and TxDOT shall cease operating and maintaining the Project but only following the submittal to TxDOT in writing of a remedial plan that (A) demonstrates to TxDOT's reasonable satisfaction that the Borrower is ready, willing and able and has the technical and financial means to so operate and maintain the Project, and (B) sets forth the specific steps Borrower intends to take as well as the schedule to resume operation and maintenance of the Project in compliance with the requirements of this Agreement and the Project Agreement;

(v) Upon the occurrence of an Event of Default under Section 6.01(l) or (n) hereof, TxDOT shall have the right, but not the obligation, upon notice to Borrower but without waiving or releasing Borrower from any obligations, for so long as Substantial Completion has not occurred, regardless of whether the Borrower is continuing or resumes construction work with respect to the Authority Structures, to step-in and undertake completion of the Authority Structures using any and all reasonable means necessary to achieve Substantial Completion substantially in accordance with the plans and specifications for the Authority Structures approved under the Project Agreement and to pay or direct the Trustee to pay or reimburse TxDOT for the costs thereof out of funds in the Construction Fund, the General Fund or the Capital Expenditure Fund, in that order of priority, and should such costs amount to more than the total available in such funds at the time of the request for payment, then TxDOT shall have the right (but not the obligation) to pay such additional costs by expenditure of TxDOT's funds for which it shall be entitled to reimbursement from any future deposits to the General Fund or the Capital Expenditure Fund; and

(vi) exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Finance Documents or any other document or at law or in equity.

Section 6.03 Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement or the other Finance Documents by TxDOT shall in any event be effective unless the same shall be in writing and signed by TxDOT, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 6.04 No Waiver; Remedies Cumulative. No failure on the part of TxDOT to exercise, and no delay in exercising, any right hereunder or under the other Finance Documents shall operate as a waiver thereof; and no single or partial exercise by TxDOT of any right hereunder or under the other Finance Documents shall preclude any other or further exercise thereof or the exercise of any other right. To the extent permitted by applicable law, the remedies herein and in the other Finance Documents provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 6.05 No Set-Off. Neither party shall set off or apply any balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held against indebtedness at any time owing by the other party.

ARTICLE VII.
COVENANTS AND EVENTS OF DEFAULT BY TXDOT

Section 7.01 Legal Opinions. On or before the Closing Date, TxDOT shall deliver to the Borrower a legal opinion from TxDOT's counsel in form and substance reasonably satisfactory to the initial purchasers under the Bond Purchase Contract.

Section 7.02 Advance Funds. Upon the delivery of a Trustee Request, TxDOT shall, from money appropriated by the Texas State Legislature in a manner that would allow its use for this purpose, advance the funds specified in the Trustee Request within three Business Days of the delivery of such request; provided, however, that no such advance shall exceed the Maximum Permitted Amount, or cause the aggregate amount of the advances made for such Draw Period to exceed the Maximum Available Annual Amount, or cause the aggregate amount of all advances to exceed the Maximum Available Aggregate Amount. TxDOT covenants that it will submit a request in accordance with applicable law to obtain an appropriation from the Texas Legislature to fulfill its obligation to make advances under the Toll Equity Loan Commitment as provided in this Agreement, but not to exceed the Maximum Available Annual Amount for the Draw Periods included in the legislative request.

Section 7.03 Continuing Disclosure. Prior to or concurrently with the issuance of the Series 2010 First Tier Bonds, any Refunding Bonds and any Additional Senior Project Debt, TxDOT shall execute a continuing disclosure undertaking in a form reasonably acceptable to TxDOT, Borrower and the purchasers of such debt in order to enable Borrower to comply with its continuing disclosure undertaking relating to such debt as required under Rule 15c2-12 of the Securities Exchange Commission.

Section 7.04 Builder's Liens. TxDOT shall use commercially reasonable efforts to cause all contractors to comply with all applicable builders' lien legislation and to pay or cause to be paid when due all claims and demands of contractors, subcontractors, laborers, suppliers of material, builders, workmen and others which, if unpaid, might result in the creation of a builders' lien, prior claim, legal pledge or analogous claim against the Project or any part thereof or on the revenue, income or profits arising therefrom, unless there is a bona fide dispute and adequate security has been posted.

Section 7.05 Remedies Upon An Event of Default by TxDOT. Upon TxDOT's failure (i) to honor a request by the Trustee for an advance under the Toll Equity Loan Commitment which complies with all the requirements of this Agreement if funds have

been appropriated to TxDOT by the Texas State Legislature in a manner that would allow its use for such purpose, (ii) to satisfy its obligations under the continuing disclosure undertaking described in Section 7.03 hereof, or (iii) to observe and perform its covenant in Section 7.04 hereof (each of (i), (ii) and (iii) constituting an "Event of Default" with respect to TxDOT), Borrower may, without prior notice, demand or presentment, and to the extent permitted by applicable law, do any or all of the following:

(a) by suit, action or proceeding in equity, enjoin any acts or things which are unlawful or the violation of any rights of Borrower and the Trustee;

(b) seek an action in mandamus against TxDOT.

Section 7.06 Failure to Fund Advances Due to Non-Appropriation. Failure to honor a request by the Trustee for an advance under the Toll Equity Loan Commitment due solely to the fact that funds have not been appropriated to TxDOT by the Texas State Legislature in a manner that would allow its use for such purpose shall not constitute an Event of Default with respect to TxDOT under this Agreement.

(b) In the event that TxDOT has failed to honor a request by the Trustee for an advance under the Toll Equity Loan Commitment due solely to the fact that funds had not been appropriated to TxDOT by the Texas State Legislature in a manner that would allow its use for such purpose, TxDOT shall have no obligation to fund such request on any date subsequent to such failure.

Section 7.07 Obligations Not a Debt of TxDOT. The obligations of TxDOT under this Agreement do not create a debt of TxDOT, the Commission, the State of Texas, or any other agency or political subdivision of the State of Texas under any provision of the Texas State Constitution.

With a copy to:

Texas Department of Transportation
Dallas District Office
4777 East Highway 80
Mesquite, Texas 75150
Attention: District Engineer
Fax: 214-320-6117
Email: whale@dot.state.tx.us

Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483
Attn: General Counsel
Fax: 512-475-3070
Email: bjackson@dot.state.tx.us

The Borrower, the Trustee or TxDOT may change the address to which notices to it are to be sent by notice given to the other persons listed in this Section 8.01.

All notices shall, when mailed or given by private delivery service, be effective on the date indicated on the return or delivery receipt, respectively, and all notices given by email or facsimile shall be effective when received if confirmation of receipt, by email or facsimile, is received by the sender the same business day. If confirmation of receipt of email or facsimile notices is not received the same business day, the notices shall be effective when confirmation is received, or on the date indicated on the return or delivery receipt if the facsimile or email notices have been confirmed by mailing or private delivery service, whichever is earlier. Whenever in this Agreement the giving of notice is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 8.02 Borrower Indemnification. TO THE EXTENT PERMITTED BY LAW, THE BORROWER HEREBY INDEMNIFIES AND HOLDS TXDOT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND ADVISORS OF ANY OF THE FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN "INDEMNITEE") AGAINST, AND HOLD EACH INDEMNITEE HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES (INCLUDING REASONABLE FEES, CHARGES AND DISBURSEMENTS OF COUNSEL OF THE INDEMNITEE'S CHOICE) WHICH SUCH INDEMNITEE MAY INCUR OR WHICH MAY BE CLAIMED AGAINST SUCH INDEMNITEE BY ANY PERSON OR ENTITY:

(a) BY REASON OF ANY INACCURACY OR ALLEGED INACCURACY IN ANY MATERIAL RESPECT, OR ANY UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT OF ANY MATERIAL FACT,

CONTAINED IN THE OFFICIAL STATEMENT OR ANY AMENDMENT OR SUPPLEMENT THERETO, OR IN ANY FUTURE OFFERING DOCUMENT OR ANY AMENDMENT OR SUPPLEMENT THERETO, OR BY REASON OF THE OMISSION OR ALLEGED OMISSION TO STATE THEREIN A MATERIAL FACT NECESSARY TO MAKE SUCH STATEMENTS, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING, IN EACH CASE TO THE EXTENT SUCH STATEMENTS AND FACTS (I) RELATE TO THE BORROWER OR THE PROJECT OR (II) ARE OTHERWISE KNOWN, FOLLOWING REASONABLY DILIGENT INQUIRY, TO THE BORROWER; PROVIDED THAT, (X) TO THE EXTENT ANY STATEMENTS OR FACTS DO NOT RELATE TO THE BORROWER, OR THE PROJECT, THIS REPRESENTATION DOES NOT APPLY TO ANY SECTIONS OF THE OFFICIAL STATEMENT OR ANY FUTURE OFFERING DOCUMENT REGARDING TXDOT, THE UNITED STATES DEPARTMENT OF TRANSPORTATION OR THE TRANSPORTATION INFRASTRUCTURE FINANCE INNOVATION ACT OF 1998, AS AMENDED, AND (Y) THIS INDEMNITY DOES NOT APPLY TO ANY EXTENT TO THE SECTION THEREOF ENTITLED "TAX MATTERS" OR ANY PROVISIONS OF THE OFFICIAL STATEMENT OR FUTURE OFFERING DOCUMENT REGARDING RISKS ASSOCIATED WITH THE TRAFFIC AND REVENUE STUDY REPORT; OR

(b) BY REASON OF OR IN CONNECTION WITH THE EXECUTION, DELIVERY OR PERFORMANCE OF ANY FINANCE DOCUMENT OR ANY AGREEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED THEREBY; OR

(c) BY REASON OF ANY BREACH BY THE BORROWER OF ANY REPRESENTATION, WARRANTY, COVENANT, TERM OR CONDITION IN, OR THE OCCURRENCE OF AN EVENT OF DEFAULT UNDER, THIS AGREEMENT, INCLUDING ALL REASONABLE FEES AND EXPENSES RESULTING FROM THE SETTLEMENT OR DEFENSE OF ANY CLAIMS OR LIABILITIES ARISING AS A RESULT OF ANY SUCH BREACH OR DEFAULT; OR

(d) BY REASON OF ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS SUBSTANCE ON OR FROM THE PROJECT, OR ANY LIABILITY IN RESPECT OF ANY ENVIRONMENTAL CLAIM RELATED TO THE PROJECT; OR

(e) BY REASON OF ANY ACTUAL CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO.

PROVIDED; THAT THE INDEMNITIES IN THIS SECTION 8.02 SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE.

NOTHING IN THIS SECTION 8.02 IS INTENDED TO LIMIT THE BORROWER'S OBLIGATIONS CONTAINED IN ARTICLE II HEREOF. WITHOUT PREJUDICE TO THE SURVIVAL OF ANY OTHER OBLIGATION OF THE BORROWER HEREUNDER, THE INDEMNITIES AND OBLIGATIONS OF THE BORROWER CONTAINED IN THIS SECTION 8.02 SHALL SURVIVE THE PAYMENT IN FULL OF AMOUNTS PAYABLE PURSUANT TO ARTICLE II HEREOF AND THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT. SUBJECT TO SECTION 8.14 HEREOF, ALL SUMS DUE TO ANY INDEMNITEE HEREUNDER SHALL BE AN OBLIGATION OF THE BORROWER, DUE AND PAYABLE IMMEDIATELY WITHOUT DEMAND.

Section 8.03 TxDOT Indemnification. TO THE EXTENT PERMITTED BY LAW, TXDOT HEREBY INDEMNIFIES AND HOLDS THE BORROWER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND ADVISORS OR ANY OF THE FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN "INDEMNITEE") AGAINST, AND HOLDS EACH INDEMNITEE HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES (INCLUDING REASONABLE FEES, CHARGES AND DISBURSEMENTS OF COUNSEL OF THE INDEMNITEE'S CHOICE) WHICH SUCH INDEMNITEE MAY INCUR OR WHICH MAY BE CLAIMED AGAINST SUCH INDEMNITEE BY ANY PERSON OR ENTITY BY REASON OF ANY INACCURACY OR ALLEGED UNTRUE STATEMENT OF ANY MATERIAL FACT RELATING TO TXDOT OR THE TOLL EQUITY LOAN PROVIDED OR APPROVED BY TXDOT IN WRITING AND CONTAINED IN THE OFFICIAL STATEMENT OR ANY AMENDMENT OR SUPPLEMENT THERETO, OR IN ANY FUTURE OFFERING DOCUMENT OR ANY AMENDMENT OR SUPPLEMENT THERETO OR BY REASON OF THE OMISSION OR ALLEGED OMISSION TO STATE THEREIN A MATERIAL FACT NECESSARY TO MAKE SUCH STATEMENTS, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING; PROVIDED THAT THE INDEMNITIES IN THIS SECTION 8.03 SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE OR EMPLOYEE OR AGENT OF THE INDEMNITEE OR THE INITIAL PURCHASERS OF THE SENIOR PROJECT DEBT. WITHOUT PREJUDICE TO THE SURVIVAL OF ANY OTHER OBLIGATION OF TXDOT HEREUNDER, THE INDEMNITIES AND OBLIGATIONS OF TXDOT CONTAINED IN THIS SECTION 8.03 SHALL SURVIVE THE EXPIRATION OR

EARLIER TERMINATION OF THE AGREEMENT. ALL SUMS DUE TO ANY INDEMNITEE HEREUNDER SHALL BE AN OBLIGATION OF TXDOT, DUE AND PAYABLE IMMEDIATELY WITHOUT DEMAND, BUT SHALL BE PAYABLE SOLELY FROM MONEY APPROPRIATED BY THE TEXAS STATE LEGISLATURE IN A MANNER THAT WOULD ALLOW ITS USE FOR THIS PURPOSE.

Section 8.04 Binding Effect; Successors and Assigns. This Agreement shall become effective when it shall have been executed by the Borrower and TxDOT and thereafter shall be binding upon and inure to the benefit of the Borrower and TxDOT and their respective successors and assigns. The Borrower shall not have the right to assign its rights hereunder or any interest herein other than to the Trustee, without the prior written consent of TxDOT. TxDOT shall not have the right to assign its rights or obligations hereunder or any interest herein without the prior written consent of the Borrower and confirmation from each rating agency then rating the Senior Project Debt that any such assignment will not negatively affect the then current ratings on the Senior Project Debt.

Section 8.05 Survival of Representations, Warranties and Covenants. All representations, warranties and covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the delivery of this Agreement and any advances under the Toll Equity Loan Commitment.

Section 8.06 Counterparts. The execution and delivery hereof by the parties hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement.

Section 8.07 Costs and Expenses.

(a) The Borrower agrees to pay on demand all reasonable, documented out-of-pocket costs and expenses of TxDOT in connection with the enforcement of this Agreement, the other Finance Documents and such other documents; and

(b) Without prejudice to the survival of any other obligation of the Borrower hereunder, the indemnities and obligations of the Borrower contained in this Section 8.07 shall survive the payment in full of amounts payable pursuant to Article II hereof and the expiration or earlier termination of this Agreement. Subject to Section 8.14 hereof, all sums due hereunder shall be an obligation of the Borrower, due and payable immediately without demand.

Section 8.08 Amendments.

(a) No amendment to or waiver of any provision of this Agreement, nor consent to any departure by the Borrower therefrom, shall be

effective unless the same shall be in writing and signed by TxDOT and the Borrower.

(b) No amendment to or waiver of any defined term in any other Transaction Document which is incorporated by reference herein shall be effective in the context of this Agreement unless the same shall have been consented to in advance by TxDOT.

(c) The parties may amend and supplement this Agreement to increase the amount of the Toll Equity Loan Commitment to include Eligible Costs associated with the SWP/CT Project. Such increase shall only be as a result of adding the SWP/CT Project, in accordance with the approval of the Texas Transportation Commission and as provided in this Agreement and in a Supplement to Toll Equity Loan Agreement in a form and with such terms and provisions as agreed to by the parties.

Section 8.09 No Waiver. No failure on the part of TxDOT to exercise, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right or power hereunder preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of TxDOT hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall have been provided in accordance with Section 8.08 hereof, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

Section 8.10 Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable law to be contracted for, charged or received, and if any payments by the Borrower to TxDOT include interest in excess of such a maximum amount, TxDOT shall apply such excess to the reduction of the unpaid principal amount or other sums due from the Borrower pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable law, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to

such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by law, any non- principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable law, to be an expense, fee, premium or penalty rather than interest.

Section 8.11 Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the Trust Agreement, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable law; provided that if such terms relate to the terms or amount of payment of principal of or interest on the Senior Project Debt or the pledge of Revenues or other security provided to the holders of the Senior Project Debt, the terms of the Trust Agreement shall control .

Section 8.12 Governing Law; Jurisdiction; Waivers. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY OR THE PERFORMANCE OF ANY OF THE PARTIES HEREUNDER, THE BORROWER AND TXDOT HEREBY IRREVOCABLY (A) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN TEXAS; (B) AGREE THAT ALL CLAIMS WITH RESPECT TO SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE OR FEDERAL COURT; (C) WAIVE THE DEFENSE OF ANY INCONVENIENT FORUM; (D) AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANOTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW; AND (E) CONSENT TO SERVICE OF PROCESS BY MAILING OR DELIVERING A COPY OF SUCH PROCESS TO THE BORROWER OR TXDOT, AS APPLICABLE, AT ITS ADDRESS SET FORTH HEREIN AND AGREE THAT SUCH SERVICE SHALL BE EFFECTIVE WHEN SENT OR DELIVERED. THE BORROWER AND TXDOT EACH REPRESENTS AND WARRANTS THAT IT HAS CONSULTED WITH COUNSEL AND UNDERSTANDS THE RAMIFICATIONS OF THE FOREGOING.

Section 8.13 Dispute Resolution Procedures. The Borrower and TxDOT will set up a formalized process to resolve the issues under this Agreement that the parties have designated to be subject to the provisions of this Section 8.13. The process will include an issues resolution ladder to resolve questions at the appropriate organizational levels. Any questions that cannot be resolved by use of the issues resolution ladder will be referred to the Borrower's Executive Director or his/her

designee and TxDOT's Executive Director or his/her designee to resolve. If a dispute is processed under the issues resolution ladder and not resolved, the parties agree to use the procedures in the next following sentences: The party making a claim may advance it in accordance with the statutes and administrative rules applicable on the effective date of this Agreement, including all statutory provisions that effect a waiver, in whole or part, of sovereign immunity to suit for the purpose of adjudicating a claim for a breach under the Agreement, including Tex. Loc. Gov't. Code Chapter 271, Subchapter I, to the extent applicable. The parties agree to use any alternative dispute resolution procedure that is a part of the applicable claim procedure. The parties shall satisfy the requirement for alternative dispute resolution by participating in non-binding arbitration, unless otherwise agreed to by the parties. During the resolution of an issue the Borrower and TxDOT will not hinder work under this Agreement and such work will proceed.

Section 8.14 Limited Obligation; No Personal Liability. The obligations and liabilities of the Borrower under the Toll Equity Loan, the Toll Equity Note and this Agreement (except with respect to the Borrower's obligation to pay Operating Expenses, Major Maintenance Expenses and Capital Expenditures in any given Draw Period in excess of the amounts of such expenses and expenditures as set forth in the Project Budget for such Draw Period or to the extent such expenses and expenditures relate to operation and maintenance of the Project at standards higher than the Project Agreement Standards) shall be non recourse to the Borrower (except with respect to the Borrower's obligation to pay certain amounts in connection with the construction, operation, and maintenance of the Project in excess of the Project Budget where there are insufficient Revenues and other amounts held under the Trust Agreement available therefor). Subject to the provisions of the following sentence, in no event shall any officer, agent, employee, or director in the Borrower (a "Non-Recourse Party") be personally liable or obligated for such liabilities and obligations of the Borrower or be subject to any personal liability or accountability by reason of the execution and delivery hereof. Nothing herein contained shall limit or be construed to (i) release any Non-Recourse Party from liability for its fraudulent actions, bad faith or misappropriation of funds or willful misconduct, (ii) limit or impair the exercise of remedies with respect to any collateral, or (ii) require TxDOT to indemnify the Non-Recourse Parties for liabilities or claims that may be independently asserted by third parties against them.

Section 8.15 Offering Documents for Additional Debt. The Borrower and TxDOT agree to work cooperatively in the preparation and distribution of any Future Offering Document which shall be in a form reasonably satisfactory to TxDOT. The Borrower and TxDOT shall be deemed to make, as of the date of the issuance of any Additional Senior Project Debt or Refunding Bonds, the same representations and warranties with respect to any such Future Offering Document as the parties have made hereunder with respect to the Official Statement.

(Remainder of page intentionally left blank)

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

NORTH TEXAS TOLLWAY AUTHORITY

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Allen Clemson
Executive Director

By: _____
Amadeo Saenz, Jr., P.E.,
Executive Director

Date: _____

Date: _____

ATTEST:

Ruby Franklin,
Secretary

APPROVED AS TO FORM:

LOCKE LORD BISSELL & LIDDELL LLP
Outside General Counsel to the Borrower

By: _____
Kevin L. Twining

EXHIBIT 1

SCENARIO 1C SOUTHWEST PARKWAY/CHISHOLM TRAIL PROJECT DESCRIPTION

The Scenario 1C Southwest Parkway/Chisholm Trail Project begins on the SH 121 at IH 30 in the Fort Worth Central Business District and extends south on the SH 121 to US 67 in Cleburne, Texas. The Southwest Parkway portion of the Scenario 1C Southwest Parkway/Chisholm Trail Project extends SH 121 from IH 30 to FM 1187 west of Crowley, Texas, and the Chisholm Trail portion of the Scenario 1C Southwest Parkway/Chisholm Trail Project extends SH 121 from FM 1187 to US 67.

The Southwest Parkway is divided into 5 segments as defined below:

Segment 1 - IH 30/Summit to Rogers Road: 6-lane tollway with connectivity to IH 30;

Segment 2 - Rogers Road to South of Arborlawn Drive: 6-lane tollway;

Segment 2B - At Hulen Street Bridge over the UPRR Davidson Yard: 6-lane tollway;

Segment 3A - Arborlawn to Overton Ridge Blvd. consisting of the ARRA funded IH 20/SH 183 Interchange and Local Connectivity Improvements required for the future configuration;

Segment 3B - Arborlawn to Overton Ridge Blvd., consisting of the SH 121 mainlanes and the following 4 direct connectors at the interchange with IH 20 /SH 183: 1) SH 121 Southbound to IH 20 westbound, 2) IH 20 westbound to SH 121 southbound, 3) SH 121 northbound to IH 20 eastbound, and 4) IH 20 eastbound to SH 121 northbound;

Segment 4 - South of Overton Ridge to South of Altamesa: 6-lane tollway; and

Segment 5 - South of Altamesa to FM 1187; the 6-lane tollway reduces to 4 lanes between Altamesa Blvd. and McPherson Road.

The Chisholm Trail is comprised of 1 segment as defined below:

Segment 6 - FM 1187 to US 67; 2 lanes (one direction) of the ultimate 4-lane tollway will be constructed with periodic passing lanes added in both directions. (The other 2 lanes (opposite direction) of the ultimate build-out will be deferred for future improvements.)

SCHEDULE 3.01(f) TO TOLL EQUITY LOAN AGREEMENT
GOVERNMENTAL APPROVALS

Section 1. FHWA Requirements

- Concurrence and Award of Design-Build Contract
- FHWA/TxDOT Oversight Agreement
- Environmental Clearance
- Design-Builder's Construction Quality Management Plan (QCMP)
- Design-Builder's Project Management Plan (PMP) includes DB-QCMP

Section 2. Permitting Documents

- 404 Permits (As Applicable)
- Environmental Permits (As Required)
- NWP #14 – (As Applicable)
- NOI to TCEQ (As Applicable)
- Notification to USACE (As Applicable)

Section 3. Applications and Approvals

- Interstate Access Justification (IAJ) (As Needed based on any revisions)
- Mega Project - Project Management Plan (PMP)
- Mega Project - Financial Plan (FP)
- NTTA SH 161 Design-Build Quality Assurance Plan (QAP)
- NTTA SH 161 Project Specific Pavement Design Approval
- Design Exceptions (As identified and submitted)
- Railroad Joint Use and Force Account Agreement

APPENDIX A

FORM OF TOLL EQUITY LOAN NOTE

THIS NOTE MAY NOT BE TRANSFERRED

UNITED STATES OF AMERICA
STATE OF TEXAS
NORTH TEXAS TOLLWAY AUTHORITY

_____,
SERIES 2010

MAXIMUM PRINCIPAL <u>AMOUNT</u> [The Maximum Available Aggregate Amount]	INTEREST <u>RATE</u> As Described Below	MATURITY <u>DATE</u> As Described Below	ISSUANCE <u>DATE</u>
\$ _____			_____

ON THE MATURITY DATE specified below the North Texas Tollway Authority (the "*Authority*"), a political subdivision of the State of Texas and a body corporate and politic, hereby promises to pay to the Texas Department of Transportation ("*TxDOT*") the lesser of (a) principal amount specified above (the "*Maximum Principal Amount*") and (b) the aggregate unpaid principal amount of any advances made by TxDOT (the "*Outstanding Principal Sum*") pursuant to the Toll Equity Loan Agreement dated as of _____, 2010 (the "*Toll Equity Loan Agreement*") between the Authority and TxDOT and to pay interest thereon, from the date of such advance, to the maturity date specified for such advance, or the date of prepayment of such advance. The final maturity date for each advance and any accrued and unpaid interest thereon shall be 40 years from the Issuance Date of this note.

ADVANCES MADE by TxDOT to the Authority in accordance with the Toll Equity Loan Agreement and each payment made on account of such advance shall be recorded by or on behalf of TxDOT and endorsed on separate grids in the form attached hereto as **Attachment A**, with a copy to the Authority and the Trustee.

ADVANCES MADE pursuant to the Toll Equity Loan Agreement evidenced by this note shall bear interest at a per annum rate of interest equal to the ten year "Aaa (pure)" rate provided by Municipal Market Data and published in *The Bond Buyer* under the caption "Municipal Market Data General Obligation Yields" plus 1.00%, *provided, however*, that if the ten year "Aaa (pure)" rate is no longer provided by Municipal Market Data, the rate to be used in its place shall be that rate which most closely replicates such rate, as agreed to by the Authority and TxDOT. Such rate shall be established using the rate most recently published prior to the time of each advance. Interest on this note shall be calculated on the basis of a 365 or 366-day year, as applicable.

ALL ACCRUED AND UNPAID INTEREST shall be payable on the first Business Day of each calendar month, but only to the extent that funds are available for such

purpose within the Third Tier Interest Account of the Third Tier Debt Service Fund established pursuant to the Trust Agreement dated as of _____, 2010 between the Authority and _____ (the "*Original Trust Agreement*").

INTEREST PAYMENTS made by the Authority on account of each advance shall be recorded by or on behalf of TxDOT and endorsed on separate grids in the form attached hereto as **Attachment B** with a copy to the Authority and the Trustee.

ACCRUED BUT UNPAID INTEREST for each advance shall be compounded semiannually on _____ 1 and _____ 1 of each year commencing on the first such date after the date of each advance, and such compounded amounts shall bear interest at the same rate applicable to such advance. The amount of compounded interest shall be endorsed on the grids for each such advance.

IT IS SPECIFICALLY PROVIDED, that the above principal and interest are payable solely from the sources and in the manner provided in the Original Trust Agreement, as supplemented by the First Supplemental Agreement dated as of even date therewith, the Second Supplemental Agreement dated as of even date therewith, and the Third Supplemental Agreement dated as of even date therewith. As so supplemented, the Original Trust Agreement is referred to herein as the "*Trust Agreement*."

THIS NOTE is issued under and pursuant to a Resolution duly adopted by the Board of Directors of the Authority (the "*Bond Resolution*") and pursuant to the Trust Agreement, executed counterparts of which Bond Resolution and Trust Agreement are on file at the principal office of the Trustee. Reference is hereby made to the Bond Resolution and the Trust Agreement for provisions thereof relating to this note, including the custody and application of the proceeds of Obligations issued under the Trust Agreement, the collection and disposition of revenues, the funds and accounts charged with and pledged to the payment of the interest on and the principal of this note, the nature and extent of the security, the terms and conditions on which this note is issued, the rights, duties, and obligations of the Authority, and the Trustee, and the rights of TxDOT, and, by the acceptance of this note, the owner hereof assents to all of the provisions of the Bond Resolution and the Trust Agreement.

THE PRINCIPAL OF AND INTEREST ON this note are payable in lawful money of the United States of America, without exchange or collection charges. The payment of principal of and interest on this note shall be made by the Trustee to TxDOT on each payment date by, if requested by TxDOT, wire transfer to an account designated by TxDOT in the United States of America in an institution which has the wire services facilities of the Federal Reserve Bank, or, if not so requested, by check, dated as of such payment date, drawn by the Trustee on, in each case payable solely from, funds of the Authority on deposit in the Third Tier Debt Service Fund created and maintained under the Trust Agreement with the Trustee for such purpose as hereinafter provided. If payment is made by check, such check shall be sent by the Trustee by United States mail, first-class postage prepaid, on each such payment date, to TxDOT.

ALL ADVANCES MADE that are evidenced by this note are subject to mandatory repayment prior to maturity on the first Business Day of each calendar month, but solely

from and to the extent of funds available therefor held in the Third Tier Principal Account of the Third Tier Debt Service Fund created and maintained pursuant to the Trust Agreement. This note is subject to optional prepayment, in whole or in part, by the Authority on any Business Day at a price of par plus accrued interest to the date of prepayment, upon at least two Business Days' notice to TxDOT specifying the date and amount of repayment. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, unless such notice is revoked by the Authority on or prior to the prepayment date specified therein.

IT IS HEREBY certified, recited, and covenanted that this note has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this note have been performed, existed, and been done in accordance with law; and that this note, is a special Third Tier Obligation of the Authority, payable solely from the sources and in the priority as is provided in the Trust Agreement.

TxDOT shall have no right to enforce the provisions of the Bond Resolution or the Trust Agreement or to institute action or enforce the covenants therein, or to take any action with respect to any Event of Default under the Trust Agreement, or to institute, appear in, or defend any suit or other proceeding with respect thereto, except as provided in the Trust Agreement and the Toll Equity Loan Agreement.

MODIFICATIONS or alterations of the Trust Agreement or of any Supplemental Agreement may be made by the Authority and the Trustee only to the extent and in the circumstances permitted by the Trust Agreement.

THIS NOTE is issued under and pursuant to the provisions of Chapter 366, Texas Transportation Code (said Chapter being herein referred to as the "Act"), and other applicable laws, and under and pursuant to the Bond Resolution and the Trust Agreement.

THIS NOTE and the interest hereon do not constitute a debt of the State of Texas or of any of the Counties of the Authority (currently being the counties of Collin, Dallas, Denton, and Tarrant) or a pledge of the faith and credit of the State of Texas or any of the Counties. Neither the State of Texas, the Authority, nor the Counties of the Authority are obligated to pay this note or the interest on this note from a source other than the amount pledged to pay the note and interest on this note, and neither the faith and credit nor the taxing power of the State of Texas or the Counties of the Authority are pledged to the payment of the principal of or the interest on this note. This note is payable only from the sources as provided in the Trust Agreement.

TxDOT acknowledges all of the terms and provisions of the Bond Resolution and the Trust Agreement, agrees to be bound by such terms and provisions subject to the terms and provisions of the Toll Equity Loan Agreement, acknowledges that the Bond Resolution and the Trust Agreement are duly recorded and available for inspection in the official minutes and records of the Board, and on file with the Trustee, and agrees that the terms and provisions of this note, the Bond Resolution, and the Trust Agreement constitute a contract between TxDOT, the Authority, and the Trustee.

TERMS USED in this note and not otherwise defined herein have the meanings given them in the Trust Agreement.

IN WITNESS WHEREOF, the Authority has caused this note to be signed with the manual or facsimile signature of the Chairman of the Authority and countersigned with the manual or facsimile signature of the Secretary [or Assistant Secretary] of the Authority and has caused the official seal of the Authority to be duly impressed or placed in facsimile on this Note.

Secretary
North Texas Tollway Authority

Chairman
North Texas Tollway Authority

(NTTA SEAL)

FORM OF TRUSTEE'S AUTHENTICATION CERTIFICATE

TRUSTEE'S AUTHENTICATION CERTIFICATE

It is hereby certified that this note has been issued under the provisions of the Bond Resolution and the Trust Agreement described in this note.

_____,
Trustee

Dated:

By: _____
Authorized Representative

FORM OF COMPTROLLER'S REGISTRATION CERTIFICATE

COMPTROLLER'S REGISTRATION CERTIFICATE

REGISTER NO. _____

I hereby certify that this note has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this note has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this

(COMPTROLLER'S SEAL)

Comptroller of Public Accounts of
the State of Texas

APPENDIX B

SCHEDULE OF MAXIMUM AVAILABLE ANNUAL AMOUNTS

APPENDIX C

CERTIFICATE OF BORROWER RE ADVANCES

The undersigned, a Board Representative as such term is defined in that certain Toll Equity Loan Agreement (the "Agreement") dated as of _____, 2010, by and between the Texas Department of Transportation ("TxDOT") and the North Texas Tollway Authority ("Borrower"), hereby certifies on behalf of the Borrower with respect to the advance requested by the Trustee pursuant to Section 2.03 of the Agreement, as follows:

(a) The Trustee has no amounts or insufficient amounts on deposit in the Capitalized Interest Fund for payment of interest on the Series 2010 First Tier Bonds for the period for which an advance is hereby requested to the extent that any portion of the advance will be used to pay interest on the Series 2010 First Tier Bonds.

(b) Borrower has accessed and depleted all funds held in applicable Project Reserve Funds for the purposes permitted therefor under the Trust Agreement and the Agreement.

(c) The requested advance under the Toll Equity Loan Commitment is no greater than the Maximum Permitted Amount.

(d) The requested advance under the Toll Equity Loan Commitment when added to other amounts advanced under the Toll Equity Loan Commitment during the current Draw Period will not exceed the Maximum Available Annual Amount for such Draw Period.

(e) The requested advance, when added to the amount of all prior advances under the Toll Equity Loan Commitment will not exceed the aggregate amount of Eligible Costs.

(f) Documentation required by Section 2.03 of the Agreement is attached hereto if the requested advance, when added to the amount of all prior advances under the Toll Equity Loan Commitment, exceeds the aggregate of amounts expended or incurred by the Borrower for Capital Expenditures, Major Maintenance and Operating Expenses (not to exceed amounts set forth in the Project Budget), for Project Costs, and for the Upfront Payment (and therefore relates to amounts anticipated to be expended).

(g) The aggregate amount of Capital Expenditures, Major Maintenance and Operating Expenses expended or incurred (not to exceed amounts set forth in the Project Budget), Project Costs expended or incurred, and the amount of the Upfront Payment paid, by the Borrower as of the date of

the requested advance under the Toll Equity Loan Commitment is
\$_____.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

Dated: _____, ____.

NORTH TEXAS TOLLWAY AUTHORITY

APPENDIX D
PROJECT BUDGET

APPENDIX E

FUNDS AND ACCOUNTS

Set forth below are the funds and accounts to be established pursuant to the Trust Agreement and the provisions governing such funds and accounts. Capitalized terms used in this Appendix E but not defined herein shall have the meanings specified in the Toll Equity Loan Agreement or, if not defined therein, in the Trust Agreement.

Definitions.

“Capital Expenditures Reserve Requirement” means (a) for years 1 through [9] after the execution of the Toll Equity Loan Agreement, an amount equal to the product of (w) the total amount of the capital cost of the Project Capacity Improvements in year [9] as shown in the Financial Model divided by [9] times (x) the number of years after the date of the execution of the Toll Equity Loan Agreement, and (b) for years [10] through [19] after the execution of the Toll Equity Loan Agreement, an amount equal to the product of (y) the total amount of the capital cost of the Project Capacity Improvements in year [19] as shown in the Financial Model divided by [9] times (z) the number years after the 10th anniversary of the date of the execution of the Toll Equity Loan Agreement.

“Depositary” means the depositary bank under the Master Custodial Account Agreement.

“Major Maintenance Reserve Requirement” means the sum of (a) the amount equal to 100% of the Major Maintenance Expenses projected to be incurred in the next Fiscal Year from the date of calculation as set forth in the Project Budget, (b) the amount equal to 80% of the Major Maintenance Expenses project to be incurred in the second Fiscal Year from the date of calculation as set forth in the Project Budget, (c) the amount equal to 50% of the Major Maintenance Expenses projected to be incurred in third Fiscal Year from the date calculation as set forth in the Project Budget, (d) the amount equal to 25% of the Major Maintenance Expenses projected to be incurred in the fourth Fiscal Year from the date of calculation as set forth in the Project Budget, and (e) the amount equal to 10% of the Major Maintenance Expenses projected to be incurred in the fifth Fiscal Year from the date of calculation as set forth in the Project Budget.

“Rate Stabilization Fund Requirement” means an amount equal to the greater of (a) \$[70,025,654], and (b) 100% of the Maximum Available Annual Amount for the Fiscal Year following the Fiscal Year in which the calculation is made.

“Series 2010 Capitalized Interest Account Requirement” means an amount which, when added to estimated investment earnings thereon, equals the interest that will accrue and be payable on the Series 2010 First Tier Bonds through the period ending one year after the expected Service Commencement Date.

Creation of Funds. The following funds are hereby created and amounts deposited therein shall be held in trust by the Trustee (except with respect to the Operating Fund, the Major Maintenance Fund, and the Capital Expenditures Fund, each

of which will constitute funds of the Authority held and maintained by the Authority until applied as hereinafter directed:

- (a) Construction Fund; and within such fund, a CIF Construction Account, a Series 2010 Construction Account, and a TIFIA Construction Account;
- (b) Revenue Fund;
- (c) First Tier Debt Service Fund, and within such fund, a First Tier Interest Account, a First Tier Principal Account and a Series 2010 Capitalized Interest Account;
- (d) Second Tier Debt Service Fund, and within such fund, a Second Tier Interest Account and a Second Tier Principal Account;
- (e) Operating Fund, and within such fund, a Project Budget Account and an Annual Operating Budget Account;
- (f) Major Maintenance Fund, and within such fund, a Project Budget Account and an Annual Operating Budget Account;
- (g) Capital Expenditures Fund, and within such fund, a Project Budget Account and an Annual Operating Budget Account;
- (h) Third Tier Debt Service Fund, and within such fund, a Third Tier Interest Account and a Third Tier Principal Account;
- (i) Rate Stabilization Fund;
- (j) Major Maintenance Reserve Fund;
- (k) Capital Expenditures Reserve Fund; and
- (l) General Fund.

Neither Revenues, amounts on deposit in any of the above funds and accounts or proceeds from advances under the Toll Equity Loan Commitment shall be used to pay for Operating Expenses, Major Maintenance Expenses or Capital Expenditures at standards higher than the Project Agreement Standards.

Revenue Fund; Agreements With Other Turnpikes.

(a) *Deposits to Revenue Fund.* The Authority covenants that all Revenues (excepting investment income from all funds and accounts other than the Revenue Fund which shall be retained in such funds and accounts except as otherwise required to be transferred as provided herein) will be deposited daily, as far as practicable, with the Trustee or in the name of the Trustee with the Depository to the credit of the Revenue Fund.

(b) *Agreement With Other Turnpikes.* To the extent now or hereafter authorized by law, the Authority may enter into agreements with any commission, authority or other similar legal body operating a turnpike whether or not connected to the Project (but not with itself or a related entity), for the collection and application of tolls charged for trips over all or a portion of one or more turnpikes, which, on the basis of the revenues to be received by any such agreement, will result in the receipt by the

Authority of its allocable portion of such tolls (less fees and expenses associated with such arrangement). The Authority may also enter into the Master Custodial Account Agreement.

Amounts relating to the Project and received by the Authority from such other commission, authority or other similar legal body or pursuant to the Master Custodial Account Agreement, in accordance with such agreements, shall be deposited with the Trustee for credit to the Revenue Fund and shall constitute Revenues. Any agreement entered into pursuant to this Section shall be made available to the Trustee and TxDOT upon their request.

(c) *Flow of Funds.* Except as otherwise provided, transfers from the Revenue Fund shall be made on the third Business Day prior to the first day of each month. In recognition that (i) Obligations and the interest thereon may come due on various dates, (ii) First Tier Obligations have a security interest in the Trust Estate senior to that securing the Second Tier Obligations and the Third Tier Obligations, (iii) Second Tier Obligations have a security interest in the Trust Estate senior to that securing the Third Tier Obligations and (iv) Second Tier Obligations and Third Tier Obligations, or interest thereon, may become due and payable on a date or dates in a Fiscal Year prior to the date or dates a First Tier Obligation or the interest thereon is due and Third Tier Obligations, or interest thereon, may become due and payable on a date or dates prior to the date or dates a First Tier Obligation or Second Tier Obligation, or interest thereon, is due, the Authority covenants that no transfer from the Revenue Fund to any fund, other than the First Tier Debt Service Fund, will be made unless, in the opinion of a Board Representative set forth in a certificate delivered to the Trustee, the transfer is not anticipated to result in the inability of the Authority to make a later transfer, as required by the Trust Agreement, to a fund securing Obligations that have a security interest in the Trust Estate senior to that securing the Obligations that are secured by the fund into which the transfer is scheduled to be made. Transfers shall be made for the below listed purposes or to the credit of the below-listed funds in the order of priority listed, *provided that*, if in any prior month the amount required to be deposited in a fund set forth below is not so deposited, then the amount to be deposited into such fund for the current month shall include all amounts required to be deposited in any prior month to such fund but not deposited (the "*Shortfall Amount*"). The amount deposited for the current month will not include the Shortfall Amount for the prior month if and to the extent the Shortfall Amount was transferred to such fund from another fund or from a draw under the Toll Equity Loan Agreement.

(1) Payment of arbitrage rebate in accordance with the provisions contained under the caption "**Payment of Rebate**";

(2) to the First Tier Debt Service Fund, in the amounts specified under the caption "**First Tier Debt Service Fund**";

(3) to the Second Tier Debt Service Fund, in the amounts specified under the caption "**Second Tier Debt Service Fund**";

(4) to the Project Budget Account of the Operating Fund, in the amounts specified under the caption "**Operating Fund—Project Budget Amounts**";

(5) to the Project Budget Account of the Major Maintenance Fund, in the amounts specified under the caption "**Major Maintenance Fund—Project Budget Amounts**";

(6) to the Project Budget Account of the Capital Expenditures Fund, in the amounts specified under the caption "**Capital Expenditures Fund—Project Budget Amounts**";

(7) to the Third Tier Debt Service Fund, in the amounts specified under the caption "**Third Tier Debt Service Fund**";

(8) to the Annual Operating Budget Account of the Operating Fund, in the amounts specified under the caption "**Operating Fund—Annual Operating Budget Amounts**";

(9) to the Rate Stabilization Fund, in the amount specified under the caption "**Rate Stabilization Fund**";

(10) to the Annual Operating Budget Account of the Major Maintenance Fund, in the amounts specified under the caption "**Major Maintenance Fund—Annual Operating Budget Amounts**";

(11) to the Annual Operating Budget Account of the Capital Expenditures Fund, in the amounts specified under the caption "**Capital Expenditures Fund—Annual Operating Budget Amounts**";

(12) to the Major Maintenance Reserve Fund, in an amount specified under the caption "**Major Maintenance Reserve Fund**";

(13) to the Capital Expenditures Reserve Fund, in the amount specified under the caption "**Capital Expenditures Reserve Fund**"; and

(14) to the General Fund, the remainder.

Payment of Rebate. The Authority covenants to calculate and to pay directly to the government of the United States of America all amounts due for payment of "arbitrage rebate" under Section 148(a) of the Code with respect to any Obligations. Nevertheless, the Authority in the future may direct the Trustee to pay arbitrage rebate from amounts held in any fund hereunder for any or all Series of Obligations (which direction shall specify the procedures for collection and payment of amounts due in respect of arbitrage rebate) if (a) required under any amendments to Section 148(a) of the Code or (b) the Authority otherwise determines that the payment of arbitrage rebate is necessary or appropriate.

First Tier Debt Service Fund. In addition to the accounts established in the First Tier Debt Service Fund specified in the Trust Agreement, the Trustee and the Authority may create such additional accounts in the First Tier Debt Service Fund pursuant to a Supplemental Agreement as they deem necessary or appropriate, subject to TxDOT's right to review and approve any such Supplemental Agreement. The Trustee shall deposit to the First Tier Interest Account the amount of any tax credit received from the United States Treasury in connection with the payment of interest on "Build America Bonds". From the proceeds of the Series 2010 First Tier Bonds, on the

Closing Date the Trustee shall deposit into the Series 2010 Capitalized Interest Account the amount of the Series 2010 Capitalized Interest Account Requirement. The Trustee shall withdraw from the Revenue Fund and deposit to the (a) First Tier Interest Account an amount equal to one-sixth of the interest coming due on the First Tier Obligations on the next succeeding [DATE OF INTEREST PAYMENTS], and (b) First Tier Principal Account an amount equal to [one-twelfth][one-sixth] of the principal coming due on the First Tier Obligations on the next succeeding [DATE OF PRINCIPAL PAYMENTS]; *provided, however*, that credit shall be given with respect to any such deposits for the amount of any available investment income from investments on deposit in the First Tier Interest Account or the First Tier Principal Account, as applicable; *provided, further*, that so long as accrued investment income or capitalized interest is available in the Series 2010 Bond Capitalized Interest Account of the First Tier Debt Service Fund such money will first be transferred from the Series 2010 Bond Capitalized Interest Account to the First Tier Interest Account of the First Tier Debt Service Fund before any transfers from the Revenue Fund are made.

The money in the First Tier Interest Account and First Tier Principal Account shall be held by the Trustee in trust for the benefit of the First Tier Obligations, to the extent the foregoing are payable from such accounts, and, to said extent and pending application, shall be subject to a lien and charge in favor of the owners of the First Tier Obligations until paid out or transferred as hereinafter provided. There shall be withdrawn from the First Tier Interest Account and the First Tier Principal Account from time to time and set aside or deposited with the Trustee sufficient money for paying the interest on and the principal of and premium on the First Tier Obligations as the same shall become due, except to the extent such interest, principal or other amounts are payable from a fund or account other than the First Tier Debt Service Fund as may be provided in any Supplemental Agreement.

If at the time the Trustee is required to make a withdrawal from the First Tier Debt Service Fund the money therein shall not be sufficient for such purpose, the Trustee shall withdraw the amount of such deficiency from the money on deposit in the following funds or accounts and transfer the same to the First Tier Debt Service Fund in the following order of priority to the extent that funds are available therein: the Revenue Fund, the General Fund, the Capital Expenditures Reserve Fund, the Major Maintenance Reserve Fund, the Annual Operating Budget Account of the Capital Expenditures Fund, the Annual Operating Budget Account of the Major Maintenance Fund, the Rate Stabilization Fund and the Annual Operating Budget Account of the Operating Fund. If, after making such transfers, the money in the First Tier Debt Service Fund is still insufficient the Trustee shall make a draw under the Toll Equity Loan Agreement to satisfy any such shortfall, to the extent that funds are available thereunder. Amounts drawn under the Toll Equity Loan Agreement for the foregoing purpose as described in this section shall be deposited by the Trustee directly to the First Tier Debt Service Fund.

Second Tier Debt Service Fund. In addition to the accounts established in the Second Tier Debt Service Fund specified in the Trust Agreement, the Trustee and the Authority may create such additional accounts in the Second Tier Debt Service Fund

pursuant to a Supplemental Agreement as they deem necessary or appropriate, subject to TxDOT's right to review and approve any such Supplemental Agreement.

After first having made or provided for the payments or deposits specified under the captions "**Payment of Rebate**" and "**First Tier Debt Service Fund**," the Trustee shall withdraw from the Revenue Fund and deposit to the (a) Second Tier Interest Account an amount equal to one-sixth of the interest coming due on Second Tier Obligation the next succeeding [DATE OF INTEREST PAYMENTS], and (b) Second Tier Principal Account an amount equal to [one-twelfth][one-sixth] of the principal coming due on Second Tier Obligations on the next succeeding [DATE OF PRINCIPAL PAYMENTS]; *provided, however,* that credit shall be given with respect to any such deposits for the amount of any available investment income from investments on deposit in the Second Tier Interest Account or the Second Tier Principal Account, as applicable.

The money in the Second Tier Principal Account and the Second Tier Interest Account shall be held by the Trustee in trust for the benefit of the Second Tier Obligations, to the extent the foregoing are payable from such accounts, and, to said extent and pending application, shall be subject to a lien and charge in favor of the owners of the Second Tier Obligations until paid out or transferred as hereinafter provided. There shall be withdrawn from the Second Tier Interest Account and the Second Tier Principal Account from time to time and set aside or deposited with the Trustee sufficient money for paying the interest on and the principal of the Second Tier Obligations as the same shall become due, except to the extent such interest, principal or other amounts are payable from a fund or account other than the Second Tier Debt Service Fund as may be provided in any Supplemental Agreement.

If at the time the Trustee is required to make a withdrawal from the Second Tier Debt Service Fund the money therein shall not be sufficient for such purpose, the Trustee shall withdraw the amount of such deficiency from the money on deposit in the following funds or accounts and transfer the same to the Second Tier Debt Service Fund in the following order of priority to the extent that funds are available therein: the Revenue Fund (subject to clause (c) under the caption "Revenue Fund; Agreements with Other Turnpikes"), the General Fund, the Capital Expenditures Reserve Fund, the Major Maintenance Reserve Fund, the Annual Operating Budget Account of the Capital Expenditures Fund, the Annual Operating Budget Account of the Major Maintenance Fund, the Rate Stabilization Fund and the Annual Operating Budget Account of the Operating Fund. If, after making such transfers, the money in the Second Tier Debt Service Fund is still insufficient the Trustee shall make a draw under the Toll Equity Loan Agreement to satisfy any such shortfall, to the extent that funds are available thereunder. Amounts drawn under the Toll Equity Loan Agreement for the foregoing purpose as described in this Section shall be deposited by the Trustee directly to the Second Tier Debt Service Fund.

Operating Fund—Project Budget Amounts. The Authority shall establish a fund known as the "Operating Fund" and, within such fund, a "Project Budget Account" and an "Annual Operating Budget Account," that shall be held by the Authority in the name of the Authority outside of the Trust Agreement, but separate and apart from its other funds and accounts, until applied as hereinafter directed. After first having made

or provided for the payments or deposits specified under the captions "**Payment of Rebate**," "**First Tier Debt Service Fund**," and "**Second Tier Debt Service Fund**," the Trustee shall transfer from the Revenue Fund to the credit of the Project Budget Account of the Operating Fund, on written request of the Authority, an amount which a Board Representative shall certify to be required to make the total amount in the Project Budget Account of the Operating Fund equal to the lesser of (i) one-sixth (1/6) of the amount of the total Operating Expenses scheduled for the then current Fiscal Year in the Project Budget, plus all prior accruals for insurance and other periodic or regularly recurring expenses, and (ii) one-sixth (1/6) of the amount of the total Operating Expenses scheduled for the then current Fiscal Year in the then current Annual Operating Budget, plus all prior accruals for insurance and other periodic or regularly recurring expenses. If amounts on deposit in the Revenue Fund are insufficient to make such transfer, the Trustee shall transfer amounts held in the following funds in the following order of priority in an amount sufficient to satisfy any such shortfall to the extent that funds are available therein: the General Fund, the Capital Expenditures Reserve Fund, the Major Maintenance Reserve Fund, the Annual Operating Budget Account of the Capital Expenditures Fund, the Annual Operating Budget Account of the Major Maintenance Fund, the Rate Stabilization Fund and the Annual Operating Budget Account of the Operating Fund. If there remains a shortfall, the Trustee shall make a draw under the Toll Equity Loan Agreement to satisfy any such shortfall, to the extent that funds are available thereunder. Amounts drawn under the Toll Equity Loan Agreement for the foregoing purpose described in this section shall be deposited by the Trustee directly to the Project Budget Account of the Operating Fund.

The Authority shall make payments from the Operating Fund for the payment of Operating Expenses, and the Operating Fund shall be used for no other purpose. The Authority shall pay the costs of Operating Expenses first from the Project Budget Account of the Operating Fund and then, to the extent amounts in such account are insufficient from the Annual Operating Budget Account of the Operating Fund. In making payments from the Operating Fund, the Authority shall be deemed to be certifying that obligations in the stated amounts have been incurred by the Authority and that each item thereof was properly incurred as an Operating Expense, and has not been paid previously.

Major Maintenance Fund—Project Budget Amounts. The Authority shall establish a fund know as the "Major Maintenance Fund" and, within such fund, a "Project Budget Account" and an "Annual Operating Budget Account", that shall be held by the Authority in the name of the Authority outside of the Trust Agreement, but separate and apart from its other funds and accounts, until applied as herein directed. After first having made or provided for the deposits specified under the captions "**Payment of Rebate**," "**First Tier Debt Service Fund**," "**Second Tier Debt Service Fund**," and "**Operating Fund—Project Budget Amounts**," the Trustee shall, to the extent transfers from the Major Maintenance Reserve Fund pursuant to the provisions under the caption "**Major Maintenance Reserve Fund**" are insufficient for such purpose, transfer from the Revenue Fund to the credit of the Project Budget Account of the Major Maintenance Fund an amount equal to the lesser of (i) the Major Maintenance Expenses budgeted in the Project Budget for such month, and (ii) the Major

Maintenance Expenses budgeted in the current Fiscal Year's Annual Operating Budget for such month. If amounts on deposit in the Revenue Fund are insufficient to make such transfer, the Trustee shall transfer amounts held in the following funds in the following order of priority in an amount sufficient to satisfy any such shortfall to the extent that funds are available therein: the General Fund, the Capital Expenditures Reserve Fund, the Annual Operating Budget Account of the Capital Expenditures Fund, the Annual Operating Budget Account of the Major Maintenance Fund, the Rate Stabilization Fund and the Annual Operating Budget Account of the Operating Fund. If there remains a shortfall, the Trustee shall make a draw under the Toll Equity Loan Agreement to satisfy any such shortfall, to the extent that funds are available thereunder. Amounts drawn under the Toll Equity Loan Agreement for the foregoing purpose described in this Section shall be deposited by the Trustee directly to the Major Maintenance Fund.

The Authority shall make payments from the Major Maintenance Fund for the payment of Major Maintenance Expenses of the Project, and the Major Maintenance Fund shall be used for no other purpose. The Authority shall pay the costs of Major Maintenance Expenses first from the Project Budget Account of the Major Maintenance Fund and then, to the extent amounts in such account are insufficient, from the Annual Operating Budget Account of the Major Maintenance Fund. In making payments from the Major Maintenance Fund, the Authority shall be deemed to be certifying that obligations in the stated amounts have been incurred by the Authority and that each item thereof was properly incurred as a Major Maintenance Expense, and has not been paid previously.

Capital Expenditures Fund—Project Budget Amounts. The Authority shall establish a fund known as the "Capital Expenditures Fund" and, within such fund, a "Project Budget Account" and an "Annual Operating Budget Account", that shall be held by the Authority in the name of the Authority outside of the Trust Agreement, but separate and apart from its other funds and accounts, until applied as herein directed. After first having made or provided for the deposits specified under the captions "**Payment of Rebate,**" "**First Tier Debt Service Fund,**" "**Second Tier Debt Service Fund,**" "**Operating Fund—Project Budget Amounts,**" and "**Major Maintenance Fund—Project Budget Amounts,**" the Trustee shall, to the extent funds are not available in the Construction Fund for payment of Capital Expenditures for the month, and to the extent transfers from the Capital Expenditures Reserve Fund pursuant to the provisions under the caption "**Capital Expenditures Reserve Fund**" are insufficient for such purpose, transfer from the Revenue Fund to the credit of the Project Budget Account of the Capital Expenditures Fund an amount equal to the lesser of (i) the Capital Expenditures budgeted in the Project Budget for such month, and (ii) the Capital Expenditures budgeted in the current Fiscal Year's Annual Operating Budget for such month. If amounts on deposit in the Revenue Fund are insufficient to make such transfer, the Trustee shall transfer amounts held in the following funds in the following order of priority in an amount sufficient to satisfy any such shortfall to the extent that funds are available therein: the General Fund, the Major Maintenance Reserve Fund, the Annual Operating Budget Account of the Capital Expenditures Fund, the Annual Operating Budget Account of the Major Maintenance Fund, the Rate Stabilization Fund

and the Annual Operating Budget Account of the Operating Fund. If there remains a shortfall, the Trustee may, at the direction of the Authority, make a draw under the Toll Equity Loan Agreement as provided therein to satisfy any such shortfall, to the extent that funds are available thereunder. Amounts drawn under the Toll Equity Loan Agreement for the foregoing purpose described in this Section shall be deposited by the Trustee directly to the Capital Expenditures Fund.

The Authority shall make payments from the Capital Expenditures Fund for the payment of Capital Expenditures, and the Capital Expenditures Fund shall be used for no other purpose. The Authority shall pay the costs of Capital Expenses first from funds available in the Construction Fund for payment of such Capital Expenditures, next from the Project Budget Account of the Capital Expenditures Fund and then, to the extent amounts in such account are insufficient, from the Annual Operating Budget Account of the Capital Expenditures Fund. In making payments from the Capital Expenditures Fund, the Authority shall be deemed to be certifying that obligations in the stated amounts have been incurred by the Authority and that each item thereof was properly incurred as a Capital Expenditure and has not been paid previously.

Third Tier Debt Service Fund. After first having made or provided for the deposits specified under the captions "**Payment of Rebate,**" "**First Tier Debt Service Fund,**" "**Second Tier Debt Service Fund,**" "**Operating Fund—Project Budget Amounts,**" "**Major Maintenance Fund—Project Budget Amounts,**" and "**Capital Expenditures Fund—Project Budget Amounts,**" the Trustee shall withdraw from the Revenue Fund and deposit to the applicable account in the Third Tier Debt Service Fund the amounts due TxDOT in accordance with the terms specified in the Supplemental Agreement authorizing such Third Tier Obligation and the Toll Equity Loan Agreement.

The money in the Third Tier Principal Account and the Third Tier Interest Account shall be held by the Trustee in trust for the benefit of the Third Tier Obligations, to the extent the foregoing are payable from such accounts, and, to said extent and pending application, shall be subject to a lien and charge in favor of the owners of the Third Tier Obligations until withdrawn to pay principal of and interest on the Third Tier Obligations. There shall be withdrawn from the Third Tier Interest Account and the Third Tier Principal Account from time to time and set aside or deposited with the Trustee sufficient money for paying the interest on and the principal of the Third Tier Obligations as the same shall become due.

If at the time the Trustee is required to make a withdrawal from the Third Tier Debt Service Fund the money therein shall not be sufficient for such purpose, the Trustee shall withdraw the amount of such deficiency from the money on deposit in the following funds or accounts and transfer the same to the Third Tier Debt Service Fund in the following order of priority to the extent that funds are available therein: the Revenue Fund (subject to clause (c) under the caption "Revenue Fund; Agreements with other Turnpikes"), the General Fund, the Capital Expenditures Reserve Fund, the Major Maintenance Reserve Fund, the Annual Operating Budget Account of the Capital Expenditures Fund, the Annual Operating Budget Account of the Major Maintenance Fund, Rate Stabilization Fund and the Annual Operating Budget Account of the Operating Fund.

Operating Fund—Annual Operating Budget Amounts. After first having made or provided for the payments or deposits specified under the captions "**Payment of Rebate,**" "**First Tier Debt Service Fund,**" "**Second Tier Debt Service Fund,**" "**Operating Fund—Project Budget Amounts,**" "**Major Maintenance Fund—Project Budget Amounts,**" "**Capital Expenditures Fund—Project Budget Amounts,**" and "**Third Tier Debt Service Fund,**" the Trustee shall transfer from the Revenue Fund to the credit of the Annual Operating Budget Account of the Operating Fund, on written request of the Authority, an amount which a Board Representative shall certify to be required to make the total amount in the Annual Operating Budget Account of the Operating Fund equal to one-sixth (1/6) of an amount equal to the excess, if any, of the amount reflected in the current Fiscal Year's Annual Operating Budget for Operating Expenses for such Fiscal Year over the amount reflected in the Project Budget for Operating Expenses for such Fiscal Year and money in this account shall be used as provided under the caption "Operating Fund – Project Budget Amounts; provided in no event shall Revenues be used to pay for Operating Expenses relating to the operation of the Project at standards higher than the Project Agreement Standards as provided in the Toll Equity Loan Agreement.

If amounts on deposit in the Revenue Fund are insufficient to make such transfer, the Trustee shall transfer amounts held in the following funds in the following order of priority in an amount sufficient to satisfy any such shortfall to the extent that funds are available therein: the General Fund, the Capital Expenditures Reserve Fund, the Major Maintenance Reserve Fund, the Capital Expenditures Fund-Annual Operating Budget Account and the Major Maintenance Fund-Annual Operating Budget Account. The Authority covenants that if, after transferring amounts as specified in the preceding sentence, actual Operating Expenses in any month are in excess of amounts on deposit in the Operating Fund and in excess of the amount contained in the Project Budget for Operating Expenses for such month or in excess of the amount required to operate the Project according to the Project Agreement Standards, it will cause an amount sufficient to make up any such shortfall to be transferred to the Operating Fund from other lawfully available funds of the Authority, but in no event from the Rate Stabilization Fund.

Rate Stabilization Fund. The Authority shall deposit on the Closing Date \$[70,025,654] from the proceeds of the issuance of the Series 2010 First Tier Bonds. Thereafter, and after first having made or provided for the deposits specified under the captions "**Payment of Rebate,**" "**First Tier Debt Service Fund,**" "**Second Tier Debt Service Fund,**" "**Operating Fund—Project Budget Amounts,**" "**Major Maintenance Fund—Project Budget Amounts,**" "**Capital Expenditures Fund—Project Budget Amounts,**" "**Third Tier Debt Service Fund,**" and "**Operating Fund—Annual Operating Budget Amounts,**" the Trustee shall transfer from the Revenue Fund to the credit of the Rate Stabilization Fund amounts sufficient to accumulate an amount equal to the Rate Stabilization Fund Requirement, or to restore the balance in the Rate Stabilization Fund to an amount equal to the Rate Stabilization Fund Requirement.

Amounts on deposit in the Rate Stabilization Fund shall be transferred by the Trustee to (a) the First Tier Debt Service Fund or the Second Tier Debt Service Fund to cure a deficiency therein, (b) the Project Budget Account of the Operating Fund in any

month to cure a deficiency in the amount to be deposited therein pursuant to the provisions described under the caption "**Operating Fund—Project Budget Amounts**," (c) the Project Budget Account of the Major Maintenance Fund in any month to cure a deficiency in the amount to be deposited therein pursuant to the provisions described under the caption "**Major Maintenance Fund—Project Budget Amounts**," (d) the Project Budget Account of the Capital Expenditures Fund in any month to cure a deficiency in the amount to be deposited therein pursuant to the provisions described under the caption "**Capital Expenditures Fund—Project Budget Amounts**," (e) the Third Tier Debt Service Fund to cure any deficiency therein, or (f) to be applied to the redemption or defeasance of any Project Debt in the event of an optional redemption of 100% of the First Tier Obligations, Second Tier Obligations and the Third Tier Obligations. In the event that the amounts on deposit in the Rate Stabilization Fund exceed the Rate Stabilization Fund Requirement, the Trustee shall transfer such excess to the Revenue Fund.

Major Maintenance Fund—Annual Operating Budget Amounts. After first having made or provided for the deposits specified under the captions "**Payment of Rebate**," "**First Tier Debt Service Fund**," "**Second Tier Debt Service Fund**," "**Operating Fund—Project Budget Amounts**," "**Major Maintenance Fund—Project Budget Amounts**," "**Capital Expenditures Fund—Project Budget Amounts**," "**Third Tier Debt Service Fund**," "**Operating Fund—Annual Operating Budget Amounts**," and "**Rate Stabilization Fund**," the Trustee shall, to the extent transfers from the Major Maintenance Reserve Fund pursuant to the provisions under the caption "Major Maintenance Reserve Fund" are insufficient for such purpose, transfer from the Revenue Fund to the credit of the Annual Operating Budget Account of the Major Maintenance Fund an amount equal to the excess, if any, of the amount reflected in the current Fiscal Year's Annual Operating Budget for Major Maintenance Expenses for such month over the amount reflected in the Project Budget for Major Maintenance Expenses for such month and money in this account shall be used as provided under the caption "Major Maintenance Fund – Project Budget Amounts"; provided in no event shall Revenues be used to pay for Major Maintenance Expenses relating to the maintenance of the Project at standards higher than Project Agreement Standards as provided in the Toll Equity Loan Agreement . If amounts on deposit in the Revenue Fund are insufficient to make such transfer, the Trustee shall transfer amounts held in the following funds in the following order of priority in an amount sufficient to satisfy any such shortfall to the extent that funds are available therein: the General Fund, the Capital Expenditures Reserve Fund and the Capital Expenditures Fund—Annual Operating Budget Account. The Authority covenants that if, after transferring the amounts as specified in the preceding sentence, actual Major Maintenance Expenses in any month are in excess of amounts on deposit in the Major Maintenance Fund and in excess of the amount contained in the Project Budget for Major Maintenance Expenses for such month it will cause an amount sufficient to make up any such shortfall to be transferred to the Major Maintenance Fund from other lawfully available funds of the Authority, but in no event from the Rate Stabilization Fund.

Capital Expenditures Fund—Annual Operating Budget Amounts. After first having made or provided for the deposits specified under the captions "**Payment of**

Rebate," "First Tier Debt Service Fund," "Second Tier Debt Service Fund," "Operating Fund—Project Budget Amounts," "Major Maintenance Fund—Project Budget Amounts," "Capital Expenditures Fund—Project Budget Amounts," "Third Tier Debt Service Fund," "Operating Fund—Annual Operating Budget Amounts," "Rate Stabilization Fund," and "Major Maintenance Fund—Annual Operating Budget Amounts," the Trustee shall, to the extent funds are not available in the Construction Fund for payment of Capital Expenditures for the month, and to the extent transfers from the Capital Expenditures Reserve Fund pursuant to the provisions under the caption "Capital Expenditures Reserve Fund" are insufficient for such purpose, transfer from the Revenue Fund to the credit of the Annual Operating Budget Account of the Capital Expenditures Fund an amount equal to the excess, if any, of the amount reflected in the current Fiscal Year's Annual Operating Budget for Capital Expenditures for such month over the amount reflected in the Project Budget for Capital Expenditures for such month and money in this account shall be used as provided under the caption "Capital Expenditures Fund – Project Budget Amounts"; provided in no event shall Revenues be used to pay for Capital Expenditures relating to the Project at standards higher than the Project Agreement Standards as provided in the Toll Equity Loan Agreement. If amounts on deposit in the Revenue Fund are insufficient to make such transfer, the Trustee shall transfer amounts held in the following funds in the following order of priority in an amount sufficient to satisfy any such shortfall to the extent that funds are available therein: the General Fund and the Major Maintenance Reserve Fund. The Authority covenants that if, after transferring the amounts as specified in the preceding sentence, actual Capital Expenditures in any month are in excess of amounts on deposit in the Capital Expenditures Fund and in excess of the amount contained in the Project Budget for Capital Expenditures for such month, it will cause an amount sufficient to make up any such shortfall to be transferred to the Capital Expenditures Fund from other lawfully available funds of the Authority, but in no event from the Rate Stabilization Fund.

Major Maintenance Reserve Fund. After first having made or provided for the deposits specified under the captions **"Payment of Rebate," "First Tier Debt Service Fund," "Second Tier Debt Service Fund," "Operating Fund—Project Budget Amounts," "Major Maintenance Fund—Project Budget Amounts," "Capital Expenditures Fund—Project Budget Amounts," "Third Tier Debt Service Fund," "Operating Fund—Annual Operating Budget Amounts," "Rate Stabilization Fund," "Major Maintenance Fund—Annual Operating Budget Amounts," and "Capital Expenditures Fund—Annual Operating Budget Amounts,"** the Trustee shall transfer from the Revenue Fund to the Major Maintenance Reserve Fund an amount sufficient to cause the balance in the Major Maintenance Reserve Fund to be equal to the Major Maintenance Reserve Requirement.

Amounts on deposit in the Major Maintenance Reserve Fund shall be transferred by the Trustee in the following order of priority:

- (1) to the First Tier Debt Service Fund to cure any deficiency therein;
- (2) to the Second Tier Debt Service Fund to cure any deficiency therein;

(3) to the Project Budget Account of the Operating Fund in any month to cure deficiencies in the amounts to be deposited therein pursuant to the provisions described under the captions "**Operating Fund—Project Budget Amounts**";

(4) to the Project Budget Account of the Major Maintenance Fund each month an amount equal to the lesser of (i) the Major Maintenance Expenses budgeted in the Project Budget for such month, and (ii) the Major Maintenance Expenses budgeted in the current Fiscal Year's Annual Operating Budget for such month;

(5) to the Project Budget Account of the Capital Expenditures Fund in any month in which deposits therein are less than the actual Capital Expenditures expended on the Project for such month, subject to the provisions described under the captions "**Capital Expenditures Fund—Project Budget Amounts**";

(6) to the Third Tier Debt Service Fund to cure any deficiency therein;

(7) to the Annual Operating Budget Account of the Operating Fund in any month to cure deficiencies in the amounts to be deposited therein pursuant to the provisions described under the captions "**Operating Fund—Annual Operating Budget Amounts**";

(8) to the Annual Operating Budget Account of the Major Maintenance Fund each month an amount equal to the excess, if any, of the amount reflected in the current Fiscal Year's Annual Operating Budget for Major Maintenance Expenses for such month over the amount reflected in the Project Budget for Major Maintenance Expenses for such month; and

(9) to the Annual Operating Budget Account of the Capital Expenditures Fund in any month in which deposits therein are less than the actual Capital Expenditures expended on the Project for such month, subject to the provisions described under the caption "**Capital Expenditures Fund—Annual Operating Budget Amounts.**"

In the event that the amounts on deposit in the Major Maintenance Reserve Fund exceed the amounts required to be held therein, the Trustee shall transfer such excess to the Revenue Fund.

Capital Expenditures Reserve Fund. After first having made or provided for the deposits specified under the captions "**Payment of Rebate,**" "**First Tier Debt Service Fund,**" "**Second Tier Debt Service Fund,**" "**Operating Fund—Project Budget Amounts,**" "**Major Maintenance Fund—Project Budget Amounts,**" "**Capital Expenditures Fund—Project Budget Amounts,**" "**Third Tier Debt Service Fund,**" "**Operating Fund—Annual Operating Budget Amounts,**" "**Rate Stabilization Fund,**" "**Major Maintenance Fund—Annual Operating Budget Amounts,**" "**Capital Expenditures Fund—Annual Operating Budget Amounts,**" and "**Major Maintenance Reserve Fund,**" the Trustee shall transfer from the Revenue Fund to the Capital Expenditures Reserve Fund an amount sufficient to cause the balance in the Capital Expenditures Reserve Fund to be equal to the Capital Expenditures Reserve Requirement.

Amounts on deposit in the Capital Expenditures Reserve Fund shall be transferred by the Trustee in the following order of priority:

- (1) to the First Tier Debt Service Fund to cure any deficiency therein;
- (2) to the Second Tier Debt Service Fund to cure any deficiency therein;
- (3) to the Project Budget Account of the Operating Fund in any month to cure deficiencies in the amounts to be deposited therein pursuant to the provisions described under the captions "**Operating Fund—Project Budget Amounts**";
- (4) to the Project Budget Account of the Major Maintenance Fund in any month in which the amounts on deposit therein are less than the Major Maintenance Expenses for such month, subject to the provisions described under the caption "**Major Maintenance Fund—Project Budget Amounts**";
- (5) to the Project Budget Account of the Capital Expenditures Fund each month an amount equal to the lesser of (i) the Capital Expenditures budgeted in the Project Budget for such month, and (ii) the Capital Expenditures budgeted in the current Fiscal Year's Annual Operating Budget for such month;
- (6) to the Third Tier Debt Service Fund to cure any deficiency therein;
- (7) to the Annual Operating Budget Account of the Operating Fund in any month to cure deficiencies in the amounts to be deposited therein pursuant to the provisions described under the captions "**Operating Fund—Annual Operating Budget Amounts**";
- (8) to the Annual Operating Budget Account of the Major Maintenance Fund in any month in which the amounts on deposit therein are less than the Major Maintenance Expenses for such month, subject to the provisions described under the caption "**Major Maintenance Fund—Annual Operating Budget Amounts**"; and
- (9) to the Annual Operating Budget Account of the Capital Expenditures Fund each month an amount equal to the excess, if any, of the amount reflected in the current Fiscal Year's Annual Operating Budget for Capital Expenditures for such month over the amount reflected in the Project Budget for Capital Expenditures for such month.

In the event that the amounts on deposit in the Capital Expenditures Reserve Fund exceed the amounts required to be held therein, the Trustee shall transfer such excess to the Revenue Fund.

General Fund. After first having made or provided for the deposits specified under the captions "**Payment of Rebate**," "**First Tier Debt Service Fund**," "**Second Tier Debt Service Fund**," "**Operating Fund—Project Budget Amounts**," "**Major Maintenance Fund—Project Budget Amounts**," "**Capital Expenditures Fund—Project Budget Amounts**," "**Third Tier Debt Service Fund**," "**Operating Fund—Annual Operating Budget Amounts**," "**Rate Stabilization Fund**," "**Major Maintenance Fund—Annual Operating Budget Amounts**," "**Capital Expenditures Fund—Annual Operating Budget Amounts**," "**Major Maintenance Reserve Fund**,"

and "**Capital Expenditures Reserve Fund**" the Trustee shall transfer from the Revenue Fund to the credit of the General Fund all remaining Revenues.

Amounts on deposit in the General Fund shall be transferred by the Trustee to (a) the First Tier Debt Service Fund or the Second Tier Debt Service Fund to cure any deficiency therein or, upon the direction of a Board Representative, to redeem or defease any First Tier Obligations or Second Tier Obligations, (b) the Operating Fund in any month to cure deficiencies in the amounts to be deposited therein , the Major Maintenance Fund in any month in which the amounts on deposit therein are less than the Major Maintenance Expenses for such month, the Capital Expenditures Fund in any month in which deposits therein are less than the actual Capital Expenditures expended on the Project for such month, pursuant to and in the order specified in the provisions described under the captions "**Operating Fund—Project Budget Amounts**" and "**Operating Fund—Annual Operating Budget Amounts**," "**Major Maintenance Fund—Project Budget Amounts**" and "**Major Maintenance Fund—Annual Operating Budget Amounts**," and "**Capital Expenditures Fund—Project Budget Amounts**" and "**Capital Expenditures Fund—Annual Operating Budget Amounts**," (c) the Third Tier Debt Service Fund to cure any deficiency therein or, upon the direction of the Board Representative, to redeem or defease any Third Tier Obligations in the event of an optional redemption of any Third Tier Obligation, (d) the Major Maintenance Reserve Fund to cure any deficiency therein, or (e) the Capital Expenditures Reserve Fund to cure any deficiency therein.

Amounts on deposit in the General Fund may also be used (a) to pay or secure bonds, notes or other obligations of the Authority issued to finance costs for the Project, or (b) to pay or reimburse the Authority for Operating Expenses, Major Maintenance Expenses and Capital Expenditures under the current or any previous Annual Operating Budgets with respect to operating, maintaining or improving the Project to the Project Agreement Standards but in no event will the Authority be reimbursed for expenses incurred in operating, maintaining or improving the Project to standards higher than Project Agreement Standards, provided that there are no amounts due and owing to TxDOT under the Toll Equity Loan; provided, further, that such Operating Expenses, Major Maintenance Expenses and Capital Expenditures are not the subject of a dispute between the Authority and TxDOT regarding compliance with the Toll Equity Loan Agreement requirements, or, if subject to such a dispute, that such dispute has been resolved but only to the extent and in the amount provided in favor of the Authority.

Construction Fund. If the parties enter into a Supplemental Agreement with respect to the SWP/CT Project, the Trustee and the Authority may create additional Construction Funds under the Trust Agreement for the SWP/CT Project pursuant to a supplement to the Trust Agreement approved by TxDOT.

(a) *Accounts; Deposits to the Construction Fund.* The Authority shall deposit to the Construction Fund the amounts specified in each Supplemental Agreement. In addition, on the date of issuance of the Series 2010 First Tier Bonds, the Authority shall further deposit to the CIF Construction Account of the Construction Fund the amount of \$[INSERT AMOUNT] to pay Costs of the Project. The Series 2010 Construction Account shall be governed by the provisions contained herein and by the provisions relating thereto contained in the First Supplemental Agreement. The TIFIA Construction

Account shall be governed by the provisions contained herein and by the provisions relating thereto contained in the Second Supplemental Agreement. The CIF Construction Account shall be governed by the provisions contained herein.

(b) *Application of the Construction Fund; Lien.* Subject to the other provisions of this Trust Agreement, the money credited to the Construction Fund (including all obligations held as investments thereof and the proceeds of such investments) shall be applied to the payment of the cost of acquiring or constructing the Project, including the cost of improvements, extensions, enlargements, or additions to the Project. Pending such application, such money and investments shall be part of the Trust Estate until paid out or transferred as herein provided.

(c) *Payments from Construction Fund.* Payment of the Cost of the Project shall be made from the accounts of the Construction Fund. All payments from the Construction Fund shall be subject to the provisions and restrictions set forth in this Section, and the Authority covenants that it will not cause or permit to be paid from the Construction Fund any sums except in accordance with such provisions and restrictions, *provided, however*, that, at the option of the Authority, during the period of construction or completion of construction of the Project or of any expansion, enlargement or addition thereto, the Authority may direct the Trustee to transfer all or any amount of the (1) investment earnings held in the Series 2010 Construction Account of the Construction Fund and deposit the same to the credit of the First Tier Interest Account, and (2) investment earnings held in the TIFIA Construction Account of the Construction Fund and deposit the same to the credit of the Second Tier Interest Account. The Trustee shall account for all amounts at any time on hand in the Construction Fund attributable to all investment earnings, regardless of their source, and will, at the direction of the Authority, make the deposits required above to the extent of such investment earnings on hand at the time each such deposit is required to be made. It is further *provided that* in the event that such investment earnings should not be sufficient to supplement the applicable Interest Account in an amount required to enable the Trustee to pay from the applicable Interest Account the interest coming due on the Obligations on any Interest Payment Date, then the Trustee, upon the direction of the Authority, shall use the corpus of the related account of the Construction Fund (original Obligation proceeds) to the extent directed by the Authority to provide the required supplement to the related Interest Account.

(d) *Items of Cost.* The term "*Cost*" or "*Cost of the Project*" when used with respect to the Project for purposes of expenditure of amounts on deposit in the Construction Fund shall mean and include all costs related to the Project and any expansion, enlargement or addition thereto, and, without intending thereby to limit or restrict any such definition, shall include the following:

- (i) "project costs" as defined in Chapter 1371, Texas Government Code;
- (ii) obligations incurred for labor and to contractors, builders and materialmen in connection with the construction of the Project or any part thereof, and obligations incurred for machinery and equipment to be utilized in connection with the Project;

- (iii) payments to owners and others, for real property, or interests therein, or for options or other property or contractual rights;
- (iv) all expenses of every kind or character incurred in the acquisition of real property, including all costs and expenses of whatever kind in connection with the exercise of the power of condemnation, and including the cost of title searches and reports, abstracts of title, title certificates and opinions, title guarantees, title insurance policies, appraisals, negotiations and surveys;
- (v) the amount of any damages or claimed damages incident to or consequent upon the construction of the Project; also the cost of any litigation and amounts paid by court order or upon settlement of any litigation or of any claim (although not litigated) of any kind during construction or of any claim arising during or out of or related to construction of the Project;
- (vi) as to toll collection equipment, it is recognized that some manufacturers of such equipment will not sell such equipment outright, and that some manufacturers will sell it; but that it will not be known, until bids are received by the Authority for the acquisition of such equipment, which manufacturer will offer the most advantageous terms to the Authority. The acquisition of toll collection equipment is hereby determined and declared to be a capital expenditure, and a proper "Cost." It is specially *provided, however*, that if, in the discretion of the Authority, it will be to the advantage of the Authority to do so, the Authority may enter into lease-purchase or lease-rental agreements for the acquisition of such equipment. In such event the Authority shall so advise the Trustee, and the Trustee shall set aside and retain the amounts required for the payments under such agreements in the Construction Fund, and shall make such payments as so required, upon requisitions as provided for in this Section. Any such payments shall constitute proper items of "cost" for all purposes;
- (vii) the cost of any necessary indemnity and surety bonds, the cost of all fidelity bonds, the fees and expenses of the Trustee and the Paying Agent, and premiums on all insurance deemed necessary and advisable by the Authority, until one year after the completion of construction thereof;
- (viii) the cost of borings and other preliminary investigations to determine foundation or other conditions, all fees, costs, and expenses necessary or incident to determining the feasibility and practicability of constructing the Project, and all fees, costs, and expenses of engineers and others for making traffic studies, surveys, and estimates, and all fees, costs, and expenses of engineering services, plans, specifications, surveys, and estimates of cost and revenues, and all costs of supervising construction, as well as for the performance of all other duties of engineers in relation to the construction of the Project or the issuance of Obligations therefor;
- (ix) the cost of preparing and issuing Obligations, including refunding Obligations, and all legal, accounting and other professional expenses and fees and financing charges in connection with any Obligations and/or the Project, and expenses of administration properly chargeable to the construction of the Project, including salaries and all payments and deductions as provided by law;

(x) the cost of restoring, repairing and placing in its original condition, as nearly as practicable, all public or private property damaged or destroyed in the construction of the Project, or the amount paid by the Authority as compensation for such damage or destruction, and all costs lawfully incurred or damages lawfully payable, with respect to the restoration, relocation, removal, reconstruction or duplication of property or facilities in connection with or made necessary or caused by the construction of the Project, and the cost of building facilities to connect land severed by the Project or severance damages paid in lieu of such facilities;

(xi) any obligation or expense heretofore or hereafter incurred by the Authority in connection with any of the foregoing items of cost, and the reimbursement of any obligations or expenses incurred in connection with any of the foregoing items of cost;

(xii) utility relocations, buildings and other structures, fencing, landscaping, illumination, communication systems, and safety devices; and

(xiii) all other items of cost and expense not elsewhere in this Section specified, incident to the construction and equipping of the Project, the financing thereof and the costs of placing the Project in operation, including all costs as defined under the term "Cost" in the Turnpike Act.

(e) *Special Requirements Relating to Condemnation.* Whenever it shall be necessary to acquire by condemnation any real property or other property, as provided in the Turnpike Act, payment of compensation for such property or deposit of money to secure such payment shall be made by the Trustee under the provisions of this clause (e) in order that the Authority may either (i) take possession thereof prior to the completion of condemnation proceedings or (ii) take title thereto upon completion of condemnation proceedings. The Trustee shall withdraw from the Construction Fund and deposit with the court in which the proceedings for condemnation shall be pending, or pay to an owner or owners if so required by the court's order, an amount equal to the amount necessary so to be paid or deposited, upon receipt by the Trustee of the following documents:

(1) a requisition, signed by at least two Board Representatives for such purpose, requesting withdrawal and stating the amount thereof;

(2) a statement signed by the PMO or the Consulting Engineers, certifying that in their opinion the acquisition of such property is necessary in connection with the construction, operation or maintenance of the Project; and

(3) a statement signed by Counsel for the Authority stating the amount of compensation necessary to be paid or stating the amount necessary to be deposited with the court.

Similar withdrawals and deposits shall be made by the Trustee with respect to any such condemnation case pending before such court in the event additional amounts shall be necessary to be paid or to be deposited, upon receipt by the Trustee of a requisition of the Authority, signed as required by clause (1) of this subsection, requesting such withdrawal, stating the amount thereof and having attached thereto a

statement signed by Counsel for the Authority stating the amount of compensation necessary to be paid or stating an amount necessary to be deposited with the court.

(f) *Payments from Construction Fund; Requisitions and Certificates.* Payments from the Construction Fund, except the payments and withdrawals which the Trustee is authorized to make under the provisions of clauses (e), (g) and (k) of this Section, shall be made in accordance with the provisions of this Section. Before any such payment shall be made the Authority shall file with the Trustee:

(i) a requisition, signed by at least two Board Representatives of the Authority designated by resolution of the Authority for such purpose, stating in respect of each payment to be made:

- (1) the item number of the payment;
- (2) the name of the person to whom payment is to be made;
- (3) the amount to be paid from each account of the Construction Fund;
- (4) the purpose for which the payment is to be made;
- (5) that obligations in the stated amounts have been incurred by the Authority and that each item thereof is a proper charge against the Construction Fund and has not been paid, *provided, however*, that certification to this effect shall not be required with respect to any item for the payment for any real property;
- (6) that there has not been filed with or served upon the Authority legal notice of any lien, right to lien, attachment or other claim, which is valid in the opinion of Counsel for the Authority, and affects the right to receive payment of any of the money payable to any of the persons, firms or corporations named in such requisition, which has not been released or will not be released simultaneously with such payment;
- (7) that such requisition contains no item representing payment on account of any retained percentages which the Authority is at the date of such certificate entitled to retain; *provided, however*, that certification to this effect shall not be required with respect to any item for the payment for any real property; and
- (8) that no default exists under this Trust Agreement which has not been disclosed to the Trustee, and the Authority will use its best efforts to cure any default if it exists;

(ii) with respect to any item for payment for real property, the additional statements set forth in clause (h) of this Section; and

(iii) with respect to all items payable on account of all obligations incurred for construction or engineering work and for acquisition of materials, equipment or supplies (other than for administrative office purposes) and for labor hired by the Authority to do construction work, and with respect to all items of payment to be made in reimbursing utility or railroad companies or others for obligations incurred by them pursuant to agreement with the Authority, a statement signed

by the PMO or Consulting Engineers and attached to or made a part of such requisition, certifying that each such obligation has been properly incurred and is then due and unpaid, that such obligation is a proper charge against the Construction Fund, and that, insofar as such obligation was incurred for work, materials, equipment or supplies, such work was actually performed, or such materials, equipment or supplies were actually installed, or delivered at the site of the work for that purpose, or delivered for storage or fabrication at a place or places approved by the PMO or Consulting Engineers.

Upon receipt of each such requisition and accompanying certificates the Trustee shall pay each such item from the Construction Fund or shall advance funds to the Authority for the payment thereof.

In the event the proceeds of any advance is in excess of the amount required for the purpose for which any requisition was made, such excess shall be returned to the Trustee for the credit of the Construction Fund.

(g) *Reimbursements for Payment from Revolving Fund.* The Trustee shall, from time to time, make payments to the Authority from the Construction Fund as reimbursements for payments theretofore made by the Authority from a revolving fund created by the Authority for the purpose of paying such items of Cost of the Project as in the opinion of the Authority cannot be conveniently paid as otherwise provided in this Trust Agreement. Before any such payment shall be made, the Authority shall file with the Trustee a requisition, signed as provided in clause (f) of this Section, specifying the payee, the amount and the purpose of each payment from the revolving fund for which such reimbursement is requested, accompanied by a certificate similarly signed, certifying that each such payment was a necessary item of the Cost of the Project, and that such item of Cost could not be conveniently paid except from such revolving fund; *provided, however,* that if any item in such requisition is for reimbursement on account of the payment for any real property, such requisition shall also have attached thereto the documents required by clause (h) of this Section, and if any such payment is for reimbursement on account of payment, or securing payment by deposit, of compensation in any condemnation case, the requisition shall also be accompanied by the documents referred to in clause (e) of this Section. In making such reimbursements the Trustee may rely conclusively upon such requisitions and accompanying certificates.

(h) *Requisitions for Payment for Real Property.* If any requisition under clause (f) of this Section contains any item for payment for real property for temporary or permanent use of the Authority, the Authority shall attach to or make a part of such requisition, in addition to the applicable certificates mentioned in clause (f) of this Section:

- (i) a statement signed by the PMO or Consulting Engineers certifying that in their opinion the acquisition of such property is necessary or advisable in connection with the construction or operation of the Project; and
- (ii) either (1) an opinion signed by Counsel for the Authority that at the time of making such payment the Authority has or will have good title to, or an easement in or over, said real property sufficient for the purposes of the Authority, and free

from all liens and encumbrances except liens or encumbrances which, in the opinion of said counsel, do not have a materially adverse effect upon the Authority's right to use said real property for the purposes intended or which have been or will be adequately guarded against by a bond or contract of indemnity, guaranty, or insurance; or (2) a statement by Counsel for the Authority that such title has been or will be insured by a title insurance company satisfactory to such counsel, guaranteeing good title in the authority free and clear of all liens and encumbrances other than those which in the opinion of said counsel do not have a materially adverse effect upon the Authority's right to use said real property for the purpose intended; or (3) if any payment requested by a requisition be a payment for an option to purchase, a quitclaim deed, a lease, or release, or on a contract to purchase, or is otherwise for the acquisition of a right or interest in lands which is less than a fee simple or perpetual easement, or if such payment be part payment for any such purpose, the written approval of Counsel for the Authority of the acquisition of such lesser right or interest.

Whenever in connection with the purchase of any real property it shall be necessary or desirable either (1) to withhold from the purchase price a portion thereof to be applied to pay any tax, assessment, or other claim which is or may be a lien on said real property or (2) later to pay any such tax, assessment, or other claim which is or may be, or but for any law exempting real property from taxation would be, a lien on any real property, a payment or payments for which shall previously have been requisitioned and made pursuant to the prior provisions of this Section, such tax, assessment, or claim shall be paid by the Trustee to such person as shall be designated in a further requisition (meeting the specifications of clause (f) of this Section), accompanied by the approval of such payment by Counsel for the Authority. Each such requisition shall identify the real property with respect to which such payment is to be made. If the amount of any such tax, assessment, or other lien shall have been withheld from the purchase price of any real property, and if after payment thereof there shall remain any balance due on the purchase price (including damages), requisition for the payment of such balance, and payment thereof, shall be made in the same manner as provided in the preceding sentences of this paragraph.

(i) *Trustee to Retain Requisitions.* All requisitions, certificates and opinions received by the Trustee, as required in this Section as conditions of payment from the Construction Fund, may be relied upon conclusively by and shall be retained in the possession of the Trustee for a period of the later of seven (7) years after the date of the final payment from the Construction Fund or the date upon which the Obligations to which such payments relate are no longer Outstanding, subject at all reasonable times to the inspection of the Authority, the PMO and the Consulting Engineers, and their agents and representatives.

(j) *Progress Reports; Audits during Construction; Certificate Upon Opening.* The Authority covenants that, at least once in every six-month period during the construction of any portion of the Project which it finances in whole or in part with Obligations, it will cause the Consulting Engineers to prepare a progress report in connection with the acquisition of real property for the Project, and a progress report in connection with such construction, including their then current estimates of:

- (i) the date on which the Project or portion thereof will be opened for traffic, unless such Project or portion thereof shall have been opened for traffic prior to the date of such report,
- (ii) the date on which the construction of such Project or portion thereof will be completed,
- (iii) the cost of the Project or portion thereof but excluding any Obligation discount and the interest during construction and for one year after completion of construction, and
- (iv) the amount of funds required each six (6) months during the remaining estimated period of construction to meet the aforesaid cost of such Project or portion thereof exclusive of funds provided for construction contingencies, and accompanied by a progress schedule for such construction, and further including, as to construction, comparisons between the actual times elapsed and the actual costs, and the original estimates of such times and costs. Copies of such progress reports shall be filed with the Trustee and with the Authority.

(k) *Certificates and Opinions after Completion; Disposition of Balances.* When the construction of the Project shall have been completed, which fact shall be evidenced to the Trustee by a certificate stating the date of such completion, signed by a Board Representative and approved by the PMO or Consulting Engineers, accompanied by an opinion of Counsel for the Authority stating that the Authority has acquired title or easements, or has acquired the right of possession by condemnation proceedings which may still be pending, in the name of the Authority to the right-of way for the project free from all liens or encumbrances except liens, encumbrances or other defects of title which, in the opinion of such counsel, do not have a materially adverse effect upon the Authority's right to use such right-of-way for the purposes intended or which have been adequately guarded against by a bond or other form of indemnity, guaranty or insurance, in which opinion such counsel may rely on title insurance policies of companies satisfactory to such counsel as evidence of title when such policies are obtained, and accompanied by a certificate of the PMO or Consulting Engineers stating the amount, if any, required in their opinion for the payment of any remaining part of the Cost of the Project, the balance in the Construction Fund in excess of the amount, if any, stated in such certificate, shall (1) if in the CIF Account, be transferred to the Authority and used for any lawful purpose, (2) if in the Series 2010 Construction Account, be retained in such account and be used to pay for Capital Expenditures including the Project Capacity Improvements, unless such use is not permitted under applicable federal tax laws or regulations, in which case such amounts shall be used by the Trustee to redeem, defease or purchase and cancel Outstanding Senior Project Debt as directed by the Authority, and (3) if in the TIFIA Construction Account, be retained in such account and be used to pay for Capital Expenditures including the Project Capacity Improvements.

Thereafter, if at any time there shall be filed with the Trustee a certificate signed by a Board Representative and approved by the PMO or Consulting Engineers stating that the cost of the Project has been fully paid, the balance in the accounts of Construction Fund shall be disposed of as provided above.

APPENDIX F

**FORM OF CERTIFICATE OF BORROWER RE SATISFACTION OF SECTION 3.02
CONDITIONS**

The undersigned, a Board Representative, as such term is defined in that certain Toll Equity Loan Agreement (the "Agreement") dated as of _____, 2010, by and between the Texas Department of Transportation and the North Texas Tollway Authority (the "Borrower"), hereby certifies for and on behalf of the Borrower that (i) the conditions set forth in Section 3.02(a) and (b) of the Agreement have been satisfied or waived, (ii) there has been no default or event of default described in Section 3.02(c) or (e) of the Agreement such that the condition precedent in either such Section is not satisfied, (iii) the representations and warranties given by the Borrower in the Agreement are true and correct in all materials respects on and as of the dates specified in Section 3.02(d) of the Agreement, and (iv) no event, development or circumstance as to the Borrower described in Section 3.02(f) of the Agreement has occurred or become known to the Borrower.

Dated: _____, 20__

NORTH TEXAS TOLLWAY AUTHORITY