

**SUPPLEMENT TO TOLL EQUITY LOAN AGREEMENT**

dated as of November 1, 2011

between

**North Texas Tollway Authority,**  
as Borrower,

and

**Texas Department of Transportation,**  
as TxDOT,

relating to

**SOUTHWEST PARKWAY/CHISHOLM TRAIL PROJECT**

**and**

**COMBINED SH 161/SOUTHWEST PARKWAY/  
CHISHOLM TRAIL PROJECT**

This SUPPLEMENT TO TOLL EQUITY LOAN AGREEMENT (this "Supplement"), dated as of November 1, 2011 (the "Effective Date of this Supplement") 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 15, 2011, the Borrower and TxDOT entered into that certain Toll Equity Loan Agreement for the SH 161 Project (the "Original Agreement") pursuant to which TxDOT established the Toll Equity Loan Commitment (as defined in the Original Agreement) to provide support for the Borrower's efforts to develop, construct, operate, maintain and provide financing for 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 "SH 161 Project").

(2) On October 27, 2010, the Borrower and TxDOT entered into that certain Project Agreement for the Southwest Parkway/Chisholm Trail Project (the "SWP/CT Project Agreement") assigning certain rights and responsibilities with respect to the development, construction, operation, maintenance and financing of the SWP/CT Project (as defined in the Original Agreement).

(3) On April 28, 2011, the Borrower and TxDOT entered into that certain Agreement to Enter into Supplement to Toll Equity Loan Agreement dated as of April 15, 2011 (the "Agreement to Enter into Supplement to Toll Equity Loan Agreement"), pursuant to which TxDOT agreed, subject to satisfaction of certain conditions precedent, to enter into a supplement to the Original Agreement or amend and restate the Original Agreement to, among other things, increase the Toll Equity Loan Commitment to include the SWP/CT Project.

(4) The Texas Transportation Commission has given preliminary and final approval for an increase in the Toll Equity Loan Commitment to provide support for the Borrower's efforts to develop, construct, operate, maintain and provide financing for the SWP/CT Project.

(5) In order to provide financing for a portion of the development and construction of the SWP/CT Project under and pursuant to the SWP/CT Project Agreement, the Borrower intends to issue, pursuant to the Trust Agreement and supplement thereto, up to \$640,535,000 aggregate principal amount of the Borrower's Special Projects System First Tier Revenue Bonds (the "SWP/CT First Tier Bonds").

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 increase the Toll Equity Loan Commitment

to include the SWP/CT Project, the parties hereby amend and supplement the Original Agreement as follows:

## **ARTICLE I** **DEFINITIONS**

Section 1.01 Certain Defined Terms. Section 1.01 of the Original Agreement is hereby supplemented to add or amend the following capitalized terms as they relate to the Toll Equity Loan Commitment including the SWP/CT Project. Capitalized terms used herein and not defined have the meaning given in the Original Agreement. TERMS DEFINED IN THE ORIGINAL AGREEMENT AND ALSO DEFINED IN THIS SUPPLEMENT HAVE THE RESPECTIVE MEANINGS GIVEN IN THIS SUPPLEMENT, AND THE CORRESPONDING DEFINITIONS IN THE ORIGINAL AGREEMENT ARE SUPERSEDED.

“Agreement” means the Original Agreement as amended and supplemented by this Supplement, except where the context in the Original Agreement clearly indicates otherwise (such as in the definitions of “Effective Date” and “Material Adverse Effect” in the Original Agreement and in the first sentence of Section 8.04 of the Original Agreement).

“Agreement to Enter into Supplement to Toll Equity Loan Agreement” has the meaning set forth in paragraph (3) of the Preliminary Statements to this Supplement.

“Contract” means each or all, as the context indicates, of (a) the Design/Build Agreement (SH 161 Project) bearing contract No. 02622-SH161—00-DB-PM between the Borrower and the Design-Build Contractor and (b) each construction contract between the Borrower and a construction contractor for construction of any portion of the SWP/CT Project.

“Contractor” means each or all, as the context indicates, of (a) 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 Contract for the SH 161 Project and (b) each contractor that is a party to a Contract for construction of any portion of the SWP/CT Project.

“Design-Build Contract” means “Contract”.

“Design-Build Contractor” means “Contractor”.

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

“Finance Documents” means each of the Trust Agreement, the Series 2011 First Tier Bonds, the Original Agreement, the TIFIA Loan Agreement, the Series 2011 TIFIA Note, the Master Custodial Account Agreement, the supplement to the Trust Agreement entered into in connection with the Supplement, the SWP/CT First Tier Bonds, the

Supplement, the Master Custodial Account Agreement document delivered in connection with the Supplement, and the Toll Equity Loan Note in the form of Appendix A to the Supplement.

“Financial Model” means the financial model prepared by the Borrower and delivered to TxDOT as of the dates specified in Section 3.01 – 2 of the Agreement to Enter into Supplement to Toll Equity Loan Agreement for the purposes of consummating the Supplement, which contains the details of the Series 2011 Project Debt, the proposed SWP/CT Project Debt, the Project Budget, the Maximum Available Annual Amount and the Maximum Available Aggregate Amount, all as defined in this Supplement, as updated from time to time in accordance with Section 5.02(b)(ii) and (iii) hereof.

“Maximum Available Aggregate Amount” has the meaning set forth in Section 2.01 of this Supplement.

“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 First Tier Capitalized Interest Account of the First Tier Debt Service Fund for the payment of interest on the Series 2011 First Tier Bonds and the SWP/CT 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 2011 First Tier Bonds and the SWP/CT 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, the General Account of the General Fund and the Current Year Revenue Account of the General Fund; and (ii) the Maximum Available Annual Amount for the applicable period for which an advance is requested, minus balances in the First Tier Capitalized Interest Account of the First Tier Debt Service Fund for the payment of interest on the Series 2011 First Tier Bonds and the SWP/CT 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 2011 First Tier Bonds and the SWP/CT 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, the General Account of the General Fund and the Current Year Revenue Account of the General Fund.

“Original Agreement” has the meaning set forth in paragraph (1) of the Preliminary Statements to this Supplement.

“Project” means both the SH 161 Project and the SWP/CT Project.

“Project Agreement” means both the SH 161 Project Agreement and the SWP/CT Project Agreement.

“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 SH 161 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 Documents” means, collectively, the Project Agreement and the Contracts.

“Senior Project Debt” means, as at any date, the Series 2011 Project Debt, the SWP/CT Project Debt, and any Additional Senior Project Debt and Refunding Bonds incurred as of such date and as permitted in this Agreement.

“Service Commencement Date” means, respectively, (a) for the SH 161 Project, the date when all Phases of the SH 161 Project are open for normal and continuous operations and use by the traveling public and (b) for the SWP/CT Project, the date when all sections of the SWP/CT Project are open for normal and continuous operations and use by the traveling public.

“SH 161 Project” means the “Project” described in paragraph (2) of the Preliminary Statements to the Original Agreement.

“SH 161 Project Agreement” means the “Project Agreement” described in paragraph (3) of the Preliminary Statements to the Original Agreement.“

“Substantial Completion” means, respectively, (a) for the SH 161 Project, 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 SH 161 Project Agreement, such that the Authority Structures, other than the low volume direct connectors in Phase 4, are in a condition that the SH 161 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 SH 161 Project Agreement, and (b) for the SWP/CT Project, the date when the Borrower has completed or caused the completion of all acquisition, equipping and construction of the SWP/CT Project (other than those portions to be constructed by TxDOT) in accordance with the requirements of the SWP/CT Project Agreement, such that the SWP/CT Project (other than those portions to be constructed by TxDOT) is in a condition that the SWP/CT 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 SWP/CT Project Agreement.

"Supplement" means this Supplement to Toll Equity Loan Agreement dated as of November 1, 2011.

"SWP/CT First Tier Bonds" has the meaning set forth in paragraph (5) of the Preliminary Statements to this Supplement.

"SWP/CT Guaranteed Substantial Completion Date" for the SWP/CT Project means April 30, 2014.

"SWP/CT Project Agreement" has the meaning set forth in paragraph (2) of the Preliminary Statements to this Supplement.

"SWP/CT Project Debt" means the SWP/CT First Tier Bonds.

Section 1.02 Deletion of Certain Defined Terms. Section 1.01 of the Original Agreement is hereby amended to delete the terms "Note Issuance Date" and "Note Maturity Date."

## **ARTICLE II** **AMOUNT AND TERMS OF THE TOLL EQUITY LOAN COMMITMENT**

Section 2.01 Establishing the Toll Equity Loan Commitment. The second sentence of Section 2.01 of the Original Agreement is hereby amended in its entirety to read as follows:

"The Toll Equity Loan Commitment shall not exceed in total principal amount \$6,020,333,650.00 (the "Maximum Available Aggregate Amount") and no advance thereunder shall cause the aggregate principal amount of all advances (i) in any of the Draw Periods as set forth in Appendix B to exceed the Maximum Available Annual Amount set forth in Appendix B for any of such Draw Periods and (ii) taking into account such advance and all prior advances, to exceed the aggregate amount of Eligible Costs."

Section 2.03 Toll Equity Loan. The third and fourth paragraphs in Section 2.03 of the Original Agreement are amended to read as follows:

"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 of each of the SH 161 Project and the SWP/CT Project and subject to the following paragraph, amounts in the Project Budget for that portion of the Project for subsequent years shall be considered to be amounts reasonably anticipated to be expended or incurred.

Five years after Substantial Completion of both the SH 161 Project and the SWP/CT Project, and at the end of each Fiscal 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.”

Section 2.06 Release of Toll Equity Loan Commitment. The “Service Commencement Date” referred to in the second paragraph of Section 2.06 of the Original Agreement shall be the last Service Commencement Date to occur. The “Effective Date” referred to in the third paragraph of Section 2.06 of the Original Agreement shall be the Effective Date of this Supplement.

### **ARTICLE III** **CONDITIONS OF ESTABLISHING TOLL EQUITY LOAN COMMITMENT**

Article III of the Original Agreement is not applicable to the SWP/CT Project.

### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES**

Section 4.01 Representations and Warranties of the Borrower. The Borrower hereby reaffirms all of the representations and warranties set forth in Section 4.01 of the Original Agreement as of the date hereof (except to the extent that any representation and warranty set forth in Section 4.01 of the Original Agreement specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date), provided that (a) Section 4.01(j) of the Original Agreement shall include the SWP/CT First Tier Debt and the Toll Equity Loan Note in the form of Appendix A to this Supplement, and (b) Section 4.01(z) of the Original Agreement shall refer only to the Official Statement for the SWP/CT First Tier Debt.

Section 4.02 Representations and Warranties of TxDOT. TxDOT hereby reaffirms all of the representations and warranties set forth in Section 4.02 of the Original Agreement as of the date hereof (except to the extent that any representation and warranty set forth in Section 4.02 of the Original Agreement specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date), provided that (a) no representations and warranties are reaffirmed with respect to the Direct Agreement with the Contractor for the SH 161 Project, and (b) Section 4.01(g) of the Original Agreement shall refer only to the Official Statement for the SWP/CT First Tier Debt.

**ARTICLE V**  
**COVENANTS OF THE BORROWER**

Section 5.01(b) Limitation on Use of Funds to Pay for Certain Operation and Maintenance Expenses and Capital Expenditures. Section 5.01(b) of the Original Agreement is supplemented by adding the following paragraph at the end of said section:

“Notwithstanding anything herein to the contrary, in no event shall amounts held in any of the Project Reserve Funds be used to pay Capital Expenditures for the SWP/CT Project; provided that the Borrower shall be permitted to pledge amounts held in the General Fund for repayment of debt service on indebtedness incurred to pay for Capital Expenditures for the SWP/CT Project. Any such pledge shall comply with the last paragraph of Section 5.06(c) of the Agreement.”

Section 5.02(b)(ii) Covenant re Traffic Engineer. The “Service Commencement Date” referred to in Section 5.02(b)(ii) of the Original Agreement shall be the first Service Commencement Date to occur.

Section 5.02(c)(iii) Consultant Reports; Appointment of Replacement Consultants. The “Service Commencement Date” referred to in Section 5.02(c)(iii) of the Original Agreement shall be each Service Commencement Date.

Section 5.05(d) Use of Proceeds and Amounts Remaining in the Construction Fund After Completion of the Authority Structures. The second paragraph of Section 5.05(d) of the Original Agreement is replaced in its entirety with the following:

“(i) Any amounts remaining in the Series 2011 Construction Account held by the Trustee under the Trust Agreement after the Borrower submits to the Trustee a final completion certificate with regard to construction of the Authority Structures for the SH 161 Project and that are not needed to pay any unpaid costs of the SH 161 Project shall be transferred to the SWP/CT Project Construction Account if the SWP/CT Project is not completed at the time of submission of such final completion certificate. Any amounts remaining in the SWP/CT Project Construction Account of the Construction Fund held by the Trustee under the Trust Agreement after the Borrower submits to the Trustee a final completion certificate with regard to construction of the Authority Structures for the SWP/CT Project and that are not needed to pay any unpaid costs of the SWP/CT Project shall be transferred to the Series 2011 Construction Account if the SH 161 Project is not completed at the time of submission of such final completion certificate.

(ii) After the Borrower submits to the Trustee both final completion certificates with regard to construction of the Authority Structures for the Project, any amounts remaining in the Series 2011 Construction Account shall remain therein, any amounts remaining in the SWP/CT Project Construction Account

shall be transferred to the Series 2011 Construction Account, and all amounts on deposit in the Series 2011 Construction Account 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 2011 Construction Account is not permitted by applicable federal tax laws or regulations or by the TIFIA Loan Agreement, 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.

(iii) The Borrower shall provide as the first contribution of equity to develop the SWP/CT Project an amount equal to \$327,528,911.00.

(iv) Any amounts remaining in the SH 161 Project CIF Construction Account of the Construction Fund after the Borrower submits to the Trustee a final completion certificate with regard to construction of the Authority Structures for the SH 161 Project and that are not needed to pay any unpaid costs of the SH 161 Project shall be transferred to the SWP/CT Project CIF Construction Account of the Construction Fund if the SWP/CT Project is not completed at the time of submission of such final completion certificate. Any amounts remaining in the SWP/CT Project CIF Construction Account of the Construction Fund after the Borrower submits to the Trustee a final completion certificate with regard to construction of the Authority Structures for the SWP/CT Project and that are not needed to pay any unpaid costs of the SWP/CT Project shall be transferred to the SH 161 Project CIF Construction Account of the Construction Fund if the SH 161 Project is not completed at the time of submission of such final completion certificate.

(v) After the Borrower submits to the Trustee both final completion certificates with regard to construction of the Authority Structures for the Project, any amounts remaining in applicable CIF Construction Account of the Construction Fund shall be transferred first to the Revenue Fund and used as provided for "Revenues" in Appendix E of this Supplement, provided that the amount so transferred plus amounts previously expended from the CIF Construction Accounts for both the SH 161 Project and the SWP/CT Project is not required to exceed \$400 million, and second, the balance to the Borrower; provided, if and to the extent such use of such amounts on deposit in the applicable CIF Construction Account of the Construction Fund is not permitted by applicable federal tax laws or regulations, at the option and direction of the Borrower such amounts shall remain in such account and be used to pay for Capital Expenditures, including Project Capacity Improvements, or Major Maintenance Expenses."

Section 5.05(e) Change Orders. The first sentence of Section 5.05(e) of the Original Agreement is hereby amended in its entirety to read as follows:

"The Borrower shall not enter into any Change Order (or any similar term as defined in each Contract) or any Scope Change (or any similar term as defined

in each Contract except in compliance with the applicable requirements of federal law and the Project Agreement.”

Section 5.05(f) Tolling System. The “Service Commencement Date” referred to in Section 5.02(f) of the Original Agreement shall be each Service Commencement Date.

Section 5.06(a) Senior Project Debt. Section 5.06(a) of the Original Agreement is amended to add the following:

“SWP/CT Project Debt. The Borrower shall issue all of the SWP/CT First Tier Bonds in compliance with the terms and conditions of the Trust Agreement. SWP/CT Project Debt shall only be issued as fixed rate debt. On the date of the issuance of the SWP/CT Project Debt, there shall be no event of default by the Borrower under the Trust Agreement, this Agreement, or the Project Agreement. The Borrower shall deposit proceeds of the SWP/CT First Tier Bonds with the Trustee in an amount sufficient, after taking into account amounts required to be deposited or expected to be received by the Borrower from sources other than SWP/CT Project Debt, (A) to pay for Project Costs on the SWP/CT Project as set forth in the Project Budget, including the contingency in an amount set forth in the Project Budget, and (B) to fund all amounts required to be deposited in Trust Agreement Funds as provided in Appendix E.”

Section 5.06(b). Refunding of Senior Project Debt. Section 5.06(b)(iii) of the Original Agreement is amended in its entirety to read as follows:

“(iii) Unless expressly approved by TxDOT, no refunding transaction involving Project Debt that extends the final maturity of the Series 2011 First Tier Bonds, the TIFIA Loan, or the SWP/CT First Tier Bonds 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.”

Section 5.06(c) Additional Project Debt. The first paragraph of Section 5.06(c) of the Original Agreement is amended in its entirety to read as follows:

“The issuance of Senior Project Debt (other than the Series 2011 Project Debt, the SWP/CT Project Debt as provided in Section 5.06(a), 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)) 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 2 years after the final maturity of the Series 2011 Project Debt, but in no event longer than 40 years after the execution of the Original 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, the General Account of the General Fund, and the Current Year Revenue Account of 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.”

Section 5.07 Sources of Funds. The “Service Commencement Date” referred to in Section 5.07 of the Original Agreement shall be the last Service Commencement Date to occur.

## **ARTICLE VI**

### **EVENTS OF DEFAULT BY THE BORROWER**

Section 6.01(l) Events of Default. Section 6.01(l) of the Original Agreement is replaced in its entirety with the following:

- “(i) Substantial Completion with respect to the Authority Structures under the SH 161 Project Agreement has not occurred by the date that occurs twelve months after the Guaranteed Substantial Completion Date.
- “(ii) Substantial Completion with respect to the Authority Structures under the SWP/CT Project Agreement has not occurred by the date that occurs twelve months after the SWP/CT Guaranteed Substantial Completion Date.”

Section 6.01(n) Events of Default. Section 6.01(n) of the Original Agreement is replaced in its entirety with the following:

- “(i) Prior to Substantial Completion of the Authority Structures under the SH 161 Project Agreement, the construction of such Authority Structures is abandoned; provided that, for the purposes of this Section 6.01(n)(i), abandonment of the construction of such Authority Structures is deemed to have occurred if no significant construction on such Authority Structures (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.
- “(ii) Prior to Substantial Completion of the Authority Structures under the SWP/CT Project Agreement, the construction of such Authority Structures is abandoned; provided that, for the purposes of this Section 6.01(n)(ii), abandonment of the construction of such Authority Structures is deemed to have

occurred if no significant construction on such Authority Structures (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.”

Section 6.01(o) Events of Default. The “Service Commencement Date” referred to in Section 6.01(o) of the Original Agreement shall be the first Service Commencement Date to occur.

Section 6.02(e) Remedies upon an Event of Default. Section 6.02(e) of the Original Agreement is replaced in its entirety with the following:

“(i) Upon the occurrence of an Event of Default under Section 6.01(l)(i) or (n)(i), 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 of the Authority Structures under the SH 161 Project Agreement has not occurred, regardless of whether the Borrower is continuing or resumes construction work with respect to such Authority Structures, to step-in and undertake completion of such Authority Structures using any and all reasonable means necessary to achieve Substantial Completion of such Authority Structures substantially in accordance with the plans and specifications for the Authority Structures approved under the SH 161 Project Agreement and to pay or direct the Trustee to pay or reimburse TxDOT for the costs thereof out of funds in the accounts in the Construction Fund related to the SH 161 Project, the General Account of the General Fund, the Current Year Revenue Account of 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 Account of the General Fund, the Current Year Revenue Account of the General Fund or the Capital Expenditure Fund. If in the exercise of remedies under this Section 6.02(e) TxDOT incurs costs or causes costs to be paid (or reimbursed to TxDOT) with amounts credited to the General Account of the General Fund, the Current Year Revenue Account of the General Fund or the Capital Expenditure Fund that, taken together with all previously incurred Project Costs, exceed the Project Costs set forth in the Project Budget (the “Excess Construction Cost”), the Borrower shall, without limiting TxDOT’s right to exercise remedies due to the occurrence and continuance of an Event of Default under Section 6.01(l)(i) or (n)(i) hereof, repay TxDOT for the Excess Construction Cost and, upon any such repayment by the Borrower, TxDOT shall apply such repayment in accordance with and to the extent required by the last sentence of Section 15(c) of the Direct Agreement (as defined in the Trust Agreement);

(ii) Upon the occurrence of an Event of Default under Section 6.01(l)(ii) or (n)(ii), 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 of the Authority Structures under the SWP/CT Project Agreement has not occurred, regardless of whether the Borrower is continuing or resumes construction work with respect to such Authority Structures, to step-in and undertake completion of such Authority Structures using any and all reasonable means necessary to achieve Substantial Completion of such Authority Structures substantially in accordance with the plans and specifications for the Authority Structures approved under the SWP/CT Project Agreement and to pay or direct the Trustee to pay or reimburse TxDOT for the costs thereof out of funds in the accounts in the Construction Fund related to the SWP/CT Project, the General Account of the General Fund, the Current Year Revenue Account of 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 Account of the General Fund, the Current Year Revenue Account of the General Fund or the Capital Expenditure Fund. If in the exercise of remedies under this Section 6.02(e) TxDOT incurs costs or causes costs to be paid (or reimbursed to TxDOT) with amounts credited to the General Account of the General Fund, the Current Year Revenue Account of the General Fund or the Capital Expenditure Fund that, taken together with all previously incurred Project Costs, exceed the Project Costs set forth in the Project Budget (the "Excess Construction Cost"), the Borrower shall, without limiting TxDOT's right to exercise remedies due to the occurrence and continuance of an Event of Default under Section 6.01(l)(ii) or (n)(ii) hereof, repay TxDOT for the Excess Construction Cost and, upon any such repayment by the Borrower, TxDOT shall apply such repayment in accordance with and to the extent required by the last sentence of Section 15(c) of the Direct Agreement (as defined in the Trust Agreement); and"

**ARTICLE VII**  
**COVENANTS AND EVENTS OF DEFAULT BY TXDOT**

No changes are made to Article VII of the Original Agreement.

**ARTICLE VIII**  
**MISCELLANEOUS**

Section 8.01 Notices. Copies of notices to TxDOT also shall be delivered to the following:

Texas Department of Transportation  
Ft. Worth District Office  
2501 Southwest Loop  
Fort Worth, Texas 76133  
Attn: Maribel P. Chavez, P.E.  
Fax: (817) 370-6787  
Email: mchavez@dot.state.tx.us

Section 8.02 Amended and Restated Toll Equity Loan Agreement. After the Effective Date of this Supplement, the parties intend to enter into an Amended and Restated Toll Equity Loan Agreement to combine the terms of the Original Agreement and this Supplement into one document.

## **APPENDICES**

Appendix A Form of Toll Equity Loan Note. Appendix A of the Original Agreement is replaced in its entirety with Appendix A to this Supplement.

Appendix B Schedule of Maximum Available Amounts. Appendix B of the Original Agreement is replaced in its entirety with Appendix B to this Supplement.

Appendix C Form of Certificate of Borrower Re Advances. Appendix C of the Original Agreement is replaced in its entirety with Appendix C to this Supplement.

Appendix D Project Budget. Appendix D of the Original Agreement is replaced in its entirety with Appendix D to this Supplement.

Appendix E Funds and Accounts. Appendix E of the Original Agreement is replaced in its entirety with Appendix E to this Supplement.

Except as expressly amended and supplemented by this Supplement, the Original Agreement remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement 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: \_\_\_\_\_  
Gerald E. Carrigan  
Interim Executive Director

By: \_\_\_\_\_  
Phil Wilson,  
Executive Director

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

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

ATTEST:

\_\_\_\_\_  
Ruby Franklin,  
Secretary

APPROVED AS TO FORM:

LOCKE LORD LLP  
Outside General Counsel to the Borrower

By: \_\_\_\_\_  
Kevin L. Twining

**APPENDIX A**

**FORM OF TOLL EQUITY LOAN NOTE**

**AMENDED AND RESTATED TOLL EQUITY NOTE**

**THIS NOTE MAY NOT BE ASSIGNED OR TRANSFERRED**

UNITED STATES OF AMERICA  
STATE OF TEXAS  
NORTH TEXAS TOLLWAY AUTHORITY  
SPECIAL PROJECTS SYSTEM  
THIRD TIER REVENUE NOTE  
SERIES 2011  
(TOLL EQUITY LOAN AGREEMENT)

<u>MAXIMUM PRINCIPAL AMOUNT</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>ORIGINAL ISSUANCE DATE</u>	<u>AMENDED AND RESTATED DATE</u>
\$6,020,333,650	As Described Below	As Described Below	April 28, 2011	November 10, 2011

THIS NOTE amends and restates in its entirety that certain note entitled "North Texas Tollway Authority Special Projects System Third Tier Revenue Note, Series 2011 (Toll Equity Loan Agreement)" authorized by the Third Supplemental Agreement (as defined below), dated the Original Issuance Date, and made by the North Texas Tollway Authority (the "Authority"), a political subdivision of the State of Texas and a body corporate and politic, in favor of the Texas Department of Transportation ("TxDOT") in the original maximum principal amount of \$4,093,677,822 (the "Original Note"); *provided*, that this note is given solely in substitution of the Original Note and not in repayment or satisfaction thereof. Simultaneously with the Authority's execution and delivery of this note to TxDOT, TxDOT has agreed to deliver to the Authority the Original Note, marked "cancelled."

ON THE MATURITY DATE specified below, the Authority hereby promises to pay to TxDOT the lesser of (a) the principal amount of \$6,020,333,650 (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 April 1, 2011 (as amended and supplemented, 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 Amended and Restated 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 **Appendix 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; *provided further* however, that the rate of interest shall never exceed the Maximum Rate (as defined in the Toll Equity Loan Agreement). 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.

SUBJECT TO SECTION 214 OF THE TRUST AGREEMENT, 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 April 1, 2011 between the Authority and Wells Fargo Bank, National Association (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 **Appendix B** with a copy to the Authority and the Trustee.

ACCRUED BUT UNPAID INTEREST for each advance shall be compounded semiannually on March 1 and September 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 April 1, 2011, the Second Supplemental Agreement dated as of April 1, 2011, the Third Supplemental Agreement dated as of April 1, 2011 (the "*Third Supplemental Agreement*"), the Fourth Supplemental Agreement dated as of as November 1, 2011, and the Fifth Supplemental Agreement dated as of as November 1, 2011. 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 on March 17, 2011, and a Resolution duly adopted by the Board of Directors of the Authority on October 6, 2011 (collectively, 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.

SUBJECT TO SECTION 214 OF THE TRUST AGREEMENT, 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. Subject to Section 214 of 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 Debt 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 A SPECIAL LIMITED OBLIGATION of the Authority, payable from and secured by a lien on and pledge of the Trust Estate granted in the Trust Agreement, on a basis subordinate to that securing all First Tier Obligations and Second Tier Obligations issued under the Trust Agreement, and on an equal and ratable basis with any Third Tier Obligations issued in accordance with the provisions of 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, 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





## APPENDIX B

### SCHEDULE OF MAXIMUM AVAILABLE ANNUAL AMOUNTS

<u>Fiscal Year End (Aug 31)</u>	<u>Toll Equity Loan Maximum Available Annual Amount</u>
2012	\$ -
2013	31,104,836
2014	51,087,582
2015	82,605,216
2016	99,149,601
2017	112,172,417
2018	130,284,173
2019	145,256,478
2020	164,113,035
2021	173,815,799
2022	186,693,119
2023	193,539,846
2024	207,672,742
2025	214,782,767
2026	220,673,312
2027	227,782,984
2028	244,718,287
2029	240,170,038
2030	240,345,726
2031	234,796,473
2032	236,869,609
2033	227,353,759
2034	138,448,454
2035	153,289,552
2036	163,426,760
2037	163,426,760
2038	163,426,760
2039	163,426,760
2040	163,426,760
2041	129,018,014
2042	146,911,358
2043	169,628,386
2044	178,498,077
2045	181,444,618
2046	201,445,337
2047	239,528,255

## APPENDIX C

### CERTIFICATE OF BORROWER RE ADVANCES

The undersigned, a Board Representative as such term is defined in that certain Toll Equity Loan Agreement dated as of April 1, 2011, as amended and supplemented by that certain Supplement to Toll Equity Loan Agreement dated as of November 1, 2011 (together the "Agreement") 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 2011 First Tier Bonds or the SWP/CT 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 2011 First Tier Bonds or the SWP/CT 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 by the Borrower (not to exceed amounts set forth in the Project Budget), Project Costs expended or incurred,

and the amount of the Upfront Payment paid, 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: \_\_\_\_\_,\_\_\_\_\_.

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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 PGBT WE Closing Date, an amount equal to (i) the product of (A) the total amount of the capital cost of the Project Capacity Improvements in year 9 as shown in the Financial Model divided by 9, multiplied by (B) the number of years after the PGBT WE Closing Date (with each partial year deemed to be a whole year), less (ii) the aggregate amount of funds transferred from the Capital Expenditures Reserve Fund to the Capital Expenditures Fund to pay costs of the Project Capacity Improvements scheduled in year 9, and (b) for years 10 through 20 after the PGBT WE Closing Date, an amount equal to (i) the product of (A) the total amount of the capital cost of the Project Capacity Improvements in year 20 as shown in the Financial Model divided by 10, multiplied by (B) the number of years after the 9th anniversary of the PGBT WE Closing Date (with each partial year deemed to be a whole year), less (ii) the aggregate amount of funds transferred from the Capital Expenditures Reserve Fund to the Capital Expenditures Fund to pay costs of the Project Capacity Improvements scheduled in year 20; provided, however, that, if the most recent Financial Model delivered after the PGBT WE Closing Date shows expenditures of the capital costs of Project Capacity Improvements in years other than in the years 9 and 20 after the PGBT WE Closing Date as described above, this definition of “Capital Expenditures Reserve Requirement” shall be deemed to be revised accordingly. For purposes of illustration, if the expenditures of the capital costs of Project Capacity Improvements in the most current Financial Model is scheduled to occur in years 11 and 21 rather than years 9 and 20, the definition of “Capital Expenditures Reserve Requirement” shall be deemed to be revised as follows: (a) for years 1 through 11 after the PGBT WE Closing Date, an amount equal to (i) the product of (A) the total amount of the capital cost of the Project Capacity Improvements in year 11 as shown in the Financial Model divided by 11, multiplied by (B) the number of years after the PGBT WE Closing Date (with each partial year deemed to be a whole year), less (ii) the aggregate amount of funds transferred from the Capital Expenditures Reserve Fund to the Capital Expenditures Fund to pay costs of the Project Capacity Improvements scheduled in year 11, and (b) for years 12 through 21 after the PGBT WE Closing Date, an amount equal to (i) the product of (A) the total amount of the capital cost of the Project Capacity Improvements in year 21 as shown in the Financial Model divided by 10, multiplied by (B) the number of years after the 11th anniversary of the PGBT WE Closing Date (with each partial year deemed to be a whole year), less (ii) the aggregate amount of funds transferred from the Capital Expenditures Reserve Fund to the Capital Expenditures Fund to pay costs of the Project Capacity Improvements scheduled in year 21.

"*Construction Step-In Construction Costs Limit*" means, with respect to the SWP/CT Project, \$97,584,595.

"*Construction Step-In Evaluation Costs Limit*" means, with respect to the SWP/CT Project, \$62,454,141.

"*Depository*" means Wells Fargo Bank, National Association as the depository bank under the Master Custodial Account Agreement, and any successor or replacement depository bank thereunder.

"*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) \$128,331,766, or such other amount established pursuant to the Toll Equity Loan Agreement as amended or supplemented pursuant to **Section 1313** of the Trust Agreement, and (b) 100% of the Maximum Available Annual Amount for the Fiscal Year following the Fiscal Year in which the calculation is made, provided, however, that in no event shall the Rate Stabilization Fund Requirement be in excess of the maximum Principal and interest coming due on First Tier Obligations and Second Tier Debt Obligations in any future Fiscal Year.

"*Series 2011 Capitalized Interest Account Requirement*" means an amount calculated by the Authority and provided to the Trustee which, when added to estimated investment earnings thereon, equals the interest that will accrue and be payable on the Series 2011 Bonds through the period ending one year after the expected Service Commencement Date.

**Creation of Funds.** In addition to any other funds created by Supplemental Agreement, the following funds are created in the Trust Agreement and amounts deposited therein shall be held in trust by the Trustee until applied as directed in the Trust Agreement:

- (a) Construction Fund, and within such fund, a CIF Construction Account, a Series 2011 Construction Account, a SWP/CT Project CIF Construction Account and a SWP/CT Project 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 First Tier Capitalized Interest Account, and within the First Tier Capitalized Interest Account, a Series 2011D Capitalized Interest Sub-Account and a Series 2011F Capitalized Interest Sub-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, and within such fund, a General Account, a Current Year Revenue Account and a TIFIA Prepayment Account.

In addition, the BANs Construction Fund, and within such fund, a BAN Capitalized Interest Account, are created and amounts deposited therein shall be held in trust by the Trustee until applied as directed in the Trust Agreement. The BANs Construction Fund (including the BAN Capitalized Interest Account therein) shall be held by the Trustee in accordance with the terms and provisions of the Trust Agreement, solely for the benefit of the Authority. Amounts on deposit in the BANs Construction Fund shall be used solely for the purposes set forth in the Trust Agreement. The BANs Construction Fund shall not be part of the Trust Estate and shall not be security for the Obligations.

**Revenue Fund; Agreements With Other Turnpikes.**

(a) *Deposits to Revenue Fund.* The Authority covenants in the Trust Agreement 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 in the Trust Agreement) 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).

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 fourth Business Day prior to the first day of each month (each such date a "Transfer Date").

Transfers shall be made for the below listed purposes or to the credit of the below-listed funds and accounts in the order of priority listed, provided that, if in any prior month the full amount required to be deposited in a fund or account set forth below is not so deposited, then the amount to be deposited into such fund for the current Transfer Date shall include all amounts required to be deposited in any prior month to such fund in accordance with the applicable provisions of Article IV to the Trust Agreement but not so deposited as of the current Transfer Date (the "Shortfall Amount"). The amount deposited for the current Transfer Date will not include a Shortfall Amount if and to the extent part or all of such Shortfall Amount was transferred to such fund from another fund in accordance with **Article IV** of the Trust Agreement or from a draw under the Toll Equity Loan Agreement prior to such Transfer Date. In the event that in any month the Trustee submits a Draw Request under the Toll Equity Loan Agreement, and the amount received by the Trustee pursuant to such Draw Request is insufficient to pay all amounts requested in such Draw Request, the Trustee shall apply the amounts received under such Draw Request, first, to any amounts required to be deposited in the First Tier Debt Service Fund on such date pursuant to the provisions under the caption "**First Tier Debt Service Fund**," including any Shortfall Amount, second, to any amounts required to be deposited in the Second Tier Debt Service Fund on such date pursuant to the provisions under the caption "**Second Tier Debt Service Fund**," including any Shortfall Amount, third, to any amounts required to be deposited in the Project Budget Account of the Operating Fund on such date pursuant to the provisions under the caption "**Operating Fund—Project Budget Amounts**," including any Shortfall Amount, fourth, to any amounts required to be deposited in the Project Budget Account of the Major Maintenance Fund on such date pursuant to the provisions under the caption "**Major Maintenance Fund—Project Budget Amounts**," including any Shortfall Amount, and fifth, to any amounts required to be deposited in the Project Budget Account of the Capital Expenditures Fund on such date pursuant to the provisions under the caption "**Capital Expenditures Fund—Project Budget Amounts**," including any Shortfall Amount.

- (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, in the amount specified under the caption "**General Fund.**"

**Payment of Rebate.** The Authority covenants in the Trust Agreement 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 under the Trust Agreement 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 under the caption "**Creation of Funds,**" the Authority may direct the Trustee to create additional accounts in the First Tier Debt Service Fund pursuant to a Supplemental Agreement (for the avoidance of doubt, entry into any such Supplemental Agreement shall be subject to the consents required pursuant to **Section 1103** of the Trust Agreement).

On each Transfer Date, after first having made or provided for the payments required by the provisions under the caption "**Payment of Rebate**" (if applicable), the Trustee shall withdraw from the Revenue Fund and deposit to the First Tier Interest

Account and the First Tier Principal Account the amounts required to be deposited therein with respect to First Tier Obligations in accordance with the Supplemental Agreements authorizing such First Tier Obligations; 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 amounts for capitalized interest are available in the First Tier Capitalized Interest Account of the First Tier Debt Service Fund for payment of interest on a Series of First Tier Obligations, such money will first be transferred from the First Tier 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 provided in the Trust Agreement. The Trustee shall withdraw from the First Tier Interest Account and the First Tier Principal Account from time to time and set aside and hold in trust pursuant to the provisions under the caption "**Money Set Aside for Principal and Interest Held in Trust**" sufficient money for paying the interest on and the Principal of 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 deposit into the First Tier Debt Service Fund from the Revenue Fund pursuant to the second paragraph of this Section the money therein shall not be sufficient for such purpose, or if on the fourth Business Day prior to the date interest on and/or the Principal of and premium on the First Tier Obligations shall become due the money therein shall not be sufficient for such payments, 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 Current Year Revenue Account of the General Fund, the General Account of 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, the Annual Operating Budget Account of the Operating Fund and, only upon the occurrence and continuance of an Event of Default, the Project Budget Account of the Capital Expenditures Fund. If, after making such transfers, on the fourth Business Day prior to the date interest on and/or the Principal of and premium on the First Tier Obligations shall become due the money in the First Tier Debt Service Fund is insufficient to make such payment, the Trustee shall make a draw under the Toll Equity Loan Agreement by submitting a Draw Request in accordance with the provisions under the caption "**Draw Request**" in an amount sufficient 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 for application as set forth in this Section.

**Second Tier Debt Service Fund.** In addition to the accounts established in the Second Tier Debt Service Fund specified under the caption "**Creation of Funds,**" the Authority may instruct the Trustee to create additional accounts in the Second Tier Debt Service Fund pursuant to a Supplemental Agreement (for the avoidance of doubt, entry into any such Supplemental Agreement shall be subject to the consents required pursuant to **Section 1103** of the Trust Agreement).

On each Transfer Date, after first having made or provided for the payments, deposits, and transfers required by the provisions under the captions "**Payment of Rebate**" and "**First Tier Debt Service Fund,**" the Trustee shall withdraw from the Revenue Fund and deposit to the Second Tier Interest Account and the Second Tier Principal Account the amounts required to be deposited therein with respect to Second Tier Obligations in accordance with the Supplemental Agreements authorizing such Second Tier Obligations; 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 provided in the Trust Agreement. The Trustee shall withdraw from the Second Tier Interest Account and the Second Tier Principal Account from time to time and set aside and hold in trust pursuant to the provisions under the caption "**Money Set Aside for Principal and Interest Held in Trust**" 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 deposit into the Second Tier Debt Service Fund from the Revenue Fund pursuant to the second paragraph of this Section the money therein shall not be sufficient for such purpose, or if on the fourth Business Day prior to the date interest on and/or the Principal of and premium on the Second Tier Obligations shall become due the money therein shall not be sufficient for such payments, 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, the Current Year Revenue Account of the General Fund, the General Account of 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, the Annual Operating Budget Account of the Operating Fund and, only upon the occurrence and continuance of an Event of Default, the Project Budget Account of the Capital Expenditures Fund. If, after making such transfers, on the fourth Business Day prior to the date interest on and/or the Principal of and premium on the Second Tier Obligations shall become due the money in the Second Tier Debt Service Fund is insufficient to make such payment, the Trustee shall make a draw under the Toll Equity Loan Agreement by submitting a Draw Request in

accordance with the provisions under the caption "**Draw Request**" in an amount sufficient to satisfy any such shortfall, to the extent that funds are available thereunder; provided that, the Trustee shall not include in any such Draw Request interest calculated at the Default Rate (as defined in the TIFIA Loan Agreement) due and owing on the TIFIA Note in an amount in excess of the interest calculated at the stated interest rate on the Second Tier Obligations as set forth in **Section 6** of the TIFIA Loan Agreement (such excess amount, the "Default Interest Amount"). 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 for application as set forth in this Section; provided that, any Default Interest Amount shall not be paid out of amounts drawn under the Toll Equity Loan Agreement.

**Operating Fund—Project Budget Amounts.** On each Transfer Date, after first having made or provided for the payments, deposits, and transfers required by the provisions 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, 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. 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: Current Year Revenue Account of the General Fund, the General Account of 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, the Annual Operating Budget Account of the Operating Fund and, only upon the occurrence and continuance of an Event of Default, the Project Budget Account of the Capital Expenditures Fund. If there remains a shortfall, the Trustee shall make a draw under the Toll Equity Loan Agreement by submitting a Draw Request in accordance with the provisions under the caption "**Draw Request**" in an amount sufficient 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.

At the written direction of the Authority, the Trustee shall disburse funds to the Authority or its designee from the Operating Fund for the payment of Operating Expenses in accordance with the Annual Operating Budget, and the funds from the Operating Fund shall be used for no other purpose; provided that the Authority covenants that, 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. The Trustee shall disburse funds to 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; provided, however, that the Authority shall not instruct the Trustee

to, and the Trustee shall not withdraw from the Operating Fund for payment of Operating Expenses in any Fiscal Year an aggregate amount in excess of the total amount of Operating Expenses provided for in the Annual Operating Budget for such Fiscal Year. In directing disbursements from the Operating Fund, the Authority shall be deemed to be certifying that obligations in the stated amounts have been or will be incurred by the Authority and that each item thereof was or will be properly incurred as an Operating Expense and shall be due and payable no later than 30 days after the Authority directs the Trustee to disburse funds for the payment of such obligation, and has not been paid previously. With each disbursement direction for payment of amounts out of the Operating Fund, the Authority shall either (i) certify to the Trustee that the Annual Operating Budget on file with the Trustee for the then current Fiscal Year has not been amended or supplemented, or (ii) file with the Trustee any amendment or supplement to such Annual Operating Budget.

During an O&M Step-In, the Trustee shall disburse funds to TxDOT or its designee from the Operating Fund (first from the Project Budget Account of the Operating Fund and then, to the extent amounts in such account are insufficient after making the transfers from the other funds and accounts as provided in the first paragraph of this Section and the second paragraph under the caption "**Operating Fund—Annual Operating Budget Amounts**" from the Annual Operating Budget Account of the Operating Fund) upon written request of TxDOT to pay Operating Expenses pursuant to, and in accordance with, **Section 6.02(d)** of the Toll Equity Loan Agreement, provided that (i) disbursements are made for payment of Operating Expenses in accordance with (A) the provisions of this Section (and, with respect to amounts from the Annual Operating Budget Account of the Operating Fund, the provisions under the caption "**Operating Fund—Annual Operating Budget Amounts**"), (B) the priorities of any transfers required pursuant to the provisions under the captions "**First Tier Debt Service Fund**" and "**Second Tier Debt Service Fund**" (C) the Annual Operating Budget, and (ii) such Operating Expenses that have not been the subject of prior transfers out of the Funds and Accounts. Subject to the preceding sentence, should such Operating Expenses amount to more than the total available amount in the Operating Fund (after transfers to the Operating Fund from the other Funds and Accounts pursuant to the first paragraph of this Section and the second paragraph under the caption "**Operating Fund—Annual Operating Budget Amounts**") at the time of the request for disbursement and TxDOT pays for such excess costs with funds that are not part of the Trust Estate, then the Trustee shall pay such excess amount to TxDOT upon written request of TxDOT from any future deposits to the Operating Fund not needed to pay current Operating Expenses at the time.

**Major Maintenance Fund—Project Budget Amounts.** On each Transfer Date, after first having made or provided for the payments, deposits and transfers required by the provisions 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 the transfer from the Major Maintenance Reserve Fund pursuant to **clause (4)** under the caption "**Major Maintenance Reserve Fund**" is 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) one-twelfth (1/12) of the amount of the total Major Maintenance Expenses scheduled for the then current Fiscal Year in the Project Budget, and (ii) one-twelfth

(1/12) of the amount of the total Major Maintenance Expenses scheduled for the then current Fiscal Year in the then current Annual Operating Budget. 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: Current Year Revenue Account of the General Fund, the General Account of 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, the Annual Operating Budget Account of the Operating Fund and, only upon the occurrence and continuance of an Event of Default, the Project Budget Account of the Capital Expenditures Fund. If there remains a shortfall, the Trustee shall make a draw under the Toll Equity Loan Agreement by submitting a Draw Request in accordance with the provisions under the caption "**Draw Request**" in an amount sufficient 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.

At the written direction of the Authority, the Trustee shall disburse funds to the Authority or its designee from the Major Maintenance Fund for the payment of Major Maintenance Expenses of the Project in accordance with the Annual Operating Budget, and the funds from the Major Maintenance Fund shall be used for no other purpose; provided that the Authority covenants that in no event shall Revenues be used to pay for Major Maintenance Expenses relating to the maintenance of the Project at standards higher than the Project Agreement Standards. The Trustee shall disburse funds to 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; provided, however, that the Authority shall not instruct the Trustee to, and the Trustee shall not withdraw from the Major Maintenance Fund for payment of Major Maintenance Expenses in any Fiscal Year an aggregate amount in excess of the total amount of Major Maintenance Expenses provided for in the Annual Operating Budget for such Fiscal Year. In directing disbursements from the Major Maintenance Fund, the Authority shall be deemed to be certifying that obligations in the stated amounts have been or will be incurred by the Authority and that each item thereof was or will be properly incurred as a Major Maintenance Expense and shall be due and payable no later than 30 days after the Authority directs the Trustee to disburse funds for the payment of such obligation, and has not been paid previously. With each disbursement direction for payment of amounts out of the Major Maintenance Fund, the Authority shall either (i) certify to the Trustee that the Annual Operating Budget on file with the Trustee for the then current Fiscal Year has not been amended or supplemented, or (ii) file with the Trustee any amendment or supplement to such Annual Operating Budget.

During an O&M Step-In, the Trustee shall disburse funds to TxDOT or its designee from the Major Maintenance Fund (first from the Project Budget Account of the Major Maintenance Fund and then, to the extent amounts in such account are insufficient after making the transfers from the other funds and accounts as provided in the first paragraph of this Section and the second paragraph under the caption "**Major Maintenance Fund—Annual Operating Budget Amounts**," from the Annual

Operating Budget Account of the Major Maintenance Fund) upon written request of TxDOT to pay Major Maintenance Expenses pursuant to, and in accordance with, **Section 6.02(d)** of the Toll Equity Loan Agreement, provided that (i) disbursements are made for payment of Major Maintenance Expenses in accordance with (A) the provisions of this Section (and, with respect to amounts from the Annual Operating Budget Account of the Major Maintenance Fund, the provisions under the caption "**Major Maintenance Fund—Annual Operating Budget Amounts**"), (B) the priorities of any transfers required pursuant to the provisions under the captions "**First Tier Debt Service Fund**", "**Second Tier Debt Service Fund**" and "**Operating Fund—Project Budget Amounts**" and (C) the Annual Operating Budget, and (ii) such Major Maintenance Expenses have not been the subject of prior transfers out of the Funds and Accounts. Subject to the preceding sentence, should such Major Maintenance Expenses amount to more than the total available amount in the Major Maintenance Fund (after transfers to the Major Maintenance Fund from the other Funds and Accounts pursuant to the first paragraph of this Section and the provisions under the caption "**Major Maintenance Fund—Annual Operating Budget Amounts**") at the time of the request for disbursement and TxDOT pays for such excess costs with funds that are not part of the Trust Estate, then the Trustee shall pay such excess amount to TxDOT upon written request of TxDOT from any future deposits to the Major Maintenance Fund not needed to pay current Major Maintenance Expenses at the time.

**Capital Expenditures Fund—Project Budget Amounts.** On each Transfer Date, after first having made or provided for the payments, deposits and transfers required by the provisions 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 Project Capacity Improvements Capital Expenditures for the month after the Transfer Date, and to the extent the transfer from the Capital Expenditures Reserve Fund pursuant to **clause (5)** under the caption "**Capital Expenditures Reserve Fund**" is insufficient for such purpose, but only if no Event of Default has occurred and is continuing in accordance with the third paragraph of this Section, 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 Project Capacity Improvements Capital Expenditures budgeted in the Project Budget for such month, and (ii) the Project Capacity Improvements 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, but only if no Event of Default has occurred and is continuing in accordance with the third paragraph of this Section: Current Year Revenue Account of the General Fund, the General Account of 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 written direction of the Authority, make a draw under the Toll Equity Loan Agreement by submitting a Draw Request in accordance with the provisions under the caption "**Draw Request**" in an amount sufficient to satisfy any such shortfall, to the extent that funds

are available thereunder; provided that the Trustee shall not be entitled to submit a Draw Request to pay any such shortfall so long as the Trustee is prevented from transferring, disbursing or applying funds in the Project Budget Account of the Capital Expenditures Fund as set forth in the third paragraph of this Section. 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.

At the written direction of the Authority, but only if no Event of Default has occurred and is continuing, the Trustee shall disburse funds to the Authority or its designee from the Capital Expenditures Fund for the payment of Project Capacity Improvements Capital Expenditures in accordance with the Annual Operating Budget, and the funds from the Capital Expenditures Fund shall be used for no other purpose. The Trustee shall disburse funds to pay the costs of Project Capacity Improvements Capital Expenditures first from funds available in the Construction Fund for payment of such Project Capacity Improvements Capital Expenditures, next from the Project Budget Account of the Capital Expenditures Fund if such amounts are available for such purpose in accordance with this Section and then, to the extent amounts in such account are insufficient, from the Annual Operating Budget Account of the Capital Expenditures Fund if such amounts are available for such purpose in accordance with the provisions under the caption "**Capital Expenditures Fund—Annual Operating Budget Amounts**"; provided, however, that the Authority shall not instruct the Trustee to, and the Trustee shall not withdraw from the Capital Expenditures Fund for payment of Capital Expenditures in any Fiscal Year an aggregate amount in excess of the total amount of Capital Expenditures provided for in the Annual Operating Budget for such Fiscal Year. In directing disbursements from the Capital Expenditures Fund, the Authority shall be deemed to be certifying that obligations in the stated amounts have been or will be incurred by the Authority and that each item thereof was or will be properly incurred as a Project Capacity Improvements Capital Expenditure and shall be due and payable no later than 30 days after the Authority directs the Trustee to disburse funds for the payment of such obligation and has not been paid previously; provided in no event shall the Authority direct the Trustee to use Revenues to pay for Project Capacity Improvements Capital Expenditures relating to the Project at standards higher than the Project Agreement Standards. With each disbursement direction for payment of amounts out of the Capital Expenditures Fund, the Authority shall either (i) certify to the Trustee that the Annual Operating Budget on file with the Trustee for the then current Fiscal Year has not been amended or supplemented, or (ii) file with the Trustee any amendment or supplement to such Annual Operating Budget.

Notwithstanding the foregoing paragraphs of this Section, if the Trustee is notified as to the occurrence and continuance of an Event of Default by the Controlling Creditor for any Event of Default other than a TIFIA Loan Agreement Default or the TIFIA Lender with respect to any TIFIA Loan Agreement Default (or any of the Controlling Creditor and the TIFIA Lender in the event that the Event of Default is both a TIFIA Loan Agreement Default and an Event of Default under the Trust Agreement other than that described in **Section 802(e)** therein), then the Trustee shall not transfer, disburse or apply funds from the Project Budget Account of the Capital Expenditures Fund in accordance with the direction of the Authority as provided in the foregoing paragraphs of this Section until such time that written notice is provided to the Trustee by the Controlling Creditor for any Event of Default other than a TIFIA Loan Agreement Default or the TIFIA Lender with respect to any TIFIA Loan Agreement Default (or both

the Controlling Creditor and the TIFIA Lender in the event that the Event of Default is both a TIFIA Loan Agreement Default and an Event of Default under the Trust Agreement other than that described in **Section 802(e)** therein) that such Event of Default has been waived or cured to its satisfaction or that the Trustee otherwise may release funds from the Project Budget Account of the Capital Expenditures Fund for the payment of any part or all of the Project Capacity Improvements Capital Expenditures that would have been payable in accordance with the preceding paragraphs of this Section had there been no such Event of Default; provided, however, that during the continuance of such Event of Default, amounts on deposit in the Project Budget Account of the Capital Expenditures Fund shall be transferred by the Trustee on the Transfer Date for the following purposes in the following order of priority:

- (1) to the First Tier Debt Service Fund to cure any deficiency therein in accordance with the provisions under the caption "**First Tier Debt Service Fund**";
- (2) to the Second Tier Debt Service Fund to cure any deficiency therein in accordance with the provisions under the caption "**Second Tier Debt Service Fund**";
- (3) to the Project Budget Account of the Operating Fund to cure any deficiency therein in accordance with the provisions under the caption "**Operating Fund—Project Budget Amounts**"; and
- (4) to the Project Budget Account of the Major Maintenance Fund to cure any deficiency therein in accordance with the provisions under the caption "**Major Maintenance Fund—Project Budget Amounts.**"

During a Construction Step-In, if amounts on deposit in the Construction Fund and the BANs Construction Fund are insufficient to satisfy the disbursements permitted to TxDOT pursuant to **clause (m)** under the caption "**Construction Fund and BANs Construction Fund**" and the amounts in the General Fund transferred in accordance with the penultimate paragraph under the caption "**General Fund**" are insufficient to satisfy such disbursements, the Trustee shall transfer amounts held in the Capital Expenditures Fund (first from the Project Budget Account of the Capital Expenditures Fund, and then, to the extent amounts in such account are insufficient after making the transfers from the other funds and accounts as provided in the first paragraph of this Section (without regard to the existence of any Event of Default) and the second paragraph under the caption "**Capital Expenditures Fund—Annual Operating Budget Amounts**" (without regard to the existence of any Event of Default), from the Annual Operating Budget Account of the Capital Expenditures Fund) to TxDOT in an amount sufficient to satisfy any such shortfall. Such transfer shall be made only if all of the conditions and requirements for disbursements pursuant to **clause (m)** under the caption "**Construction Fund and BANs Construction Fund**" are satisfied as if such disbursements were payments from the Construction Fund or the BANs Construction Fund in accordance therewith. If at the time that TxDOT delivers a request to the Trustee pursuant to **clause (m)** under the caption "**Construction Fund and BANs Construction Fund,**" the documented Costs of the Project for which disbursement is sought by TxDOT amount to more than the total available in the Construction Fund and BANs Construction Fund, the General Fund and the Capital Expenditures Fund (after transfer of all available amounts in the Capital Expenditures Reserve Fund) collectively

at the time of the request for disbursement and TxDOT pays for such excess costs with funds that are not part of the Trust Estate, then the Trustee shall transfer to TxDOT at its written request such excess amount from any future deposits into the Capital Expenditures Fund (to the extent that deposits to the General Fund are unavailable for such purpose), subject to the limitations described in **clause (m)** under the caption "**Construction Fund and BANs Construction Fund**".

During an O&M Step-In, the Trustee shall disburse funds to TxDOT or its designee from the Capital Expenditures Fund (first from the Project Budget Account of the Capital Expenditures Fund and then, to the extent amounts in such account are insufficient after making the transfers from the other funds and accounts as provided in the first paragraph of this Section and the second paragraph under the caption "**Capital Expenditures Fund—Annual Operating Budget Amounts**," from the Annual Operating Budget Account of the Capital Expenditures Fund) upon written request of TxDOT to pay Operating Expenses and Major Maintenance Expenses pursuant to, and in accordance with, **Section 6.02(d)** of the Toll Equity Loan Agreement, provided that (i) funds in the Operating Fund and the Major Maintenance Fund are insufficient for such purposes in accordance with the last paragraph of under the caption "**Operating Fund—Project Budget Amounts**" and "**Major Maintenance Fund—Project Budget Amounts**", respectively, (ii) disbursements are made for payment of such expenses in accordance with (A) the provisions of this Section (and, with respect to amounts from the Annual Operating Budget Account of the Capital Expenditures Fund, the provisions under the caption "**Capital Expenditures Fund—Annual Operating Budget Amounts**"), (B) the priorities of any transfers required pursuant to the provisions under the captions "**First Tier Debt Service Fund**", "**Second Tier Debt Service Fund**", "**Operating Fund—Project Budget Amounts**" and "**Major Maintenance Fund—Project Budget Amounts**" and (C) the Annual Operating Budget, and (iii) such expenses have not been the subject of prior transfers out of the Funds and Accounts. Subject to the preceding sentence, should such expenses amount to more than the total available amount in the Capital Expenditures Fund (after transfers to the Capital Expenditures Fund from the other Funds and Accounts pursuant to the first paragraph of this Section and the provisions under the caption "**Capital Expenditures Fund—Annual Operating Budget Amounts**") at the time of the request for disbursement and TxDOT pays for such excess costs with funds that are not part of the Trust Estate, then the Trustee shall pay such excess amount to TxDOT upon written request of TxDOT from any future deposits to the Capital Expenditures Fund not needed to pay current Capital Expenditures at the time.

**Third Tier Debt Service Fund**. On each Transfer Date, and provided no Third Tier Subordination Event has occurred and is continuing, after first having made or provided for the payments, deposits and transfers 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**," but subject to the provisions of Section 214 of the Trust Agreement, the Trustee shall transfer from the Revenue Fund to the applicable account in the Third Tier Debt Service Fund the amounts due in respect of Third Tier Obligations in accordance with the terms specified in the Trust Agreement or in the Supplemental Agreement authorizing such Third Tier Obligations.

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. Subject to the provisions of **Section 214** of the Trust Agreement, the Trustee shall withdraw from the Third Tier Interest Account and the Third Tier Principal Account from time to time and set aside and hold in trust pursuant to the provisions under the caption "**Money Set Aside for Principal and Interest Held in Trust**" 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, subject to **Section 214** of the Trust Agreement, 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: Current Year Revenue Account of the General Fund, the General Account of 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.** On each Transfer Date, after first having made or provided for the payments, deposits and transfers 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 that the Authority covenants that 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.

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: Current Year Revenue Account of the General Fund, the General Account of the General Fund, the Capital Expenditures Reserve Fund, the Major Maintenance Reserve Fund, the Annual Operating Budget Account of the Capital Expenditures Fund and the Annual Operating Budget Account of the Major Maintenance Fund. The Authority covenants that if, after transferring amounts as

specified in the preceding sentence, actual Operating Expenses in any month are either (i) 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 (ii) 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 or any other account in the Trust Estate.

**Rate Stabilization Fund.** The Authority shall deposit on the PGBT WE Closing Date the amount of the Rate Stabilization Fund Requirement as of the PGBT WE Closing Date from the proceeds of the issuance of the Series 2011 Bonds. On any SWP/CT Closing Date, the Authority shall deposit, from proceeds of Additional Obligations issued in connection with the SWP/CT Project or from funds not part of the Trust Estate, an amount necessary to cause the Rate Stabilization Fund to be increased, if and to the extent necessary, so that the Rate Stabilization Fund will contain an amount equal to the Rate Stabilization Fund Requirement as of such date. After the PGBT WE Closing Date or any SWP/CT Closing Date, and after first having made or provided for the payments, deposits, and transfers required by the provisions 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 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 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 under the caption "**Capital Expenditures Fund—Project Budget Amounts**" unless an Event of Default has occurred and is continuing in accordance with the last paragraph 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 First Tier Obligations, Second Tier Obligations and Third Tier Obligations (to the extent such Obligations are Outstanding) 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.** On each Transfer Date, after first having made or provided for the payments, deposits and transfers 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 the transfer from the Major Maintenance Reserve Fund pursuant to **clause (8)** under the caption "**Major Maintenance Reserve Fund**" is 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 one-twelfth (1/12) of the amount reflected in the current Fiscal Year's Annual Operating Budget for Major Maintenance Expenses for such Fiscal Year over one-twelfth (1/12) of the amount reflected in the Project Budget for Major Maintenance Expenses for such Fiscal Year and money in this account shall be used as provided under the caption "**Major Maintenance Fund—Project Budget Amounts**"; provided the Authority covenants that 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. 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: Current Year Revenue Account of the General Fund, the General Account of the General Fund, the Capital Expenditures Reserve Fund and the Annual Operating Budget Account of the Capital Expenditures Fund. 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 or any other account in the Trust Estate.

**Capital Expenditures Fund—Annual Operating Budget Amounts.** On each Transfer Date, after first having made or provided for the payments, deposits and transfers 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 Project Capacity Improvements Capital Expenditures for the month after the Transfer Date, and to the extent the transfer from the Capital Expenditures Reserve Fund pursuant to **clause (9)** under the caption "**Capital Expenditures Reserve Fund**" is insufficient for such purpose, but only if no Event of Default has occurred and is continuing in accordance with the last paragraph of this Section, 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 Project Capacity Improvements

Capital Expenditures for such month over the amount reflected in the Project Budget for Project Capacity Improvements 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 that the Authority covenants that in no event shall Revenues be used to pay for Project Capacity Improvements Capital Expenditures relating to the Project at standards higher than the Project Agreement Standards. If amounts on deposit in the Revenue Fund are insufficient to make such transfer, and unless an Event of Default has occurred and is continuing in accordance with the last paragraph of this Section, 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: Current Year Revenue Account of the General Fund, the General Account of 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 Project Capacity Improvements 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 Project Capacity Improvements 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 or any other account in the Trust Estate.

Notwithstanding the foregoing paragraph of this Section, if the Trustee is given written notice as to the occurrence and continuance of an Event of Default by (i) the Controlling Creditor for any Event of Default other than a TIFIA Loan Agreement Default or (ii) the TIFIA Lender with respect to any TIFIA Loan Agreement Default (or any of the Controlling Creditor and the TIFIA Lender in the event that the Event of Default is both a TIFIA Loan Agreement Default and an Event of Default under the Trust Agreement other than that described in **Section 802(e)** therein), then the Trustee shall not transfer funds from other accounts into the Annual Operating Budget Account of the Capital Expenditures Fund for any shortfalls as provided in the preceding paragraph of this Section or transfer, disburse or apply funds from the Annual Operating Budget Account of the Capital Expenditures Fund in accordance with the direction of the Authority as provided in the foregoing paragraph of this Section until such time that written notice is provided to the Trustee by the Controlling Creditor for any Event of Default other than a TIFIA Loan Agreement Default or the TIFIA Lender with respect to any TIFIA Loan Agreement Default (or both the Controlling Creditor and the TIFIA Lender in the event that the Event of Default is both a TIFIA Loan Agreement Default and an Event of Default under the Trust Agreement other than that described in **Section 802(e)** therein) that such Event of Default has been waived or cured to its satisfaction or that the Trustee otherwise may release funds from the Annual Operating Budget Account of the Capital Expenditures Fund for the payment of any part or all of the Project Capacity Improvements Capital Expenditures that would have been payable in accordance with the preceding paragraphs of this Section had there been no such Event of Default; provided, however, that during the continuance of such Event of Default, amounts on deposit in the Project Budget Account of the Capital Expenditures Fund shall be transferred by the Trustee on the Transfer Date for the following purposes in the following order of priority:

- (1) to the First Tier Debt Service Fund to cure any deficiency therein in accordance with the provisions under the caption "**First Tier Debt Service Fund**";
- (2) to the Second Tier Debt Service Fund to cure any deficiency therein in accordance with the provisions under the caption "**Second Tier Debt Service Fund**";
- (3) to the Project Budget Account of the Operating Fund to cure any deficiency therein in accordance with the provisions under the caption "**Operating Fund—Project Budget Amounts**"; and
- (4) to the Project Budget Account of the Major Maintenance Fund to cure any deficiency therein in accordance with the provisions under the caption "**Major Maintenance Fund—Project Budget Amounts.**"

**Major Maintenance Reserve Fund.** On each Transfer Date, after first having made or provided for the payments, deposits and transfers 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 on each Transfer Date for the following purposes 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 under the caption "**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) one-twelfth (1/12) of the amount of the total Major Maintenance Expenses scheduled for the then current Fiscal Year in the Project Budget, and (ii) one-twelfth (1/12) of the amount of the total Major Maintenance Expenses scheduled for the then current Fiscal Year in the then current Annual Operating Budget;
- (5) to the Project Budget Account of the Capital Expenditures Fund in any month to cure deficiencies in the amounts to be deposited therein pursuant to the provisions under the caption "**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 under the caption "**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 one-twelfth (1/12) of the amount reflected in the current Fiscal Year's Annual Operating Budget for Major Maintenance Expenses for such Fiscal Year over one-twelfth (1/12) of the amount reflected in the Project Budget for Major Maintenance Expenses for such Fiscal Year; and
- (9) to the Annual Operating Budget Account of the Capital Expenditures Fund in any month to cure deficiencies in the amounts to be deposited therein pursuant to the provisions 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.** On each Transfer Date, after first having made or provided for the payments, deposits and transfers 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 on each Transfer Date for the following purposes 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 under the caption "**Operating Fund—Project Budget Amounts**";
- (4) to the Project Budget Account of the Major Maintenance Fund in any month to cure deficiencies in the amounts to be deposited therein pursuant to the provisions 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 Project Capacity Improvements Capital Expenditures budgeted in the Project Budget for such month, and (ii) the Project Capacity Improvements Capital Expenditures budgeted in the current Fiscal Year's Annual Operating Budget for such month, subject to the provisions under the caption "**Capital Expenditures Fund—Project Budget Amounts**"; provided that during a Construction Step-In the amount to be transferred to the Project Budget Account of the Capital Expenditures Fund each month shall be the amount requested by TxDOT to pay Costs of the Project pursuant to the penultimate paragraph under the caption "**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 under the caption "**Operating Fund—Annual Operating Budget Amounts**";
- (8) to the Annual Operating Budget Account of the Major Maintenance Fund in any month to cure deficiencies in the amounts to be deposited therein pursuant to the provisions 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 Project Capacity Improvements Capital Expenditures for such month over the amount reflected in the Project Budget for Project Capacity Improvements Capital Expenditures for such month, subject to the provisions under the captions "**Capital Expenditures Fund—Annual Operating Budget Amounts.**"

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.** On each Transfer Date, after first having made or provided for the payments, deposits and transfers 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 Current Year Revenue Account of the General Fund all remaining Revenues.

Prior to the TIFIA Note Prepayment Start Date, amounts on deposit in the Current Year Revenue Account shall be transferred by the Trustee to the General

Account on the same day such amounts are deposited in the Current Year Revenue Account.

On and after the TIFIA Note Prepayment Start Date, amounts on deposit in the Current Year Revenue Account 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, (b) the Operating Fund, the Major Maintenance Fund and the Capital Expenditures Fund in any month to cure deficiencies in the amounts to be deposited therein, all pursuant to and in the order specified under the captions "**Operating Fund—Project Budget Amounts**," "**Major Maintenance Fund—Project Budget Amounts**," "**Capital Expenditures Fund—Project Budget Amounts**," "Operating Fund—Annual Operating Budget Amounts," "**Major Maintenance Fund—Annual Operating Budget Amounts**," and "**Capital Expenditures Fund—Annual Operating Budget Amounts**," (c) subject to **Section 214** of the Trust Agreement, the Third Tier Debt Service Fund to cure any deficiency therein pursuant to the provisions under the caption "**Third Tier Debt Service Fund**," (d) the Major Maintenance Reserve Fund to cure any deficiency therein pursuant to the provisions under the caption "**Major Maintenance Reserve Fund**," (e) the Capital Expenditures Reserve Fund to cure any deficiency therein pursuant to the provisions under the caption "**Capital Expenditures Reserve Fund**," or (f) upon the written direction of a Board Representative, the First Tier Debt Service Fund or the Second Tier Debt Service Fund, as applicable, to redeem or defease First Tier Obligations and Second Tier Obligations pro rata based on the Principal amount of the Outstanding First Tier Obligations and the Outstanding Second Tier Obligations.

On and after the TIFIA Note Prepayment Start Date, on the last Business Day of each Fiscal Year (the "General Fund Transfer Date"), the Trustee shall transfer the funds in the Current Year Revenue Account for the following purposes and in the following order of priority:

- (1) to the General Account in an amount sufficient to cause the balance of unencumbered funds in the General Account to equal the amount required to be paid to TxDOT on the first day of the following Fiscal Year pursuant to the last paragraph of **Section 2.06** of the Toll Equity Loan Agreement; and
- (2) of the funds remaining in the Current Year Revenue Account after the transfer pursuant to **clause (1)** above, one-half to the General Account and one-half to the TIFIA Prepayment Account.

Amounts on deposit in the General Account 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, (b) the Operating Fund, the Major Maintenance Fund and the Capital Expenditures Fund in any month to cure deficiencies in the amounts to be deposited therein, all pursuant to and in the order specified under the captions "**Operating Fund—Project Budget Amounts**," "**Major Maintenance Fund—Project Budget Amounts**," "**Capital Expenditures Fund—Project Budget Amounts**," "Operating Fund—Annual Operating Budget Amounts," "**Major Maintenance Fund—Annual Operating Budget Amounts**," and "**Capital Expenditures Fund—Annual Operating Budget Amounts**," (c) subject to **Section 214** of the Trust Agreement, the Third Tier Debt Service Fund to cure any deficiency therein, (d) the Major Maintenance

Reserve Fund to cure any deficiency therein pursuant to the provisions under the caption "**Major Maintenance Reserve Fund**," (e) the Capital Expenditures Reserve Fund to cure any deficiency therein pursuant to the provisions under the caption "**Capital Expenditures Reserve Fund**," or (f) upon the direction of a Board Representative, the First Tier Debt Service Fund or the Second Tier Debt Service Fund to redeem or defease any First Tier Obligations or Second Tier Obligations.

On any date, whether prior to, on or after the TIFIA Note Prepayment Start Date, unless there is an occurrence and continuance of an Event of Default, amounts on deposit in the Current Year Revenue Account and the General Account may also be transferred by the Trustee to the Authority or its designee (a) to pay or secure bonds, notes or other obligations of the Authority issued to finance Costs of the Project (other than Costs for the initial construction of the Project) to the extent permitted by the TIFIA Lender consent delivered pursuant to **Section 708(b)** of the Trust Agreement, or (b) to pay or reimburse the Authority for Operating Expenses, Major Maintenance Expenses and Project Capacity Improvements 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 to the extent such payments were payable pursuant to the terms of the Trust Agreement but instead were paid by the Authority from funds available to it outside of the Trust Estate because of an insufficiency of funds available for such payments in the relevant Funds and Accounts at such time, 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, and that such Operating Expenses, Major Maintenance Expenses and Project Capacity Improvements 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; provided further, that if the Trustee is notified as to the occurrence and continuance of an Event of Default by the Controlling Creditor for any Event of Default other than a TIFIA Loan Agreement Default or the TIFIA Lender with respect to any TIFIA Loan Agreement Default (or any of the Controlling Creditor and the TIFIA Lender in the event that the Event of Default is both a TIFIA Loan Agreement Default and an Event of Default under the Trust Agreement other than that described in **Section 802(e)** therein), then the Trustee shall not so transfer, disburse or apply funds from the Current Year Revenue Account or the General Account in accordance with the direction of the Authority under this paragraph until such time that notice is provided to the Trustee by the Controlling Creditor for any Event of Default other than a TIFIA Loan Agreement Default or the TIFIA Lender with respect to any TIFIA Loan Agreement Default (or both the Controlling Creditor and the TIFIA Lender in the event that the Event of Default is both a TIFIA Loan Agreement Default and an Event of Default under the Trust Agreement other than that described in **Section 802(e)** therein) that such Event of Default has been waived or cured to its satisfaction or that the Trustee otherwise may release funds from the Current Year Revenue Account or the General Account for the purposes described in this paragraph had there been no such Event of Default.

Amounts on deposit in the TIFIA Prepayment Account shall be transferred by the Trustee for prepayment of the TIFIA Note to the TIFIA Lender no later than the Business Day following the General Fund Transfer Date. The money in the TIFIA

Prepayment Account shall be held by the Trustee in trust for the exclusive benefit of the Owner of the TIFIA Note and shall be subject to a lien and charge in favor of the TIFIA Lender exclusively.

During a Construction Step-In, if amounts on deposit in the Construction Fund and the BANs Construction Fund are insufficient to satisfy the disbursements permitted to TxDOT pursuant to **clause (m)** under the caption "**Construction Fund and BANs Construction Fund**," the Trustee shall transfer amounts held in the General Fund (whether in the Current Year Revenue Account or the General Account and regardless of the existence of any Event of Default) to TxDOT in an amount sufficient to satisfy any such shortfall. Such transfer shall be made only if all of the conditions and requirements for disbursements pursuant to **clause (m)** under the caption "**Construction Fund and BANs Construction Fund**" are satisfied as if such disbursements were payments from the Construction Fund in accordance therewith. If at the time that TxDOT delivers a request to the Trustee pursuant to **clause (m)** under the caption "**Construction Fund and BANs Construction Fund**" for which disbursement is sought by TxDOT, the documented Costs of the Project amount to more than the total available in the Construction Fund and BANs Construction Fund, the General Fund and the Capital Expenditures Fund (after transfer of all available amounts in the Capital Expenditures Reserve Fund) collectively at the time of the request for disbursement and TxDOT pays for such excess costs with funds that are not part of the Trust Estate, then the Trustee shall transfer to TxDOT at its written request such excess amount from any future deposits into the General Fund, subject to the limitations of clause (m) under the caption "**Construction Fund and BANs Construction Fund**".

During an O&M Step-In, the Trustee shall disburse funds to TxDOT or its designee from the General Fund (first from the General Account of the General Fund and then, to the extent amounts in such account are insufficient, from the Current Year Revenue Account of the General Fund) upon written request of TxDOT to pay Operating Expenses and Major Maintenance Expenses pursuant to, and in accordance with, **Section 6.02(d)** of the Toll Equity Loan Agreement, provided that (i) funds in the Operating Fund, the Major Maintenance Fund and the Capital Expenditures Fund are insufficient for such purposes in accordance with the last paragraph under the caption "**Operating Fund—Project Budget Amounts**," and the provisions under the captions "**Major Maintenance Fund—Project Budget Amounts**" and "**Capital Expenditures Fund—Project Budget Amounts**," (ii) disbursements are made for payment of such expenses in accordance with (A) the provisions of this Section, (B) the priorities of any transfers required pursuant to the provisions under the captions "**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**" and (C) the Annual Operating Budget, and (iii) such expenses have not been the subject of prior transfers out of the Funds and Accounts. Subject to the preceding sentence, should such expenses amount to more than the total available amount in the Operating Fund, Major

Maintenance Fund, Capital Expenditures Fund and General Fund collectively at the time of the request for disbursement and TxDOT pays for such excess costs with funds that are not part of the Trust Estate, then the Trustee shall pay such excess amount to TxDOT upon written request of TxDOT from any future deposits to such Funds not needed to pay current Operating Expenses, Major Maintenance Expenses and Capital Expenditures at the time.

Commencing on the Net Revenue Share Commencement Date (as defined in the PGBT WE Project Agreement), amounts on deposit in the General Account and Current Year Revenue Account of the General Fund shall be transferred by the Trustee at the written direction of the Authority to TxDOT to satisfy any Net Share Amount (as defined in the PGBT WE Project Agreement) due TxDOT under the Project Agreement.

**Money Set Aside for Principal and Interest Held in Trust.** All money that the Trustee shall have set aside (or deposited with any escrow agent) for the purpose of paying any of the Obligations secured by the Trust Agreement, either at the Stated Maturity thereof or upon call for redemption, shall be held in trust for the respective Owners of such Obligations. However, any money which shall be so held or deposited by the Trustee, and which shall remain unclaimed by the Owners of such Obligations for the period of three years after the date on which such Obligations shall have become payable, shall, subject to the provisions of Title 6, Texas Property Code, be paid to the Authority upon its written request or to such officer, board or body as may then be entitled by law to receive the same; thereafter, the Owners of such Obligations shall look only to the Authority or to such officer, board or body, as the case may be, for payment and then only to the extent of the amounts so received without any interest thereon, and the Trustee shall have no responsibility with respect to such money.

**Additional Security.** Except as otherwise provided or permitted in the Trust Agreement, the Trust Estate securing all (a) First Tier Obligations, shall be shared on a parity with other First Tier Obligations on an equal and ratable basis, (b) Second Tier Obligations, shall be shared on a parity with other Second Tier Obligations on an equal and ratable basis but subordinate and junior to the lien on, pledge of and security in the Trust Estate for the benefit of the Owners of the First Tier Obligations and (c) Third Tier Obligations, shall be shared on a parity with other Third Tier Obligations on an equal and ratable basis but subordinate and junior to the lien on, pledge of and security in the Trust Estate for the benefit of the Owners of the First Tier Obligations and Second Tier Obligations. The Authority may, however, in its discretion, provide Additional Obligation Security, but shall have no obligation to provide such additional security or credit enhancement to other Obligations, except that no Additional Obligation Security shall be provided unless there shall have been first delivered to the Trustee an opinion of Bond Counsel that the exclusion from gross income of interest on any Obligations for federal income tax purposes will not be adversely affected thereby.

**Draw Request.** In order to cause TxDOT to fund a draw under the Toll Equity Loan Agreement with respect to any deficiency in the amount required to be deposited in the applicable fund or account and on such dates specified under the captions "**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, acting in accordance with **Article IV** of the Trust Agreement, shall present TxDOT by 10:00 a.m., Austin, Texas time, with a draw request in the form attached to the Trust Agreement as

Appendix A executed by the Trustee (a "Draw Request"). The Trustee shall deposit and use the proceeds of any draw under the Toll Equity Loan Agreement as provided in **Article IV** of the Trust Agreement. The Trustee shall make such Draw Request and take any other actions necessary to obtain an advance in an amount sufficient for such purpose from TxDOT without further direction or instruction or other action from the Authority or any Owners of the Outstanding Obligations. The amount requested by the Trustee pursuant to the provisions under the captions "**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**" shall not include any amount requested by the Trustee for the same purpose under any previously submitted Draw Request which was not paid by TxDOT due to a Non-Appropriation Event. The Trustee shall specify the amount of the shortfall for each applicable account determined in accordance with the provisions under the captions "**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**," as the case may be, on such Draw Request as the total amount requested for an advance under the Toll Equity Loan Agreement. Such Draw Request shall be transmitted to TxDOT by facsimile transmittal to the facsimile number referred to in Toll Equity Loan Draw Certificate and shall be promptly confirmed by written notice to TxDOT sent by certified or registered mail or private delivery service to the address and to the attention of the person referred to in the Toll Equity Loan Draw Request (it being understood that the giving or receipt of such confirmation shall not be a condition precedent to any advances under the Toll Equity Loan Agreement in connection with such Draw Request).

**Construction Fund and BANs Construction Fund.**

- (a) *Accounts; Deposits to the Construction Fund and BANs Construction Fund.*
- (i) 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 2011 Bonds, the Authority shall further deposit to the CIF Construction Account of the Construction Fund the amount of \$\_\_\_\_\_ to pay Costs of the Project. The Series 2011 Construction Account and the CIF Construction Account shall be governed by the provisions contained in the Trust Agreement.
  - (ii) On the date of issuance of the Series 2011 BANs, the Authority shall further deposit proceeds from such issuance to the BANs Construction Fund in the amount of \$\_\_\_\_\_ to pay such Costs of the Project as set forth in **clause (b)(ii)** of this Section. The BANs Construction Fund shall be governed by the provisions contained in the Trust Agreement and by the provisions relating thereto contained in the BAN Resolution.
  - (iii) On the date of issuance of the SWP/CT First Tier Bonds, the Authority shall deposit to the SWP/CT Project CIF Construction Account of the Construction Fund the amount of \$\_\_\_\_\_ to pay Costs of the SWP/CT Project. The SWP/CT Project Construction Account and the SWP/CT Project CIF Construction Account shall be governed by the provisions contained in the Trust Agreement.

- (b) *Application of the Construction Fund and BANs Construction Fund; Lien.*
- (i) Subject to the other provisions of the 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 Costs of 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 provided in the Trust Agreement.
  - (ii) Subject to the other provisions of the Trust Agreement and the BAN Resolution, the money credited to the BANs Construction Fund (including all obligations held as investments thereof and the proceeds of such investments) shall be applied only to Costs of the Project that constitute Eligible Project Costs. Such money and investments shall not be part of the Trust Estate and shall not be security for the Obligations.
  - (iii) Subject to the other provisions of the Trust Agreement, the Authority shall (i) on and after the SWP/CT Closing Date, use the money credited to the CIF Construction Account for payment of Costs of the PGBT WE Project in a manner that will cause the expenditure of all money credited to the CIF Construction Account prior to the expenditure of all money credited to the Series 2011 Construction Account for such purposes, and (ii) use the money credited to the SWP/CT Project CIF Construction Account for payment of Costs of the SWP/CT Project in a manner that will cause the expenditure of all money credited to the SWP/CT Project CIF Construction Account prior to the expenditure of all money credited to the SWP/CT Project Construction Account for such purposes, *provided, however,* that the aggregate amount expended from the SWP/CT Project CIF Construction Account and the CIF Construction Account to pay Costs of the SWP/CT Project and the PGBT WE Project shall not exceed \$400,000,000, and the aggregate balance, if any, on deposit in the SWP/CT Project CIF Construction Account and the CIF Construction Account in excess of such \$400,000,000 amount shall be transferred to the Authority and used for any lawful purpose.
- (c) *Payments from Construction Fund and BANs Construction Fund.* Payment of the Cost of the Project shall be made from the accounts of the Construction Fund and from the BANs Construction Fund. All payments from the Construction Fund and the BANs Construction Fund shall be subject to the provisions and restrictions set forth under 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 2011 Construction Account of the Construction Fund and deposit the same to the credit of the First Tier Interest Account, (2) investment earnings and other amounts held in the BANs Construction Fund or the BAN Capitalized Interest Account and deposit the same with the paying agent or escrow agent for the Series 2011 BANs to pay

the interest on and principal of the Series 2011 BANs whether at maturity or prior redemption, and (3) investment earnings held in the SWP/CT Project Construction Account of the Construction Fund and deposit the same to the credit of the First Tier Interest Account. The Trustee shall account for all amounts at any time on hand in the Construction Fund and BANs Construction Fund attributable to all investment earnings, regardless of their source, and will, at the written direction of the Authority, make the deposits required above to the extent of such investment earnings or other amounts 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 applicable interest payment date therefor, then the Trustee, upon the written 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.* For the purpose of the Trust Agreement 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 or the BANs 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 but, with respect to the BANs Construction Fund, subject in all cases to **clause (b)(ii)** of this Section:
- (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 determined and declared to be a capital expenditure, and a proper "Cost," under the Trust Agreement, 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 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 (from Construction Fund only) and the Series 2011 BANs (from BANs Construction Fund only), including refunding Obligations (from Construction Fund only), and all legal, accounting and other professional expenses and fees and financing charges in connection with any Obligations (from Construction Fund only) or the Series 2011 BANs (from BANs Construction Fund only) 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 in connection with the Project;

- (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 in connection with the Project; 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.

provided, however, that the proceeds of the Series 2011 BANs held in the BANs Construction Account shall only be applied to Eligible Project Costs.

- (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 or the BANs Construction Fund (but only if such payments constitute Eligible Project Costs) 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 substantially in the form of Appendix D attached to the Trust Agreement 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 (e)(1)** of this Section, 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 and BANs Construction Fund; Requisitions and Certificates.* Payments from the Construction Fund and the BANs Construction Fund, except the payments and withdrawals which the Trustee is authorized to make under the provisions of **clauses (e), (g), (h) and (k)** of this Section, shall be made in accordance with the provisions of this **clause (f)**. 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, substantially in the form attached to the Trust Agreement as Appendix C, 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 or from the BANs 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 or the BANs Construction Fund, as applicable, 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 payment default exists under the Trust Agreement and that no other default exists under the Trust Agreement which has not been disclosed to the Trustee, and the Authority will use its best efforts to cure any such 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;
  - (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 and made a part of such requisition, certifying that each such obligation has been properly incurred for purposes of constructing and completing the Project and is then due and unpaid, that such obligation is a proper charge against the Construction Fund or BANs Construction Fund, as applicable, 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; and

- (iv) a certification that any payments from the BANs Construction Fund shall be applied solely to pay Eligible Project Costs in accordance with the requisition requirements and other terms and conditions of the TIFIA Loan Agreement. The Authority shall submit requisitions and such supporting documentation as shall be required by the TIFIA Loan Agreement in order to assure that such proceeds, together with other available funds, shall be available to pay such costs as the same are required to be funded.

Upon receipt of each such properly executed and completed requisition and accompanying certificates the Trustee shall pay each such item from the Construction Fund or the BANs Construction Fund, as applicable, or shall, upon the written instructions of the Authority, 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 by the Authority to the Trustee for the credit of the Construction Fund or the BANs Construction Fund, as applicable.

- (g) *Reimbursements for Payment from Revolving Fund.* The Trustee shall, from time to time, make payments to the Authority from the Construction Fund or BANs 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:

- (i) a requisition, signed by at least two Board Representatives of the Authority designated by resolution of the Authority for such purpose, substantially in the form attached to the Trust Agreement as Appendix E, 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 was made out of the revolving fund;
  - (3) the amount to be paid from each account of the Construction Fund or from the BANs Construction Fund;

- (4) the purpose for which the payment was made out of the revolving fund;
  - (5) that obligations in the stated amounts have been incurred and paid by the Authority and that each item thereof is a proper charge against the Construction Fund or the BANs Construction Fund, as applicable, and has not previously been paid out of the Construction Fund or the BANs Construction Fund, 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 paid to any of the persons, firms or corporations named in such requisition, which was not released prior to such payment or was not 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 payment default exists under the Trust Agreement and that no other default exists under the Trust Agreement which has not been disclosed to the Trustee, and the Authority will use its best efforts to cure any such default if it exists;
- (ii) 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 and made a part of such requisition, certifying that each such obligation has been properly incurred for purposes of constructing and completing the Project and was at the time of payment by the Authority then due and unpaid, that such obligation is a proper charge against the Construction Fund or BANs Construction Fund, as applicable, 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; and
  - (iii) a certification that any payments from the BANs Construction Fund shall be applied solely to pay Eligible Project Costs in accordance with the requisition requirements and other terms and conditions of the TIFIA Loan

Agreement. The Authority shall submit requisitions and such supporting documentation as shall be required by the TIFIA Loan Agreement in order to assure that such proceeds, together with other available funds, shall be available to pay such costs as the same are required to be funded.

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 by the Authority for the Project, 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 Project, 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 and the BANs 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 BANs Construction Fund, as applicable, or the date upon which the Obligations to which such payments relate are no longer Outstanding, subject at all reasonable times and upon reasonable notice 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 and shall be provided by the Authority to the TIFIA Lender.

- (k) *Certificates and Opinions after Completion of PGBT WE Project; Disposition of Balances.* When the construction of the PGBT WE 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 out of the Construction Fund or the BANs Construction Fund, the balance in the CIF Construction Account and the Series 2011 Construction Account of the Construction Fund and in the BANs Construction Fund in excess of the amount, if any, stated in such certificate, shall be transferred or used as follows:
- (i) If in the CIF Construction Account and if the SWP/CT Project has not been completed or the Costs to complete SWP/CT Project have not been fully paid or provided for with funds retained in the SWP/CT Project Construction Account and the SWP/CT Project CIF Construction Account pursuant to **clause (I)** below, such balance shall be transferred to the SWP/CT Project CIF Construction Account and used to pay for Costs of the SWP/CT Project;
  - (ii) If in the CIF Construction Account and if as of such date the SWP/CT Project has been completed and the Costs to complete the SWP/CT Project have been fully paid or provided for with funds retained in the SWP/CT Project Construction Account and the SWP/CT Project CIF Construction Account pursuant to clause (I) below, such balance shall be transferred to the Revenue Fund and used as provided for "Revenues" under the Trust Agreement unless such use is not permitted under applicable federal tax laws or regulations, in which case such amounts shall be retained in such account and be used to pay for Capital Expenditures, including the Project Capacity Improvements, or Major Maintenance Expenses; *provided, however*, that the amount so retained plus the aggregate amount previously expended from the SWP/CT Project CIF Construction Account and the CIF Construction Account to pay Costs of the SWP/CT Project and the PGBT WE Project shall not exceed \$400,000,000, and the aggregate balance, if any, on deposit in the SWP/CT Project CIF Construction Account and the CIF Construction Account in excess of such \$400,000,000 amount shall be transferred to the Authority and used for any lawful purpose;

- (iii) If in the Series 2011 Construction Account and if the SWP/CT Project has not been completed or the Costs to complete SWP/CT Project have not been fully paid or provided for with funds retained in the SWP/CT Project Construction Account and the SWP/CT Project CIF Construction Account pursuant to **clause (i)** below, such balance shall be transferred to the SWP/CT Project Construction Account and used to pay for Costs of the SWP/CT Project;
- (iv) If in the Series 2011 Construction Account and if the SWP/CT Project has been completed and the Costs to complete SWP/CT Project have been fully paid or provided for with funds retained in the SWP/CT Project Construction Account and the SWP/CT Project CIF Construction Account pursuant to **clause (i)** below, such balance, at the written direction of the Authority, shall 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 First Tier Obligations or Second Tier Obligations at the written direction of the Authority, and
- (v) If in the BANs Construction Fund, such balance shall, at the written direction of the Authority, be used to redeem, defease, prepay or purchase and cancel outstanding Series 2011 BANs.

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 in this **clause (k)**.

- (l) *Certificates and Opinions after Completion of SWP/CT Project; Disposition of Balances.* When the construction of the SWP/CT 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 SWP/CT Project out of the SWP/CT Project Construction Account and the SWP/CT Project CIF Construction Account of the Construction Fund, the balance in the SWP/CT Project Construction Account and the SWP/CT Project CIF Construction Account

of the Construction Fund in excess of the amount, if any, stated in such certificate, shall be transferred or used as follows:

- (i) If in the SWP/CT Project CIF Construction Account and if as of such date the PGBT WE Project has not been completed or the Costs to complete the PGBT WE Project have not been fully paid or provided for with funds retained in the Series 2011 Construction Account and the CIF Construction Account pursuant to **clause (k)** above, such balance shall be transferred to the CIF Construction Account and used for Costs of the PGBT WE Project;
- (ii) If in the SWP/CT Project CIF Construction Account and if as of such date the PGBT WE Project has been completed and the Costs to complete the PGBT WE Project have been fully paid or provided for with funds retained in the Series 2011 Construction Account and the CIF Construction Account pursuant to **clause (k)** above, such balance shall be transferred to the Revenue Fund and used as provided for "Revenues" under the Trust Agreement unless such use is not permitted under applicable federal tax laws or regulations, in which case such amounts shall be retained in such account and be used to pay for Capital Expenditures, including the Project Capacity Improvements, or Major Maintenance Expenses; *provided, however*, that the amount so transferred or retained plus the aggregate amount previously expended from the SWP/CT Project CIF Construction Account and the CIF Construction Account to pay Costs of the SWP/CT Project and the PGBT WE Project shall not exceed \$400,000,000, and the aggregate balance, if any, on deposit in the SWP/CT Project CIF Construction Account and the CIF Construction Account in excess of such \$400,000,000 amount shall be transferred to the Authority and used for any lawful purpose;
- (iii) If in the SWP/CT Project Construction Account and if as of such date the PGBT WE Project has not been completed or the Costs to complete the PGBT WE Project have not been fully paid or provided for with funds retained in the Series 2011 Construction Account and the CIF Construction Account pursuant to **clause (k)** above, such balance shall be transferred to the Series 2011 Construction Account and used to pay the Costs of the PGBT WE Project; and
- (iv) If in the SWP/CT Project Construction Account and if as of such date the PGBT WE Project has been completed and the Costs to complete PGBT WE Project have been fully paid or provided for with funds retained in the Series 2011 Construction Account and the CIF Construction Account pursuant to **clause (k)** above, such balance, at the written direction of the Authority, shall be transferred to the Series 2011 Construction Account and be used to pay for Capital Expenditures, including the Project Capacity Improvements, to the extent such Capital Expenditures are authorized costs under the Turnpike Act, 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 First Tier Obligations or Second Tier Obligations at the written direction of the Authority.

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 Costs to complete the SWP/CT Project have been fully paid, the balance in the SWP/CT Project Construction Account and the SWP/CT Project CIF Construction Account of the Construction Fund shall be disposed of as provided above in this **clause (l)**.

- (m) *Construction Step-In.* During a Construction Step-In, the Trustee shall disburse funds to TxDOT or its designee from the Construction Fund and the BANs Construction Fund upon written request of TxDOT to pay Costs of the Project in accordance with **Section 6.02(e)** of the Toll Equity Loan Agreement and the requirements of this **clause (m)** and **clauses (b), (d), (n) and (o)** of this Section (the "TxDOT Requisition Requirements"). In the event that TxDOT incurs Costs of the Project, including Construction Step-In Evaluation Costs, in connection with the exercise of its Construction Step-In rights and the Trustee does not have sufficient amounts in the Construction Fund and the BANs Construction Fund to pay TxDOT's Requisition Request for such Costs of the Project at the time of the submission of such request, the Trustee shall use any amounts held in the General Account of the General Fund, the Current Year Revenue Account of the General Fund and the Capital Expenditure Fund, in that order of priority, to pay the TxDOT Requisition Request for such Costs of the Project; *provided, however,* that if there are still insufficient amounts to pay such TxDOT Requisition Request for such Costs of the Project (including Construction Step-In Evaluation Costs) at the time it is submitted to the Trustee, TxDOT shall be entitled to reimbursement for such Costs of the Project from any future deposits to the General Account of the General Fund, the Current Year Revenue Account of the General Fund, and the Capital Expenditures Fund, in that order of priority; *provided, further,* that in no event shall TxDOT be entitled to be paid or reimbursed by the Trustee out of any fund or account under this Trust Agreement other than the Construction Fund or the BANs Construction Fund (x) for Costs of the Project, other than Construction Step-In Evaluation Costs, that are not actually incurred by TxDOT or exceed the Construction Step-In Construction Costs Limit in the aggregate for all Construction Step-In events for the PGBT WE Project or the SWP/CT Project, as applicable, or (y) for Construction Step-In Evaluation Costs that are not actually incurred by TxDOT or exceed the Construction Step-In Evaluation Costs Limit in the aggregate for all Construction Step-In events for the PGBT WE Project or the SWP/CT Project, as applicable. All such disbursements shall be subject to the provisions and restrictions set forth in the TxDOT Requisition Requirements.
- (n) *Disbursements to TxDOT During Construction Step-In.* During a Construction Step-In, the Trustee shall, subject to **clause (m)** of this Section, disburse moneys on deposit in the Construction Fund, the BANs Construction Fund, the General Account of the General Fund, the Current Year Revenue Account of the General Fund or the Capital Expenditure Fund, as applicable, to pay or as reimbursement for payment of Costs of the Project within two Business Days after receipt by the Trustee of written requisition requests, in substantially the form attached to the Trust Agreement as **Appendix F**, of TxDOT, signed by a TxDOT Representative, TxDOT's general engineering consultant, if utilized by

TxDOT, and, in the event the disbursement involves the acquisition or condemnation of real property, Counsel to TxDOT.

Upon receipt of each requisition, the Trustee shall, as directed by TxDOT, transfer from the Construction Fund, the BANs Construction Fund, the General Account of the General Fund, the Current Year Revenue Account of the General Fund or the Capital Expenditure Fund, as applicable, funds equal to the total of the amounts to be paid as set forth in such requisition and TxDOT covenants to apply such funds to the payment of Costs of the Project as described in the requisition. If for any reason TxDOT should decide prior to release of payment by the Trustee of any item not to pay such item, the TxDOT Representative shall provide written notice of such decision to the Trustee and the Trustee shall not make such payment.

- (o) *TxDOT Progress Reports.* TxDOT covenants that at least quarterly during a Construction Step-In, it will prepare (or cause TxDOT's general engineering consultant if utilized by TxDOT during a Construction Step-In to prepare) a progress report in connection with construction of the Project including current projections with respect to:
- (i) the date on which the Project will be opened for traffic, unless the Project shall have been opened for traffic prior to the date of such report;
  - (ii) the date on which the construction of such Project will be completed;
  - (iii) the Cost of the Project excluding bond discount and capitalized interest during construction and for one year thereafter; and
  - (iv) the amount of funds required each six months during the remaining estimated period of construction to pay the Costs of the Project 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 the TIFIA Lender.