

# TEXAS TRANSPORTATION COMMISSION

## MINUTE ORDER

HARRIS County

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HOUSTON District

The Texas Transportation Commission (commission), as the governing body of the Texas Department of Transportation (department), may designate toll projects and systems and authorize the department to acquire, develop, finance, refinance, design, construct, reconstruct, expand, operate and/or maintain them.

Pursuant to Minute Order 114205, dated February 26, 2015, the department entered into 1) a Comprehensive Development Agreement dated March 4, 2016 (the "SH 288 CDA"), regarding the State Highway 288 Toll Lanes project in Harris County (the "project"), and 2) an associated Project Lease dated October 25, 2016 ("SH 288 Lease"), both with Blueridge Transportation Group, LLC, a Delaware limited liability company ("developer"). As constructed, the project extends 10.0 miles from Blodgett Street in Harris County southward to a terminus at approximately the county line between Harris and Brazoria Counties. The project is comprised of four tolled lanes on State Highway 288 (two lanes in each direction) extending ten miles from Blodgett Street in Harris County southward to a terminus at approximately the county line between Harris and Brazoria Counties, eight tolled direct connectors at Beltway 8, two tolled direct connectors at Holcombe Boulevard near the Texas Medical Center, eight direct connectors at I-610, eight general purpose lanes between Blodgett Street and I-610 (four in each direction), six general purpose lanes between I-610 and the southern terminus of the project (three in each direction), all ramps and auxiliary lanes along tolled and general purpose lanes, frontage roads for service to abutting property and adjacent areas, the operations and maintenance facility adjacent to the direct connectors at Holcombe Boulevard and the electronic toll collection system (including advanced toll information signs).

Section 31.1.1 of the SH 288 CDA provides the department with the right to terminate the SH 288 CDA and SH 288 Lease if the department determines in its discretion that a termination is in the department's best interest. Upon such a determination, the department must notify the developer and specify the date upon which the termination shall take effect. Upon termination, control of the State Highway 288 Toll Lanes project reverts to the department. In Minute Order 116663, dated March 28, 2024, the commission determined that pursuing termination of the SH 288 CDA and SH 288 Lease is in the best interest of the department and authorized the department to exercise its termination for convenience rights under the SH 288 CDA. The department provided a notice of intent to terminate to the developer on April 8, 2024, with an anticipated termination date of October 8, 2024 (termination date), by which the department intends to make, or cause to be made, a payment to the developer in the amount of \$1,731,730,721 (termination payment), less any amounts as allowed by the SH 288 CDA.

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Also in Minute Order 116663, dated March 28, 2024, pursuant to Transportation Code, Chapter 431, Subchapters A through C (Chapter 431) and in accordance with Title 43 Texas Administrative Code §15.95, the commission adopted a resolution creating a transportation corporation to assist in the acquisition, development, financing, refinancing, design, construction, reconstruction, expansion, tolling, operation and/or maintenance of any toll project as determined by the commission to assist the commission in fulfilling the purposes of Chapter 431, including promoting and developing public transportation facilities and systems by new and alternative means, reducing burdens and demands on the limited funds available to the commission, and increasing the effectiveness and efficiency of the commission. The resolution also approves the certificate of formation and bylaws of the corporation and appoints the initial directors of the corporation. The initial directors executed a Certificate of Formation on May 2, 2024, which was filed by the Office of the Texas Secretary of State on May 3, 2024, creating the Texas Transportation Finance Corporation (corporation).

Transportation Code §222.103 authorizes the department to participate, by spending money from any available source in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission. Title 43 Texas Administrative Code §15.95 provides that the corporation may borrow money and the department may lend money to the corporation pursuant to state law, including making a loan to a corporation under Transportation Code, §222.103, to pay for or reimburse project costs.

The commission has determined that it would promote safety and mobility in the state by reimbursing the amount of the termination payment to the department as soon as practicable so that the funds may be used on other transportation projects. The commission has determined that this may be accomplished by authorizing the corporation to assist in the acquisition, development, financing, refinancing, design, construction, reconstruction, expansion, tolling, operation and/or maintenance of the Project and by authorizing the department to make a loan to the corporation under Transportation Code §222.103 and Title 43 Texas Administrative Code §15.95, for the purpose of making the termination payment on behalf of the department.

The commission has determined that it may be necessary for the corporation to have the authority to execute agreements with the department or any other parties as necessary in connection with the project and the plan of finance, and for the department to have the authority to enter into agreements with the corporation, such as a project agreement to allocate project responsibilities between the corporation and

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the department and financing agreements related to the issuance of debt obligations, including loan agreements pursuant to Transportation Code, Section 222.103.

The commission has determined that a toll rate agreement between the commission and the corporation may be needed in connection with the loan and future rating and marketing of the corporation's obligations, setting forth the covenant of the commission to meet the requirements of those toll revenue obligations.

Pursuant to state and federal law, including Section 1.150-2 of the Treasury Regulations, the commission has determined that it is in the best interest of the state for the department to be reimbursed for certain expenditures made in accordance with this minute order.

IT IS THEREFORE ORDERED that the corporation may perform any function authorized by Subchapters A-C of chapter 431 and perform any function not specified by chapter 431, but necessary to acquire, develop, finance, refinance, design, construct, reconstruct, expand, toll, operate and/or maintain the project, including the execution of loans, the issuance of one or more series of public securities, collection and enforcement of tolls or causing such, and execution of any agreements with the department or any other parties as necessary in connection with the project and plan of finance, such as a project agreement to clarify the relationship between the department and the corporation concerning their respective rights and responsibilities relating to the project and financing agreements related to the issuance of debt obligations, including loan agreements with the department pursuant to Transportation Code, Section 222.103.

IT IS FURTHER ORDERED by the commission that the department is authorized to enter into agreements with the corporation as necessary in connection with the project and plan of finance, including a project agreement to clarify the relationship between the department and the corporation concerning their respective rights and responsibilities relating to the project.

IT IS FURTHER ORDERED that the commission's and department's rights to the revenues of the project, including the aggregate revenues and all other receipts and income collected, received or derived from the operation of the project in any period, shall be assigned to the corporation, subject to agreement between the department and the corporation.

IT IS FURTHER ORDERED by the commission that the department is authorized to participate in the costs of the project in the form of a loan to the corporation in an

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aggregate principal amount in nominal dollars not to exceed \$1,731,730,721, to be used for the purpose of making the termination payment described above on behalf of the department, and to execute a loan agreement with the corporation, the form of

which is attached as exhibit A to this minute order, with such changes as the executive director may approve.

IT IS FURTHER ORDERED by the commission that the chairman of the commission is authorized to execute a toll rate agreement with the corporation as needed in connection with the corporation's revenue obligations, setting forth the covenant of the commission to establish and maintain toll rates for the project sufficient to meet the requirements of those toll revenue obligations, substantially in the form attached as exhibit B, with such changes as the chairman may approve.


IT IS FURTHER ORDERED by the commission that the department's chief financial officer and the director, project finance, debt and strategic contracts division are each authorized to act on behalf of the commission to adopt an official intent to reimburse expenditures paid prior to the issuance of any obligations by the commission.

IT IS FURTHER ORDERED by the commission that the executive director, on behalf of the commission, is authorized and directed to perform all such acts and execute such documents necessary to carry out the intent of this minute order.

Submitted and reviewed by:

Recommended by:

DocuSigned by:  
  
E40115FC36E4474...  
Director, Project Finance, Debt  
and Strategic Contracts Division

DocuSigned by:  
  
0E1B35AE191749E...  
Executive Director

116738 July 30, 2024

Minute Number	Date Passed
116738	July 30, 2024

**STATE HIGHWAY FUND LOAN AGREEMENT**  
**BETWEEN**  
**TEXAS TRANSPORTATION FINANCE CORPORATION**  
**AND**  
**TEXAS DEPARTMENT OF TRANSPORTATION**  
**(STATE HIGHWAY 288 TOLL LANES PROJECT)**  
  
**DATED AS OF OCTOBER 1, 2024**

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## STATE HIGHWAY FUND LOAN AGREEMENT

**THIS STATE HIGHWAY FUND LOAN AGREEMENT** (this "Agreement"), dated as of October 1, 2024, is made by and between the Texas Department of Transportation (the "Department"), an agency of the State of Texas, and the Texas Transportation Finance Corporation ("Corporation"), a public non-profit transportation corporation created by the Texas Transportation Commission, the governing body of the Department (the "Commission") in accordance with Subchapters A-C, Chapter 431, Texas Transportation Code, as amended (the "Act"), which Corporation is authorized by law to acquire, develop, finance, refinance, design, construct, reconstruct, expand, toll, operate and maintain any toll projects throughout the State of Texas (the "State") as determined by the Commission. Unless otherwise defined herein, capitalized terms used in this Agreement have the meanings set forth in Section 1.1 of this Agreement.

### RECITALS

A. In Minute Order 116663 dated March 28, 2024, ("Minute Order 116663"), the Commission authorized the creation of the Corporation, which is a public non-profit transportation corporation operating pursuant to the Act and the Texas Business Organizations Code, Chapter 22, as provided in the Act, for the purposes of (i) promoting and developing public transportation facilities and systems by new and alternative means; (ii) expanding and improving transportation facilities and systems; (iii) reducing burdens and demands on the limited funds available to the Commission and increasing the effectiveness and efficiency of the Commission; and (iv) issuing bonds, notes and other obligations and the incurrence of contractual obligations including loan agreements in accordance with Title 43, Texas Administrative Code § 15.95.

B. Pursuant to Minute Order 114205 dated February 26, 2015, the Department entered into a Comprehensive Development Agreement dated March 4, 2016 with Blueridge Transportation Group, LLC, regarding the SH 288 Toll Lanes Project. On April 8, 2024, pursuant to Minute Order 116663, the Department issued a notice of termination for convenience to Blueridge Transportation Group, LLC under the CDA and intends to make the required Termination Compensation payments to the Developer as required to terminate for convenience in accordance with Section 31.1 of the CDA.

C. In Minute Order 116663 and Minute Order \_\_\_\_ dated July 30, 2024 ("Minute Order \_\_\_\_\_"), the Commission authorized the Corporation to act on behalf of the Commission by acquiring, developing, financing, refinancing, designing, constructing, reconstructing, expanding, tolling, operating, and/or maintaining the SH 288 Toll Lanes Project and authorized the assignment of the Toll Revenues related to the SH 288 Toll Lanes Project to the Corporation subject to agreement between the Department and the Corporation as provided in the Project Agreement and the Trust Agreement.

D. The Department, pursuant to Article III, Section 52-b of the Texas Constitution and Section 222.103 of the Texas Transportation Code, is authorized to participate, through the expenditure of money from any available source, in the acquisition, construction, maintenance, or



operation of a toll facility of a public entity or private entity on terms and conditions established by the Commission so long as money spent is repaid.

E. On July 30, 2024, pursuant to Minute Order \_\_\_\_\_, the Commission, pursuant to its constitutional and statutory authority, including Title 43, Texas Administrative Code § 15.95, authorized the Department to participate in the costs of the SH 288 Toll Lanes Project in the form of a loan to the Corporation in the aggregate principal amount of up to \$1,731,730,721 to be used for the purposes described herein. In Minute Order \_\_\_\_\_, set forth as EXHIBIT C to this Agreement, the Commission authorized the Executive Director of the Department to enter into the SHF Loan by and pursuant to this Agreement with the Corporation.

F. The Acquisition Costs are being financed through the SHF Loan evidenced by the Series 2024 Subordinate Tier Note.

G. On July 31, 2024, the Corporation Board in Resolution Number \_\_\_\_ set forth as EXHIBIT D to this Agreement, authorized the Corporation Representative to enter into the SHF Loan by and pursuant to this Agreement and the Series 2024 Subordinate Tier Note.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, to be kept and performed by all parties as hereinafter set forth, the Department and the Corporation do hereby mutually agree as follows:

## **AGREEMENT**

### **ARTICLE I**

#### **DEFINITIONS AND INTERPRETATION**

**Section 1.1 Definitions.** Capitalized terms used herein but not otherwise defined below have the respective meanings set forth in the Trust Agreement. In this Agreement, the terms below shall have the following meanings:

"Accreted Value" means, as of any date on or before the Final Accretion Date, the principal amount of the Series 2024 Subordinate Tier Note outstanding, plus the value of all accreted interest thereon to that date.

"Accretion Date" means each date identified as such in Section 3.1 and on EXHIBIT B to this Agreement.

"Acquisition Costs" means the acquisition costs paid by the Corporation for the SH 288 Toll Lanes Project, on behalf of the Department, through payment of the Termination Compensation as defined and set forth in the CDA.

"Act" means, collectively, Chapter 431, Texas Transportation Code, known as the "Texas Transportation Corporation Act" and Chapter 22, Texas Business Organizations Code regarding non-profit corporations.

"Agreement" means this State Highway Fund Loan Agreement between the Corporation and the Department, as it may be amended from time to time.

"Annual Debt Service" means, for any Fiscal Year, the principal amount and interest paid or payable with respect to the Series 2024 Subordinate Tier Note in such Fiscal Year, including any Deferred Debt Service Payment.

"Average Treasury Pool Rate" means, as provided in Section 3.1(b) and for any period on April 1 through and including September 30, the average of the most recent six (6) months of treasury pool rates as published on the State of Texas' Comptroller's website on and as calculated on April 1; and for any period on October 1 through and including March 31, the average of the most recent six (6) months of treasury pool rates as published on the State of Texas' Comptroller's website on and as calculated on October 1 and, subject to Section 9.8 hereof, in no event shall such rate exceed six percent (6%) per annum.

"Closing Conditions" means the conditions set out in Section 5.1 of this Agreement.

"Closing Date" means the date of the delivery of this Agreement and the Series 2024 Subordinate Tier Note pursuant to Section 2.1 of this Agreement.

"Corporation Board" means the Board of Directors of the Corporation.

"Debt Service Amortization Schedule" means the amortization schedule set forth in EXHIBIT B to this Agreement.

"Debt Service Fund" means the Subordinate Tier Debt Service Fund created pursuant to the Trust Agreement.

"Deferred Debt Service" means all Deferred Debt Service Installments and accreted interest thereon.

"Deferred Debt Service Installment" has the meaning specified in Section 3.1(c) of this Agreement.

"Deferred Debt Service Payment Date" has the meaning specified in Section 3.1(c) of this Agreement.

"Department District Office" means the District Engineer responsible for the Houston District of the Department or any office or division succeeding to its functions in relation to the SH 288 Toll Lanes Project.

"Disbursement" means the periodic disbursement of Series 2024 Subordinate Tier Note proceeds pursuant to Section 2.2.

"Disbursement Conditions" means conditions to make any Disbursement as set forth in Section 2.2 of this Agreement.

"Disbursement Date(s)" means the date(s) upon which the Series 2024 Subordinate Tier Note proceeds are disbursed to the Trustee for deposit to the credit of the Construction Fund, subject to Corporation's completion of the Disbursement Conditions.

"Event of Default" has the meaning specified in Section 8.1 of this Agreement and such other events specified in the Trust Agreement.

"Final Accretion Date" has the meaning specified in Section 3.1(b) of this Agreement.

"Financing Documents" means this Agreement, the Series 2024 Subordinate Tier Note, the Toll Rate Agreement and the Trust Agreement.

"First Supplemental Agreement" means the First Supplemental Agreement, dated as of October 1, 2024, between the Corporation and the Trustee authorizing the issuance of the Series 2024 Subordinate Tier Note and the execution and delivery of this Agreement.

"Governmental Approvals" means all authorizations, covenants, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority, including to the extent required under Environmental Laws.

"Initial Disbursement" means the first Disbursement hereunder after the Closing Date.

"Initial Interest Payment Date" has the meaning specified in Section 3.1 of this Agreement.

"Initial Rate" means for the period from the Closing Date through and including March 31, 2025, the average of the most recent six (6) months of treasury pool rates as published on the State of Texas' Comptroller's website on and as calculated on October 1, 2024.

"Interest Payment Date" has the meaning specified in Section 3.1 of this Agreement being each April 1 and October 1 of each year as herein provided.

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

"Master Trust Agreement" means the Master Trust Agreement between the Corporation and the Trustee dated as of October 1, 2024.

"Material Adverse Effect" means a material adverse effect on (i) the operations or financial condition of the SH 288 Toll Lanes Project, (ii) the authority or the ability of the Corporation to perform in any material respect any of its obligations under the Financing

Documents or the Project Agreement, or (iii) the validity or enforceability against the Corporation of this Agreement, the Trust Agreement or any Related Document.

"Maturity Date" has the meaning specified in Section 3.1 of this Agreement.

"Non-Recourse Party" or "Non-Recourse Parties" has the meaning set forth for that term in Section 9.1 of this Agreement.

"PFD" means the Project Finance, Debt and Strategic Contracts Division of the Department and any successor to its duties and functions related to this Agreement.

"Pre-Closing Date" has the meaning specified in Section 2.1 of this Agreement.

"Principal Payment Date" means October 1 of each year as provided in Section 3.1 of this Agreement.

"Project" means the Project as defined in the Master Trust Agreement.

"Project Funding Sources" means, the currently identified funding sources of the Corporation for the acquisition of the SH 288 Toll Lanes Project, being the Series 2024 Subordinate Tier Note and the SHF Loan.

"Related Documents" means the Financing Documents and the Project Agreement.

"Series 2024 Subordinate Tier Note" means the Texas Transportation Finance Corporation Toll Revenue Subordinate Tier Note, Series 2024 (State Highway 288 Toll Lanes Project) which evidences and secures the Corporation's obligation to repay the Loan under this Agreement.

"SHF Loan" or "Loan" means the loan made by the Department to the Corporation pursuant to the terms of the Series 2024 Subordinate Tier Note, this Agreement and the Trust Agreement, including the First Supplemental Agreement, as authorized by Minute Order \_\_\_\_\_.

"Termination Compensation" has the meaning given in the CDA.

"Termination for Convenience" has the meaning given in the CDA.

"Toll Rate Agreement" means the Toll Rate Agreement, dated as of October 1, 2024, between the Corporation and the Commission relating to the Project.

"Toll Rate Covenant" has the meaning specified in the Toll Rate Agreement.

"Traffic Consultant" means any traffic and revenue consultant or firm of traffic and revenue consultants of favorable national reputation for skill and experience in performing the duties for which such Traffic Consultant is required to be employed pursuant to the provisions of

this Agreement and the Trust Agreement, including Sections 7.2(b) and 9.5, and who is retained by or on behalf of the Corporation as a Traffic Consultant.

"Trust Agreement" means the Master Trust Agreement as amended and supplemented from time to time, including as supplemented by the First Supplemental Agreement.

"Trustee" means U.S. Bank Trust Company, National Association, and its successors under the Trust Agreement.

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

**Section 1.2 Interpretation.** Unless the context shall otherwise require, the words "hereto," "herein," "hereof" and other words of similar import refer to this Agreement as a whole, and references to sections, subsections and provisions are to the applicable sections, subsections and provisions of this Agreement. Whenever the Corporation's knowledge is implicated in this Agreement or the phrase "the Corporation's knowledge," "the knowledge of the Corporation" or a similar phrase is used in this Agreement, the Corporation's knowledge or such phrase(s) shall be interpreted to mean the Corporation's actual knowledge after reasonable and diligent inquiry. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, definitions of terms shall apply equally to the singular and plural forms of the terms defined. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "principal" includes, with respect to the Series 2024 Subordinate Tier Note, the Accreted Value thereof. All references to time in this Agreement shall be to the time in Austin, Texas.

**Section 1.3 Construction.** This Agreement consists of the text hereof together with all exhibits identified herein and attached hereto.

## ARTICLE II

### FINANCIAL ASSISTANCE

**Section 2.1 SHF Loan.** (a) Upon the terms and conditions of this Agreement, the Department will lend the Corporation up to the aggregate principal amount of One Billion Seven

Thirty One Million Seven Hundred Thirty Thousand Seven Hundred Twenty One Dollars (\$1,731,730,721) of the Series 2024 Subordinate Tier Note for the purpose of paying the Acquisition Costs identified in EXHIBIT A incurred by or on behalf of the Corporation for the SH 288 Toll Lanes Project, as further described in Sections 2.2 and 3.1 hereof.

(b) The Department will make disbursements of the proceeds of the Series 2024 Subordinate Tier Note, as requested, by the Corporation to the Department, in accordance with Sections 2.2 and 3.1 of this Agreement. The Closing Date shall occur no later than the fifth Business Day following the date on which all Closing Conditions have been satisfied (the "Pre-Closing Date").

**Section 2.2 Series 2024 Subordinate Tier Note and SHF Loan Disbursements.** (a) Subject to satisfaction by the Corporation of each of the Disbursement Conditions, the Department shall disburse on each Disbursement Date a Disbursement in the amount requested by the Corporation; provided, however, the Corporation acknowledges and agrees that the Department's obligation to make any Disbursement occurring after the end of the current fiscal biennium of the State (August 31, 2025) shall be subject in each case to the appropriation by the Texas Legislature of funds for such purposes. Any "non-appropriation" by the Texas Legislature as described in the preceding sentence shall not constitute a default by the Department under this Agreement.

Disbursements shall be deposited with the Trustee for deposit into the Construction Fund and used only for Acquisition Costs.

(b) Amounts on deposit in the Construction Fund may be applied to the Acquisition Costs identified in EXHIBIT A. All draws from the Construction Fund for Acquisition Costs shall be supported by a requisition in accordance with the Trust Agreement. All such requisitions and expenditures shall be subject to review and audit by the Department.

(c) While on deposit in the Construction Fund, the Series 2024 Subordinate Tier Note proceeds may be invested by the Corporation in Permitted Investments provided that all investment earnings shall accrue to the benefit of the Construction Fund. If, during the course of this Agreement, the Corporation changes the Trustee in accordance with the Trust Agreement, the Corporation shall notify the Department in writing at least thirty (30) days in advance of such change and provide the new account details.

**Section 2.3 Unexpended Balance in Construction Fund.** All amounts on deposit in the Construction Fund, if any, after all requirements for the payment of the Acquisition Costs have been met, shall be transferred to the Debt Service Fund to prepay, first, any outstanding Deferred Debt Service with the nearest Deferred Debt Service Payment Date; or second, any other principal of and interest on the Series 2024 Subordinate Tier Note in inverse order of scheduled principal installments. The Corporation shall provide a written certificate of a Corporation Representative to the Trustee and the Department within thirty (30) days of the date of the payment of the final Acquisition Costs pursuant to the preceding sentence and such certificate shall identify the details of such remaining balance, if any, and contain a calculation in reasonable detail of any prepayment which prepayment date shall not be more than ten (10) days after the date of the certificate.

## ARTICLE III

### LOAN PROVISIONS

**Section 3.1 Assignment of Toll Revenues; Repayment of the Series 2024 Subordinate Tier Note and the SHF Loan.** The Corporation hereby covenants and agrees to pay the Series 2024 Subordinate Tier Note and the SHF Loan, as follows:

(a) As security for this Agreement and the Series 2024 Subordinate Tier Note and pursuant to the Trust Agreement, the Corporation has pledged, assigned and granted, or shall cause to be pledged, assigned and granted a Lien on the Trust Estate in accordance with the provisions of the Trust Agreement. The Series 2024 Subordinate Tier Note and this Agreement shall be secured by the Trust Agreement as Subordinate Tier Obligations and are also the Initial Obligations. In accordance with Minute Order \_\_\_\_\_, the Trust Agreement and the Project Agreement, the Department has assigned the Toll Revenues (constituting a portion of the Revenues) to the Corporation effective on the Toll Revenue Transfer Date. The Corporation may defer Debt Service on the Series 2024 Subordinate Tier Note scheduled to be due pursuant to Section 3.1(b) before the date when all claims are settled and the Developer has completed all transition activities and been paid by the Department, or paid on behalf of the Department, all amounts owed in connection with the termination of the CDA as provided in Section 3.1(c).

(b) The proceeds of the Series 2024 Subordinate Tier Note are anticipated to be disbursed in one or more Disbursements as agreed by the parties and the Series 2024 Subordinate Tier Note shall mature and be due and payable on October 1, 2064 (the "Maturity Date") with annual principal and interest payments to be reflected in EXHIBIT B attached hereto determined at the time of each Disbursement. EXHIBIT B shall be revised by the Department, and agreed to by the Corporation, to reflect the annual principal and interest payments of the Series 2024 Subordinate Tier Note relating to a particular Disbursement, in compliance with this Section 3.1, no later than five Business Days prior to the date of such Disbursement. Such amended EXHIBIT B shall be attached to this Agreement and shall become a part of this Agreement for all purposes. The Series 2024 Subordinate Tier Note shall accrete interest on each Disbursement at the Average Treasury Pool Rate per annum, compounding semi-annually on each April 1 and October 1 of each year from the respective date of each such Disbursement (the "Final Accretion Date"), with each April 1 and October 1 being an "Accretion Date." The initial interest payment date shall be April 1, 2025 (the "Initial Interest Payment Date"), and the initial interest rate at the Closing Date shall be the Initial Rate through March 31, 2025. Interest will be payable semi-annually in arrears on each Interest Payment Date of each year. Notwithstanding any provision in this Agreement to the contrary and pursuant to the Trust Agreement, all interest payments shall be made to the extent of available Net Revenues. The first Principal Payment Date shall be October 1, 2029. Principal will be payable annually on each Principal Payment Date in accordance with this Agreement. The first Disbursement to the Corporation is expected to be made on the Closing Date. Any payment of the Series 2024 Subordinate Tier Note shall be treated as a payment of the SHF Loan.

(c) Notwithstanding paragraph (a) above, the Corporation may defer payment of the principal of and interest on the Series 2024 Subordinate Tier Note due on any Principal Payment

Date or Interest Payment Date (each such deferral, a "Deferred Debt Service Installment") for a period not to exceed three (3) years from the date of such deferral, unless extended by agreement of the parties hereto pursuant to Section 9.8 hereof; provided, however, no Deferred Debt Service Installment shall extend past the Maturity Date. Each Deferred Debt Service Installment shall accrete interest at the Average Treasury Pool Rate per annum compounding semi-annually on each April 1 and October 1 of each year from the respective original deferral date of each such Deferred Debt Service Installment until the third-year anniversary of the deferral when such Deferred Debt Service Installment is due and payable (a "Deferred Debt Service Payment Date"). In no case may the payment of Deferred Debt Service be deferred under this Agreement. EXHIBIT B shall be revised by the Department, and agreed to by the Corporation, to reflect each Deferred Debt Service Installment and the corresponding accretion values to the related Deferred Debt Service Payment Date. Such amended EXHIBIT B shall be attached to this Agreement and shall become a part of this Agreement for all purposes.

(d) Any prepayment of the Series 2024 Subordinate Tier Note and the SHF Loan permitted under this Agreement made on or prior to the Final Accretion Date shall be paid at the Accreted Value of the Series 2024 Subordinate Tier Note as of the date of such repayment, with the Department and the Corporation calculating the Accreted Value as of such date using straight-line interpolation between Accretion Dates. Any prepayment of a Deferred Debt Service Installment permitted under this Agreement made on or prior to the relevant Deferred Debt Service Payment Date shall be paid at the accreted value of such installment as of the date of such repayment, with the Department and the Corporation calculating the accreted value as of such date using straight-line interpolation between April 1 and October 1 accretion dates applicable thereto.

(e) Interest will be calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months.

(f) The Corporation covenants to make payments of principal, interest and all other costs in accordance with the terms of this Agreement.

**Section 3.2 Prepayment.** (a) There shall be no penalty or premium imposed by the Department upon the Corporation for prepayment and redemption, in whole or in part, of the Series 2024 Subordinate Tier Note and the SHF Loan, and any accrued and unpaid interest, prior to the Maturity Date, upon the Corporation's having given the Department and the Trustee at least seven (7) days' prior written notice of such optional prepayment and redemption; provided, however, that any optional prepayment and redemption must be applied to any Deferred Debt Service Payment with the Deferred Debt Service Payment Date nearest in time to the optional prepayment and redemption date before any other principal of and interest on the Series 2024 Subordinate Tier Note.

(b) Commencing with the end of the Fiscal Year in which the Initial Interest Payment Date occurs and at the end of each Fiscal Year thereafter, if there is any outstanding Deferred Debt Service, all Revenues in the General Fund shall be used by the Corporation to prepay any Deferred Debt Service with the Deferred Debt Service Payment Date nearest in time to the end of the applicable Fiscal Year with seven (7) days' written notice prior to any prepayment and redemption date to the Department.



(c) Commencing with the end of the Fiscal Year in which the Initial Interest Payment Date occurs and at the end of each Fiscal Year thereafter and subject to any prior transfers required to pay Deferred Debt Service as provided in paragraph (b) above, any Revenues transferred to the Corporation General Fund, shall be used by the Corporation to prepay the principal of and interest on the Series 2024 Subordinate Tier Note with seven (7) days' written notice prior to any such prepayment and redemption date to the Department, in inverse order of scheduled principal installments.

(d) The Corporation shall prepay the Series 2024 Subordinate Tier Note and the SHF Loan as required by Section 2.3.

(e) The Series 2024 Subordinate Tier Note shall not be subject to defeasance and no amounts in respect of the Series 2024 Subordinate Tier Note and the SHF Loan shall be considered or deemed to have been paid until the Department shall have received irrevocable payment in immediately available funds in accordance with the requirements for payment set forth in this Agreement.

(f) Any prepayment and redemption of the Series 2024 Subordinate Tier Note and the SHF Loan permitted under this Agreement made on or prior to the Final Accretion Date shall be paid at the Accreted Value of the Series 2024 Subordinate Tier Note as of the date of such repayment, with the Department and the Corporation calculating the Accreted Value as of such date using straight-line interpolation between Accretion Dates. Any prepayment of a Deferred Debt Service Installment permitted under this Agreement made on or prior to the relevant Deferred Debt Service Payment Date shall be paid at the accreted value of such installment as of the date of such repayment, with the Department and the Corporation calculating the accreted value as of such date using straight-line interpolation between April 1 and October 1 accretion dates applicable thereto.

(g) Upon the Department's receipt of confirmation that payment in full of the outstanding Accreted Value of the Series 2024 Subordinate Tier Note, any outstanding Deferred Debt Service and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the Department shall surrender the Series 2024 Subordinate Tier Note to the Corporation and this Agreement will terminate, except for the provisions surviving termination as described in Section 9.3. If the Corporation prepays only part of the unpaid balance of the principal of such Series 2024 Subordinate Tier Note or any outstanding Deferred Debt Service, the Department shall reflect in its books and records such prepayment and the Department may make a notation on the Series 2024 Subordinate Tier Note and EXHIBIT B hereto indicating the amount of principal of, Deferred Debt Service and interest on such Series 2024 Subordinate Tier Note then being prepaid and redeemed. Absent manifest error, the Department's determination of such matters as set forth on the Series 2024 Subordinate Tier Note and EXHIBIT B hereto shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Corporation's obligations hereunder or under the Series 2024 Subordinate Tier Note. Any partial prepayments and redemptions of principal shall be applied to reduce future principal payments due on the Series 2024 Subordinate Tier Note in inverse order of scheduled Principal Payment Dates, or as otherwise agreed to by the Department in its sole discretion. If

monies shall not have been so paid on the prepayment and redemption date, such Accreted Value of the Series 2024 Subordinate Tier Note or Deferred Debt Service, as the case may be, shall continue to accrue or accrete interest until payment thereof at the Average Treasury Pool Rate per annum.

(h) Any prepayment of the SHF Loan shall be treated as a redemption or prepayment of the Series 2024 Subordinate Tier Note.

**Section 3.3 Obligations of the Corporation Unconditional.** (a) Provided that the Department receives the Series 2024 Subordinate Tier Note and the SHF Loan and makes a Disbursement of Series 2024 Subordinate Tier Note proceeds upon the Corporation's satisfaction of each of the Disbursement Conditions (as further described in Section 5.3 of this Agreement), the obligations of the Corporation, as borrower, to make the payments required in Section 3.1 of this Agreement and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of (i) any breach by the Department or the Commission or the Trustee of any obligation to the Corporation, whether hereunder or otherwise, or (ii) any indebtedness or liability at any time owing to the Corporation by the Department, the Commission or the Trustee and, until such time as the Accreted Value, any Deferred Debt Service and interest on the Series 2024 Subordinate Tier Note and the SHF Loan shall have been fully paid, the Corporation (x) will not suspend or discontinue any payments provided for in Section 3.1 hereof, (y) will perform and observe all other covenants and agreements contained in this Agreement and (z) except as otherwise provided herein, will not terminate this Agreement or the Lien on the Trust Estate in favor of the Department for any cause, or any failure of the Department, the Commission or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Financing Documents or the Project Agreement.

(b) The repayment of all or any portion of the outstanding balance of the Series 2024 Subordinate Tier Note shall not entitle the Corporation to any subsequent advances from the Department, nor shall the Department have any obligation to advance to or for the benefit of the Corporation any amount in excess of the amount set forth in Section 2.1 hereof.

**Section 3.4 Revenues.** The Corporation shall not use Revenues to make any payments or satisfy any obligations other than in accordance with the Trust Agreement and shall not apply any portion of the Revenues in contravention of the Trust Agreement.

**Section 3.5 Additional Indebtedness.** The Corporation shall not issue or incur any indebtedness secured by the Trust Estate or the Revenues other than as provided in the Trust Agreement.

## ARTICLE IV

### PROJECT RESPONSIBILITIES

**Section 4.1 Acquisition Costs.** The Department will provide the SHF Loan to the Corporation for actual Acquisition Costs as provided in this Agreement. The SH 288 Toll Lanes

Project and the estimated Acquisition Costs to be paid from proceeds of the Series 2024 Subordinate Tier Note are further described in EXHIBIT A to this Agreement.

**Section 4.2 Project Responsibilities.** (a) Pursuant to the terms of the Project Agreement and the Trust Agreement, the Corporation shall maintain and operate the Project as required by the Trust Agreement in accordance with the Project Agreement and in compliance in all material respects with applicable laws and Governmental Approvals and make all necessary repairs, renewals and replacements, in each case, in accordance in all material respects with the Project Agreement and the Trust Agreement.

(b) The roles and responsibilities of the Department and the Corporation in connection with the Project shall be subject to the terms of the Project Agreement.

(c) In accordance with the Project Agreement, each party shall provide the other, or their authorized representatives, with right of entry or access to all properties or locations necessary to perform activities required to execute the work, inspect the work, or aid otherwise in the prompt pursuit of the work. The Corporation shall also provide the Department and the Texas State Auditor's Office, or their authorized representatives, with right of access to any books, documents, papers, or other records of the Corporation which are pertinent to its financing as described in this Agreement, in order to make audits, examinations, excerpts, and transcripts, or to complete the accounting described in the Trust Agreement.

**Section 4.3 Third-Party Indemnification.** The Corporation shall require in any document that any party with whom the Corporation contracts will indemnify the Corporation and the Department and hold each of the Corporation, the Department and their respective officers, directors, employees, agents and advisors harmless against any and all claims, damages, losses, liabilities, costs or expenses (including reasonable fees, charges and disbursements of counsel) which may be incurred or which may be claimed against the Corporation and the Department in connection with the performance of any covenant, obligation or other matter undertaken by such third party in respect to such document.

## ARTICLE V

### CONDITIONS TO LOAN CLOSING AND DISBURSEMENTS

**Section 5.1 Closing Conditions.** Except as provided in this Article, no funds will be disbursed by the Department under this Agreement on or after the Closing Date unless the Department has received on or before the Closing Date originally executed or certified copies of the following documents, certificates, agreements and opinions in form and substance satisfactory to the Department and its counsel:

(a) an opinion, from a nationally recognized bond counsel in a form satisfactory to the Department that includes the opinion that the Series 2024 Subordinate Tier Note constitutes a Subordinate Tier Obligation under the Trust Agreement in accordance with their respective terms and the Series 2024 Subordinate Tier Note, when authenticated and delivered, this Agreement, the Toll Rate Agreement, the Trust Agreement and the First Supplemental Agreement, assuming due authorization and delivery by the other parties thereto, are valid, binding and enforceable

obligations of the Corporation and under State law, including the mandamus remedy under Section 802 of the Trust Agreement;

(b) a certified copy of the resolution authorizing the execution and delivery of this Agreement, and the Trust Agreement, certifying compliance with Chapter 551, Texas Government Code, the meeting date, and board members in attendance and voting at such meeting in the form attached hereto as EXHIBIT D;

(c) a general certificate of the Corporation in form and substance as agreed to by the Department, and upon which the Department is entitled to rely, containing information and certifications typically provided to the Attorney General of the State in connection with the issuance of bonds or other obligations in the State with respect to the financing of Acquisition Costs;

(d) this Agreement fully executed, including all exhibits hereto;

(e) the executed Trust Agreement, including the First Supplemental Agreement;

(f) the executed Series 2024 Subordinate Tier Note in the aggregate principal amount of \$1,731,730,721 duly authenticated by the Trustee payable to the Department;

(g) a certificate signed by a Corporation Representative that the representations and warranties of the Corporation set forth in Related Documents shall be true and correct, as of the Closing Date, except (i) for the representations in Section 6.1(e) and (ii) to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date);

(i) a copy of any other documents, agreements, approvals and reports reasonably requested by the Department in respect of the SH 288 Toll Lanes Project or the Corporation; and

(j) the executed Project Agreement.

**Section 5.2 Department Closing Certifications.** On the Closing Date, the Department shall deliver to the Corporation a certificate that all Closing Conditions have been satisfied or expressly waived.

**Section 5.3 Disbursement Conditions.** Notwithstanding anything in this Agreement to the contrary, the Department shall have no obligation to make a Disbursement to the Corporation until each of the following Disbursement Conditions has been satisfied or waived in writing by the Department:

(a) At the time of, and immediately after giving effect to, any Disbursement then currently requested or scheduled to be disbursed, (i) no Event of Default hereunder or event of default under any other Related Document shall have occurred and be continuing and (ii) no event that with the giving of notice or the passage of time or both would constitute an Event of Default hereunder or event of default under any Related Document, in each case, shall have occurred and be continuing;

(b) The representations and warranties of the Corporation set forth in this Agreement and in each other Related Document shall be true, correct and complete as of each date on which any Disbursement of Series 2024 Subordinate Tier Note proceeds is made, except (i) to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date) or (ii) for certain Disbursements provided in paragraph (e) below;

(c) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since the Closing Date;

(d) The Corporation shall have demonstrated to the Department's satisfaction that at the time of, and immediately after giving effect to, any Disbursement currently requested or scheduled to be disbursed there are sufficient funds to pay the Acquisition Costs;

(e) A copy of all Government Approvals required to acquire the SH 288 Toll Lanes Project as contemplated in this Agreement, the Trust Agreement and the Project Agreement; and

(f) The Department and the Corporation have agreed to an amended EXHIBIT B hereto reflecting the Annual Debt Service on the Series 2024 Subordinate Tier Note, including the then proposed Disbursement.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

**Section 6.1 Representations and Warranties of the Corporation.** The Corporation represents and warrants as of the Closing Date and as of each Disbursement Date (except to the extent that any representation and warranty set forth below specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date and further, such representation and warranties may be modified by delivery of a certificate, in form and substance acceptable to the Department, on the Closing Date and each Disbursement Date to the extent necessary due to certain documents not being executed or deliverable prior to, or as of, the Closing Date and each such Disbursement Date) as follows:

(a) The Corporation has the requisite power and authority; has obtained all necessary consents, approvals, authorizations and orders of any Governmental Authority or regulatory authority; and has taken all actions necessary to (i) enter into, deliver and perform its obligations under the Project Agreement which it is a party and the transactions contemplated hereby and thereby, and (ii) carry out its activities as now conducted and as proposed to be conducted immediately following execution and delivery of the Project Agreement.

(b) The Corporation has duly authorized the execution and delivery of the Project Agreement to which it is a party, the performance of its obligations hereunder and thereunder. The authorization has been executed by a Corporation Representative and has not been repealed, revoked, rescinded or amended and is in full force and effect.

(c) Except for actions, suits or proceedings as of the Closing Date to which the Department is a party or of which the Department has knowledge, including matters related to the termination of the CDA, there is no action, suit, proceeding or, to the knowledge of the Corporation, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Corporation, threatened against or affecting all or any portion of the SH 288 Toll Lanes Project, or the ability of the Corporation to execute, deliver and perform its obligations under the Project Agreement. As of the Closing Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Corporation, any inquiry or investigation before or by any court or other Governmental Authority pending or, to the knowledge of the Corporation, threatened against or affecting the SH 288 Toll Lanes Project, the Corporation or the assets, properties or operations of the Corporation, except as otherwise contemplated in the CDA of which the Department has full knowledge, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Corporation's knowledge, there are no actions of the type described above pending or, threatened against or affecting the termination of the CDA, except for actions to which the Department is a party or of which the Department has knowledge as of the Closing Date and except for matters arising after the Closing Date that, in each case, could not reasonably be expected to result in a Material Adverse Effect. The Corporation is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(d) The execution and delivery by the Corporation of each Related Document, the performance by the Corporation of its obligations hereunder and thereunder and the consummation of the transactions herein and therein contemplated do not and will not in any material respect conflict with, or constitute a breach or result in a default or violation of any material agreement or other instrument to which the Corporation is a party or by which it is bound or the Act or any other existing law or constitutional provision applicable to it or order, rule, regulation, decree, ordinance or restriction of any court, government or Governmental Authority having jurisdiction over the Corporation or its property and, except as contemplated in the CDA and herein, will not result in or require the creation or imposition of any security interest on any of the Corporation's property or the Trust Estate other than the security interests created pursuant to the Financing Documents.

(e) The Corporation has obtained or caused to be obtained all consents, approvals, authorizations and orders of any Governmental Authority or regulatory authority that (i) are required to be obtained by the Corporation as a condition precedent to the execution and delivery of each Related Document or (ii) are required for the performance by the Corporation of its obligations under any Related Document to which it is a party or for the grant by the Corporation of the Lien on the Trust Estate, as applicable, and all such consents, approvals, authorizations and orders of any governmental or regulatory authority are in full force and effect.

(f) Each Related Document, assuming the valid authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with the terms thereof, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws or judicial action affecting the enforcement of creditors' rights generally and

the application of general principles of governmental immunity and equity (regardless of whether enforceability is considered in a proceeding in equity or at law). As provided in and in accordance with the Trust Agreement, the Corporation has valid legal and beneficial title to the Revenues and the Trust Estate, in each case free and clear of any Lien of any kind, except any encumbrances as contemplated in the CDA and herein. Except as provided in the Financing Documents and as contemplated in the CDA, the Corporation has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate or upon the SH 288 Toll Lanes Project or the Revenues.

(g) No Event of Default hereunder or no event that with the giving of notice or the passage of time or both would constitute an Event of Default hereunder shall have occurred and be continuing.

(h) No Event of Default and no default under, and as defined in, the Project Agreement has occurred and is continuing and no event has occurred and is continuing that would be (with the expiration of any applicable grace period, the giving of notice or the making of any determination under the Project Agreement) a default thereunder.

(i) The Corporation does not have any obligations for borrowed money secured by or payable from the Revenues, other than this Agreement.

(j) All insurance or self-insurance required to be maintained as of the date hereof by the Corporation pursuant to the Project Agreement and Sections 711 through 713 of the Trust Agreement has been obtained and is in full force and effect. Any premiums due and payable in connection therewith have been paid and such insurance complies in full with the insurance required to be maintained by the Corporation pursuant to Sections 711 through 713 of the Trust Agreement and the Project Agreement.

(k) None of the information in any agreement, document, certificate, exhibit, financial statement, book, record, material or report or other written information furnished by the Corporation to the Department, when taken as a whole, contained any untrue statement of material fact or omitted to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not materially misleading; and provided that the Corporation does not represent as to the accuracy of the information provided by the Department; and provided further, that no representation or warranty is made as to the accuracy of any forecasts, projections, opinions or other forward looking statements.

(l) The Corporation is in compliance in all material respects with and has conducted (or caused to be conducted) its business and government functions in compliance in all material respects with all applicable laws.

**Section 6.2 Representations and Warranties of the Department.** The Department represents and warrants as of the date hereof, the Closing Date and each Disbursement Date (except to the extent that any representation and warranty set forth below specifically refers to an

earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date), as follows:

(a) The Department has all requisite power and authority to make the SHF Loan pursuant to this Agreement to the Corporation and to perform any and all of its obligations under this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by the Department, and is a legally valid and binding agreement of the Department, enforceable in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws or judicial action affecting the enforcement of creditors' rights generally and the application of general principles of sovereign immunity and equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

**Section 6.3 Signatory Authority.** Each representative of the Department and the Corporation, as applicable, executing this Agreement, certificates, security documents and other ancillary documents and agreements executed in connection therewith is fully authorized to bind that entity to the terms of this Agreement.

## ARTICLE VII

### COVENANTS OF THE CORPORATION

**Section 7.1 Project Covenants.** In addition to the representations, warranties and covenants of the Corporation set forth in (i) the Trust Agreement and (ii) this Agreement, including in Article VI, the Corporation covenants and agrees as follows:

(a) The Corporation will not sell, assign or otherwise dispose of any real or personal property comprising a portion of the Project unless a Corporation Representative determines that such action will not Materially Adversely Affect the Revenues or the ability of the Corporation to charge or collect Revenues. The Corporation shall deposit the proceeds of such sale or disposition into the Revenue Fund. In the event the Corporation did not meet its Rate Covenant in accordance with the Toll Rate Agreement during the preceding Fiscal Year, the Corporation shall notify the Department of the sale or disposition of any property that generated Revenues in excess of one (1) percent during the prior Fiscal Year, and all proceeds from such sale or disposition shall be deposited in the Revenue Fund.

(b) The Corporation will not lease any real estate or personal property comprising a portion of the Project unless the Corporation Representative determines that such action will not Materially Adversely Affect the Revenues.

(c) Without intending to limit the foregoing, the Corporation also may enter into contracts or other forms of agreement for the use of any real estate comprising a portion of the Project including, but not limited to, rights of way for telephone, telegraph, cable or optic fiber and other forms of telecommunication, electric transmission or distribution, gas transmission and other lines, petroleum pipelines, water or wastewater, towers or facilities for utilities and other



uses that do not Materially Adversely Affect the operation of the Project and the payments received in connection with the same shall, to the extent permitted by law, constitute with any such lease or other agreement relating to the use of real estate comprising a portion of the Project to protect the interest of the Corporation in such property.

**Section 7.2 Payment of Obligations.** (a) The Corporation shall duly and punctually pay or cause to be paid when due, principal of, the Accreted Value of, Deferred Debt Service and interest on the Series 2024 Subordinate Tier Note at the dates and places and in the manner mentioned hereunder.

(b) The Corporation is duly authorized under the Act to execute, deliver and perform pursuant to the Series 2024 Subordinate Tier Note, this Agreement, the Toll Rate Agreement, the Project Agreement and the Trust Agreement, including the First Supplemental Agreement. The Trust Estate is and will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto except the pledge and security interest granted for the benefit of the Financing Documents and all action on the part of the Corporation to that end has been and will be duly and validly taken. Subject to the Trust Agreement, the Corporation shall at all times, to the extent permitted by law, defend, preserve and protect its title to the Trust Estate, the pledge of the Trust Estate under this Agreement and the Trust Agreement, including the Department, against all claims and demands of all Persons whomsoever.

**Section 7.3 Corporation Representatives.** Whenever under the provisions of this Agreement or the approval of the Corporation is required, or the Corporation is required to take some action at another party's request, such approval or such request shall be given for the Corporation by a Corporation Representative.

**Section 7.4 Use of Proceeds.** The Corporation shall use the proceeds of the SHF Loan for purposes permitted by applicable law and as otherwise permitted under the Financing Documents.

**Section 7.5 Transactions with other Governmental Authorities.** Except for the transactions expressly contemplated in the Project Agreement, including transactions necessary for environmental mitigation, the Corporation shall not (i) sell or transfer any property or assets constituting part of the Project to any other Person, (ii) purchase or acquire any property or assets of any other Governmental Authority, or (iii) otherwise engage in any transactions with any other Governmental Authority that in each case of clauses (i), (ii) or (iii), could reasonably be expected to result in a Material Adverse Effect.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.1 Events of Default.** The occurrence of any of the following shall be an "Event of Default" under this Agreement:

(a) Failure by the Corporation to pay from funds accumulated therefor under the Trust Agreement when due any amount payable under the Series 2024 Subordinate Tier Note or the SHF Loan, other than a Deferred Debt Service Installment;

(b) Failure by the Corporation to pay from funds accumulated therefor under the Trust Agreement when due any Deferred Debt Service Installment on the related Deferred Debt Service Payment Date;

(c) Failure by the Corporation to make any payment, to the extent funds are available under the Trust Agreement, to the Department or as otherwise required to be paid from funds available under the Trust Agreement, except as set forth in Section 8.1(a) and (b) hereof, within ten (10) Business Days from the date on which it was due;

(d) Failure by the Corporation to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than as provided for specifically in this Section 8.1, for a period of sixty (60) days after the earlier of (i) the Corporation acquiring actual knowledge of such occurrence or (ii) notice specifying such failure and requesting that it be remedied shall have been given to the Corporation by the Department, unless the Department shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice is capable of cure but cannot reasonably be cured within the applicable period, the Corporation shall be entitled to a further extension of time reasonably necessary to remedy such failure so long as corrective action is instituted by the Corporation within the applicable period and is diligently pursued until such failure is corrected.

(e) (i) Any Related Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Corporation contests in any manner the validity or enforceability of any Related Document or denies it has any further liability under any Related Document, or purports to revoke, terminate or rescind any Related Document, or (ii) the Trust Agreement ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and binding security interest on any material portion of the Trust Estate other than as a result of actions or a failure to act by and within the control of the Trustee or the Department, and with the priority purported to be created thereby;

(f) The Corporation fails to operate and maintain the Project in accordance with this Agreement, the Trust Agreement and the Project Agreement and such failure is reasonably expected to have a Material Adverse Effect, unless such failure is remedied within thirty (30) days of the Department having given notice thereof to the Corporation;

(g) The operation or maintenance of the Project or any material part of the Project is suspended or abandoned; provided that, for the purposes of this clause, suspension or abandonment of the Project or part of the Project is deemed to have occurred, if the Corporation fails, without reasonable cause, to operate the Project or any material part of the Project (taking into account force majeure) for a continuous period of ninety (90) days;

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

(i) The occurrence of an “Event of Default” under and as defined in the Trust Agreement.

**Section 8.2 Remedies Upon an Event of Default.** Subject to the Trust Agreement, the Corporation agrees that upon the occurrence of an Event of Default hereunder the Department may, by all legal and equitable means, (i) exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement and the Trust Agreement (provided that acceleration of the principal of and interest on the Series 2024 Subordinate Tier Note or the SHF Loan is not an available remedy). In connection with an Event of Default in Section 8.1, the Department reserves the right to terminate Disbursement of any amounts of the Series 2024 Subordinate Tier Note and the SHF Loan.

**Section 8.3 Waivers; Consents.** No waiver of, or consent with respect to, any provision of the Financing Documents by the Department shall in any event be effective unless the same shall be in writing and signed by the Department, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**Section 8.4 No Waiver; Remedies Cumulative.** No failure on the part of the Department to exercise, and no delay in exercising, any right hereunder or under the other Financing Documents shall operate as a waiver thereof; and no single or partial exercise by the Department of any right under the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other right. To the extent permitted by applicable law, the remedies in the Financing Documents provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

**Section 8.5 No Set-Off.** Neither party shall set-off or apply any balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held against indebtedness at any time owing by the other party.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.1 Liability for Losses; Non-Recourse Parties.** (a) The Corporation agrees that it is solely responsible for all losses, costs, expenses, penalties, claims, and liabilities due to activities of the Corporation and its agents, employees, officers, or contractors performed under this Agreement, and which result from an error, omission, or negligent act of the Corporation or any agent, employee, official, or contractor of the Corporation. Notwithstanding anything in this Agreement to the contrary, this provision shall survive any termination of this Agreement.

(b) Subject to the provisions of the following sentence, in no event shall any officer, agent, consultant, employee or director in the Corporation (a "Non-Recourse Party" or collectively, the "Non-Recourse Parties") be personally liable or obligated for the liabilities and obligations of the Corporation under this Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement. Nothing herein

contained shall limit or be construed to (i) release any Non-Recourse Party from liability for its fraudulent actions, bad faith or misappropriation of funds or willful misconduct, (ii) limit or impair the exercise of remedies with respect to any collateral, or (iii) require the Department to indemnify the Non-Recourse Parties for liabilities or claims that may be independently asserted by third parties against them.

**Section 9.2 Termination.** This Agreement may be terminated, as follows:

(a) Upon the written agreement of both parties to this Agreement to such termination; provided, however, that any such termination is specifically subject to the requirements of Section 9.4 of this Agreement;

(b) Should the Department be unable to advance the proceeds of the Series 2024 Subordinate Tier Note to the Corporation in accordance with the terms of this Agreement, as described in Section 2.2(a), the Corporation may terminate this Agreement by written notice to the Department, however, any such inability by the Department to advance the proceeds of the SHF Loan will not constitute a default by the Department under this Agreement.

**Section 9.3 Survival.** In addition to the survival provisions set forth in Sections 9.1 and 9.2 of this Agreement, which shall be given full force and effect in the event of termination of this Agreement, the obligation of a party related to any losses, costs, expenses, penalties, claims, and liabilities due to the activities of a party, or any agent, employee, official, or contractor of a party shall survive any termination of this Agreement, including the automatic termination upon payment in full of the SHF Loan.

**Section 9.4 Appointment of Replacement Consultants.** If at any time the General Engineering Consultant or the Traffic Consultant (the "Consultants" and individually a "Consultant") should resign or the Corporation desires to remove any or all of such Consultants, the Corporation shall give notice to the Department at least thirty (30) days prior to the effective date of such resignation (to the extent known) or removal and as soon as practical and in compliance with applicable laws and the Corporation's policies shall appoint a successor Consultant that satisfies the eligibility criteria for such Consultant as provided in this Agreement.

**Section 9.5 Notice Addresses.** All notices to either party by the other party required under this Agreement may be delivered in Adobe ".pdf" or comparable format by electronic mail to such electronic mail addresses, all as set forth below:

<p>The Department: Texas Department of Transportation Attn: Project Finance, Debt and Strategic Contracts Division Email address: projectfinance@txdot.gov</p>	<p>and</p>	<p>The Corporation: Texas Transportation Finance Corporation Attn: Secretary/Treasurer Email address: projectfinance@txdot.gov</p>
--	------------	--

All notices shall be deemed so delivered via electronic email, unless otherwise provided herein. A party hereto may change the above address by sending written notice of such change to the other party in the manner stated in this Article IX.

**Section 9.6 Governing Law; Jurisdiction; Waivers.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY OR THE PERFORMANCE OF ANY OF THE PARTIES HEREUNDER, THE CORPORATION AND THE DEPARTMENT HEREBY IRREVOCABLY (A) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN TEXAS; (B) AGREE THAT ALL CLAIMS WITH RESPECT TO SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE OR FEDERAL COURT; (C) WAIVE THE DEFENSE OF ANY INCONVENIENT FORUM; (D) AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANOTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW; AND (E) CONSENT TO SERVICE OF PROCESS BY ELECTRONIC MAIL OR DELIVERING A COPY OF SUCH PROCESS TO THE CORPORATION OR THE DEPARTMENT, AS APPLICABLE, AT ITS ADDRESS SET FORTH HEREIN AND AGREE THAT SUCH SERVICE SHALL BE EFFECTIVE WHEN SENT OR DELIVERED. THE CORPORATION AND THE DEPARTMENT EACH REPRESENTS AND WARRANTS THAT IT HAS CONSULTED WITH COUNSEL AND UNDERSTANDS THE RAMIFICATIONS OF THE FOREGOING.

**Section 9.7 Severability; Interest Limitation.** If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Corporation for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable law to be contracted for, charged or received, and if any payments by the Corporation to the Department include interest in excess of such a maximum amount, the Department shall apply such excess to the reduction of the unpaid Accreted Value, Deferred Debt Service or other sums due from the Corporation pursuant hereto, or if none is due, such excess shall be refunded to the Corporation; provided that, to the extent permitted by applicable law, in the event the interest is not collected, is applied to Accreted Value, Deferred Debt Service or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to Accreted Value, Deferred Debt Service or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by law, any non-Accreted Value or Deferred Debt Service (except payments specifically stated in this

Agreement to be "interest") shall be deemed, to the extent permitted by applicable law, to be an expense, fee, premium or penalty rather than interest.

**Section 9.8 Written Amendments.** Any changes in the character, agreement, terms, or responsibilities of the parties, including the revision of EXHIBIT B as contemplated in Section 3.1 hereof, must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by both parties.

**Section 9.9 Payments Due on Days Other than Business Days.** If any payment becomes due and payable on a day other than a Business Day, unless sooner paid such payment shall be extended to the next succeeding Business Day and interest thereon shall be payable at the then applicable rate during such extension. The Department acknowledges and agrees that any such payments may be made by the Trustee on behalf of the Corporation from funds on deposit in the funds and accounts in the Trust Agreement.

**Section 9.10 Successors and Assigns.** This Agreement shall bind and shall be for the sole and exclusive benefit of, the respective parties and their legal successors, including, without limitation, any successor agency of a party. Other than as provided in the preceding sentence, the Corporation is prohibited from assigning any of the rights or obligations conferred by this Agreement to any third party without the advance written approval of the Department. Any attempted assignment or other transfer of the Corporation's rights or obligations of this Agreement without the consent of the Department shall be void and may be grounds for termination of this Agreement.

**Section 9.11 Relationship of the Parties.** Nothing in this Agreement shall be deemed or construed by the parties, or any third party, as creating the relationship of principal and agent between the Department and the Corporation.

**Section 9.12 Reasonable Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

**Section 9.13 Immunity.** If and to the extent the Corporation expressly waives or is deemed to have waived sovereign immunity from suit or from liability, whether by statute or a final non-appealable judgment of a court of competent jurisdiction, with respect to the enforcement of any of its outstanding debt obligations, the Department shall be entitled to the full benefits of any such waiver of immunity, as though such waiver were expressly set forth in this Agreement.

**Section 9.14 Trustee as Third-Party Beneficiary.** The Department and the Corporation expressly agree that the Trustee is an intended third-party beneficiary of this Agreement to the extent of the rights, duties and obligations conferred, given or granted hereunder or under the Trust Agreement.

**Section 9.15. Verifications of Statutory Representations and Covenants.** The Corporation makes the following representations and covenants pursuant to Chapters 2252,

2271, 2274, and 2276, Texas Government Code, as heretofore amended (the "Government Code"), in entering into this Agreement. As used in such verifications, "affiliate" means an entity that controls, is controlled by, or is under common control with the Corporation within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Agreement, notwithstanding anything in this Agreement to the contrary.

(a) Not a Sanctioned Company. The Corporation represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Government Code. The foregoing representation excludes the Corporation and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(b) No Boycott of Israel. The Corporation hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. As used in the foregoing verification, "boycott Israel" has the meaning provided in Section 2271.001, Government Code.

(c) No Discrimination Against Firearm Entities. The Corporation hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning provided in Section 2274.001(3), Government Code.

(d) No Boycott of Energy Companies. The Corporation hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, "boycott energy companies" has the meaning provided in Section 2276.001(1), Government Code.

**Section 9.16 Execution.** This Agreement and any agreements and certificates executed in connection therewith may be executed through any electronic symbol or process attached to or logically associate with a contract or other record and executed or adopted by a Person with the intent to sign such document pursuant to the Texas Uniform Electronic Transaction Act, codified at Chapter 322, Texas Business and Commerce Code, as amended, in any number of counterparts and by the different parties thereto in separate counterparts, each of which when so executed and delivered to be deemed an original, but all such counterparts together to constitute one and the same instrument.

[The remainder of this page is intentionally left blank.]

**IN WITNESS WHEREOF**, the Department and the Corporation have executed this Agreement.

**TEXAS TRANSPORTATION FINANCE CORPORATION**

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

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

**TEXAS DEPARTMENT OF TRANSPORTATION**

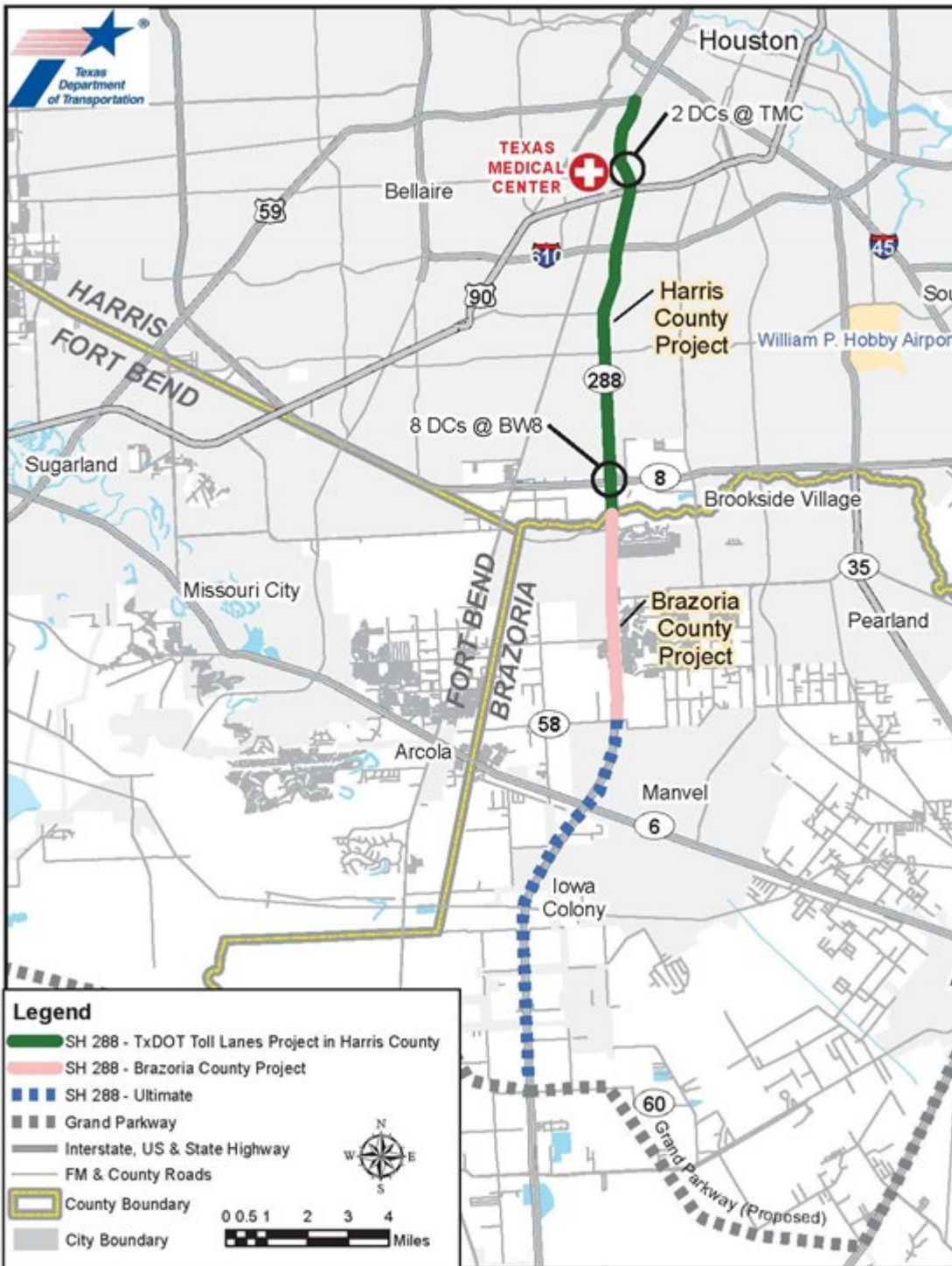
Date: \_\_\_\_\_

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



# EXHIBIT A

## SH 288 Toll Lanes Project Map and Acquisition Costs



Acquisition Costs – all or a portion of \$1,731,730,721

## EXHIBIT B

### Amortization Schedule

To be filled in at closing:

<b>Date</b>	<b>Principal<sup>1</sup></b>	<b>Deferred Debt Service Installment</b>	<b>Accreted Value</b>	<b>Deferred Debt Service Payment Date</b>	<b>Prepayments<sup>2</sup></b>
10/01/2029					
04/01/2030					
10/01/2030					
04/01/2031					
10/01/2031					
04/01/2032					
10/01/2032					
04/01/2033					
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04/01/2040					
10/01/2040					
04/01/2041					
10/01/2041					
04/01/2042					
10/01/2042					
04/01/2043					
10/01/2043					
04/01/2044					

<sup>1</sup> The maximum principal amount of the Series 2024 Subordinate Tier Note, inclusive of accreted interest is \_\_\_\_\_.

<sup>2</sup> Any optional prepayment and redemption must be applied to any Deferred Debt Service Installment with the nearest Deferred Debt Service Payment Date before any other principal of and interest on the Series 2024 Subordinate Tier Note.

10/01/2044					
04/01/2045					
10/01/2045					
04/01/2046					
10/01/2046					
04/01/2047					
10/01/2047					
04/01/2048					
10/01/2048					
04/01/2049					
10/01/2049					
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10/01/2062					
04/01/2063					
10/01/2063					
04/01/2064					
10/01/2064					

**EXHIBIT C**

**Minute Order of Commission**

**EXHIBIT D**

**Resolution of Corporation**

**TOLL RATE AGREEMENT**

**State Highway 288 Toll Lanes Project**

**Between**

**Texas Transportation Commission**

**and**

**Texas Transportation Finance Corporation**

**Dated as of October 1, 2024**

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**State Highway 288 Toll Lanes Project**

**TOLL RATE AGREEMENT**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF TRAVIS**       §

**THIS TOLL RATE AGREEMENT** (this "Agreement"), by and between the **TEXAS TRANSPORTATION COMMISSION** (the "Commission"), the governing body of the Texas Department of Transportation, an agency of the State of Texas, and the **TEXAS TRANSPORTATION FINANCE CORPORATION** (the "Corporation"), a transportation corporation authorized by the Commission pursuant to Chapter 431, Texas Transportation Code, is dated as of October 1, 2024. The Commission and the Corporation are together referred to as the "Parties." Any capitalized terms not otherwise defined in this Agreement shall have the meanings given in the Master Trust Agreement, dated as of October 1, 2024, by and between the Corporation and U.S. Bank Trust Company, National Association, as Trustee (the "Master Trust Agreement").

**WITNESSETH**

**WHEREAS**, pursuant to Minute Order 114205 dated February 26, 2015, the Department entered into a Comprehensive Development Agreement dated March 4, 2016 with Blueridge Transportation Group, LLC, as amended (the "CDA"), regarding the State Highway 288 Toll Lanes Project. Pursuant to Minute Order 116663 ("Minute Order 116663") dated March 28, 2024 adopted by the Commission, the Department issued a notice of termination for convenience to Blueridge Transportation Group, LLC under the CDA and intends to make the required Termination Compensation (as defined in the CDA) payments to the Developer as required to terminate for convenience in accordance with Section 31.1 of the CDA; and

**WHEREAS**, in Minute Order 116663 and Minute Order \_\_\_\_ dated July 30, 2024 ("Minute Order \_\_\_\_\_"), the Commission authorized the Corporation to act on behalf of the Commission by acquiring, developing, financing, refinancing, designing, constructing, reconstructing, expanding, tolling, operating, and/or maintaining the Project. The Commission also authorized the Department to participate in the costs of the Project in the form of a loan to the Corporation to be used for the purpose of making the required Termination Compensation on behalf of the Department pursuant to the terms of the CDA, and authorized the Department to assign the revenues related to the Project to the Corporation subject to agreement between the Department and the Corporation; and

**WHEREAS**, the Corporation has all power and authority under Chapter 431, Subchapters A through C, of the Texas Transportation Code, 43 Texas Administrative Code §15.95 under its certificate of formation and bylaws and pursuant to Minute Order \_\_\_\_\_ to undertake the activities authorized by the Commission including the issuance of one or more series of obligations to finance the Project; and



**WHEREAS**, the SH 288 Toll Lanes Project is a toll project as defined in Section 201.001, Texas Transportation Code, as amended, and the SH 288 Toll Lanes Project has been designated as part of the state highway system; and

**WHEREAS**, the Corporation will finance the Initial Project using the proceeds of one or more series of its obligations issued pursuant to the Master Trust Agreement and such obligations will be secured, in part, by the toll revenue of the Project; and to provide support for the Corporation's efforts to acquire, develop, construct, operate, maintain and provide financing for the Project, the Commission must provide certain covenants for the benefit of the Corporation and the Owner's regarding the setting of toll rates; and

**WHEREAS**, this toll rate agreement is necessary in connection with the obligations issued by the Corporation for the Initial Project.

## **A G R E E M E N T**

**NOW, THEREFORE**, the Commission and the Corporation agree as follows:

### **ARTICLE I TOLLS AND REVENUES**

**Section 1.1 Effectiveness of Agreement.** This Agreement has been fully executed and delivered by the Parties hereto, provided Sections 1.2, 1.3 and 1.4 shall become effective on and after the Toll Revenue Transfer Date.

**Section 1.2 Covenants as to Tolls.** (a) The Commission covenants that it will (1) ensure that a Toll Rate Schedule for the Project is adopted and maintained in effect in substantial conformity with the recommendation of the Traffic Consultant and in conformity with any toll rate escalation policy of the Commission and (2) establish charges for other uses of the property constituting a part of the Project such as property leases, designed, collectively, to produce Net Revenues in each Fiscal Year in an amount at least equal to the requirements of Section 1.2(b) below. The Commission directs the Executive Director of the Department to establish toll rates for the Project in accordance with 43 T.A.C. § 27.82(g) and any other rules, policies or obligations of the Commission consistent with the covenants the Commission in this Agreement. Notwithstanding the foregoing, in the event the toll rates set in accordance with any toll rate escalation policy of the Commission do not produce a Toll Rate Schedule sufficient to satisfy the toll rate covenant in Section 1.2(b), the Commission shall provide for the establishment of toll rates sufficient to comply with the Rate Covenant in Section 1.2(b). Prior to effecting any change in the Toll Rate Schedule, the Commission shall have obtained and filed with the Corporation and the Trustee a certificate by the Traffic Consultant either:

(1) stating, in their opinion, that if such proposed Toll Rate Schedule had been in effect during the preceding Fiscal Year, it would not have caused a material decrease in the Net Revenues for such preceding Fiscal Year, or

(2) stating, in their opinion, that the adoption of such proposed Toll Rate Schedule will not materially adversely affect the ability of the Commission to comply with its covenants in Section 1.2(b).

Any such certificate by the Traffic Consultant shall be based on their own opinion as to the Revenues of the Project to be derived by the Corporation (which may include appropriate investment income that constitute Revenues of the Project as estimated by a Corporation Representative) and, upon a certificate by the General Engineering Consultant to be obtained by the Corporation and filed with the Trustee, stating the opinion of the General Engineering Consultant as to the amount of Operating Expenses during any pertinent Fiscal Year or period, assuming that the proposed Toll Rate Schedule had been in effect during such pertinent Fiscal Year or period.

(b) The Commission covenants to keep in effect a Toll Rate Schedule which will raise and produce Revenues of the Project during each Fiscal Year sufficient to satisfy the greatest of (1) or (2) below:

(1) Net Revenues of 1.00 times the scheduled Debt Service Requirements on all Outstanding First Tier Obligations for the Fiscal Year; or

(2) Net Revenues of 1.00 times the scheduled Debt Service Requirements on all Outstanding First Tier Obligations and all Outstanding Subordinate Tier Obligations for the Fiscal Year.

In the event that for any such Fiscal Year such Revenues of the Project shall be less than the amounts contemplated above for such Fiscal Year, the Corporation will, before the 15th day of March of the following Fiscal Year, cause the Traffic Consultant to make and file their recommendations with the Corporation, the Commission and the Trustee as to a revision in the Toll Rate Schedule then in effect, in order to cause the raising and production of such Revenues of the Project in a manner which will enable the Corporation to produce at the earliest feasible time such Revenues in at least the amounts contemplated above for each such Fiscal Year. The Commission covenants that it will promptly and carefully consider such recommendations, and that it will, within sixty days after receipt of such recommendations, either (i) place into effect any Toll Rate Schedule as so recommended by the Traffic Consultant, or (ii) place into effect any alternative Toll Rate Schedule which, in the opinion of the Commission, will enable it to comply with the covenants in this Section 1.2(b).

In the process of developing and adopting the Toll Rate Schedule for a period or portion of a period that constitutes a Construction and Ramp-Up Period for any Project Improvement, the Traffic Consultant, the Commission and the Corporation may assume that, for making the calculations required by Section 1.2(b)(1) and (2) above, Revenues for such period include the amounts forecasted to be on deposit in the Rate Stabilization Fund as reflected in the Annual Budget for each Fiscal Year in such period. In making the calculations in Section 1.2(b)(1) and (2) above, the Traffic Consultant, the Commission and the Corporation may take into account any amounts reasonably expected to be received by the Trustee in the Fiscal Year from or as a result of any Additional Obligation Security the Corporation has pledged for the benefit of all

Obligations or the Obligations of any Tier or Series, but, if the pledge is not for the benefit of all Obligations, the amounts reasonably expected to be received may only be taken into account when making the calculation for the affected Obligations.

The foregoing covenant is referred to herein as the "Rate Covenant."

(c) Anything in this Agreement to the contrary notwithstanding, if the Commission complies with all recommendations of the Traffic Consultant (or such independent engineer or engineering firm or corporation as hereinafter provided for in this Section) with respect to the Toll Rate Schedule, it shall not constitute an Event of Default under the provisions of this Agreement or the Master Trust Agreement if there exists a deficiency in any Fiscal Year or Years between the Revenues of the Project for such Fiscal Year or Years and the amount required to be produced for such Fiscal Year or Years. It is provided, however, that in the event of any such deficiency, and regardless of any recommendations of the Traffic Consultant or others, or compliance therewith by the Commission, the Trustee may, and the Trustee shall, upon the written request of the Owners of not less than twenty percent (20%) in aggregate principal amount of the Obligations then Outstanding and upon being indemnified to its satisfaction, institute and prosecute in a court of competent jurisdiction an appropriate action to compel the Commission to comply with its covenant herein to adopt and keep in effect a Toll Rate Schedule which will raise and produce during each Fiscal Year an amount of Revenues of the Project as required in Section 1.2(b) for such Fiscal Year, or to comply with any other covenant in this Section 1.2. The Commission covenants that it will comply with any final order, decree, or judgment entered in any such proceeding, or any modification thereof.

(d) In the event that the Commission shall request the Traffic Consultant for its recommendations as required herein, and the Traffic Consultant, after such request by the Commission, shall fail to file with the Commission and with the Trustee such recommendations in writing within 90 days after such request, the Trustee shall forthwith designate and appoint an independent engineer or engineering firm or corporation having a nationwide and favorable reputation for skill and experience in such work, in lieu of the Traffic Consultant, to make the necessary survey and study and to make the required recommendations as to such revision, which recommendations shall be reported in writing to the Commission, the Corporation and to the Trustee on or before the 1st day of August of such year. Such recommendations shall for all purposes be considered to be the equivalent of and a substitute for the recommendations of the Traffic Consultant hereinabove mentioned.

The Commission further covenants that upon its making any request of the Traffic Consultant for recommendations, or the receipt of any such recommendation from the Traffic Consultant or others, or the adoption by the Commission of any revised Toll Rate Schedule, certified copies of any such request, recommendations or revisions so adopted will forthwith be filed with the Trustee and the Corporation.

**Section 1.3 Uniformity of Tolls; Free Passage.** (a) The Commission covenants that tolls will be classified in a reasonable way to cover all traffic, so that the tolls may be uniform in application to all traffic falling within any reasonable class regardless of the status or character of any Person participating in the traffic; provided that the foregoing shall not be interpreted to restrict

the Commission's right, in its discretion in connection with its management of the Project, to establish and maintain flexible Toll Rate Schedules including, but not limited to, provisions for utilizing or otherwise taking into account, peak and nonpeak pricing, introductory pricing, vehicle weight, number of axles, method of payment, frequency, carpooling, electronic and other toll collection technologies, traffic management systems and similar classifications.

Any change in classification that results in a reduced toll or any new classification shall be subject to a Traffic Consultant approving the same before it is implemented unless the same is temporary (i.e., having a duration of less than thirty (30) days from the effective date) or a pilot or test program (i.e., having a duration of less than one (1) year from the effective date). In all events, the Commission shall not make a change in classification or any new classification unless the Commission determines that such change is not expected to result in the receipt of Revenues of the Project in amounts less than that required in Section 1.2(b) hereof.

(b) Notwithstanding the provisions of (a) above, no free vehicular passage or reduced tolls will be permitted over the Project within a class, other than its approaches and service roads, or any portion of the Project designated toll-free, except that, in its discretion, the Commission may:

(1) reduce tolls through the use of commutation or other tickets or privileges based upon frequency or volume if the reduction is expected to result in an increase in the Revenues;

(2) grant free passage to those Persons or vehicles as required by the laws of the State of Texas;

(3) grant free passage to authorized emergency vehicles as defined in Transportation Code, Section 541.201;

(4) grant free passage to marked, recognizable military vehicles;

(5) grant free passage to vehicles registered under Transportation Code, Section 504.202 (disabled veterans) and Transportation Code Section 504.315(g) (Purple Heart recipients), and to vehicles registered by a Person who has received the Medal of Honor as authorized in Title 10, U.S. Code, Section 6241 or such other military honor authorized by law and approved by the Commission;

(6) grant free passage to TxDOT contractors working on the construction, improvement, maintenance, or operation of the Project;

(7) grant free passage to any vehicle (a) designated by the Department of Public Safety as an emergency vehicle during disasters declared by the Governor of Texas and (b) in the time of a declared emergency, natural disaster or other public safety event, as determined by the Executive Director of TxDOT;

(8) grant free passage to vehicles that are part of a funeral procession under these conditions:

- a. advance notice is provided to TxDOT;
- b. the Executive Director of TxDOT determines it is in the interest of public safety that the procession be routed on to the Project;
- c. the procession is escorted by certified peace officers; and
- d. the procession enters and exits the Project outside these hours: Monday through Friday 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m.; and

(9) grant free passage to processions and motorcades for heads-of-state and dignitaries if the procession or motorcade is escorted by the United States Secret Service, Texas Department of Public Safety, or other law enforcement agency charged with the responsibility for the safety and security of the head-of-state/dignitary.

Any reduced toll pursuant to Section 1.3(b) shall be reviewed by the Commission with the Traffic Consultant before implementing the same unless the same is temporary (i.e., having a duration of less than thirty (30) consecutive days from the effective date) or a pilot or test program (i.e., having a duration of less than one (1) year from the effective date). In addition, in the event the Commission did not meet the Rate Covenant in Section 1.2(b) for the preceding Fiscal Year, any such reduced toll shall be subject to the Traffic Consultant approving the same before it is implemented by the Commission unless the Commission reasonably determines that the circumstances require immediate implementation, in which event the Commission shall obtain such approval promptly following implementation. In all events, the Commission shall not reduce tolls unless the Commission determines that such reduction is not expected to result in the receipt of Revenues in amounts less than that required by the Rate Covenant in Section 1.2(b).

(c) The Commission's covenant as to uniformity of tolls shall not be construed as requiring that tolls for any given class of traffic shall be identical in amount throughout the entire Project for trips of approximately identical lengths. The Commission may fix and place in effect a Toll Rate Schedule for any given class of traffic wherein the tolls charged for travel on a given section or segment of the Project shall be different from the tolls charged on another section or segment of the Project notwithstanding the fact that both of such sections or segments shall be of identical or approximately identical length.

(d) As used in this Section, approval by the Traffic Consultant means that the Traffic Consultant has undertaken an analysis of the impact of the contemplated action of the Commission and determined that it would not materially adversely affect the ability of the Commission to meet the Rate Covenant in Section 1.2(b). The Commission shall file a copy of each approval by the Traffic Consultant with the Corporation and the Trustee promptly after receipt.

(e) The Commission shall set policies with respect to implementation of this Section.

(f) Notwithstanding anything in this Agreement to the contrary, introductory, free or reduced tolls may be utilized in connection with the opening to the public of any component of the Project.

**Section 1.4 Corporation as Beneficiary under Master Custodial Agreement; Other Toll Road Revenue Allocation Agreements.** (a) The Commission covenants and agrees that, under the Master Custodial Agreement, the Corporation shall be a “Beneficiary” (as defined in the Master Custodial Agreement) so long as the Master Trust Agreement is outstanding. The Commission shall direct the Department to execute and deliver a “Joinder Agreement” (as defined in the Master Custodial Agreement) among the Department, the Corporation and the Custodian (as defined in the Master Custodial Agreement), which shall also designate the Trustee and the Owners as “Secured Parties” (as defined in the Master Custodial Agreement) under the Master Custodial Agreement.

Amounts relating to the Project and received by the Corporation or on behalf of the Corporation pursuant to the Master Custodial Agreement shall be deposited with the Trustee for credit to the Revenue Fund and shall constitute a portion of the Revenues.

(b) To the extent now or hereafter authorized by law, the Corporation or the Commission or the Department, for the benefit of the Corporation, may enter into agreements with any authority or other similar legal body operating a toll road whether or not connected to the Project and not otherwise subject to the Master Custodial Agreement, for the collection and application of tolls charged for trips over all or a portion of one or more toll roads, which, on the basis of the revenues to be received by any such agreement, will result in the receipt by the Corporation (or the Trustee) of its allocable portion of such tolls (less fees and expenses associated with such arrangement).

Amounts relating to the Project and received by the Corporation or on behalf of the Corporation from such other authority or other similar legal body, in accordance with such agreement, shall be deposited with the Trustee for credit to the Revenue Fund and shall constitute a portion of the Revenues.

## **ARTICLE II GENERAL PROVISIONS**

**Section 2.1 Circulation of the Agreement.** Copies of this Agreement may be provided to and relied upon by underwriters, investment bankers, brokerage firms, bond counsel, and similar parties in connection with Corporation’s issuance of Obligations.

**Section 2.2 Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

**Section 2.3 Written Amendments.** Any changes in the character, agreement, terms and/or responsibilities of the Parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the Commission and the Corporation, with the prior written consent of the Trustee pursuant to the Master Trust Agreement.

**Section 2.4 Notices.** All notices to either party by the other required under this Agreement shall be sent by electronic mail, addressed to such party at the following addresses:

**Corporation:**

\_\_\_\_\_  
President  
Texas Transportation Finance Corporation  
\_\_\_\_\_  
@txdot.gov

**TxDOT:**

Executive Director  
Texas Department of Transportation  
\_\_\_\_\_  
@txdot.gov

**With a copy to:**

\_\_\_\_\_  
Director  
Project Finance, Debt, and Strategic  
Contracts Division  
Texas Department of Transportation  
\_\_\_\_\_  
@txdot.gov

All notices shall be deemed given when sent by electronic mail. Either party may change their electronic mail address by sending via electronic mail written notice of the change to the other in the manner provided for above.

**Section 2.5 Limitations.** All covenants and obligations of the Department and the Corporation under this Agreement shall be deemed to be valid covenants and obligations of said entities, and no officer, director, or employee of the Commission or the Corporation shall have any personal obligations or liability hereunder.

**Section 2.6 Remedies.** This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity, including *mandamus*, may be availed of by either party to this Agreement and shall be cumulative.

**Section 2.7 Benefit.** This Agreement is entered into for the benefit of the Commission, the Corporation, and, pursuant to the Master Trust Agreement, the Trustee and the Owners and their respective successors and permitted assigns. The Commission and the Corporation expressly acknowledge that the Trustee and Owners are intended third party beneficiaries of this Agreement and that the Trustee and Owners may enforce this Agreement pursuant to the terms of the Master Trust Agreement. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general provided; however, the Trustee and the Owners are third party beneficiaries to this Agreement and is entitled to enforce any provisions herein pursuant to the terms of the Master Trust Agreement.

**Section 2.8 Relationship of the Parties.** Nothing in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent between the Commission and the Corporation.

**Section 2.9 Authorization.** Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement. Each signatory on behalf of the Commission and the Corporation, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

**Section 2.10 Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

**Section 2.11 Execution.** This Agreement and any agreements and certificates executed in connection therewith may be executed through any electronic symbol or process attached to or logically associate with a contract or other record and executed or adopted by a person with the intent to sign such document pursuant to the Texas Uniform Electronic Transaction Act, codified at Chapter 322, Texas Business and Commerce Code, in any number of counterparts and by the different parties thereto in separate counterparts, each of which when so executed and delivered to be deemed an original, but all such counterparts together to constitute one and the same instrument.



**IN WITNESS WHEREOF**, the Commission and the Corporation have executed this Agreement on the dates shown herein below, effective on the date listed above.

**TEXAS TRANSPORTATION  
FINANCE CORPORATION**

**TEXAS TRANSPORTATION  
COMMISSION**

By: \_\_\_\_\_  
\_\_\_\_\_, President

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

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

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

**ACKNOWLEDGED AND AGREED TO**

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION**, as Trustee pursuant to  
the Master Trust Agreement

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