Highway Factors Attachment – Portions of Amended and Restated Facility Agreement, North Tarrant Express Segments 3A, 3B and 3C Facility between Texas Department of Transportation and NTE Mobility Partners Segments 3 LLC, dated July 30, 2019

Fort Worth, TX

HWY21FH005

(29 pages)

AMENDED AND RESTATED
FACILITY AGREEMENT

NORTH TARRANT EXPRESS
SEGMENTS 3A, 3B AND 3C FACILITY

Between

Texas Department of Transportation

and

NTE Mobility Partners Segments 3 LLC,
a Delaware Limited Liability Company

Dated as of July 30, 2019

AMENDED AND RESTATED FACILITY AGREEMENT

NORTH TARRANT EXPRESS
SEGMENTS 3A, 3B & 3C FACILITY

This Amended and Restated Facility Agreement (this "Agreement") is entered into and effective as of July 30, 2019 by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and NTE Mobility Partners Segments 3 LLC, a Delaware Limited Liability Company ("Developer").

RECITALS

A. The State of Texas desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnership agreements, and the Texas Legislature has enacted Transportation Code, Chapter 223, Subchapter E (the "Code"), and TxDOT has adopted Sections 27.1-27.9 of Title 43, Texas Administrative Code (the "Rules"), to accomplish that purpose.

B. The Code grants TxDOT the authority to enter into agreements with private entities to develop, design, construct, finance, operate and maintain transportation facilities.

C. Pursuant to the provisions of the Code and the Rules, TxDOT issued a Request for Qualifications on December 8, 2006, as amended.

D. TxDOT received seven responsive qualification submittals by March 15, 2007, and subsequently shortlisted four responsive proposers.

E. On March 3, 2008, TxDOT issued to the shortlisted proposers a Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the North Tarrant Express Project (as subsequently amended by addenda, the "RFP").

F. As part of the RFP, TxDOT required that shortlisted proposers commit to entering into a comprehensive development agreement (the "Concession CDA") to develop, design, construct, finance, operate and maintain, at a minimum, Segment 1 and such other portions of Segment 2 of the North Tarrant Express Project as were set forth in the Proposal and a comprehensive development agreement for the remaining portions of the North Tarrant Express Segments 2, 3A, 3B, 3C and 4 (the "CDA for Segments 2-4").

G. On December 1, 2008, TxDOT received responses to the RFP, including the response of Meridiam Infrastructure (SCA) SICAR and Cintra Concesiones de Infraestructuras de Transporte, S.A. on behalf of Developer (the "Proposal").

H. An RFP evaluation committee comprised of TxDOT staff determined that Developer was the proposer which best met the selection criteria contained in the RFP and that its Proposal was the one which provided the best value to the State.

I. On January 29, 2009, the Texas Transportation Commission accepted the recommendation of the Texas Turnpike Authority Director and the RFP evaluation committee and authorized TxDOT staff to negotiate the comprehensive development agreements; and on

June 23, 2009, TxDOT and the Developer entered into the Concession CDA and the CDA for Segments 2-4.

J. On July 6, 2011, TxDOT and the Developer agreed upon a Facility Implementation Plan for the development of the NTE Segments 3A & 3B Facility in accordance with the terms of the CDA for Segments 2-4.

K. Pursuant to the Facility Implementation Plan and in accordance with the CDA for Segments 2-4, TxDOT and the Developer negotiated the terms of a certain Facility Agreement, North Tarrant Express Segments 3A and 3B Facility, dated as of March 1, 2013 (the "2013 Agreement").

L. The 2013 Agreement, the other FA Documents, the Facility Trust and Security Instruments, the Intellectual Property Escrows and the Lease Escrow Agreement collectively constitute a comprehensive development agreement as contemplated under the Code and the Rules.

M. The Executive Director was authorized to enter into the 2013 Agreement pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order 113159.

N. The Parties have previously amended the 2013 Agreement pursuant to Amendments No. 1 through 4 and 6 thereto (for the avoidance of doubt, there was no Amendment No. 5).

O. Pursuant to Sections 14.1.1.3 and 14.1.2 of the 2013 Agreement, TxDOT issued to Developer on February 10, 2016 a Request for Change Proposal to add, as a Facility Extension, Segment 3C of the Facility to the scope of work.

P. Following the procedures for developing and evaluating a Request for Change Proposal under Sections 14.1.2 and 14.1.3 of the 2013 Agreement, TxDOT and Developer entered into a Change Order Agreement dated March 7, 2019 for the purpose of establishing the terms and conditions under which the Parties would enter into a TxDOT Change for the Segment 3C Facility Segment (the "Change Order Agreement"). The Change Order Agreement set forth the agreement of the Parties to enter into amendments to the 2013 Agreement and related FA Documents upon satisfaction of conditions precedent set forth in the Change Order Agreement.

Q. For convenience of administration, the Parties have agreed to consolidate the amendments to the 2013 Agreement contemplated by the Change Order Agreement and Amendments Nos. 1 through 4 and 6 to the 2013 Agreement in this Amended and Restated Facility Agreement (this "Agreement"), which hereby incorporates all the terms of the 2013 Agreement as amended by Amendments No. 1 through 4 and 6 thereto and as further amended hereby to add Segment 3C as a Facility Extension in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the Work to be financed and performed by Developer, the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS; FA DOCUMENTS; ORDER OF PRECEDENCE; PRINCIPAL FACILITY DOCUMENTS

1.1 Definitions

Definitions for the terms used in this Agreement and the other FA Documents are contained in Exhibit 1.

1.2 FA Documents; Order of Precedence

The term "FA Documents" shall mean the documents listed in Section 1.2.1. Each of the FA Documents is an essential part of the agreement between the Parties. The FA Documents are intended to be complementary and to be read together as a complete agreement.

1.2.1 Subject to Section 1.2.2, in the event of any conflict, ambiguity or inconsistency among the FA Documents, the order of precedence, from highest to lowest, shall be as follows:

1.2.1.1 Change Orders, Agreement amendments and Lease amendments, and all exhibits and attachments thereto;

1.2.1.2 Book 1 (this Agreement, including all exhibits and the executed originals of exhibits that are contracts, except Exhibit 2);

1.2.1.3 Book 2 (Technical Provisions) amendments, and all exhibits and attachments to such amendments;

1.2.1.4 Book 2 (Technical Provisions), and all exhibits and attachments to the Technical Provisions;

1.2.1.5 Book 3 General Provisions (Technical Provisions) amendments, and all exhibits and attachments to such amendments;

1.2.1.6 Book 3 General Provisions (Technical Provisions), and all exhibits and attachments;

1.2.1.7 Book 3 Manuals (Technical Documents) amendments; provided that TxDOT in its sole discretion may designate that such amendments or portions thereof take precedence over the Technical Provisions to the extent provided in Sections 7.2.6 and 8.1.2.2;

1.2.1.8 Book 3 Manuals (Technical Documents);

1.2.1.9 Developer's commitments set forth in Exhibit 2, including Developer's schematic plan of the Facility; provided that, to the extent specified in Exhibit 2, certain provisions therein shall supersede the specified provisions of the other FA Documents.

1.2.2 If the FA Documents contain differing provisions on the same subject matter, the provisions that establish the higher quality, manner or method of performing the Work, establish better Good Industry Practice or use more stringent standards will prevail. Additional details in a lower priority FA Document shall be given effect except to the extent they irreconcilably

conflict with requirements, provisions and practices contained in the higher priority FA Document. If the FA Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the foregoing rules, then the provisions (whether setting forth performance or prescriptive requirements) contained in the document of higher order of precedence shall prevail over the provisions (whether setting forth performance or prescriptive requirements) contained in the document of lower order of precedence.

1.2.3 Where there is an irreconcilable conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Facility set forth in one or more manual(s) or publication(s) referenced within a FA Document or set of FA Documents with the same order of priority (including within documents referenced therein), the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT in its sole discretion approves otherwise in writing. If there is an irreconcilable conflict between manuals or publications referenced in FA Documents of differing priorities, the order of precedence set forth in Section 1.2.1 will apply. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.2.4 The TxDOT Tolling Services Agreement is an FA Document and is therefore supplemented by terms and provisions of this Agreement that expressly apply to FA Documents. Wherever this Agreement contains provisions on a subject matter that would apply to the TxDOT Tolling Services Agreement by virtue of it being an FA Document but the TxDOT Tolling Services Agreement contains provisions on the same subject matter (including limitations of liability, Collateral Agent's rights to a new tolling services agreement, and TxDOT's rights to assign, etc.), the provisions of the TxDOT Tolling Services Agreement shall exclusively govern and control.

1.3 Order of Precedence of Facility Management Plan; Survival of Facility Implementation Plan

1.3.1 In the event of any conflict, ambiguity or inconsistency between the Facility Management Plan and any of the FA Documents, the latter shall take precedence and control.

1.3.2 Except for the rights and obligations of TxDOT and Developer under Section 4.2 of the Facility Implementation Plan, which rights and obligations shall survive the execution of this Agreement and shall remain in full force and effect up to and until immediately preceding Financial Close, the Facility Implementation Plan is hereby superseded and replaced in its entirety by this Agreement.

1.4 Principal Facility Documents; Facility Trust and Security Instruments

1.4.1 Prior to or at Financial Close, Developer entered into the Facility Trust Agreement in substantially the form attached as Exhibit 30 to the 2013 Agreement and the other Facility Trust and Security Instruments to which Developer is a party. The Facility Trust Agreement was amended and restated in its entirety as of July 7, 2017, and may be further amended as of the Amendment Effective Date in substantially the form attached as Exhibit 30, if necessary to include the Segment 3C Facility Segment. TxDOT is either a party to the Facility Trust Agreement or an express, intended third party beneficiary thereof. Developer at

its expense shall be solely responsible for posting any indemnity bond or other security the trustee may require in connection with its services under the Facility Trust Agreement.

1.4.2 If TxDOT is not a signatory thereto, then except with TxDOT's prior written approval in its sole discretion, Developer shall not during the Term (a) terminate or permit termination of the Facility Trust Agreement, (b) appoint or approve a substitute or replacement trustee thereunder, (c) agree to any amendment of any provisions of the Facility Trust Agreement, (d) in any material respect waive, or fail to enforce, any provision of the Facility Trust Agreement or (e) oppose or interfere with TxDOT's exercise of its third party beneficiary rights against the trustee thereunder.

1.4.3 TxDOT and Developer covenant and agree to perform all of their respective obligations under or in connection with the Facility Trust and Security Instruments, including any custodial arrangement that may be put into effect pursuant to Section 19.10.4.

1.5 Reference Information Documents

1.5.1 TxDOT has provided and disclosed to Developer the Reference Information Documents. Without limiting the foregoing, Developer acknowledges receipt of the Reference Information Documents relating to the Segment 3C Facility Segment listed in Exhibit 32 to this Agreement (which list is not necessarily all-inclusive). The Reference Information Documents are not mandatory or binding on Developer. Developer is not entitled to rely on the Reference Information Documents as presenting design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the FA Documents, Governmental Approvals or Law.

1.5.2 TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any Developer-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents.

1.5.3 TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the FA Documents, Governmental Approvals or Laws. Except as expressly set forth herein, Developer shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

ARTICLE 2. GRANT OF CONCESSION; TERM

2.1 Grant of Concession

2.1.1 Pursuant to the provisions of the Code and the Rules and subject to the terms and conditions of the FA Documents, TxDOT hereby grants to Developer the exclusive right, and Developer accepts the obligation, to finance, develop, design and construct the Facility described in Section 1 of the Technical Provisions (other than the TxDOT Works), and to enter into the Lease in the form attached as Exhibit 3 for the Facility and Facility Right of Way.

2.1.2 From and after issuance of NTP1, Developer and its authorized Developer-Related Entities shall have the right and license to enter onto the Facility Right of Way for the Segment 3A Facility Segment and other lands owned by TxDOT related thereto for purposes of

carrying out its obligations under this Agreement. From and after issuance of NTP1 (3C), Developer and its authorized Developer-Related Entities shall have the right and license to enter onto the Facility Right of Way for the Segment 3C Facility Segment and other lands owned by TxDOT related thereto for purposes of carrying out its obligations under this Agreement. Developer's sole rights of entry onto the Facility Right of Way for the Segment 3B Facility Segment prior to the Service Commencement Date for such Facility Segment are set forth in Sections 25.1.8 and 25.3.4.

2.1.3 TxDOT and Developer acknowledge that they have executed two counterparts of the Lease and one counterpart of the Memorandum of Lease and placed them in a neutral escrow for safekeeping pursuant to the Lease Escrow Agreement. Upon the Operating Commencement Date for the Segment 3A Facility Segment, but not before then, and as a ministerial act, TxDOT and Developer shall date the Lease and Memorandum of Lease, obtain acknowledgment of their signatures on the Memorandum of Lease by a Texas notary public, attach all legal descriptions pertaining to the Segment 3A Facility Segment and each Party shall deliver to the other Party, and the other Party shall accept, the Lease and Memorandum of Lease. Thereupon, the Lease shall take effect and the right of entry under Section 2.1.2 respecting the Segment 3A Facility Segment shall automatically cease to have effect. Developer, at its expense, shall have the right to record the Memorandum of Lease upon its delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of the Memorandum of Lease bearing all recording information.

2.1.4 The Lease and Memorandum of Lease are subject to amendment as follows:

2.1.4.1 TxDOT and Developer acknowledge that they have executed two counterparts of an amendment to the Lease and one counterpart of an amendment to the Memorandum of Lease and placed them in a neutral escrow for safekeeping pursuant to the Lease Escrow Agreement. Upon the Operating Commencement Date for the Segment 3B Facility Segment, but not before then, and as a ministerial act, TxDOT and Developer shall date the amendment to the Lease and amendment to the Memorandum of Lease, obtain acknowledgment of their signatures on the amendment to the Memorandum of Lease by a Texas notary public, attach all legal descriptions pertaining to the Segment 3B Facility Segment and each Party shall deliver to the other Party, and the other Party shall accept, the amendment to the Lease and amendment to the Memorandum of Lease. Thereupon, the Lease shall take effect respecting the Segment 3B Facility Segment and the right of entry under Section 25.3.4 respecting the Segment 3B Facility Segment shall automatically cease to have effect. Developer, at its expense, shall have the right to record the amendment to the Memorandum of Lease upon its delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of the amendment to the Memorandum of Lease bearing all recording information.

2.1.4.2 TxDOT and Developer acknowledge that they have executed two counterparts of an additional amendment to the Lease and one counterpart of an additional amendment to the Memorandum of Lease and placed them in a neutral escrow for safekeeping pursuant to the Lease Escrow Agreement. Upon the Operating Commencement Date for the Segment 3C Facility Segment, but not before then, and as a ministerial act, TxDOT and Developer shall date such amendment to the Lease and such amendment to the Memorandum of Lease, obtain acknowledgment of their signatures on such amendment to the Memorandum of Lease by a Texas notary public, attach all legal descriptions pertaining to the Segment 3C Facility Segment and each Party shall deliver to the other Party, and the other Party shall accept, such amendment to the Lease and such amendment to the Memorandum

of Lease. Thereupon, the Lease shall take effect respecting the Segment 3C Facility Segment and the right of entry under Section 2.1.2 respecting the Segment 3C Facility Segment shall automatically cease to have effect. Developer, at its expense, shall have the right to record such amendment to the Memorandum of Lease upon its delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of such amendment to the Memorandum of Lease bearing all recording information. The Parties acknowledge that the legal description in such amendment to the Lease and amendment to the Memorandum of Lease will be preliminary. The Parties shall cooperate and use diligent efforts to execute and deliver by the Final Acceptance Deadline for the Segment 3C Facility Segment (or such later date as may be mutually agreed by the Parties) a further amendment to the Lease and a further amendment to the Memorandum of Lease setting forth the final legal description for the Segment 3C Facility Segment, and Developer shall thereafter promptly record such amendment to the Memorandum of Lease.

2.1.4.3 Within a reasonable period of time after the Facility Right of Way is changed due to a Change Order, TxDOT and Developer shall prepare, execute and deliver an amendment to the Lease and an amendment to the Memorandum of Lease to set forth the applicable adjustments to the legal description of the Facility Right of Way. The Parties acknowledge that the legal description for such amendments may be preliminary for amendments done prior to completion of construction of the improvements that are the subject of such a Change Order, and that the final legal description may have to be established via further amendments upon or after completion of such construction. Developer, at its expense, shall have the right to record such amendments to the Memorandum of Lease upon delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of such amendments to the Memorandum of Lease bearing all recording information.

2.1.5 Developer shall have the exclusive right and obligation, during the Operating Period, to use, manage, operate, maintain and repair the Facility (provided that nothing in this clause shall be construed as releasing TxDOT from any of its obligations contemplated in Section 25.7.2), and to perform Renewal Work and Upgrades, pursuant to the terms of the Lease, this Agreement, the other FA Documents and the Principal Facility Documents, except as otherwise contemplated in Section 25.1.

2.1.6 Developer shall have the exclusive right and obligation, for each Facility Segment, commencing on the Service Commencement Date for such Facility Segment and ending at the end of the Term, to toll the Managed Lanes of the Facility pursuant to the terms of this Agreement, the other FA Documents and the Principal Facility Documents.

2.1.7 Developer's rights granted in this Section 2.1 are limited by and subject to the terms and conditions of the FA Documents, including the following:

2.1.7.1 Receipt of all Governmental Approvals necessary for the Work to be performed and satisfaction of any requirements applicable under the Governmental Approvals (including the NEPA Approval) for the Work to be performed; and

2.1.7.2 TxDOT's sole ownership of fee simple title to the Facility and Facility Right of Way and all improvements constructed thereon, subject to Developer's Interest, including Developer's leasehold estate under the Lease.

2.2 Term of Concession

2.2.1 This Agreement shall take effect on the Effective Date, and shall remain in effect until expiration of the Lease or earlier termination of this Agreement and (if in effect) the Lease (the "Term"). The term of the Lease shall commence upon the Operating Commencement Date that first occurs and shall continue until June 22, 2061; provided that the Lease shall be subject to earlier termination in accordance with the terms of this Agreement and the Lease shall be subject to extension under Section 13.1.4.

2.2.2 TxDOT and Developer acknowledge their mutual intent that, despite TxDOT's retention of fee title to the Facility and the Facility Right of Way, despite Developer's leasehold estate and interest therein, and despite the payment by Developer of 100% of the total capital improvement costs of the Facility, excluding the TxDOT Works and the GP Capacity Improvements, Developer be treated, to the maximum extent permitted by Law, as the owner for federal income tax purposes of such portion of the Facility for which Developer is not reimbursed its total capital improvement costs for the Facility by the Public Funds Amount. TxDOT and Developer acknowledge their mutual intent that, despite the payment by Developer of 100% of the total capital improvement costs of the Facility, the payment of the Public Funds Amount by TxDOT to Developer is a reimbursement of the portion of Developer's total capital improvement costs of the Facility that are expended by Developer on behalf of, and for the benefit of, TxDOT and shall not be treated as compensation or consideration of any kind paid by TxDOT to Developer for federal income tax purposes. TxDOT and Developer acknowledge their mutual intent that the grant to Developer of the exclusive right and obligation to toll the Managed Lanes of the Facility for the Facility Term pursuant to Section 2.1.6 is intended for federal income tax purposes to be the grant by TxDOT of an exclusive right and franchise to toll the Managed Lanes of the Facility for and during the Term. TxDOT will not file any documentation with the U.S. government inconsistent with this intention. (This provision is not intended to have any bearing on ownership status under Environmental Laws regarding Hazardous Materials or on allocation of risk and liability under the FA Documents.)

2.2.3 The Parties acknowledge Developer's rights and obligations under the FA Documents to finance, manage, operate, maintain, repair, toll and perform Renewal Work and Upgrades commence on the Effective Date notwithstanding the later commencement of the Lease, subject to, among other conditions, issuance of NTP1, NTP2, NTP1 (3C), NTP2 (3C), NTP GP, NTP GTBR, NTP 3C UCI and satisfaction of the conditions precedent to Service Commencement set forth in this Agreement.

ARTICLE 3. TOLLS

3.1 Authorization to Toll

3.1.1 Except as provided in Section 3.1.3, Developer shall have the exclusive right to (a) impose tolls upon the Users of the Managed Lanes, (b) establish, modify and adjust the rate of such tolls, and (c) enforce and collect tolls from the Users of the Managed Lanes, all in accordance with and subject to the terms and conditions contained in this Agreement, including those set forth in this Article 3 and in Exhibit 4.

3.1.2 The foregoing authorization includes the right, to the extent permitted by applicable Law, and subject to the terms and conditions set forth in Exhibit 4 and the terms, rules and regulations that may be established for uniform account maintenance and reconciliation among operators of electronically tolled facilities within and outside the State, to

fix, charge, enforce and collect Incidental Charges with respect to electronic tolling accounts managed by Developer or its Contractor, and Video Transaction Toll Premiums; provided that whenever the TxDOT Tolling Services Agreement is in effect, TxDOT, or its permitted subcontractor, shall exclusively fix, charge, enforce and collect Incidental Charges and Video Transaction Toll Premiums. Except for toll violation penalties and Incidental Charges in effect under Exhibit 4, the amount of any Incidental Charges imposed by Developer when the TxDOT Tolling Services Agreement is not in effect shall not exceed the amount reasonably necessary for Developer to recover its reasonable out-of-pocket and documented costs and expenses directly incurred with respect to the items, services and work for which they are levied.

3.1.3 Developer has no authority or right to impose any toll, fee, charge or other amount (a) on any Managed Lanes of a Facility Segment until the Service Commencement Date for such Facility Segment or (b) for use of any portion of the Facility other than the Managed Lanes. Developer has no authority or right to impose any fee, charge or other amount for use of the Facility other than the tolls, including Video Transaction Toll Premiums, and Incidental Charges specifically authorized by this Article 3.

3.1.4 Developer shall implement toll collection systems that charge, debit and collect tolls only at or through the electronic tolling facilities physically located on the Facility Right of Way or through global positioning system technologies or other remote sensing technologies that charge, debit and collect tolls only for actual vehicular use of the Managed Lanes provided that such toll collection method is in compliance with the requirements of Section 8.7.

3.1.5 Except as provided otherwise in Sections 3.1.7, 3.3 and 3.4 and Exhibit 4, and except for toll violations not reasonably collectible, Developer shall require payment of tolls for use of the Managed Lanes.

3.1.6 Except as otherwise provided in Section 19.10, nothing in this Agreement shall obligate or be construed as obligating TxDOT to continue or cease tolls after the end of the Term.

3.1.7 With TxDOT's consent, Developer may allow for the use of the Managed Lanes or any portion thereof for a limited period of time after the applicable Service Commencement Date without imposing any fee or charge, provided Developer complies with measures to ensure that the Facility or such portion thereof is not deemed under State Law to be the conversion of a free facility to a tolled facility at the end of the free period. At Developer's request, TxDOT will confer with Developer to help identify measures to prevent conversion.

3.2 Changes in User Classifications

3.2.1 Developer has irrevocably selected a User Classification system as set forth in Exhibit 4. Developer may not change from the system selected, and may not change, add to or delete any of the User Classifications within the selected system as set forth in Exhibit 4, without TxDOT's express prior written consent pursuant to this Section 3.2.

3.2.2 If Developer desires to change from the system selected, or change, add to or delete any of the User Classifications within the selected system, Developer shall apply to TxDOT for permission to implement such change, addition or deletion at least 210 days prior to the proposed effective date of such change. Such application shall set forth:

3.2.2.1 Each proposed change, addition or deletion;

3.2.2.2 The date each change, addition or deletion shall become effective;

3.2.2.3 The length of time each change, addition or deletion shall be in effect;

3.2.2.4 The reason Developer requests each change, addition or deletion;

3.2.2.5 The effect each change, addition or deletion is likely to have upon Users and traffic patterns;

3.2.2.6 A thorough report and analysis of the effect each change, addition or deletion is anticipated to have on Developer's internal rate of return (determined using the Financial Model Formulas), including the effects on the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, on the Base Case Financial Model) and on the assumptions and data therein; and

3.2.2.7 Such other information and data as TxDOT may reasonably request.

3.2.3 Developer's application shall be deemed granted without conditions unless within 120 days after receipt of a completed application TxDOT advises Developer that it has granted Developer's application with conditions or denied Developer's application. TxDOT may deny an application or impose conditions to granting an application in its sole discretion, including conditioning approval on new or an adjustment of compensation for TxDOT under this Agreement. TxDOT's decision shall not be subject to dispute resolution. If Developer finds TxDOT's conditions to the grant of an application to be unacceptable, Developer may withdraw the application and continue with the then-existing User Classifications. If Developer resubmits an application after rejection or imposition of conditions, the above procedures shall apply to the resubmitted application.

3.2.4 If Developer's application is deemed granted without conditions or is granted subject to conditions acceptable to Developer, then:

3.2.4.1 Developer may implement such change in User Classification on the effective date set forth in the application, subject to such conditions, if any, imposed by TxDOT, and subject to first giving notice to the public of the change, addition or deletion in the same manner as provided in Sections D.2.a and D.2.b of Exhibit 4; and

3.2.4.2 The Parties shall promptly amend (a) Exhibit 4 to incorporate the change, addition or deletion and (b) this Agreement as necessary, in accordance with the accepted conditions.

3.3 Exempt Vehicles

3.3.1 Developer shall not levy or impose a toll, including Video Transaction Toll Premiums, or Incidental Charges, and shall not permit a toll, including Video Transaction Toll Premiums, or Incidental Charges to be levied or imposed, for or in connection with use of the Facility by any Exempt Vehicle.

3.3.2 Developer shall implement means to accurately identify and track Exempt Vehicles in order to comply with their exemption from tolls, including Video Transaction Toll Premiums, and Incidental Charges.

3.4 Emergency Suspension of Tolls

3.4.1 In the event TxDOT designates the Facility or a portion of the Facility (a) for immediate use as an Emergency evacuation route or (b) as a route to respond to a disaster proclaimed by the Governor of Texas or his/her designee, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes. TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to such order, provided that during any period for which tolling has been suspended, TxDOT:

3.4.1.1 Concurrently suspends tolling on all other TxDOT-operated tolled facilities that are situated to directly facilitate travel from the area designated for evacuation or from the proclaimed disaster area;

3.4.1.2 Concurrently orders suspension of tolling on all other tolled facilities operated by others that are situated to directly facilitate travel from the area designated for evacuation or from the proclaimed disaster area and over which TxDOT has the authority to order such suspension; and

3.4.1.3 Lifts such order as soon as the need for Emergency evacuation or disaster response ceases.

3.4.2 TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling by any federal or State agency or instrumentality other than TxDOT to facilitate Emergency evacuation issued pursuant to applicable Law or to respond to a disaster proclaimed by the Governor of Texas or his/her designee.

3.4.3 In any time of a declared Emergency or natural disaster, as determined by the Executive Director, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes, as TxDOT deems appropriate. TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to the hours that such order is in effect, except that TxDOT shall compensate Developer for the impact on Toll Revenues for the period that such order is in effect based on the average net Toll Revenues received during the comparable days and times over the shorter of (a) the previous six months or (b) the period commencing on the Service Commencement Date applicable to the affected Managed Lanes. Such compensation shall exclude Video Transaction Toll Premiums and shall be reduced by all avoided processing and collection fees, charges and costs, including Transaction fees and charges. In the event TxDOT has the right to suspend tolling under Sections 3.4.1 and 3.4.3, TxDOT may elect to suspend tolling under either Section 3.4.1 or 3.4.3.

3.5 Toll Revenues

3.5.1 Except as otherwise provided in this Agreement, at all times during the Term, Developer shall have the exclusive right, title, entitlement and interest in and to the Toll Revenues, subject to the terms and conditions of the FA Documents (including TxDOT's rights

to compensation in accordance with this Agreement) and the security interests therein under the Security Documents. For the avoidance of doubt, except as otherwise provided in this Agreement, the foregoing shall include the exclusive right, title, entitlement and interest in and to all tolls and other charges permitted hereunder as they accrue with respect to Transactions occurring during the Term.

3.5.2 Developer may use Toll Revenues to make any Distribution or to pay non-competitive fees and charges of Affiliates, provided Developer first pays (a) all current and delinquent amounts due to TxDOT under this Agreement or the Lease, including any compensation due under Article 5, (b) all current and delinquent costs and expenses of O&M Work or of otherwise operating and maintaining the Facility (including premiums for insurance, bonds and other performance security, and including Safety Compliance work and Handback Requirements work), (c) current and delinquent debt service, and other current and delinquent amounts, due under any Funding Agreement or Security Document, (d) all currently required or delinquent deposits to the Handback Requirements Reserve, (e) all Taxes currently due and payable or delinquent (except to the extent being contested in good faith and appropriate reserves have been established consistent with U.S. GAAP), and (f) all current and delinquent costs and expenses of Renewal Work (provided that nothing in this clause shall be construed as releasing TxDOT from any of its obligations under Section 25.7.2). If Developer makes any Distribution or makes any payment to an Affiliate in violation of this provision, the same shall be deemed to be held in trust by the recipient for the benefit of TxDOT and the Collateral Agent under the senior Security Documents, and shall be payable to TxDOT or the Collateral Agent on demand. If TxDOT collects any such amounts held in trust, it shall make them available for any of the purposes set forth above and, at the request of the Collateral Agent, deliver them to the Collateral Agent net of any amounts under clause (a) above.

3.5.3 Toll Revenues shall be used first to pay all due and payable operations and maintenance costs, specifically including all amounts due to TxDOT under Sections 5.1, 5.3 and 25.3.6.3, before they may be used and applied for any other purpose.

3.5.4 Developer shall have no right to use Toll Revenues to pay any debt, obligation or liability unrelated to this Agreement, the Lease, the Facility, the Work, or Developer's services under this Agreement. The foregoing does not apply to or affect Developer's right to make Distributions in accordance with Developer's governing instruments and subject to the limitations in Section 3.5.2. For the avoidance of doubt, Developer shall have the right to use Toll Revenues to service debt required for the Facility.

3.5.5 Developer acknowledges and agrees that it shall not be entitled to receive any compensation, return on investment or other profit for providing the services contemplated by this Agreement and the Lease other than those resulting from cost savings, Toll Revenues, those items of income identified in the exclusions from the definition of Toll Revenues, Compensation Amounts and Termination Compensation in accordance with the provisions of this Agreement, and earnings thereon. The Parties acknowledge that this Agreement and the Lease contain commercially reasonable provisions and allow Developer no more than a reasonable rate of return and compensation commensurate with risk.

3.5.6 Toll Revenues shall be deposited in the appropriate account under the Facility Trust Agreement established for the purposes of holding Toll Revenues.

ARTICLE 4. FINANCING; REFINANCING

4.1 Developer Right and Responsibility to Finance

4.1.1 Developer may grant security interests in or assign the entire Developer's Interest (but not less than the entire Developer's Interest) to Lenders for purposes of securing the Facility Debt, subject to the terms and conditions contained in this Agreement and the Lease. Developer is strictly prohibited from pledging or encumbering the Developer's Interest, or any portion thereof, to secure any indebtedness of any Person other than (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has powers limited to Developer, the Facility and Work, (c) a special purpose entity subsidiary owned by Developer or an entity described in clause (b) above, or (d) the PABs Issuer.

4.1.2 Subject to TxDOT's obligation to finance and pay for (a) the acquisition, design, permitting, development and construction of the TxDOT Works and the GP Capacity Improvements, (b) the acquisition of all Facility Right of Way required for the TxDOT Works and GP Capacity Improvements, (c) the acquisition of up to [redacted] of ROW parcels for the non-tolled portions of the Facility Extension portion of the Segment 3C Facility Segment, and (d) repairs required under Section 25.7.2, and except as set forth in Sections 7.4.7, 7.5.4.7 and 25.5 and Exhibit 7, Developer is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to TxDOT, necessary for the acquisition, design, permitting, development, construction, equipping, operation, maintenance, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Facility and for the Utility Adjustment Work. Developer will pursue the necessary financing in accordance with the Facility Plan of Finance, portions of which are or upon Financial Close will be deposited in an Intellectual Property Escrow and the remaining portions of which are attached as Exhibit 5.

4.1.3 Developer warrants and represents:

4.1.3.1 As of Financial Close, that it has delivered to TxDOT or to an Intellectual Property Escrow true, correct and complete copies of the Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms) and that as of the Financial Close there existed no breach or default by Developer or any Affiliate thereunder or events which with notice or the passage of time, or both, would constitute a breach or default thereunder; and

4.1.3.2 As of Financial Close (3C), that it has delivered to TxDOT or to an Intellectual Property Escrow true, correct and complete copies of the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection therewith (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms) and that as of Financial Close (3C) there exists no breach or default by Developer or any Affiliate thereunder or events which with notice or the passage of time, or both, would constitute a breach or default thereunder.

4.1.4 If Developer has not entered into the Initial Funding Agreements and Initial Security Documents, on or before the Effective Date, then the following provisions shall apply:

4.1.4.1 Unless Developer or TxDOT elects to terminate this Agreement pursuant to Section 4.1.4.4, 4.1.4.5 or 19.1.2.5, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and complete closing

for all the Initial Facility Debt (including any subordinated debt), in a total amount, which when combined with all unconditional equity commitments acceptable to the Collateral Agent and any Public Funds Amount, any positive Recalibration Adjustment Amount, and any other sources of funds available to Developer other than from TxDOT or any other State entity, is sufficient to fund all capital requirements described in Exhibit 5 (including any negative Recalibration Adjustment Amount and the Developer Closing Payment), by not later than the Facility Financing Deadline, which may only be extended in accordance with this Section 4.1.4.1.

(a) Developer shall have the option to extend the Facility Financing Deadline under this Agreement for an additional 450 days by delivering to TxDOT not less than ten days prior to the initial Facility Financing Deadline (i) written notification of the extension and (ii) increased Financial Option Security in the total amount of [redacted], meeting the requirements of Section 16.3.1. If Developer does not timely exercise this option, it will expire, and Developer shall be obligated to achieve Financial Close by the initial Facility Financing Deadline.

(b) The Facility Financing Deadline will not be extended on account of any Relief Event (notwithstanding any other provision of this Agreement to the contrary), except that such deadline may be extended by the period of delay in Developer's ability to achieve Financial Close directly caused by TxDOT-Caused Delay, TxDOT Change or Discriminatory Action.

4.1.4.2 Except to the extent expressly permitted in writing by TxDOT, Developer shall not be deemed to have achieved Financial Close until all of the following conditions have been satisfied:

(a) Developer has prepared the Base Case Financial Model Update as contemplated and required by Section 5.2.1 in accordance with the terms hereof, including the calculation of any Refinancing Gain;

(b) Developer has delivered to TxDOT, or made available to TxDOT via an Intellectual Property Escrow, for review and comment under Section 6.3.7.1, except clause (b) thereof, drafts of those proposed Initial Funding Agreements and Initial Security Documents that will contain the material commercial terms relating to the Initial Facility Debt as and when such drafts become available but not later than ten days prior to the proposed date for Financial Close with final versions of such documents to be delivered no later than one day prior to the proposed date for Financial Close;

(c) Developer has delivered to TxDOT true and complete executed copies of the direct lender agreement under Section 20.9.4, if any;

(d) All applicable parties have entered into and delivered the Initial Funding Agreements and Initial Security Documents (except to the extent that such documents are not required to be executed on such date) meeting the requirements of Section 4.1.4.1 and Developer has delivered to TxDOT or to an Intellectual Property Escrow true and complete copies of the executed Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms); and

(e) Developer has provided TxDOT with written notice of Developer's satisfaction of all the conditions of this Section 4.1.4.2.

4.1.4.3 If for any reason Developer fails to achieve Financial Close by the Facility Financing Deadline, then TxDOT shall have the liquidated damage and termination remedies set forth in Sections 17.4.4 and 19.3.4, after delivering written notice of such Developer Default to Developer and Developer's failure to cure the same within the cure period set forth in Section 17.1.2.1; provided, however, that Developer shall not be deemed to be in Developer Default and TxDOT will not be entitled to such liquidated damage remedies (but nevertheless shall be entitled to terminate this Agreement in accordance with the terms hereof) if such failure is directly attributable to:

(a) A drop in the State's credit rating below A+ from Standard & Poor's and A2 from Moody's;

(b) If PABs are part of the initial financing under Developer's Facility Plan of Finance, any delay by or refusal of the PABs Issuer to issue bonds in the amount that Developer's underwriters are prepared to underwrite, provided that such refusal or delay is not due to any fault or less than diligent efforts of Developer, including Developer's failure to satisfy all requirements that it is obligated to satisfy under the Original PABs Agreement. If the Developer's financing schedule does not include normal and customary time periods for carrying out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds, failure of the PABs Issuer to meet that schedule shall not be considered a delay;

(c) If PABs are part of the initial financing under Developer's Facility Plan of Finance, (i) the refusal of the PABs Issuer's counsel to authorize closing of the PABs where the bond counsel is ready to give an unqualified opinion regarding the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs, unless the basis for such refusal is that it would be unreasonable for bond counsel to deliver the opinion or (ii) the delay of the PABs Issuer's counsel in authorizing closing of the PABs. If the Developer's financing schedule does not include normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds, failure of the PABs Issuer's counsel to meet that schedule shall not be considered a delay;

(d) If PABs are part of the initial financing under Developer's Facility Plan of Finance, (i) the failure of the PABs Issuer or TxDOT to comply with the terms of the Original PABs Agreement or (ii) the failure of the USDOT to provide an allocation with respect to the PABs or the withdrawal, rescission or revocation of such allocation by the USDOT Secretary in the amount approved by the USDOT Secretary where such failure directly causes inability to achieve Financial Close by the deadline therefor;

(e) If TIFIA credit assistance is part of the initial financing as determined pursuant to Section 4.1.4.5(a), the failure of the TIFIA Joint Program Office to close financing or provide financing on or prior to the Facility Financing Deadline despite commercially reasonable efforts by Developer to do so (including making reasonable financial and commercial concessions as necessary and appropriate under the circumstances) on the terms contemplated in the Facility Plan of Finance set forth in Section 4.1.4.5(g) and included in the Base Case Financial Model referred to in Section 4.1.4.5(h); or

(f) The issuance of a temporary restraining order or other form of injunction by a court with jurisdiction that prohibits prosecution of any portion of the Work that remains pending on the Facility Financing Deadline.

4.1.4.4 Developer or TxDOT may terminate this Agreement if Financial Close does not occur by the Facility Financing Deadline and such failure is directly attributable to any of the contingencies set forth in Section 4.1.4.3; provided, that if Financial Close is not achieved by the Facility Financing Deadline solely as a result of one or more of the reasons set forth in clauses (b), (c) or (d)(i) of Section 4.1.4.3, the Facility Financing Deadline and the market interest rate protection period specified in Section 4.1.4.6 shall each be extended on a day for day basis, plus an additional 30 days up to a maximum of 90 days in total to account for the consequences of such failure and the impact thereof on Financial Close; provided that Developer commensurately extends the expiry date of the Financial Option Security.

(a) In the event either Party terminates this Agreement due to the circumstances set forth in clause (a), (d)(ii), (e), or (f) of Section 4.1.4.3, the provisions of Section 19.1.2.10 will apply;

(b) In the event either Party terminates this Agreement due to the circumstances set forth clause (b), (c) or (d)(i) of Section 4.1.4.3, the provisions of Section 19.1.2.11 will apply.

4.1.4.5 The schedule, terms and procedures for determining the initial financing for the Facility and any related recalibration are as follows:

(a) The Parties acknowledge that (i) the TIFIA Joint Program Office has authorized and invited an application for TIFIA credit assistance for the Facility in the amount of up to [REDACTED], and (ii) Developer intends to develop and provide TxDOT with an alternative Facility Plan of Finance for the Facility. If (1) Developer fails to submit an alternative Facility Plan of Finance to TxDOT within 60 days after the Effective Date (or such other time period as mutually agreed) or (2) TxDOT notifies Developer of its rejection of the alternative Facility Plan of Finance within 20 Business Days (or such longer period as agreed to by the Parties) from receipt of the alternative Facility Plan of Finance, this Agreement will terminate in accordance with Section 19.1.2.1 or 19.1.2.2, as applicable.

(b) If Developer timely submits a proposed alternative Facility Plan of Finance described in clause (a)(ii) above and TxDOT notifies Developer that it agrees to Developer's proposed alternative Facility Plan of Finance, Developer shall deliver the following to TxDOT no later than March 31, 2013:

(i) Written notice of the proposed Recalibration Date, which date must be no earlier than the later to occur of (A) the date that is 60 days (or such shorter period as agreed to by the Parties) after the delivery of the information set forth in clauses (ii)-(v) below and (B) January 31, 2013 (or any such shorter period as agreed to by the Parties));

(ii) No later than concurrently with delivery of the written notice of the Recalibration Date, increased Financial Option Security in the total amount of [REDACTED] meeting the requirements of Section 16.3.1;

(iii) The identification of Developer's proposed types of Benchmark Rates;

(iv) Reasonable estimates of the impacts positive or negative, to the Project Cash Flows directly attributable to (A) each Pre-Recalibration Third Party Compensation Event (if any), and (B) for informational purposes only, each Compensation Event that is not a Pre-Recalibration Third Party Compensation Event that, in each of clauses (A) and (B) has occurred by a date that is at least ten Business Days prior to the date on which the notice in clause (i) above is provided and for which a Compensation Amount has not been determined (if any). To the extent that such items and/or events do not directly impact Project Cash Flows, Developer shall not be required to provide to TxDOT such estimates; and the lack of such estimates shall be conclusively presumed to mean that there are no adverse impacts to the Project Cash Flows directly attributable to such items;

(v) Reasonable estimates of the Compensation Amounts attributable to any Pre-Recalibration Third Party Compensation Events and/or other Compensation Events; and

(vi) All the information reasonably necessary to determine the reasonableness of the estimates required pursuant to clauses (iv) and (v) above.

(c) If Developer fails to provide to TxDOT the written notice of its proposed Recalibration Date or any of the other information and materials required pursuant to clause (b) above within the deadline established in such clause (except as provided otherwise in clause (b)(iii) above) (with any disagreement regarding the same being subject to the Dispute Resolution Procedures), this Agreement will terminate in accordance with Section 19.1.2.3. TxDOT will notify Developer within 60 days (or such shorter period as agreed to by the Parties) after receipt of the information required pursuant to clauses (b)(i)-(v) above whether (i) TxDOT, in its sole discretion, determines that, based on the information provided by Developer pursuant to clauses (b)(iii)-(v) above, the impacts to the Project Cash Flows attributable to any Pre-Recalibration Third Party Compensation Events are or are not acceptable and (ii) if applicable, whether the proposed types of Benchmark Rates do not satisfy the requirements described in clauses (a) and (b) of the definition of Benchmark Rates. In making its determination pursuant to clause (i) above and subject, for the avoidance of any doubt, to clause (d) below, TxDOT may develop its own analyses of Project Cash Flow impacts, including analyses indicating positive impacts on Project Cash Flows.

(d) If TxDOT notifies Developer pursuant to clause (c)(i) above that the impacts to the Project Cash Flows attributable to any Pre-Recalibration Third Party Compensation Events are not acceptable, this Agreement shall terminate as set forth in Section 19.1.2.6.

(e) If TxDOT notifies Developer pursuant to clause (c)(ii) above that Developer's submission of its proposed types of Benchmark Rates do not satisfy the requirements described in clauses (a) and (b) in the definition of Benchmark Rates (and Developer shall have failed to so satisfy such requirements), then the Parties will attempt to resolve in good faith any outstanding issues for a period not to exceed 14 days (or such other time period as may be mutually agreed). If no resolution of these issues is achieved within such time period, then the provisions of Sections 4.1.4.6(b) and (c) will not apply and there will be no change to the Developer Closing Payment pursuant to such Sections. Any disagreement regarding whether Developer satisfied the requirements of clauses (a) and (b) in the definition of Benchmark Rates will be subject to the Dispute Resolution Procedures.

(f) TxDOT also shall have the right at any time on or prior to the proposed Recalibration Date to review any outstanding or resolved lawsuits challenging the NEPA Approvals. If there are one or more such challenges, TxDOT has the right, on or prior to Developer's proposed Recalibration Date, to terminate this Agreement in its sole discretion, as set forth in Section 19.1.2.6. If there are such lawsuits and TxDOT has determined that it will exercise its right to terminate this Agreement, TxDOT will provide notice of the same to Developer prior to Developer's proposed Recalibration Date.

(g) Unless this Agreement shall have been terminated prior to the proposed Recalibration Date in accordance with the terms hereof, on the proposed Recalibration Date Developer shall provide to TxDOT:

(i) An updated Base Case Financial Model that reflects, to the extent applicable, (A) the accepted impacts to the Project Cash Flows attributable to any Pre-Recalibration Third Party Compensation Events that were included in the notice of proposed Recalibration Date described above, (B) the reasonable estimates of the impacts to the Project Cash Flows attributable to any Pre-Recalibration Third Party Compensation Events that have occurred between the date that is ten Business Days prior to the date of the notice of proposed Recalibration Date and the date that is ten Business Days prior to the proposed Recalibration Date, (C) Developer's then-current plan for financing the Facility (such plan becoming the Facility Plan of Finance) with no other changes made to any other model inputs, and (D) an updated Recalibration Adjustment Amount at the magnitude necessary to reset the Equity IRR back to the value established in the Base Case Financial Model as of the Effective Date. For the purposes of calculating the Recalibration Adjustment Amount, the Parties shall assume that such amount is paid at the anticipated date of Financial Close as reflected in the model. Developer shall submit to TxDOT the updated model together with an update of the audit and opinion pursuant to Section 5.2.4. Developer shall also submit the information reasonably necessary to determine the reasonableness of the estimates required pursuant to clause (B) above.

(ii) In the event that such updated Base Case Financial Model demonstrates a Recalibration Adjustment Amount that is positive, as contemplated in clause (h)(iii) below, an updated Base Case Financial Model reflecting the same impacts, except for any impacts related to any Pre-Recalibration Third Party Compensation Events (the "Alternate Financial Model"), which Alternate Financial Model shall only be used for the express purpose contemplated in clause (h)(iii) below. The Recalibration Adjustment Amount calculated in the Alternate Financial Model as set forth in the immediately preceding sentence shall be the "AFM Recalibration Adjustment Amount."

(iii) New or updated estimates of each Compensation Event that is not a Pre-Recalibration Third Party Compensation Event for which no Compensation Amount has been determined or provide confirmation that the previous estimate still reflects Developer's best estimate of the Compensation Amount for such Compensation Event.

(h) Within five Business Days after TxDOT's receipt of the updated Base Case Financial Model, as well as the Alternative Financial Model, if any, submitted by Developer pursuant to clause (g) above, TxDOT will review such model(s) and notify Developer whether such model(s) are free from errors or that it has otherwise identified any errors in one or both of the models. In the event that TxDOT shall have identified any such errors, Developer shall immediately correct such errors. After any such errors have been corrected or if there are no such errors, the following provisions shall apply.

(i) If the Recalibration Adjustment Amount generated by the model is negative (requiring an additional payment from Developer to TxDOT), then the Recalibration Date shall be the first Business Day after the date of TxDOT's notice provided in accordance with the first sentence of this clause (h) or, to the extent that any errors had been identified as per the terms above, the first Business Day after all such errors have been corrected. The Parties will record as of the Recalibration Date the values of the Benchmark Rates as set forth in Section 4.1.4.6(c) and, at the election of Developer, Developer shall pay the Recalibration Adjustment Amount either (A) at Financial Close or (B) in accordance with a payment schedule agreed to by the Parties spreading payments of the Recalibration Adjustment Amount over a period not to exceed ten years. For purposes of the calculation contemplated hereunder, such payment schedule shall commence on Developer's anticipated date of Financial Close (unless otherwise agreed to by the Parties) as reflected in the model and shall be determined such that the Net Present Value of the payments as of the anticipated date of Financial Close equals the Recalibration Adjustment Amount; provided that such amount is deemed in the model to have been paid at the anticipated date of Financial Close. For the purposes of this clause (i), "Net Present Value" means the aggregate of the discounted values, calculated as of the anticipated date of Financial Close, of each of the relevant payments, in each case discounted using the Equity IRR established in the Base Case Financial Model as of the Effective Date. The model will be updated to incorporate any agreed payment schedule under this subsection and under Section 4.1.4.7 and will then become the Base Case Financial Model and Developer shall have no further right to compensation from TxDOT with respect to the Pre-Recalibration Third Party Compensation Events included in such model. Developer agrees to pay TxDOT such amount as compensation to TxDOT in exchange for TxDOT's grant to Developer of the exclusive right to toll the Managed Lanes and rent for Facility Right of Way and Developer allocates such amount for U.S. federal income tax purposes between the exclusive right to toll the Managed Lanes and rent for Facility Right of Way based on the relative fair market values of such rights as of the Effective Date, which Developer has determined are ████ percent and ████ percent respectively.

(ii) If the Recalibration Adjustment Amount is positive (requiring a payment from TxDOT to Developer), then Developer shall notify TxDOT within three Business Days from receipt of TxDOT's notice provided in accordance with the first sentence of this clause (h) or, to the extent that any errors had been identified as per the terms above, the first Business Day after all such errors have been corrected, whether it will proceed with the Facility with a Recalibration Adjustment Amount of █. If Developer is willing to proceed with the Facility with a Recalibration Adjustment Amount of █, then (A) Developer will update the Base Case Financial Model to reset the Recalibration Adjustment Amount to █ and establish the corresponding reduction in Developer's Equity IRR, (B) the Parties will record the values of the Benchmark Rates as set forth in Section 4.1.4.6(c) and (C) the Recalibration Date shall be the first Business Day after the date of Developer's notification and the model, as updated, will become the Base Case Financial Model and Developer shall have no further right to compensation from TxDOT with respect to the Pre-Recalibration Third Party Compensation Events included in such model.

(iii) If the Recalibration Adjustment Amount is positive (requiring payment from TxDOT to Developer) and Developer does not provide the notice under clause (h)(ii) above or provides notice to TxDOT that it will not proceed with the Facility with a Recalibration Adjustment Amount of █, TxDOT may terminate this Agreement as set forth in (A) Section 19.1.2.5 if the AFM Recalibration Adjustment Amount is positive or (B) Section 19.1.2.6 if the AFM Recalibration Adjustment Amount is equal to █ or is negative, in each case, within three Business Days from the expiration of the period for Developer's notice

under clause (h)(ii) above. If, within such three Business Day period, TxDOT notifies Developer that it will proceed with the Facility on the basis of the originally calculated positive Recalibration Adjustment Amount calculated pursuant to clause (g)(i)(D) above as potentially updated to correct errors identified pursuant to clause (h) above, then (1) the Parties will record the values of the Benchmark Rates as set forth in Section 4.1.4.6(c), (2) the Recalibration Date shall be the first Business Day after the date of TxDOT's notification and the model, as and if updated, will become the Base Case Financial Model and (3) subject to payment by TxDOT to Developer of the Recalibration Adjustment Amount as provided herein, Developer shall have no further right to compensation from TxDOT with respect to the Pre-Recalibration Third Party Compensation Events included in such model. In such case, if the AFM Recalibration Adjustment Amount is positive, TxDOT shall pay to Developer the AFM Recalibration Adjustment Amount on the date of Financial Close or such other date as the Parties mutually agree. TxDOT shall pay the balance of the Recalibration Adjustment Amount in a lump sum payable on the date of Substantial Completion of the Segment 3A Facility Segment (together with interest thereon from the date of Financial Close to the date of Substantial Completion of the Segment 3A Facility Segment at a rate equal to LIBOR in effect from time to time plus 200 basis points). If TxDOT fails to provide notice pursuant to this clause (iii) within such three Business Day period, then (I) if the AFM Recalibration Adjustment Amount is positive, this Agreement shall be deemed terminated and the provisions of Section 19.1.2.5 shall apply or (II) if the AFM Recalibration Adjustment Amount is equal to ■ or is negative, this Agreement shall be deemed terminated and the provisions of Section 19.1.2.6 shall apply.

(i) TxDOT shall have the right to terminate this Agreement prior to the Recalibration Date for any reason other than those set forth in Section 4.1.4.3, 4.1.4.4 or 4.1.4.5(a) through (h) as set forth in Section 19.1.2.7.

4.1.4.6 Scheduling of Financial Close and adjustment for changes in Benchmark Rates are subject to the following terms and conditions:

(a) After Developer has updated the Base Case Financial Model pursuant to Section 4.1.4.5, Developer shall provide written notice to TxDOT of the scheduled date for Financial Close, which date must be no earlier than five Business Days after the date the notice is provided. In addition, to the extent that PABs or any other debt securities will be issued in the capital markets, the notice must also set forth the date scheduled for the pricing of the PABs or any such other debt securities and such notice must be provided at least 15 Business Days before the date scheduled for the pricing of the PABs or such other debt securities. If the scheduled date(s) change after Developer has provided to TxDOT the written notice contemplated in this Section 4.1.4.6, Developer shall promptly provide TxDOT with written notice of the new date(s), which cannot be any earlier than the date(s) set forth in the original notice.

(b) On the earlier of the date that is one Business Day prior to (i) the scheduled date for the pricing of the PABs or such other debt securities indicated in the written notice from Developer, or if no PABs or other debt securities will be issued, the date scheduled for Financial Close, and (ii) the date that is 91 days after the Recalibration Date (the "Calculation Date"), Developer and TxDOT shall determine on the basis of the Base Case Financial Model the amount of adjustment, positive or negative, necessary to hold constant the Developer's Equity IRR established at the Recalibration Date, calculated as provided in clause (c) below. Such an adjustment resulting in a positive amount shall constitute the "Developer Closing Payment." Such an adjustment in a negative amount shall constitute the "Public Funds

Amount"; provided that the Public Funds Amount shall always be equal to at least [redacted], as adjusted upward to give effect to increases in market interest rates as described in clause (c) below. Once Developer has delivered the notice described in clause (a) above, the market interest rate protection period and Calculation Date shall not be extended on account of any delays in the scheduled date of Financial Close except as set forth in Section 4.1.4.4 and except as set forth in clause (a) above. Any adjustment to the Developer Closing Payment shall be subject to Section 19.1.2.8.

(c) The adjustment under clause (b) above shall be calculated by taking into account changes in market interest rates (either positive or negative) for the period beginning at 10:00 a.m. on the Recalibration Date and ending at 10:00 a.m. on the Calculation Date (but not considering any terms and conditions included in the Initial Funding Agreements and Initial Security Documents, if any). The interest rate adjustment will be based on the movement, if any, in the approved Benchmark Rates. Based on a reading taken from the relevant screen shots on the Calculation Date, Developer and TxDOT shall both adjust the Base Case Financial Model as of such date to reflect the changes (if any) in the relevant Benchmark Rates and any revisions approved by the Parties but not any potential errors identified as part of the updated audit and opinion provided pursuant to Section 5.2.4. TxDOT and Developer will use the Base Case Financial Model, as so adjusted, to calculate the Developer Closing Payment or the Public Funds Amount, as applicable, as of the date of Financial Close due to the market interest rate protection by resetting Developer's Equity IRR back to the value established at the Recalibration Date. The Developer Closing Payment, if any, shall constitute compensation to TxDOT in exchange for TxDOT's grant to Developer of the right to toll the Managed Lanes and rent for the Facility Right of Way; and Developer allocates such amount for U.S. federal income and tax purposes between the right to toll the Managed Lanes and rent for Facility Right of Way based on the relative fair market values of such rights as of the Effective Date, which Developer has determined are [redacted] percent and [redacted] percent respectively.

4.1.4.7 If the adjustment under Section 4.1.4.6 results in a Developer Closing Payment, at the election of Developer, Developer shall pay to TxDOT the Developer Closing Payment either (a) concurrently with Financial Close or (b) in accordance with a payment schedule agreed to by the Parties spreading payments of the Developer Closing Payment over a period not to exceed ten years. For purposes of the calculation contemplated hereunder, such payment schedule shall commence on the anticipated date of Financial Close (unless otherwise agreed to by the Parties) as reflected in the Base Case Financial Model and shall be determined such that the Net Present Value of the payments as of the anticipated date of Financial Close equals the Developer Closing Payment; provided that such amount is deemed in the model to have been paid at the anticipated date of Financial Close. For the purposes of this Section, "Net Present Value" means the aggregate of the discounted values, calculated as of the anticipated date of Financial Close, of each of the relevant payments, in each case discounted using the Equity IRR established in the Base Case Financial Model as of the Effective Date. The model will be updated to incorporate any agreed payment schedule under this Section and under Section 4.1.4.5(h)(i) and will then become the Base Case Financial Model. Developer agrees to pay TxDOT such amount as compensation to TxDOT in exchange for TxDOT's grant to Developer of the exclusive right to toll the Managed Lanes and rent for the Facility Right of Way and Developer allocates such amount for U.S. federal income tax purposes between the exclusive right to toll the Managed Lanes and rent for Facility Right of Way based on the relative fair market values of such rights as of the Effective Date, which Developer has determined are [redacted] percent and [redacted] percent respectively.

4.1.4.8 If this Agreement is not terminated pursuant to Section 19.1.2.8 (if applicable) because TxDOT has not elected to terminate, then TxDOT shall owe the Public Funds Amount to Developer in accordance with Part C of Exhibit 7. If this Agreement is not terminated pursuant to Section 19.1.2.8 (if applicable) because Developer has elected to override TxDOT's election to terminate as provided in Section 19.1.2.9, then no Developer Closing Payment shall be due TxDOT and no Public Funds Amount shall be due Developer. If the adjustment under Section 4.1.4.6 results in a Developer Closing Payment in excess of ██████ and this Agreement is not terminated pursuant to Section 19.1.2.8 (if applicable) because TxDOT has elected to override Developer's election to terminate as provided in Section 19.1.2.9, then the amount of the Developer Closing Payment in excess of ██████ shall not be due to TxDOT and the Developer Closing Payment shall be ██████.

4.1.4.9 The Parties shall complete Part A of Exhibit 6 at Financial Close.

4.1.4.10 The Parties shall revise the information contained in Attachment 1 to Exhibit 7 at the Recalibration Date using the Base Case Financial Model to calculate, by applying a constant coefficient to forecast revenues and holding all other variables constant except for dividends, the revenues necessary to yield the following range of blended, Post-Tax IRRs earned by the equity invested in the Facility over the Term: ██████ ██████ The resultant revenue projections shall be inserted in the relevant columns of Attachment 1 to Exhibit 7.

4.1.5 Within two Business Days after the date of Financial Close, TxDOT shall return to Developer the original of the Financial Option Security. Within two Business Days after the date of Financial Close (3C), TxDOT shall return to Developer the original of the closing security required under the Change Order Agreement for the Segment 3C Facility Segment.

4.1.6 Developer shall deliver copies of any ancillary supporting documents (e.g., UCC filing statements) to TxDOT within 30 days after the date of Financial Close with respect to the Initial Facility Debt and within 30 days after the date of Financial Close (3C) with respect to the Segment 3C Initial Facility Debt.

4.1.7 Except as set forth in Section 4.1.4.6, Developer exclusively bears the risk of any changes in the interest rate, payment provisions or other terms of its financing.

4.1.8 Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Developer shall remain liable to TxDOT for the payment of all sums owing to TxDOT under this Agreement and the Lease and the performance and observance of all of Developer's covenants and obligations under this Agreement and the Lease.

4.2 No TxDOT Liability

4.2.1 TxDOT shall have no obligation to pay or fund debt service on any debt issued or incurred in connection with the Facility or this Agreement. TxDOT shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness incurred in connection with the Facility or this Agreement, any other Funding Agreement or any Security Document.

4.2.2 None of the State, TxDOT (except as otherwise set forth in Section 4.2.4), the Texas Transportation Commission or any other agency, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any

of them, has any liability whatsoever for payment of the principal sum of any Facility Debt, any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility, or any interest accrued thereon or any other sum secured by or accruing under any Funding Agreement or Security Document. Except for a violation by TxDOT of its express obligations to Lenders set forth in Article 20 and except as set forth in Section 3.5.2, no Lender is entitled to seek any damages or other amounts from TxDOT, whether for Facility Debt or any other amount. TxDOT's review of any Funding Agreements or Security Documents or other Facility financing documents is not a guarantee or endorsement of the Facility Debt, any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility, or any traffic and revenue study, and is not a representation, warranty or other assurance as to the ability of any such Person to perform its obligations with respect to the Facility Debt or any other obligations issued or incurred by such Person in connection with this Agreement, the Lease or the Facility, or as to the adequacy of the Toll Revenues to provide for payment of the Facility Debt or any other obligations issued or incurred by such Person in connection with this Agreement, the Lease or the Facility. For the avoidance of doubt, the foregoing does not affect TxDOT's liability to Developer under Article 19 and Exhibit 20 for Termination Compensation that is measured in whole or in part by outstanding Facility Debt.

4.2.3 TxDOT shall not have any obligation to any Lender pursuant to this Agreement, except, if the Collateral Agent has notified TxDOT of the existence of its Security Documents, for the express obligations to Lenders set forth in Article 20 and Section 3.5.2 or in any direct lender agreement pursuant to Section 20.9.4. The foregoing does not preclude Lender enforcement of this Agreement against TxDOT where the Lender has succeeded to the rights, title and interests of Developer under the FA Documents, whether by way of assignment or subrogation.

4.2.4 For the avoidance of doubt and notwithstanding anything to the contrary set forth in this Agreement or any other FA Document, TxDOT shall be obligated to pay for the acquisition, design, permitting, development and construction of the TxDOT Works and any repairs required pursuant to Section 25.7.2, and TxDOT shall not be permitted to create any lien or security interest over, or otherwise encumber, any of the TxDOT Works or any repairs in respect thereto.

4.3 Mandatory Terms of Facility Debt, Funding Agreements and Security Documents

Facility Debt, Funding Agreements and Security Documents and any amendments or supplements thereto, shall comply with the following terms and conditions.

4.3.1 The Security Documents may only secure Facility Debt the proceeds of which are obligated to be used exclusively for the purposes of (a) performing Developer's obligations under the FA Documents in connection with acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing or replacing the Facility (other than in respect of the design and construction of the TxDOT Works), performing the Utility Adjustment Work required to be performed by Developer or the Renewal Work, or performing other Work, (b) paying interest on such Facility Debt and principal and interest on other existing Facility Debt, (c) paying reasonable development fees to Developer-Related Entities or to any Design-Build Contractor or its affiliates for services related to the Facility, (d) paying fees and premiums to any Lender of the Facility Debt or such Lender's agents, (e) paying costs and fees in connection with the closing of any permitted Facility Debt, (f) making payments due under the FA Documents to

TxDOT or any other Person, (g) funding reserves required under this Agreement, Funding Agreements or Security Documents, applicable securities laws, or Environmental Laws, (h) making Distributions, but only from the proceeds of Refinancings permitted under this Agreement, and (i) refinancing any Facility Debt under clauses (a) through (h) above.

4.3.2 The Security Documents may only secure Facility Debt and Funding Agreements issued and executed by (a) Developer, (b) its permitted successors and assigns, (c) a special purpose entity that owns Developer but no other assets and has purposes and powers limited to the Facility and the Work, (d) any special purpose subsidiary wholly owned by Developer or such entity, or (e) the PABs Issuer.

4.3.3 Facility Debt under a Funding Agreement and secured by a Security Document must be issued and held only by Institutional Lenders who qualify as such at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (a) qualified investors other than Institutional Lenders may acquire and hold interests in Facility Debt in connection with the securitization or syndication of Facility Debt through a public or private offering, but only if an Institutional Lender acts as Collateral Agent for such Facility Debt, (b) PABs may be issued, acquired and held by parties other than Institutional Lenders but only if an Institutional Lender acts as indenture trustee for the PABs and (c) Subordinate Debt is not subject to this provision.

4.3.4 The Security Documents as a whole securing each separate issuance of debt shall encumber the entire Developer's Interest, provided that the foregoing does not preclude subordinate Security Documents or equipment lease financing.

4.3.5 No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Developer's Interest shall extend to or affect the fee simple interest of TxDOT in the Facility or the Facility Right of Way or TxDOT's rights or interests under the FA Documents.

4.3.6 Each note, bond or other negotiable or non-negotiable instrument evidencing Facility Debt, or evidencing any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility must include or refer to a document controlling or relating to the foregoing that includes a conspicuous recital to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the obligor and the security pledged by Developer or the obligor therefor, is not an obligation, moral or otherwise, of the State, TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power of the State, TxDOT, the Texas Transportation Commission or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

4.3.7 Each Funding Agreement and Security Document containing provisions regarding default by Developer shall require, or incorporate a requirement by reference to another Funding Agreement or Security Document that requires, that if Developer is in default thereunder and the Collateral Agent gives notice of such default to Developer, then the Collateral Agent shall also give concurrent notice of such default to TxDOT. Each Funding Agreement and Security Document that provides Lender remedies for default by Developer or the borrower shall require that the Collateral Agent deliver to TxDOT, concurrently with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice

required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document.

4.3.8 No Funding Agreement or Security Document that may be in effect during any part of the period that the Handback Requirements apply shall grant to the Lender any right to apply funds in the Handback Requirements Reserve or to apply proceeds from any Handback Requirements Letter of Credit to the repayment of Facility Debt, to any other obligation owing the Lender or to any other use except the uses set forth in Section 8.11.3, and any provision purporting to grant such right shall be null and void, provided, however, that (a) any Lender or Substituted Entity shall, following foreclosure or transfer in lieu of foreclosure, automatically succeed to all rights, claims and interests of Developer in and to the Handback Requirements Reserve, and (b) an exception may be made for excess funds described in Section 8.11.4.2.

4.3.9 Each relevant Funding Agreement and Security Document that may be in effect during any part of the period that the Handback Requirements apply shall expressly permit, without condition or qualification, or incorporate permission by reference to another Funding Agreement or Security Document that expressly permits, without condition or qualification, Developer to (a) use and apply funds in the Handback Requirements Reserve in the manner contemplated by the FA Documents and (b) issue additional Facility Debt, secured by the Developer's Interest, for the added limited purposes of funding work pursuant to Handback Requirements and Safety Compliance as set forth in Section 12.4 and (c) otherwise comply with its obligations in the FA Documents regarding Renewal Work, the Renewal Work Schedule, the Handback Requirements and the Handback Requirements Reserve. Subject to the foregoing, any protocols, procedures, limitations and conditions concerning draws from the Handback Requirements Reserve set forth in any Funding Agreement or Security Document or the issuance of additional Facility Debt as described in clause (b) above shall be consistent with the permitted uses of the Handback Requirements Reserve, and shall not constrain Developer's or TxDOT's access thereto for such permitted uses, even during the pendency of a default under the Funding Agreement or Security Document. For the avoidance of doubt, (i) the Lenders then holding Facility Debt may reasonably limit additional Facility Debt if other funds are then readily available to Developer for the purpose of funding the Work; (ii) no Lender then holding Facility Debt is required hereby to grant *pari passu* lien or payment status to any such additional Facility Debt; and (iii) the Lenders then holding Facility Debt may impose reasonable, customary requirements as to performance and supervision of the Work.

4.3.10 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender shall not name or join TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Facility Debt or other obligations secured thereby or the foreclosure or other enforcement of the Funding Agreement or Security Document, unless and except to the extent that (a) joinder of TxDOT as a necessary party is required by applicable Law in order to confer jurisdiction on the court over the dispute with Developer or to enforce Lender remedies against Developer and (b) the complaint against TxDOT states no claim or cause of action for a lien or security interest on, or to foreclose against, TxDOT's right, title and interest in and to the Facility and Facility Right of Way, or for any liability of TxDOT on the indebtedness.

4.3.11 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that

expressly states, that the Lender shall not seek any damages or other amounts from TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, whether for Facility Debt or any other amount, except (a) damages from TxDOT for a violation by TxDOT of its express obligations to Lenders set forth in Section 3.5.2 and Article 20 or in any direct lender agreement pursuant to Section 20.9.4 and (b) amounts due from TxDOT under this Agreement where the Lender has succeeded to the rights, title and interests of Developer under the FA Documents, whether by way of assignment or subrogation.

4.3.12 Each Funding Agreement and Security Document shall be consistent with Section 3.5.3.

4.3.13 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender and the Collateral Agent shall respond to any request from TxDOT or Developer for consent to a modification or amendment of this Agreement within a reasonable period of time.

4.3.14 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender agrees to exclusive jurisdiction and venue in the federal and State courts in Travis County in any action by or against TxDOT or its successors and assigns.

4.4 Refinancing

4.4.1 Right of Refinancing

Developer from time to time may consummate Refinancings under the Funding Agreements on terms and conditions acceptable to Developer. TxDOT shall have no obligations or liabilities in connection with any Refinancing except for the rights, benefits and protections set forth in Article 20 (but only if the Refinancing satisfies the conditions and limitations set forth in Section 20.1).

4.4.2 Notice of Refinancing

4.4.2.1 In connection with any Refinancing except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing, Developer shall deliver, not later than 14 days prior to the proposed date for closing the Refinancing, either to TxDOT or to an Intellectual Property Escrow for access and review by TxDOT, the following:

(a) Draft proposed Funding Agreements and Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms); and

(b) The Pre-Refinancing Data.

4.4.2.2 In connection with any Refinancing except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing, Developer shall deliver, not later than 30 days after close of the Refinancing (but in the case of the Segment 3C Initial

Facility Debt, not later than the date of Financial Close (3C)), either to TxDOT or to an Intellectual Property Escrow for access and review by TxDOT the following.

(a) Copies of all signed Funding Agreements and Security Documents in connection with the Refinancing; and

(b) The Refinancing Data.

4.4.3 Refinancing Limitations, Requirements and Conditions

4.4.3.1 If TxDOT renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under Section 20.9 or any direct lender agreement pursuant to Section 20.9.4, then Developer shall reimburse TxDOT all TxDOT's Recoverable Costs and other fees, costs and expenses TxDOT incurs in connection with rendering any such assistance or performing any such activity. Developer also shall reimburse TxDOT's Recoverable Costs of assessing the Refinancing Gain and TxDOT's share thereof, if any. If TxDOT delivers to Developer a written invoice therefor at least two Business Days prior to the scheduled date of closing, then Developer shall reimburse such costs at closing. If TxDOT does not deliver a written invoice at least two Business Days prior to closing, then it may deliver such invoice within 30 days after receiving notice of closing and Developer shall reimburse TxDOT for such costs within ten days after TxDOT delivered the invoice to Developer. If for any reason the Refinancing does not close, Developer shall reimburse such TxDOT's Recoverable Costs and such other fees, costs and expenses within ten days after TxDOT delivers to Developer a written invoice therefor.

4.4.3.2 The Refinancing Gain shall be calculated after deducting payment of such TxDOT's Recoverable Costs and such other fees and expenses, as well as Developer's reasonable professional costs and expenses directly associated with the Refinancing.

4.5 Financing of TxDOT Works and GP Capacity Improvements

Notwithstanding anything to the contrary in this Agreement or the other FA Documents, and subject to Section 4.2.4, TxDOT shall be solely responsible for obtaining and repaying any and all financing, at its own cost and risk and without recourse to any Developer-Related Entity, necessary for the acquisition, design, permitting, development and construction of the TxDOT Works, for the Utility Adjustment Work related to the TxDOT Works, for any repairs required pursuant to Section 25.7.2, and for the acquisition, design, permitting, development and construction of the GP Capacity Improvements as provided in Part F of Exhibit 7.

ARTICLE 5. TXDOT COMPENSATION; FINANCIAL MODEL UPDATES; PAYMENT OF PUBLIC FUNDS; APPROPRIATIONS

5.1 Revenue Payments

TxDOT's rights to payment related to Toll Revenues for the Facility are set forth in Part A of Exhibit 7. Developer agrees to pay TxDOT such amounts as compensation to TxDOT in exchange for TxDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Facility pursuant to the Lease. For