

**AGREEMENT REGARDING
TSA PERFORMANCE SECURITY
AND
SH 121 MARKET INTEREST RATE ADJUSTMENT**

**Between
Texas Department of Transportation
and
North Texas Tollway Authority**

Dated May 28, 2009

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AGREEMENT REGARDING
TSA PERFORMANCE SECURITY
AND
SH 121 MARKET INTEREST RATE ADJUSTMENT

THIS AGREEMENT REGARDING TSA PERFORMANCE SECURITY AND SH 121 MARKET INTEREST RATE ADJUSTMENT (this "Agreement") is entered into as of May 28, 2009 by and between the TEXAS DEPARTMENT OF TRANSPORTATION, a public agency of the State of Texas ("TxDOT"), and the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and a political subdivision of the State of Texas ("NTTA").

WITNESSETH

A. The NTTA is currently authorized to operate turnpike projects within the Counties of Collin, Dallas, Denton and Tarrant (the "NTTA Boundary Area") pursuant to Chapter 366 of the Texas Transportation Code, as amended (the "Regional Tollway Authority Act").

B. Pursuant to Section 366.038 (the "Statute") of the Regional Tollway Authority Act, the NTTA is required to provide, for reasonable compensation, customer service and other toll collection and enforcement services for toll projects in the NTTA Boundary Area.

C. TxDOT has entered into, or intends to enter into, Comprehensive Development Agreements with private third party developers ("Developers") for, among other things, the operation of toll projects in the NTTA Boundary Area (each such agreement being referred to as a "CDA").

D. In connection with each CDA in the NTTA Boundary Area, the NTTA has entered into, or intends to enter into, a Tolling Services Agreement ("TSA") with the applicable Developer to satisfy the requirements of the Statute.

E. In order to obtain assurance of the performance of the customer services and other toll collection and enforcement services to be provided by the NTTA under the TSAs, the proposers submitting bids on the North Tarrant Express Managed Lanes Project and the IH 635 Managed Lanes Project (which are the only projects for which TSAs to which the NTTA is or will be a party have been negotiated as of the date hereof) have requested that the NTTA furnish performance security under the applicable TSA for each such Project and include in each such TSA provisions for the possible switchover from the NTTA to TxDOT of responsibility for the performance of tolling services if the NTTA defaults thereunder or if another event occurs thereunder permitting such switchover.

F. The NTTA and TxDOT desire to enter into this Agreement to evidence their agreement relating to (i) the provision of performance security that is or may be required for the NTTA's obligations under the TSA entered into or to be entered into by the NTTA in connection with the North Tarrant Express Managed Lanes CDA, the IH 635 Managed Lanes CDA and any

other TSAs to be entered into by the NTTA in connection with any other CDAs and (ii) certain terms concerning the potential switchover from the NTTA to TxDOT of responsibility for the performance of the tolling services under such TSAs if the NTTA defaults thereunder or if another event occurs thereunder permitting such switchover.

G. The NTTA and TxDOT are parties to that certain Project Agreement dated October 18, 2007 for the State Highway 121 toll project (the "SH 121 Project Agreement"), and a dispute (the "Dispute") has arisen under Section 20(d) of the SH 121 Project Agreement as to the amount of the market interest rate adjustment to the Additional Upfront Payment (as defined in the SH 121 Project Agreement).

H. The NTTA and TxDOT desire to resolve the Dispute pursuant to the terms and conditions set forth herein.

I. On May 18, 2009, the Board of Directors of the NTTA passed Resolution No. 09-141, authorizing the Executive Director of the NTTA to execute and deliver this Agreement on behalf of the NTTA.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT and NTTA hereby agree as follows:

1. The Master Cash Collateral Trust Account.

(a) The NTTA will establish, pursuant to a trust agreement (the "Trust Agreement") among NTTA, TxDOT and a mutually acceptable Qualified Financial Institution (as defined in Attachment 1 to this Agreement) as trustee (the "Trustee"), a master cash collateral trust account (the "Master Account") to serve as performance security for the NTTA's obligations under the TSA for the North Tarrant Express Project and, subject to Sections 4 and 5 below and unless otherwise agreed by NTTA and TxDOT, other TSAs.

(b) The NTTA will fund the Master Account in the amount of twenty-five million, five hundred and ninety-eight thousand, seven hundred and sixty-seven Dollars (\$25,598,767.00) on or prior to the time the Master Account is first required to be established under a TSA. The funding of such amount shall be considered part of the Additional Upfront Payment.

(c) Funds in the Master Account shall at all times be held free and clear of any liens, security interests or claims by or through NTTA, TxDOT or any other party, except for the specific rights and interests of NTTA and TxDOT established pursuant to this Agreement and the Trust Agreement.

(d) A separate sub-account (each a "TSA Sub-Account") of the Master Account will be established for each TSA, and a portion of the funds in the Master Account will be initially transferred to the applicable TSA Sub-Account in the amount required by and otherwise in accordance with and at the time required under the applicable TSA; provided that if the Trustee requires separate accounts for TSAs rather than TSA Sub-Accounts in order to administer the

trust and/or establish rights in or provide assurances to Developers and their respective designees and lenders intended by this Agreement, then the NTTA will establish such separate accounts to serve the same purposes and functions as TSA Sub-Accounts, and in such event all references to a TSA Sub-Account under this Agreement shall be deemed to refer to such separate accounts.

(e) The terms and conditions of the TSA Sub-Accounts, and the rights and obligations of the NTTA and the Developers (and each Developer's designees and lenders) relating thereto, shall be substantially as set forth in, and shall be consistent with, Attachment 1 to this Agreement, which is the performance security provision and related provisions under the executed or pending North Tarrant Express TSA. As contemplated in Sections 1(f) and (i) below, the NTTA will have the right and ability to cause funds in the Master Account to be contributed to a TSA Sub-Account to cover a Performance Security Shortfall (as defined in Section 1(i) hereof) related to such TSA Sub-Account.

(f) To the extent a TSA permits the NTTA to elect to transfer from a TSA Sub-Account to the Master Account any interest or other earnings in excess of the annual or other periodically required amount for the TSA Sub-Account balance, the NTTA will make such election on a timely basis whenever practicable unless the NTTA and TxDOT agree otherwise, and the transferred funds will remain in the Master Account and be available to fund (i) future TSA Sub-Accounts, (ii) increases in the amount of, or deficiencies in, the Reserve Sub-Account (as defined in Section 1(i) hereof) and (iii) distributions to TxDOT in accordance with Section 1(l) below.

(g) Funds in each TSA Sub-Account shall be invested only in TSA Sub-Account Eligible Investments (as defined in Attachment 2), and funds in the Master Account (including the Reserve Sub-Account but excluding each TSA Sub-Account) shall be invested only in Master Account Eligible Investments (as defined in Attachment 3). TxDOT shall direct the investment of funds in TSA Sub-Account Eligible Investments or Master Account Eligible Investments, as applicable, provided that liquidity of funds necessary to enable draws as and when provided to the Developer under any TSA is preserved. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the account or sub-account, as the case may be, from which money was derived for such investment, and the interest accruing thereon and any earnings realized from such investments shall be credited to the respective account or sub-account on which it was earned, and any loss resulting from such investments shall be charged to the respective account or sub-account.

(h) NTTA shall have the right to make deposits to a TSA Sub-Account from its own sources of funds for the purposes of (i) fulfilling obligations under the applicable TSA to restore or replenish TSA Sub-Account balances or (ii) placing in trust funds for disputed amounts owing or alleged owing from NTTA to the applicable Developer. NTTA shall have the right to withdraw any such deposits that are subsequently determined under the applicable TSA to not be required for either such purpose to the extent permitted by the applicable TSA.

(i) NTTA and TxDOT also shall establish pursuant to the Trust Agreement a reserve sub-account (the "Reserve Sub-Account," distinguished from each TSA Sub-Account for TSAs) under the Master Account for the purpose of setting aside a reserve for future contributions to

TSA Sub-Accounts necessary under TSAs to cover shortfalls in the balance thereof that may exist from time to time as a result of (i) the failure of the funds in the applicable TSA Sub-Account to earn interest or other returns sufficient to cover annual or other periodic growth requirements therefor under the applicable TSA and (ii) the failure of the value of TSA Sub-Account Eligible Investments and other funds in the applicable TSA Sub-Account to equal the required amount therefor under the applicable TSA (with any such shortfall being referred to herein as a "Performance Security Shortfall"). The amount to be held in the Reserve Sub-Account shall be subject to mutual approval of the NTTA and TxDOT, such approval not to be unreasonably withheld or delayed, and shall be reviewed annually. In determining such amount and adjustments thereto, NTTA and TxDOT shall consider, among other things, the size of the TSA Sub-Accounts then-existing and or anticipated during the forthcoming year, the growth rates required for each TSA Sub-Account under the applicable TSAs, the history of earnings rates and anticipated earnings rates on fund balances in such TSA Sub-Accounts, and the values and risks to value of TSA Sub-Account Eligible Investments. To the extent NTTA and TxDOT determine that the Reserve Sub-Account is over-funded, the excess shall be promptly transferred back into the Master Account. To the extent NTTA and TxDOT determine that the Reserve Sub-Account is under-funded, the shortfall shall be promptly transferred, to the extent available, from the Master Account to the Reserve Sub-Account. Amounts on deposit in the Reserve Sub-Account shall be transferred to TSA Sub-Accounts as necessary to cover Performance Security Shortfalls.

(j) Neither the Reserve Sub-Account, nor any other funds in the Master Account, shall be available to or used by the NTTA to restore or replenish funds to any TSA Sub-Account that may be drawn therefrom by the Developer under the applicable TSA.

(k) Prior to termination of the Master Account as provided below, no amounts on deposit in the Master Account, Reserve Sub-Account or any TSA Sub-Account (including amounts originally deposited therein and any and all interest and earnings on such amounts) shall be distributed to TxDOT or NTTA, except for (i) refunds and other payments to NTTA provided for in the terms set forth in Attachment 1 with respect to the applicable TSA (or as otherwise provided for by the applicable TSA and approved by TxDOT), and (ii) distributions to TxDOT in accordance with Section 1(l) below. Prior to expiration or earlier termination of a TSA, no amounts on deposit in the corresponding TSA Sub-Account shall be applied for any purpose other than the provision of performance security to the Developer under the applicable TSA, in accordance with its terms and conditions, including the terms and conditions for the Developer's withdrawal of funds from the TSA Sub-Account, except where NTTA, TxDOT and the Developer have agreed in writing to substitution of security and except for distributions as described in clauses (i) and (ii) above.

(l) Interest and other earnings on funds in the Master Account (including the Reserve Sub-Account but excluding each TSA Sub-Account) shall be swept as of December 15 of each year and distributed to TxDOT, but only if and to the extent that (i) such interest and other earnings exceed, on a cumulative basis, aggregate amounts previously deposited from the Master Account to the Reserve Sub-Account, (ii) such interest and other earnings are not needed to cover an existing shortfall in the Reserve Sub-Account and (iii) TxDOT and the NTTA reasonably determine that in the foreseeable future such interest and other earnings will not be

needed in the Master Account (including the Reserve Sub-Account) to fund reasonably expected (A) future TSA Sub-Accounts or (B) increases in the amount to be held in the Reserve Sub-Account pursuant to Section 1(i) hereof.

(m) Neither the NTTA nor TxDOT shall have any obligation to deposit additional funds into the Master Account. Without modification of the foregoing disclaimer of obligation, if at any future time the amounts on deposit in the Master Account, the Reserve Sub-Account and/or any TSA Sub-Account are, or are expected to be, insufficient for any reason (other than due to a draw by a Developer in accordance with a TSA), including additional TSAs or inadequate interest and other earnings, NTTA and TxDOT agree to meet at such time to discuss possible solutions to any such insufficiency; provided, however, that neither NTTA nor TxDOT shall be obligated to undertake any additional obligations or to waive any existing rights or benefits under this Agreement or related to any TSA.

(n) The NTTA shall not agree to any substitution of performance security under any TSA without TxDOT's prior written approval, which approval shall not be unreasonably withheld. If TxDOT approves substitution of security, in whole or in part, the funds in the particular TSA Sub-Account that are freed as a result of the provision of substitute security under the related TSA shall be transferred from the TSA Sub-Account directly to TxDOT, but only if and to the extent that (i) such funds are not needed to cover an existing shortfall in the Reserve Sub-Account and (ii) TxDOT and the NTTA reasonably determine that in the foreseeable future such funds will not be needed in the Master Account (including the Reserve Sub-Account) to fund reasonably expected (A) future TSA Sub-Accounts or (B) increases in the amount to be held in the Reserve Sub-Account pursuant to Section 1(i) hereof.

(o) NTTA shall pay, from funds other than those in the Master Account, TSA Sub-Accounts and Reserve Sub-Account, the costs to establish, maintain and administer the trust agreement and accounts thereunder, including all trustee's fees and charges. NTTA may obtain reimbursement of such costs, or portions thereof, from Developers on a pro rata basis as more specifically provided in Attachment 1.

(p) The Master Account shall be terminated and closed, and all amounts remitted to TxDOT, if and when the NTTA has no further obligations under any TSAs.

(q) Any transfers from the Master Account to TxDOT as described herein shall be free and clear of any and all claims, liens, rights or interests of or through NTTA or any other party.

2. **The Switchover Agreement.**

(a) As a further assurance to the Developers, TxDOT and the NTTA shall enter into an interagency agreement (the "Switchover Agreement") setting out procedures and committing to technological and other modifications to expedite to the greatest extent reasonably possible the switchover from the NTTA to TxDOT of tolling services under a TSA upon the NTTA's default under that TSA or other specified trigger event under that TSA approved by TxDOT. The interagency agreement shall remain in effect so long as TxDOT has an obligation to provide

tolling services under an outstanding CDA upon a specified trigger event and TxDOT or any successor or assign respecting TxDOT's tolling services operations is providing tolling services.

(b) The purpose of the Switchover Agreement is to ensure that alternative tolling services can be provided for any Developer within a time frame, and taking into account applicable project revenues, well in advance of the depletion of the applicable TSA Sub-Account.

(c) TxDOT's and the NTTA's toll operations teams will work diligently and in good faith to formulate the provisions of the Switchover Agreement. The Switchover Agreement will contain provisions obligating TxDOT and the NTTA to cooperate with each other to modify the provisions of the Switchover Agreement from time to time to the extent reasonably necessary to take into account the terms of, and to attempt to achieve consistency with, the transition plan to be prepared by the NTTA and Developers under various TSAs, including the time frames for switchover thereunder; provided that (i) such transition plans shall be consistent with TxDOT's systems and procedures for tolling services, collection and enforcement, and (ii) the time frame for switchovers shall be consistent with the time frame set forth in Section 2(f) below.

(d) As contemplated in the executed or pending North Tarrant Express TSA, one of the technical modifications to expedite switchover shall be the development (by the NTTA and the Developer in consultation and cooperation with each other) of commercially reasonable communications protocols and procedures (which may include procurement of a commercially leased communications line (if the replacement provider is to be TxDOT) or development of a secure file transfer protocol ("ftp") site and secure communications link, secure virtual private network or some combination thereof, or another commercially reasonable alternative based on then-existing technology) that are in accordance with industry standards and practices and standards comparable (taking into account then-existing technology) to those applicable to the interconnection and interoperability of the Developer's Electronic Toll Collection System with the NTTA's computer system that supports NTTA's customer service center account management functions and that will be ready to be utilized to transmit toll transaction and collection data directly to and from TxDOT as required under TxDOT's tolling services agreement if the TSA is terminated or the Developer exercises step-in rights thereunder and elects to transfer the applicable tolling services to TxDOT. The cost of the establishment, installation or leasing, testing and maintenance of such communications protocols and procedures and changes or updates thereto pursuant to the applicable TSA shall be borne by the NTTA unless and until "cost plus" pricing applies under a TSA, in which case such cost thereafter incurred shall be included in the cost plus pricing, or unless otherwise agreed by a Developer under a TSA and approved by TxDOT.

(e) The NTTA is using and shall continue using for all TSAs the TxDOT Interface Control Document in effect from time to time ("ICD"), amended for managed lane projects to support the applicable managed lane project requirements, to expedite any switchover.

(f) As of the date of this Agreement, and taking into account the issues already addressed by TxDOT's and the NTTA's toll operations teams, and subject to the last sentence in this Section 2(f), TxDOT and NTTA agree that upon establishment of the technical

modifications described in Section 2(d) for a TSA project, the worst case scenario for switchover time to TxDOT upon a NTTA default under such TSA is five business days after TxDOT receives from the Developer (i) written notice requesting TxDOT's services and affirmatively stating that the Developer has the right to step in or intervene under the TSA, (ii) correspondence, documents and other evidence establishing the Developer's right to step in or intervene, including factual evidence that the circumstances under which such action may be taken have occurred (which documents and other evidence may be delivered with the Developer's notice to TxDOT), (iii) two sets of a fully executed back-up TSA with TxDOT, in form required by TxDOT under its CDA with the Developer (which TSA form is expected to be agreed to in advance by the Developer under the terms of the applicable CDA), and (iv) complete information on the communications protocols and procedures established and in place for interconnection between the Developer's Electronic Toll Collection System and TxDOT's computer system that supports TxDOT's toll customer account management functions (the "Maximum Switchover Period"). Responsibility between NTTA and the Developer for the design, capacity and efficacy of the communications protocols and procedures shall be as set forth in the applicable TSA, and TxDOT in any event shall not have any responsibility therefor. In the event interconnection between the Developer's Electronic Toll Collection System and such computer system of TxDOT is not established or does not function according to standards, needs and requirements of TxDOT, including the ICD, within such five business days due to problems with the design, capacity or efficacy of the communications protocols and procedures, the Maximum Switchover Period shall be extended until the problems are rectified and TxDOT shall have no responsibility or liability to NTTA for resulting delay in commencement of TxDOT's services.

3. Settlement of SH 121 Project Agreement Dispute; Releases.

(a) In settlement of the Dispute, the NTTA will deposit \$25,598,767.00 (which shall be considered part of the Additional Upfront Payment under the SH 121 Project Agreement) into the Master Account as contemplated by Section 1(b) above, rather than pay the same directly to TxDOT, to be held and used as described herein.

(b) TxDOT hereby irrevocably and unconditionally releases, acquits, and forever discharges the NTTA from and against any and all claims, suits, causes of action, judgments, cross-claims, counterclaims, rights, demands, costs, expenses, fees (including, without limitation, attorneys' and consultants' fees), obligations, liabilities, losses and damages of every kind and character whatsoever in law or equity, asserted or unasserted, accrued or unaccrued, express or implied, foreseen or unforeseen, real or imaginary, suspected or unsuspected, known or unknown, liquidated or non-liquidated, of any kind or nature or description whatsoever directly related to the Dispute, save and except the NTTA's obligations under this Agreement.

(c) The NTTA hereby irrevocably and unconditionally releases, acquits, and forever discharges TxDOT from and against any and all claims, suits, causes of action, judgments, cross-claims, counterclaims, rights, demands, costs, expenses, fees, (including, without limitation, attorneys' and consultants' fees), obligations, liabilities, losses and damages of every kind and character whatsoever in law or equity, asserted or unasserted, accrued or unaccrued, express or implied, foreseen or unforeseen, real or imaginary, suspected or unsuspected, known or

unknown, liquidated or non-liquidated, of any kind or nature or description whatsoever directly related to the Dispute, save and except TxDOT's obligations under this Agreement.

(d) This Agreement fully and completely resolves any and all actual and potential claims between TxDOT and the NTTA regarding the Dispute.

4. **IH 635 TSA.** The TSA for the IH 635 Managed Lanes Project shall be executed without change to the provisions requiring a letter of credit as the performance security. After the execution of the CDA and the TSA for the IH 635 Managed Lanes Project, TxDOT and the NTTA shall meet with the selected IH 635 Managed Lane Project Developer to discuss the substitution of a performance security arrangement different from a letter of credit, which performance security arrangement may include, if the NTTA and Developer so agree, the establishment and funding of a TSA Sub-Account in accordance with Section 1 of this Agreement on terms and conditions reasonably acceptable to TxDOT.

5. **Other TSAs.** Except as otherwise provided in this Section 5, it is the intention of TxDOT and the NTTA that funds in the Master Account will be transferred to TSA Sub-Accounts to serve as performance security for the North Tarrant Express TSA and for other TSAs (which may or may not include the TSA for the IH 635 Managed Lane Project). However, before a new TSA is added to the pool of TSAs and an appropriate TSA Sub-Account funded from the Master Account is created to secure NTTA's payment obligations under such new TSA, TxDOT and the NTTA shall review the reasonably anticipated future funding obligations for existing TSA Sub-Accounts under, and the terms of, the then-existing TSAs concerning performance security, to confirm the adequacy of the available funds in the Master Account to discharge TSA Sub-Account funding obligations under such TSAs. TxDOT and the NTTA intend, through additional future refinements to and under the Switchover Agreement, to further shorten the Maximum Switchover Period if and to the extent technically and logistically practicable for NTTA and TxDOT to achieve, in order to maximize the number of TSAs that funds in the Master Account can prudently secure, thereby eliminating the necessity for alternative, and more costly, forms of performance security for TSAs.

6. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between NTTA and TxDOT concerning the subject matter hereof, and supersedes any prior or contemporaneous oral or written agreements or representations concerning such subject matter. This Agreement may only be amended in writing signed by NTTA and TxDOT.

7. **Successors and Assigns.** This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors, including without limitation any successor public agency or political subdivision to TxDOT or NTTA. Neither TxDOT nor NTTA shall assign its interest in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law; provided, however, that TxDOT or NTTA, as the case may be, may assign its interest in this Agreement, without the consent of the other, to any person or entity who succeeds to all of its governmental powers and authority; and provided further however, that TxDOT may assign its interests and obligations regarding back-up tolling services under Section 2 of this Agreement to any governmental entity that succeeds to all or a material part of TxDOT's tolling service operations. This Section 7 shall not require the

consent of the other party in order for a party to retain a contractor or consultant to manage or perform on behalf of the retaining party all or any portion of the retaining party's tolling services, functions, operations or assets.

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

9. **Amendment.** This Agreement can be modified or amended only by a written document duly executed by the parties hereto.

10. **Notices.** All notices to either party by the other given under this Agreement shall be in writing and delivered by personal service (including express or courier service), by facsimile transmission, or by certified or registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

If to NTTA:

Delivered personally:

North Texas Tollway Authority
5900 W. Plano Parkway, Suite 100
Plano, Texas 75093
Attention: Executive Director

Delivered by mail:

North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026
Attention: Executive Director

If to TxDOT:

Texas Department of Transportation
Texas Turnpike Authority Division
125 E. 11th Street
Austin, Texas 78701
Attention: Ed Pensock, Jr., P.E.

With copies to:

Texas Department of Transportation
Office of General Counsel
125 E. 11th Street
Austin, Texas 78701
Attention: General Counsel

All personally delivered notices shall be deemed given on the date so delivered. Notice by facsimile shall be deemed given on the date indicated by written confirmation of transmission to, in the case of NTTA, (214) 528-4826 or, in the case of TxDOT, (512) 936-0970, with a copy to (512) 475-3070. All mailed notices shall be deemed given three (3) business days after being deposited in the mail. Either party hereto may change the above address or facsimile number by sending written notice of such change to the other in the manner provided for above.

11. **Limitations.** All covenants and obligations of TxDOT and NTTA under this Agreement shall be deemed to be valid covenants and obligations of said entities, and no officer, director, or employee of TxDOT or NTTA shall have any personal obligations or liability hereunder.

12. **Sole Benefit.** This Agreement is entered into for the sole benefit of TxDOT and NTTA and their respective successors and permitted assigns. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any third party developer or third party operator of any roadway or the public in general.

13. **Relationship of the Parties.** Nothing in this Agreement shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent between TxDOT and NTTA, nor any partnership or joint enterprise.

14. **Authorization.** Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement in accordance with its terms, other than those that have been obtained.

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

16. **Further Assurances.** Each party hereto will execute and deliver any and all agreements, contracts and additional documents as may be reasonably requested by the other party hereto in order to carry out the intent of this Agreement.

17. **Waiver.** No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be consent or waiver to or of any other breach or default by such party hereunder. Except as otherwise provided herein, failure on the part of any party hereto to complain of any act or failure to act by the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

18. **Captions.** The captions used for the Articles and Sections in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement or any Article or Section hereof.

19. **Exhibits.** Exhibits referred to in this Agreement and attached hereto are incorporated herein in full by this reference as if each of such exhibits were set forth in the body of this Agreement.

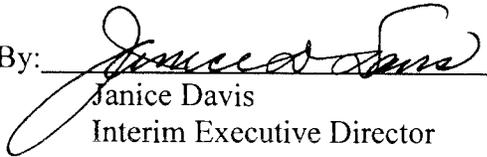
20. **Governing Law.** The laws of the State of Texas shall govern this Agreement.

21. **Counterparts; Facsimile Signature.** This Agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original and all of which, taken together, shall be construed as a single instrument.

[Signature page follows]

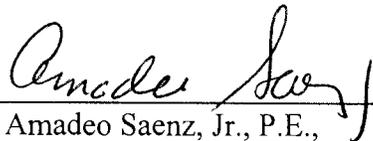
IN WITNESS WHEREOF, TxDOT and NTTA have executed this Agreement in multiple counterparts on the dates shown hereinbelow, effective on the Effective Date listed above.

**NORTH TEXAS TOLLWAY
AUTHORITY**

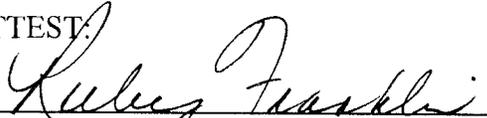
By: 
Janice Davis
Interim Executive Director

Date: 5-28-2009

**TEXAS DEPARTMENT OF
TRANSPORTATION**

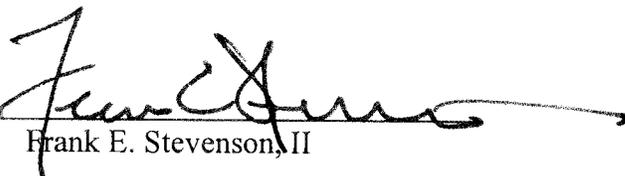
By: 
Amadeo Saenz, Jr., P.E.,
Executive Director

Date: 5/30/09

ATTEST:

Ruby Franklin,
Secretary

APPROVED AS TO FORM:

LOCKE LORD BISSELL & LIDDELL LLP
General Counsel to the Authority

By: 
Frank E. Stevenson, II

ATTACHMENT 1

Provisions for Performance Security Relating to North Tarrant Express TSA

Sections 6(i)(i) and (ii):

(i) Disputed Amounts.

(i) In the event either Party disputes any amount that is to be payable by or to such Party pursuant to a monthly adjustment in accordance with Section 6(h) [Section 6(h) deals with adjustments in various charges and payments under the North Tarrant Express TSA.], then (A) such Party shall, within 14 days after delivering or receiving (as the case may be) notice or an invoice or statement for such amount, deliver written notice to the other Party of the amount in dispute and the reasons for dispute and (B) the Party from whom the disputed amount is payable shall, within the time period for payment of the invoice, deposit an amount equal to 105% of the amount in dispute into (1) the Toll Operator Dispute Account, if Developer is the Party from whom the disputed amount is payable or (2) the Master Cash Collateral Trust Account, if NTTA is the Party from whom the disputed amount is payable. With respect to any such deposit made by NTTA into the Master Cash Collateral Trust Account, NTTA shall simultaneously direct the Collateral Account Trustee to immediately deposit the amount thereof into the Facility Cash Collateral Sub-Account. Immediately upon making a deposit pursuant to the second preceding sentence, the depositing Party shall notify the other Party in writing that such deposit has been made.

(ii) The amount so deposited under clause (i) above shall be maintained in the Toll Operator Dispute Account or the Facility Cash Collateral Sub-Account, as the case may be, until the dispute is finally determined, at which time all amounts due the payee Party, if any, shall be immediately released from the Toll Operator Dispute Account or the Facility Cash Collateral Sub-Account, as the case may be, to pay the amount due, including any late charge and interest. If the amount in the Toll Operator Dispute Account or the Facility Cash Collateral Sub-Account, as the case may be, is insufficient to pay the amount finally determined to be due, including any late charge and interest, the payor Party shall immediately satisfy the balance of the amount due from other sources. If the amount in the Toll Operator Dispute Account or the Facility Cash Collateral Sub-Account, as the case may be, exceeds the amount finally determined to be due, if any, the excess shall be immediately released to the payor Party, together with any interest earnings in the Toll Operator Dispute Account or the Facility Cash Collateral Sub-Account, as the case may be, attributable to the excess funds so released to the payor Party. Notwithstanding the foregoing, if in connection with any dispute between the Parties concerning amounts owing or alleged to be owing by NTTA to Developer pursuant to Section 6(h), (A) NTTA has invoked the provisions of this Section 6(i) and caused the required amount to be deposited into the Facility Cash Collateral Sub-Account, (B) either NTTA or Developer has initiated the dispute resolution procedures

provided for in Section 20 and (C) NTTA at any time fails to comply with the requirements of Section 20 or participate in such dispute resolution procedures, then Developer shall be entitled to withdraw an amount equal to the amount in dispute, plus any applicable interest and late charges, from the Facility Cash Collateral Sub-Account pursuant to Section 16(d) (including the provisions of Section 16(d) requiring that Developer give NTTA and the Collateral Account Trustee not less than three Business Days prior written notice of such withdrawal).

Section 16:

16. Performance Security

(a) Not later than six months prior to the Service Commencement Date for the Facility (or for the Facility Segment that first achieves Service Commencement, if Developer develops the Facility in Facility Segments) and as a condition to the right to receive compensation for services hereunder, (i) NTTA shall establish a master cash collateral trust account (the "Master Cash Collateral Trust Account"), on commercially reasonable terms for similar accounts, with a trustee (which shall be a Qualified Financial Institution) (the "Collateral Account Trustee") and shall cause \$25,598,767 to be funded in cash therein pursuant to certain agreements between NTTA and TxDOT; and (ii) NTTA shall cause the Collateral Account Trustee to establish a separate sub-account, for the sole benefit of Developer, Developer's designee and/or Developer's Lenders (the "Facility Cash Collateral Sub-Account"), and to deposit and hold in the Facility Cash Collateral Sub-Account, from funds in the Master Cash Collateral Trust Account, an amount equal to the lesser of (x) the amount determined by applying the methodology set forth in Attachment 5, as such methodology is applied in respect of the Service Year that, under Developer's Base Case Financial Model, is projected to have the highest annual revenues during the Term, [Note: Figures in Attachment 5 are particular to North Tarrant Express TSA; they will vary by TSA] or (y) \$8,600,000 plus interest on such \$8,600,000 at the rate of two percent (2%) per annum, compounded annually, accruing from January 1, 2009 until the date of actual funding in the Facility Cash Collateral Sub-Account. [Note: Figures in clause (y) above are particular to North Tarrant Express TSA; they will vary by TSA] If NTTA shall fail to provide performance security as required by clause (ii) of the preceding sentence, such failure shall constitute a "Step-In Trigger Default." The methodology to be used pursuant to clause (ii) (x) of the second preceding sentence includes the determination of a net present value amount, determined as of the date funding is required and utilizing a discount rate of 2% per annum. Developer agrees that its projection of revenues for the Service Year utilized in such determination shall be determined in good faith and consistent with the methodology used to project revenues in its Base Case Financial Model for all other Service Years during the Term. Such amount so deposited in the Facility Cash Collateral Sub-Account, and any additional amounts and earnings added thereto pursuant to the terms of this Section 16, shall be held by the Collateral Account Trustee, free and clear of any liens, security interests or claims by NTTA or any other Person, other than claims for withdrawals by Developer, Developer's Lenders or Developer's designee hereunder, and, subject to the provisions of this

Section 16, shall be available for withdrawal by Developer, Developer's Lenders or Developer's designee for Developer's or such Lenders' or designee's use and application (free and clear of any liens, security interests, or claims by NTTA or any other Person) in accordance with, and for the purposes of paying the amounts described in, Section 16(d). Notwithstanding the foregoing, however, (i) amounts deposited in the Facility Cash Collateral Sub-Account pursuant to Section 6(i) and earnings on such amounts shall be subject to payment to NTTA to the extent so determined pursuant to Section 6(i), and (ii) NTTA may require that certain amounts be transferred from the Facility Cash Collateral Sub-Account to the Master Cash Collateral Trust Account from time to time in accordance with Section 16(c). Developer acknowledges and agrees that amounts on deposit in the Master Cash Collateral Trust Account and/or in any other sub-accounts thereunder (other than amounts on deposit at any time in the Facility Cash Collateral Sub-Account) shall not be available for payment to or withdrawal by Developer and may at any time be deposited or reserved (whether in other sub-accounts or otherwise) and/or paid or made available for payment to or withdrawal by other Persons, including, but not limited to, developers under other tolling services agreements to which NTTA is a party. Developer shall be entitled to grant to its Lenders, as security for Facility Debt, a security interest in its rights to withdraw funds from the Facility Cash Collateral Sub-Account pursuant to this Section 16. NTTA shall have no obligation to fund or cause to be deposited in the Facility Cash Collateral Sub-Account any amounts over and above the amount determined pursuant to the first sentence of this Section 16(a), additional amounts and earnings to be deposited therein pursuant to Section 16(b) and (c) and additional amounts to be furnished and deposited in connection with NTTA's replenishment obligations under Section 16(g).

(b) The amount required to be on deposit in the Facility Cash Collateral Sub-Account shall be subject to adjustment on each Required Performance Security Adjustment Date. NTTA shall cause to be on deposit in the Facility Cash Collateral Sub-Account an amount at least equal to the applicable Required Performance Security Amount on each applicable Required Performance Security Adjustment Date; provided, however, that the amount required to be on deposit in the Facility Cash Collateral Sub-Account on any Required Performance Security Adjustment Date may be less than the applicable Required Performance Security Amount if the deficiency is due to a withdrawal or withdrawals from the Facility Cash Collateral Sub-Account pursuant to Section 16(d) and the deadline for NTTA's replenishment of such withdrawal has not yet occurred, but any such deficiency must be restored as contemplated by, and within the period stated in, Section 16(g). In determining whether the amount on deposit in the Facility Cash Collateral Sub-Account is at least equal to the Required Performance Security Amount, there shall be excluded from such determination any amounts on deposit therein pursuant to Section 6(i) and any earnings on any such amounts deposited therein pursuant to Section 6(i). If NTTA shall fail to comply with its obligation pursuant to the second sentence of this Section 16(b) and such failure shall continue for two Business Days on which the Collateral Account Trustee is open for business following the applicable Required Performance Security Adjustment Date, such failure shall constitute a "Step-In Trigger Default."

(c) Amounts held in the Facility Cash Collateral Sub-Account may be invested only in Eligible Investments. NTTA and Developer acknowledge that TxDOT shall make decisions on investments in Eligible Investments. Earnings on amounts held in the Facility Cash Collateral Sub-Account shall be deposited from time to time in the Facility Cash Collateral Sub-Account. Within two Business Days following each Monthly Valuation Date (subject to extension of such deadline to the next Business Day thereafter on which the Collateral Account Trustee is open for business, if the Collateral Account Trustee is not open for business on both such Business Days), the Collateral Account Trustee shall determine, and shall notify NTTA and Developer of, the value, as of the applicable Monthly Valuation Date, of amounts on deposit in the Facility Cash Collateral Sub-Account on such Monthly Valuation Date. Such notice from the Collateral Account Trustee also shall state the Required Performance Security Amount for the period in which the applicable Monthly Valuation Date occurs (as such period is determined pursuant to the definition of the "Required Performance Security Amount") and the amount by which the value of such amounts on deposit in the Facility Cash Collateral Sub-Account as of the applicable Monthly Valuation Date either exceeds or is less than such Required Performance Security Amount for the relevant period, as the case may be. If the value of such amounts on deposit in the Facility Cash Collateral Sub-Account is less than the applicable Required Performance Security Amount, NTTA shall cause to be funded into the Facility Cash Collateral Sub-Account from the Master Cash Collateral Trust Account or other sources, within two Business Days after receipt of such notice from the Collateral Account Trustee (subject to extension of such deadline to the next Business Day thereafter on which the Collateral Account Trustee is open for business, if the Collateral Account Trustee is not open for business on both such Business Days), an amount that is sufficient to restore in full the amount of such deficiency, and if NTTA shall fail to cause such amount to be so funded by such deadline, then such failure shall constitute a "Step-In Trigger Default"; provided, however, that the amount required to be on deposit in the Facility Cash Collateral Sub-Account on any Monthly Valuation Date may be less than the applicable Required Performance Security Amount if the deficiency is due to a withdrawal or withdrawals from the Facility Cash Collateral Sub-Account pursuant to Section 16(d) and the deadline for NTTA's replenishment of such withdrawal has not yet occurred, but any such deficiency must be restored as contemplated by, and within the period stated in, Section 16(g). If the value of amounts on deposit in the Facility Cash Collateral Sub-Account as of the applicable Monthly Valuation Date exceeds the Required Performance Security Amount for such Monthly Valuation Date, then NTTA may at its election, by written notice to the Collateral Account Trustee given within ten days following NTTA's receipt of such notice from the Collateral Account Trustee, require the Collateral Account Trustee to transfer such excess from the Facility Cash Collateral Sub-Account to the Master Cash Collateral Trust Account; provided, however, that for purposes of determining any excess amounts eligible for transfer from the Facility Cash Collateral Sub-Account to the Master Cash Collateral Trust Account (but not for purposes of determining any deficiency that NTTA is required to restore) on each of the two Monthly Valuation Dates immediately preceding a Required Performance Security Adjustment Date, only the amount, if any, by which the value of amounts on

deposit in the Facility Cash Collateral Sub-Account as of the applicable Monthly Valuation Date exceeds the amount of the Required Performance Security Amount, as the same is to be adjusted on the immediately succeeding Required Performance Security Adjustment Date, shall be eligible for transfer. (For example, assuming (1) the value of amounts on deposit in the Facility Cash Collateral Sub-Account is \$9,700,000 on each of the three Monthly Valuation Dates immediately prior to a Required Performance Security Adjustment Date, (2) the Required Performance Security Amount for the current 12-month period ending on the day before such immediately succeeding Required Performance Security Adjustment Date is \$9,400,000 and (3) the Required Performance Security Amount that will be required as of such immediately succeeding Required Performance Security Adjustment Date will be \$9,588,000, then the amount eligible for transfer on such three Monthly Valuation Dates, would be \$300,000 for the Monthly Valuation Date in the third month prior to the Required Performance Security Adjustment Date, \$112,000 for the Monthly Valuation Date in the second month prior to the Required Performance Security Adjustment Date and \$112,000 for the Monthly Valuation Date in the last month prior to the Required Performance Security Adjustment Date.) [Note: Figures in the foregoing clauses (1) – (3) are particular to the North Tarrant Express TSA; they will vary by TSA] Upon its receipt of any notice from NTTA requiring the transfer of an applicable excess amount, the Collateral Account Trustee shall so transfer the applicable amount to the Master Cash Collateral Trust Account, and such amount thereupon may be used for other purposes (unrelated to this Tolling Services Agreement or the Facility). For purposes of determining the value of amounts required to be on deposit in the Facility Cash Collateral Sub-Account as of any applicable Monthly Valuation Date, the Collateral Account Trustee shall exclude from such calculation any amounts deposited therein pursuant to Section 6(i) and earnings on such amounts deposited pursuant to Section 6(i). The agreement with the Collateral Account Trustee shall require it to make such determination of value in a commercially reasonable manner and in accordance with generally accepted accounting principles consistently applied. Such determination of value by the Collateral Account Trustee shall be final and binding on the Parties, absent manifest error. For the avoidance of doubt, the decline at any time or from time to time in the value of the amounts on deposit in the Facility Cash Collateral Sub-Account to an amount that is less than the applicable Required Performance Security Amount due to a decline in value of the Eligible Investments (as distinguished from a failure by NTTA to cause to be on deposit in the Facility Cash Collateral Sub-Account additional amounts to satisfy such a deficiency in connection with a Required Performance Security Adjustment Date or Monthly Valuation Date adjustment in accordance with Section 16(b) or this Section 16(c)) shall not constitute a “Step-In Trigger Default” or other default under this Tolling Services Agreement.

(d) Developer shall have the right to withdraw funds from the Facility Cash Collateral Sub-Account on any Business Day on which the Collateral Account Trustee is open for business after not less than three Business Days’ prior written notice to NTTA and the Collateral Account Trustee if NTTA has failed to make any payment required to be made by NTTA under this Tolling Services Agreement, including the payment obligations under Section 7, any adjustment payment obligation of NTTA under Section 6(h), the

obligation to refund to Developer any excessive billing of fees and charges, and obligations to pay interest and other damages (including any damages owing by NTTA in connection with any exercise by Developer of its step-in rights pursuant to Section 19(d) hereof, including damages relating to (i) any Toll Revenues lost during the period of transition of services from NTTA to the replacement tolling services provider assuming the responsibility for the performance of such services pursuant to Developer's exercise of such step-in rights and (ii) subject to Section 19(d)(iv) hereof, the costs and expenses of the transition of such services from NTTA to the replacement tolling services provider). Notwithstanding the foregoing, if NTTA shall have deposited amounts into the Facility Cash Collateral Sub-Account pursuant to Section 6(i) in connection with a dispute concerning any amount owing or alleged to be owing by NTTA to Developer pursuant to Section 6(h), then (x) Developer's right to make any withdrawal from the Facility Cash Collateral Sub-Account for payment of the disputed amount shall be subject to the determination of the amount, if any, payable to Developer as contemplated by Section 6(i) or such earlier time, if any, as Developer shall be entitled to withdraw such amount pursuant to the last sentence of Section 6(i)(ii) and (y) in connection with such a withdrawal following such determination, Developer shall be deemed to have first withdrawn amounts deposited by NTTA pursuant to Section 6(i) and any earnings thereon and then (to the extent, if any, that such amounts are insufficient to pay in full the amount owing by NTTA) to have withdrawn other amounts on deposit in the Facility Cash Collateral Sub-Account. Developer's right to withdraw funds from the Facility Cash Collateral Sub-Account shall not be conditioned on prior resort to any other security or to NTTA. If, at the time Developer or its designee attempts to withdraw funds from the Facility Cash Collateral Sub-Account, there are not adequate funds therein to pay in full the amounts then due and payable to Developer in respect of which such claim is made, then such inadequacy shall constitute a "Step-In Trigger Default."

(e) In connection with any withdrawal from the Facility Cash Collateral Sub-Account by Developer pursuant to Section 16(d), Developer shall include in the written notice required under Section 16(d) a statement and description of the amount claimed. Developer shall have the right and obligation to use and apply the proceeds of each such withdrawal toward satisfaction of the amounts described in Section 16(d) for which such withdrawal was made, and upon receipt of each withdrawal, the amounts owing from NTTA to Developer in respect of which such withdrawal has been made shall be deemed to have been paid in full (to the extent that the amounts withdrawn are sufficient to pay in full such amounts owing from NTTA to Developer); provided, however, that if Developer shall for any reason be required to refund all or any portion of a withdrawal (other than amounts determined to exceed the related obligations owing by NTTA to Developer), then the related obligation (or the portion thereof previously paid for which such refund may subsequently be required) shall be deemed unpaid and owing from and after the date of such refund unless and until paid in full, whether by payment by NTTA or a subsequent withdrawal by Developer from the Facility Cash Collateral Sub-Account. If Developer shall receive proceeds of such a withdrawal in excess of the relevant obligations or liabilities (including, without limitation, any amount subsequently determined to be an excess amount due to recovery of Toll Revenues previously thought

to be lost or recovery from other sources of any costs or expenses of the transition of tolling services from NTTA to the replacement tolling services provider), Developer shall promptly refund the excess to the Collateral Account Trustee, together with any interest thereon that may be owing pursuant to Section 16(i), with the amount of such refund to be deposited in the Facility Cash Collateral Sub-Account, except to the extent that (i) NTTA already has provided funds to the Collateral Account Trustee to be deposited in and replenish the Facility Cash Collateral Sub-Account for such excess amount or (ii) such excess is attributable to a deposit made by NTTA pursuant to Section 6(i) that exceeded the related obligation that was determined to be payable by NTTA pursuant to Section 6(i), in which case the Collateral Account Trustee shall refund to NTTA the excess amount (to the extent of the amount of funds so provided by NTTA, together with any interest thereon that may be owing pursuant to Section 16(i)).

(f) NTTA acknowledges that the improper presentment of a notice and claim for a withdrawal from the Facility Cash Collateral Sub-Account could not under any circumstances cause NTTA injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy, provided, however, that NTTA acknowledges and agrees that any notice, claim and withdrawal that are properly given and made hereunder shall not entitle NTTA to any claim whatsoever, except for any claims to refunds in accordance with the terms hereof. Accordingly, NTTA covenants (i) not to request or instruct the Collateral Account Trustee to refrain from permitting Developer or Developer's designee to withdraw funds from the Facility Cash Collateral Sub-Account in accordance with the terms of this Section 16, (ii) to include terms in the instrument creating and governing the Master Cash Collateral Trust Account and the Facility Cash Collateral Sub-Account authorizing the Collateral Account Trustee to permit Developer to withdraw funds therefrom in accordance with the terms of this Section 16, notwithstanding any objection thereto by NTTA, and (iii) not to commence or pursue any legal proceeding seeking, and NTTA irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any withdrawal from the Facility Cash Collateral Sub-Account. Any breach by NTTA of clause (i) or (iii) of the preceding sentence shall constitute a "Step-In Trigger Default."

(g) If Developer or its designee withdraws any amount from the Facility Cash Collateral Sub-Account after giving the prior written notice required pursuant to Section 16(d), then, not later than five Business Days after such withdrawal is made (provided that such fifth Business Day is a Business Day on which the Collateral Account Trustee is open for business, and if it is not, then such deadline shall be extended to the next succeeding Business Day on which the Collateral Account Trustee is open for business), NTTA shall provide to the Collateral Account Trustee, in cash, and direct the Collateral Account Trustee to immediately deposit into the Facility Cash Collateral Sub-Account, an amount sufficient to restore the balance on deposit in the Facility Cash Collateral Sub-Account to the balance thereof immediately prior to such withdrawal by Developer or its designee. Notwithstanding the foregoing, NTTA shall not be required to replenish the Facility Cash Collateral Sub-Account for amounts withdrawn by Developer in respect of an obligation determined to be payable pursuant to Section 6(i) (including

any late charges and interest) to the extent that the amount withdrawn did not exceed amounts deposited by NTTA in respect of such obligation, plus interest and earnings accrued on such deposit. If NTTA shall fail to provide to the Collateral Account Trustee, in cash, and direct the Collateral Account Trustee to immediately deposit into the Facility Cash Collateral Sub-Account, the replenishment amount required by this Section 16(g) within the required period of time, such failure shall constitute a "Step-In Trigger Default."

(h) The cost of the establishment, maintenance and administration of the Master Cash Collateral Trust Account and the Facility Cash Collateral Sub-Account shall be reimbursed to NTTA by Developer within 30 days following NTTA's delivery to Developer of an invoice, together with reasonable supporting information, for such cost; provided, if at any applicable time the Master Cash Collateral Trust Account is maintained for the benefit of not only Developer hereunder but also any other Person or Persons (other than NTTA or TxDOT), including one or more additional developers under other tolling services agreements to which NTTA is a party from time to time, then NTTA shall allocate such costs among Developer and such other Person or Persons on a prorata basis, determined based on the relative amounts maintained on deposit for the benefit of Developer and such other Person or Persons. NTTA shall pay, however, all charges imposed in connection with Developer's, Developer's Lenders or Developer's designee's proper presentment of notices and claims for withdrawals from the Facility Cash Collateral Sub-Account and replenishments of the Facility Cash Collateral Sub-Account in accordance with Section 16(g) following any such withdrawal therefrom.

(i) In the event any dispute should arise between the Parties concerning a withdrawal from the Facility Cash Collateral Sub-Account and it shall be determined pursuant to Section 20 both that (i) Developer shall have withdrawn an amount or amounts therefrom in excess of the amounts it was entitled to receive hereunder and (ii) Developer shall have withdrawn such amounts other than in good faith, then Developer shall promptly refund such excess to the Collateral Account Trustee, together with interest thereon from the date of the applicable withdrawal(s) to the date of repayment at a floating rate equal to the LIBOR in effect from time to time, plus 400 basis points. The provisions hereof concerning establishment of the Master Cash Collateral Trust Account and the Facility Cash Collateral Sub-Account and the ability of Developer to obtain withdrawals from the Facility Cash Collateral Sub-Account shall not constitute a waiver by NTTA of any right to dispute the amount or amounts of funds obtained by Developer or Developer's designee (however, such right to dispute any such withdrawal by Developer or Developer's designee shall not in any event be a condition to such withdrawal or preclude such withdrawal).

(j) NTTA at any time or from time to time during the Term may propose to provide substitute performance security hereunder in lieu of the Master Cash Collateral Trust Account and the Facility Cash Collateral Sub-Account provided for herein. Such substitute performance security may be in the form of a letter of credit, other cash collateral or other form of performance security and may be provided by NTTA or on

behalf of NTTA by another party or organization or combination of parties. Substitute performance security proposed pursuant to this Section 16(j) may include, without limitation, performance security provided by the State of Texas or any agency or political subdivision thereof, or any other public mobility organization located in, or with responsibility for, the area in which the Facility is located (including, without limitation, the North Central Texas Council of Governments). Any such substitute performance security provided pursuant to this Section 16(j), and the provider thereof, shall be subject to (i) the prior written approval of Developer in its sole and absolute discretion and (ii) the prior written approval of TxDOT, as provided in the Agreement. The cost of any such substitute performance security provided in lieu of the Master Cash Collateral Trust Account and the Facility Cash Collateral Sub-Account shall be reimbursed to the provider thereof by Developer within 30 days following NTTA's or such other provider's delivery to Developer of an invoice, together with reasonable supporting information, for such cost, and, if such cost is so reimbursed, NTTA shall not include any cost in respect thereof in the calculation or charge of the NTTA Compensation payable hereunder; provided, however, that the substitute performance security provider shall have the option (in its sole and absolute discretion and without any obligation to do so) to provide such substitute performance security at such provider's own cost and expense. Any provider of substitute performance security as contemplated by this Section 16(j) is an intended beneficiary of the provisions of this Section 16(j).

(k) The terms of the instrument creating and governing the Master Cash Collateral Trust Account and the Facility Cash Collateral Sub-Account shall be subject to Developer's reasonable prior written approval for the sole purposes of (i) confirming that the terms thereof are consistent with the terms of this Section 16 and (ii) confirming Developer's status as an intended third party beneficiary thereof to the extent of Developers' rights and the Collateral Account Trustee's and NTTA's respective obligations stated therein regarding the Facility Cash Collateral Sub-Account.

Selected Definitions:

Monthly Valuation Date means the last day of each calendar month that is a Business Day that is also a day on which the Collateral Account Trustee is open for business. The first Monthly Valuation Date shall be the last day of the calendar month in which NTTA causes the initial amount to be funded into the Facility Cash Collateral Sub-Account pursuant to clause (ii) of Section 16(a).

Qualified Financial Institution means a United States national bank with capital, surplus and undivided profits aggregating at least \$100,000,000, the short term securities of which are rated at least A-1 by Standard & Poor's Rating Services, a division of the McGraw Hill Companies, and at least P-1 by Moody's Investors Services, Inc.

Required Performance Security Adjustment Date means (a) in the case of the first Required Performance Security Adjustment Date, the July 1 that immediately follows the date of the funding of the amount initially funded into the Facility Cash Collateral Sub-Account pursuant to

clause (ii) of Section 16(a), and (b) in the case of each subsequent Required Performance Security Adjustment Date, each succeeding July 1 thereafter during the Term.

Required Performance Security Amount shall mean (a) for the period beginning on the date of the funding of the amount initially funded into the Facility Cash Collateral Sub-Account pursuant to clause (ii) of Section 16(a) (the “Initial Funding Date”) and ending on and including the immediately following June 30, such amount that is initially funded pursuant to clause (ii) of Section 16(a) (the “Initial Performance Security Amount”); (b) for the next succeeding 12 month period beginning on the first Required Performance Security Adjustment Date and ending on and including the day immediately preceding the second Required Performance Security Adjustment Date, the amount that is equal to the sum of (x) the Initial Performance Security Amount plus (y) interest on the Initial Performance Security Amount at the rate of two percent (2%) per annum for the period from and after the Initial Funding Date and ending on and including the June 30 immediately following the Initial Funding Date; and (c) for each succeeding 12 month period beginning on a Required Performance Security Adjustment Date and ending on and including the day immediately preceding the next Required Performance Security Adjustment Date, the amount that is equal to 102% of the amount that was the Required Performance Security Amount for the immediately preceding 12 month period. For example, if the Initial Performance Security Amount is \$8,900,000 and such amount is funded on April 1, then the Required Performance Security Amount as of the first Required Performance Security Adjustment Date (i.e., the following July 1) would be \$8,944,378.08 (assuming a 365 day calendar year), and the Required Performance Security Amount as of the second Required Performance Security Adjustment Date (i.e., the next July 1) would be \$9,123,265.64. [Note: Figures in the preceding sentence are particular to the North Tarrant Express TSA; they will vary by TSA]

ATTACHMENT 2

TSA Sub-Account Eligible Investments

TSA Sub-Account Eligible Investments means any one or more of the following securities:

- (a) Direct obligations of, and obligations fully and unconditionally guaranteed by, (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;
- (b) Demand or time deposits with any depository institution or trust company, provided that any such demand or time deposit or certificate of deposit is fully insured by the Federal Deposit Insurance Corporation;
- (c) Any money market funds, the investments of which consist of cash and obligations fully and unconditionally guaranteed by (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" or higher by a Rating Agency; and
- (d) Other investments that are permitted by applicable law and agreed to in writing by TxDOT, NTTA and Developer;

provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

ATTACHMENT 3

Master Account (excluding TSA Sub-Accounts) Eligible Investments

Master Account Eligible Investments means any investments permitted under the Public Funds Investment Act, Chapter 2256, Texas Government Code.