

# Texas Department of Transportation<sup>®</sup>

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

March 1, 2013

Mr. Nicolas Rubio  
Authorized Representative  
NTE Mobility Partners Segments 3, LLC  
9001 Airport Freeway  
Suite 600  
North Richland Hills, TX 76180

Mr. Sven Kottwitz  
Authorized Representative  
NTE Mobility Partners Segments 3, LLC  
9001 Airport Freeway  
Suite 600  
North Richland Hills, TX 76180

Dear Mr. Rubio & Mr. Kottwitz:

This letter is being delivered to you pursuant to the Facility Agreement for the North Tarrant Express Segments 3A & 3B Facility (the "Facility Agreement") between the Texas Department of Transportation ("TxDOT") and NTE Mobility Partners Segments 3 LLC (the "Developer"). Capitalized terms not otherwise defined herein shall have the meaning given those terms in the Facility Agreement.

TxDOT hereby (1) appoints Judge Joseph Hart, Michael Loulakis, Don Gavin, Bill Franczek, and Jim Groton as candidates who may serve on the Disputes Board and who shall comprise TxDOT's initial Disputes Board Member Candidates List, such candidates being the same persons as those who executed the disclosure statements delivered by TxDOT to Developer prior to the date hereof, and (2) approves Michael Wilk, Randall Butler, Alvin Zimmerman, Judge Susan S. Soussan, and Thomas R. McDade as candidates who may serve on the Disputes Board and who shall comprise Developer's initial Disputes Board Member Candidates List, such candidates being the same persons as those who executed the disclosure statements delivered by the Developer to TxDOT prior to the date hereof.

Sincerely,

Phil Wilson  
Executive Director

OUR GOALS

MAINTAIN A SAFE SYSTEM • ADDRESS CONGESTION • CONNECT TEXAS COMMUNITIES • BEST IN CLASS STATE AGENCY

*An Equal Opportunity Employer*

**NTE MOBILITY PARTNERS SEGMENTS 3 LLC**

March 1, 2013

Phil Wilson, Executive Director  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701

Re: North Tarrant Express Segments 3A & 3B Facility Agreement  
Initial Disputes Board Member Candidates List

Dear Mr. Wilson:

This letter is being delivered to you pursuant to the Facility Agreement for the North Tarrant Express Segments 3A & 3B Facility (the "Facility Agreement") between the Texas Department of Transportation ("TxDOT") and NTE Mobility Partners Segments 3 LLC (the "Developer"). Capitalized terms not otherwise defined herein shall have the meaning given those terms in the Facility Agreement.

The Developer hereby (1) appoints Michael Wilk, Randall Butler, Alvin Zimmerman, Judge Susan S. Soussan, and Thomas R. McDade as candidates who may serve on the Disputes Board and who shall comprise Developer's initial Disputes Board Member Candidates List, such candidates being the same persons as those who executed the disclosure statements delivered by the Developer to TxDOT prior to the date hereof, and (2) approves Judge Joseph Hart, Michael Loulakis, Don Gavin, Bill Franczek, and Jim Groton as candidates who may serve on the Disputes Board and who shall comprise TxDOT's initial Disputes Board Member Candidates List, such candidates being the same persons as those who executed the disclosure statements delivered by TxDOT to Developer prior to the date hereof .

Sincerely,

By: 

Name: Nicolas Rubio

Title: Authorized Representative

By: 

Name: Sven Kottwitz

Title: Authorized Representative

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FACILITY TRUST AGREEMENT

by and between  
BOKF, NA dba BANK OF TEXAS, as Trustee  
and  
NTE MOBILITY PARTNERS SEGMENTS 3 LLC, as Developer

RELATING TO THE  
NORTH TARRANT EXPRESS  
SEGMENTS 3A & 3B FACILITY

Dated as of March 1, 2013

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## **FACILITY TRUST AGREEMENT**

This FACILITY TRUST AGREEMENT, dated as of March 1, 2013, by and between BOKF, NA dba Bank of Texas, a national banking association, duly organized and existing under and by virtue of the laws of the United States (the "Trustee"), and NTE Mobility Partners Segments 3 LLC, a Delaware limited liability company (the "Developer"), with reference to the following facts:

### **RECITALS**

A. The Texas Department of Transportation ("TxDOT") and Developer have entered into that certain Facility Agreement, North Tarrant Express Segments 3A and 3B Facility dated as of March 1, 2013 (as it may be amended from time to time in accordance with its terms, the "Facility Agreement") regarding the design, construction, financing, operation and maintenance and the collection of toll charges from users of the Facility described therein; and

B. This Facility Trust Agreement is being executed by the parties hereto in order to provide for (i) the establishment of a Facility Trust Fund and various trust accounts within the Facility Trust Fund, (ii) the deposit into the Facility Trust Fund of funds that may be remitted to the Trustee in respect of the use of the Facility as described herein, and (iii) the Trustee to hold, administer and distribute the Facility Trust Fund as provided herein.

### **AGREEMENT**

Now therefore, in consideration of the foregoing premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto do hereby agree as follows:

### **ARTICLE I.**

#### **DEFINITIONS**

##### **Section 1.01 Definitions.**

Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes hereof and of any amendment hereof or supplement hereto and of any certificate, opinion, request or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein. All capitalized terms used herein and not defined herein shall have the respective meanings ascribed thereto in the Facility Agreement.

"Business Day" means any day other than a Saturday, Sunday or legal holiday or a day on which banks are authorized to be closed for business in Texas or any city in any other state in which the corporate trust office of the Trustee is located.

"Certificate of Developer" means an instrument in writing signed by an officer of Developer duly authorized by the Board of Directors of Developer for that purpose.

"Certificate of Toll Operator" means an instrument in writing signed by an officer of Toll Operator duly authorized by the Board of Directors of Toll Operator for that purpose.

“Certificate of TxDOT” means an instrument in writing signed by an officer of TxDOT duly authorized by the Texas Transportation Commission or State law for that purpose.

“Collateral Agent” means the Person identified by Developer to the Trustee and to TxDOT as the Collateral Agent (as such term is defined in the Facility Agreement) for purposes of holding all liens and security interests securing the Facility Debt for the benefit of holders of the Facility Debt.

“Daily Disbursement Date” means any Business Day that there are funds on deposit in the Toll Revenue Account as of the opening of business of the Trustee on such day.

“Daily Revenue Payment Amount” means a daily amount that shall be calculated in the same manner as calculations of the TxDOT Revenue Payment Amount are made pursuant to Exhibit 7 of the Facility Agreement.

“Developer Claims Account” has the meaning set forth in Section 2.02(c).

“Developer Claim Certificate” has the meaning set forth in Section 2.02(c).

“Developer Claim Final Decision Amount” has the meaning set forth in the definition of Developer Claim Final Decision Certificate.

“Developer Claim Final Decision Certificate” means a Certificate of Developer or a Certificate of TxDOT delivered to the Trustee pursuant to Section 2.03(c) in which either Developer or TxDOT, as applicable, (a) certifies to the Trustee that a Final Decision has been entered with respect to a disputed Claim of Developer described in a Developer Claim Certificate previously received by the Trustee, along with a copy of such Final Decision, certified as true and correct, and (b) certifies to the Trustee the amount, if any, payable to Developer pursuant to any such Final Decision (the “Developer Claim Final Decision Amount”).

“Developer/Toll Operator Dispute Final Decision Amount” has the meaning set forth in the definition of Developer/Toll Operator Dispute Final Decision Certificate.

“Developer/Toll Operator Dispute Final Decision Certificate” means a Certificate of Developer or a Certificate of Toll Operator delivered to the Trustee pursuant to Section 2.03(b)(i) in which either Developer or the Toll Operator, as applicable, (i) certifies to the Trustee that a court or arbitrator has delivered a written decision and award, and/or a judgment has been entered by a court confirming or modifying an arbitrator’s award and that such award, decision or judgment is final and not subject to appeal, and (ii) certifies to the Trustee the amount, if any, payable to the Toll Operator or Developer, as the case may be, pursuant to any such award or judgment (the “Developer/Toll Operator Dispute Final Decision Amount”).

“Early Deposit Date” means January 1 of the Fiscal Year immediately preceding the Fiscal Year in which the original stated expiration of the Term of the Facility Agreement will occur, as such Early Deposit Date is specified in a notice thereof from Developer and TxDOT to Trustee.

“Event of Default” has the meaning set forth in Section 4.01.

“Facility Debt Default Notice” means a written notice delivered by the Collateral Agent to the Trustee, Developer and TxDOT stating that (a) a default has occurred and is continuing with respect to the Facility Debt and (b) pursuant to the terms of the Financing Documents, the Collateral Agent is entitled to be paid any funds that would otherwise be payable by the Trustee to Developer from any Facility Trust Account on any date hereunder, and to give any related payment instructions to the Trustee in connection therewith.

“Facility Debt Default Period” means the period commencing on the date a Facility Debt Default Notice is received by the Trustee and ending on the date the relevant default in respect of the Facility Debt shall have been cured or otherwise waived.

“Facility Trust Accounts” has the same meaning set forth in Section 2.02.

“Facility Trust Agreement” means this Facility Trust Agreement by and between the Trustee and Developer, dated as set forth above, as it may from time to time be amended or supplemented in accordance herewith.

“Facility Trust Fund” means the fund by the name “North Tarrant Express Facility Trust Fund (Segments 3A&3B)” established in Section 2.01 hereof, including all of the Facility Trust Accounts described herein that are established to hold funds received by the Trustee for deposit into the Facility Trust Fund.

“Final Decision” means, to the extent the Claim or Dispute is other than with respect to a GP Public Funds Amount and is eligible for resolution pursuant to the Dispute Resolution Procedures, as provided in Section 17.8.1.1(b) of the Facility Agreement, either that (a) the TxDOT Executive Director or his designee has issued or been deemed to issue a final order implementing a decision or award of the Disputes Board with respect to such a Claim or Dispute or (b) a final judgment has been entered on such a Claim or Dispute by a court having proper jurisdiction over such Claim or Dispute and such order or judgment in each case is not subject to appeal.

“Final Decision Certificate” means a Certificate of Developer or Certificate of TxDOT delivered to the Trustee in which Developer or TxDOT, as applicable, (a) certifies to the Trustee that a Final Decision has been entered with respect to the final amounts payable to each of Developer and TxDOT under the Facility Agreement following the Termination Date, along with a copy of such Final Decision, certified as true and correct, and (b) certifies to the Trustee the amount, if any, payable to Developer or TxDOT pursuant to any such Final Decision (the “Final Decision Amount”).

“Final GP Public Funds Amount Determination” means, to the extent the Claim or Dispute is with respect to a determination of the GP Public Funds Amount in accordance with Section 1 of Part D of Exhibit 7 to the Facility Agreement and is eligible for resolution pursuant to the Dispute Resolution Procedures, as provided in Section 17.8.1.1(b) of the Facility Agreement, including any determination of changes to a GP Public Funds Amount pursuant to the terms of the Facility Agreement (such as due to reductive Change Orders, Compensation Events and final, actual, reasonable costs under Component A of the GP Public Funds Amount that differ from prior estimates) either that (a) the TxDOT Executive Director or his designee has issued or been deemed to issue a final order implementing a decision or award of the Disputes Board, and any subcommittee thereof, with respect to such Claim or Dispute or (b) a final judgment has been entered on such a Claim or Dispute by a court having proper jurisdiction over such Claim or Dispute and such order or judgment in each case is not subject to appeal.

“Final GP Public Funds Amount Determination Certificate” means a Certificate of TxDOT delivered to the Trustee in which TxDOT certifies to the Trustee that (a) a Final GP Public Funds Amount Determination has been entered with respect to the actual GP Public Funds Amount TxDOT shall be obligated to pay to Developer for the design, construction, operation and maintenance of the GP Capacity Improvements or a particular portion thereof, along with a copy of such GP Public Funds Amount Determination, certified as true and correct, and (b) the amount, if any, that TxDOT shall be entitled to withdraw (together with the earnings thereon) in accordance with Section 2 of Part D of Exhibit 7 to the Facility Agreement (such amount being the “Final GP Public Funds Excess Amount”).

"Final Termination Certificate" means a Certificate of Developer or Certificate of TxDOT delivered to the Trustee in which Developer or TxDOT, as applicable, (a) certifies to the Trustee that the "Termination Date" (as defined in the Facility Agreement) occurred under the Facility Agreement, and (b) certifies to the Trustee the actual Termination Date under the Facility Agreement.

"Financing Documents" means the agreements and documents evidencing or securing any Facility Debt, including any Funding Agreements or Security Documents described in the Facility Agreement.

"GP Public Funds Account" has the meaning set forth in Section 2.02(i).

"Joint Instructions" means written instructions to the Trustee which are executed by both Developer and TxDOT, provided that such instructions are also approved by the Collateral Agent during any Facility Debt Default Period solely to the extent such approval is required pursuant to the Financing Documents.

"Monthly Disbursement Date" means the last Business Day of each calendar month.

"NTTA" means the North Texas Tollway Authority, a regional tollway authority authorized and operating under Chapter 366 of the Texas Transportation Code, and its successors and assigns.

"Post-Termination Revenue Account" has the meaning set forth in Section 2.02(e).

"Post-Termination Developer Claims Account" has the meaning set forth in Section 2.02(h).

"Post-Termination Developer Claim Certificate" has the meaning set forth in Section 2.02(h).

"Post-Termination Developer Claim Final Decision Amount" has the meaning specified in the definition of Post-Termination Developer Claim Final Decision Certificate.

"Post-Termination Developer Claim Final Decision Certificate" means a Certificate of Developer or a Certificate of TxDOT delivered to the Trustee pursuant to Section 2.03(h) in which either Developer or TxDOT, as applicable, (a) certifies to the Trustee that a Final Decision has been entered with respect to a disputed Claim of Developer described in a Post-Termination Developer Claim Certificate, along with a copy of such Final Decision, certified as true and correct, and (b) certifies to the Trustee the amount, if any, payable to Developer pursuant to any such Final Decision (the "Post-Termination Developer Claim Final Decision Amount").

"Post-Termination Work Account" has the meaning set forth in Section 2.02(f).

"Termination Date" means, for all purposes of this Facility Trust Agreement, the earlier of the date the Trustee receives Joint Instructions or the date the Trustee receives a Final Termination Certificate, in either case, to the effect that the "Termination Date" (as defined in the Facility Agreement) has occurred.

"Texas UCC" means the Uniform Commercial Code in effect from time to time in the State of Texas.

"Toll Operator" means the NTTA or, in case permitted by law, any other person or entity providing services under a Tolling Services Agreement identified in a Certificate of Developer delivered to Trustee.

"Toll Operator Dispute Account" has the meaning set forth in Section 2.02(b).

"Toll Revenue Account" has the meaning set forth in Section 2.02(a).

"Tolling Services Agreement" means (a) that certain Tolling Services Agreement to be entered into by and between NTTA and Developer pursuant to the FA pertaining to the Facility, and (b) any other agreement between Developer and another person or entity for providing back office customer services and toll collection and enforcement services for the Facility, provided such agreement creates rights and obligations of Developer and such person or entity regarding the Toll Operator Dispute Account.

"Trustee" means BOKF, NA dba Bank of Texas, a national banking association, duly organized and existing under and by virtue of the laws of the United States, or its successor or any other bank or trust company which may at any time be substituted in its place as provided in Section 5.01.

"TxDOT Account" means each of the Post-Termination Revenue Account, and the Post-Termination Work Account.

"TxDOT Claim Certificate" has the meaning set forth in Section 2.02(d).

"TxDOT Claim Final Decision Amount" has the meaning set forth in the definition of TxDOT Claim Final Decision Certificate.

"TxDOT Claim Final Decision Certificate" means a Certificate of Developer or a Certificate of TxDOT delivered to the Trustee pursuant to Section 2.03(d) in which either Developer or TxDOT, as applicable, (a) certifies to the Trustee that a Final Decision has been entered with respect to a disputed Claim of TxDOT described in a TxDOT Claim Certificate previously received by the Trustee, along with a copy of such Final Decision, certified as true and correct, and (b) certifies to the Trustee the amount, if any, payable to TxDOT pursuant to any such Final Decision (the "TxDOT Claim Final Decision Amount").

"TxDOT Claims Account" has the meaning set forth in Section 2.02(d).

"TxDOT Revenue Payment Account" has the meaning set forth in Section 2.02(g).

"TxDOT Revenue Payment Amount" means the TxDOT Revenue Payment Amount payable pursuant to Part C of Exhibit 7 of the Facility Agreement.

## ARTICLE II.

### FACILITY TRUST FUND AND ACCOUNTS

#### Section 2.01 Establishment of Facility Trust Fund.

The Trustee hereby establishes a fund to be known as the "NTE Segments 3A & 3B Facility Trust Fund". The Trustee covenants and agrees that all funds, when and as received by Trustee and designated or otherwise directed for deposit into the NTE Segments 3A & 3B Facility Trust Fund, whether pursuant to a transfer from TxDOT, Developer or any other Person, will be received and held by the Trustee in trust hereunder and will be deposited by the Trustee in the Facility Trust Fund and will be accounted for through and held in trust in the Facility Trust Fund. All funds delivered to the Trustee for deposit into the Facility Trust Fund shall be (a) held by the Trustee in trust for the benefit of Developer and, to the extent provided herein, TxDOT and/or the Toll Operator in accordance with the terms of this Facility Trust Agreement, (b) disbursed, allocated and applied by Trustee solely to the uses and purposes hereinafter in this Article II set forth, and (c) accounted for separately and apart from all other money, funds, accounts or other resources of the Trustee. Trustee does not have any interest in the Facility

Trust Fund but is serving as trust holder of the same for the benefit of Developer and, to the extent provided herein, TxDOT as a designated third party beneficiary with direct rights of enforcement. In addition, Trustee is serving as trust holder for the benefit of the Toll Operator as a designated third party beneficiary with direct rights of enforcement, to the extent provided for in the provisions of this Facility Trust Agreement with respect to the Toll Operator Dispute Account, but not otherwise.

## **Section 2.02 Establishment and Maintenance of Accounts.**

The following trust accounts (each a "Facility Trust Account" and, collectively, the "Facility Trust Accounts") shall be established by the Trustee within the Facility Trust Fund and all funds received by the Trustee for deposit into the Facility Trust Fund shall be allocated to such Facility Trust Accounts as set forth herein:

(a) Toll Revenue Account.

(i) There is hereby established within the Facility Trust Fund a trust account designated the "Toll Revenue Account." Except as otherwise set forth in Sections 2.02(c) and (d), until the Termination Date the Trustee shall deposit the following into the Toll Revenue Account:

(A) all funds received by the Trustee for deposit into the Facility Trust Fund and designated or otherwise identified as "Toll Revenues from Transponder Transactions, or Video Transactions" (from whomever received), and

(B) any other funds received by the Trustee from the Toll Operator, TxDOT or Developer which the Trustee is directed or otherwise instructed to deposit to the Toll Revenue Account by the Person delivering such funds to Trustee.

(ii) If after the Termination Date the Trustee continues to receive funds in respect of revenues from the operation of the Facility for deposit into the Facility Trust Fund but has not received a Certificate of Developer or Certificate of TxDOT pursuant to which the Post-Termination Revenue Account is to be established under Section 2.02(e), then the Trustee shall deposit such funds received after the Termination Date into the Toll Revenue Account to be held for distribution pursuant to Section 2.03(b)(ii).

(b) Toll Operator Dispute Account.

(i) Upon Trustee's receipt of a written request from Developer, together with (A) a copy, certified by Developer to be true and complete, of a notice from Developer to the Toll Operator stating that Developer disputes an amount included in a Toll Operator invoice in respect of fees and charges for services rendered, and (B) a Certificate of Developer that the Toll Operator disagrees with Developer as to the amount in dispute in whole or in part and setting forth specifically the amount in dispute (with respect to each such disputed amount, a "Developer Dispute Certificate"), the Trustee shall establish within the Facility Trust Fund a trust account designated the "Toll Operator Dispute Account." The Trustee shall make a deposit to the Toll Operator Dispute Account in an amount equal to 105% of the amount in dispute either (I) from amounts received from Developer, or (II) if Developer has not made the required deposit in the amount specified in the Developer Dispute Certificate and the Toll Operator delivers a Certificate of Toll

Operator to the Trustee stating that the Toll Operator is permitted under the Tolling Services Agreement to direct the Trustee to make such deposit, from the Toll Revenue Account to the Toll Operator Dispute Account until the amount on deposit therein (without regard to deposits for other disputed amounts) equals the disputed amount specified in Developer Dispute Certificate. The Trustee is not responsible for taking any action pursuant to this Section until it has received one of the items referred to in clauses (I) and (II) of the immediately preceding sentence.

(ii) Upon Trustee's receipt of a written request from the Toll Operator, together with (a) a copy, certified by the Toll Operator to be true and complete, of a notice from the Toll Operator to Developer stating that the Toll Operator disputes an amount Developer claims is due in respect of tolls collected or to be collected by the Toll Operator pursuant to the Tolling Services Agreement, and (b) a Certificate of Toll Operator stating that Developer disagrees with the Toll Operator as to the amount in dispute in whole or in part and setting forth specifically the amount in dispute and stating that the Toll Operator is permitted under the Tolling Services Agreement to direct the Trustee to make such deposit (with respect to each such disputed amount, a "Toll Operator Dispute Certificate"), the Trustee shall establish within the Facility Trust Fund a trust account designated the "Toll Operator Dispute Account." The Trustee shall make a deposit to the Toll Operator Dispute Account in an amount equal to the amount in dispute either from amounts received from Developer or the Toll Operator so long as the Person delivering such funds delivers to the Trustee a Certificate of Developer or a Certificate of Toll Operator stating that the funds for deposit into the Toll Operator Dispute Account are not Toll Revenues. The Trustee shall have no responsibility to collect such funds other than to receive them when remitted by Developer or the Toll Operator.

(c) Developer Claims Account. Upon Trustee's receipt of a written request from Developer, together with (a) a copy, certified by Developer to be true and complete, of a notice from Developer to TxDOT stating that Developer has asserted a Claim against TxDOT and (b) a Certificate of Developer that TxDOT disputes the Claim in whole or in part and setting forth specifically the amount of the Claim in dispute (with respect to each such disputed Claim, a "Developer Claim Certificate"), the Trustee shall establish within the Facility Trust Fund a trust account designated the "Developer Claims Account," and thereafter the Trustee shall make deposits from the Toll Revenue Account to the Developer Claims Account as provided in Section 2.03(a)(i)(A) hereof or, if applicable, from the TxDOT Revenue Payment Account to the Developer Claims Account as provided in Section 2.03(h)(iii) hereof. For all funds on deposit in the Developer Claims Account, Developer shall be entitled to a credit in such amount against the amounts payable to TxDOT as the TxDOT Revenue Payment Amount while such funds are on deposit in the Developer Claims Account.

(d) TxDOT Claims Account. Upon Trustee's receipt of a written request from TxDOT together with (a) a copy, certified by TxDOT to be true and complete, of a notice from TxDOT to Developer stating that TxDOT has asserted a Claim against Developer and (b) a Certificate of TxDOT that Developer disputes the Claim in whole or in part and setting forth specifically the amount of the Claim in dispute (with respect to each such disputed Claim, a "TxDOT Claim Certificate"), the Trustee shall establish within the Facility Trust Fund a trust account designated the "TxDOT Claims Account," and thereafter the Trustee shall make deposits (i) from the Toll Revenue Account to the TxDOT Claims Account as provided in Section 2.03(a)(i)(B) hereof, (ii) if applicable, from the TxDOT Revenue Payment Account to the TxDOT Claims Account as

provided in Section 2.03(h)(iii), or (iii) to the TxDOT Claims Account of amounts TxDOT delivers to the Trustee for deposit therein pursuant to Part F.2 of Exhibit 20 of the Facility Agreement.

(e) Post-Termination Revenue Account. If the Termination Date has occurred and the Trustee receives a Certificate of Developer or Certificate of TxDOT that there is an outstanding unpaid amount owing from TxDOT to Developer (other than that set forth in Section 2.02(f) hereof), or an outstanding unsatisfied Claim for sums owing from TxDOT to Developer (other than that set forth in Section 2.02(h) hereof), then the Trustee shall establish within the Facility Trust Fund a trust account designated as the "Post-Termination Revenue Account". In such event, the Trustee shall also establish, at TxDOT's request, sub-accounts of the Post-Termination Revenue Account for allocation of reasonable reserves for costs of reconstruction, rehabilitation, renewal and replacement of the Facility as set forth in a Certificate of TxDOT delivered to Trustee and Developer. After the Termination Date and receipt of such Certificate of Developer or Certificate of TxDOT, the Trustee shall deposit in the Post-Termination Revenue Account all funds received by the Trustee in respect of revenues from the operation of the Facility, until such account is terminated pursuant to Section 2.03(j) hereof. Notwithstanding the foregoing, if the Trustee receives (i) Joint Instructions stating that funds received after the Termination Date are on account of Transactions occurring prior to the Termination Date, and stating the amount of such funds, or (ii) a Certificate of Developer or Certificate of TxDOT stating that a Final Decision has been rendered that funds received after the Termination Date are on account of Transactions occurring prior to the Termination Date, and stating the amount of such funds as set forth in the Final Decision, then the Trustee shall deposit such funds into the Toll Revenue Account (or, if such funds were previously received and deposited into the Post-Termination Revenue Account, transfer such funds from the Post-Termination Revenue Account to the Toll Revenue Account) for disbursement pursuant to Section 2.03(a)(i).

(f) Post-Termination Work Account. On the Termination Date, the Trustee shall establish within the Facility Trust Fund a trust account designated the "Post-Termination Work Account," and thereafter the Trustee shall deposit all funds delivered to the Trustee by TxDOT for deposit into the Post-Termination Work Account. Pursuant to Section F of Exhibit 20 of the Facility Agreement, TxDOT is required to deposit in the Post-Termination Work Account an amount equal to TxDOT's reasonable estimate of the costs Developer will incur to perform and complete its post-termination obligations under Section 19.5 of the Facility Agreement.

(g) TxDOT Revenue Payment Account. Commencing on the Early Deposit Date, the Trustee shall establish within the Facility Trust Fund a trust account designated the "TxDOT Revenue Payment Account," and thereafter the Trustee shall deposit in the TxDOT Revenue Payment Account all transfers of the calculated daily accrued TxDOT Revenue Payment Amount from the Toll Revenue Account on each Daily Disbursement Date pursuant to Section 2.05 hereof.

(h) Post-Termination Developer Claims Account. Upon the Trustee's receipt of a written request from Developer, together with (a) a copy, certified by Developer to be true and complete, of a notice from Developer to TxDOT stating that Developer has asserted a Claim against TxDOT payable out of the Post-Termination Revenue Account and (b) a Certificate of Developer that TxDOT disputes the Claim in whole or in part and setting forth specifically the amount of the Claim in dispute (with respect to each such disputed Claim, a "Post-Termination Developer Claim Certificate"), the Trustee shall establish within the Facility Trust Fund a trust account designated the "Post-Termination Developer Claims Account," and thereafter the Trustee shall make deposits from the Post-Termination Revenue Account to the Post-Termination Developer Claims Account as provided in Section 2.03(e)(v) hereof.

(i) GP Public Funds Account.

(i) There is hereby established within the Facility Trust Fund a trust account designated the "GP Public Funds Account." Upon delivery by TxDOT until the Termination Date, the Trustee shall deposit into the GP Public Funds Account all funds received by the Trustee from TxDOT for deposit into the Facility Trust Fund and designated or otherwise identified as the "GP Public Funds Amount" pursuant to Section 2.1 of Part D of Exhibit 7 to the Facility Agreement.

(ii) With each delivery of funds for deposit into the GP Public Funds Account, TxDOT shall designate in writing the particular portion of the GP Capacity Improvements (or, if applicable, the entirety of the GP Capacity Improvements) for which the deposit is made.

**Section 2.03 Withdrawal of Funds from the Accounts.**

(a) Withdrawal of Funds in the Toll Revenue Account.

(i) On each Daily Disbursement Date until the Termination Date, the Trustee shall withdraw all funds on deposit in the Toll Revenue Account and make the following payments in the following order of priority:

(A) if on or before such date the Trustee has received the documentation required under Section 2.02(c) from Developer with respect to any disputed Claim by Developer against TxDOT, for transfer to the Developer Claims Account an amount not to exceed TxDOT's "Daily Revenue Payment Amount" certified to the Trustee in a Certificate of Developer and calculated as set forth in Section 2.05 hereof, until the amount so accumulated in the Developer Claims Account equals the amount of the disputed portion of the Developer Claim specified in the Developer Claim Certificate. The Trustee acknowledges, however, that TxDOT may apply, through the Dispute Resolution Procedures, for limitations on the cumulative amount to be transferred pursuant to this clause (A) into the Developer Claims Account, and the Trustee agrees to adhere to any order or decision of the Disputes Board (even if not a Final Decision) regarding any such limit following receipt of a Certificate of TxDOT that such an order by the Disputes Board has been entered, together with a copy of such order or decision;

(B) if on or before such date the Trustee has received the documentation required under Section 2.02(d) from TxDOT with respect to any disputed Claim by TxDOT against Developer, for transfer to the TxDOT Claims Account an amount not to exceed TxDOT's "Daily Revenue Payment Amount" certified to the Trustee in a Certificate of Developer and calculated as set forth in Section 2.05 hereof; until the amount so accumulated in the TxDOT Claims Account equals the amount of the disputed portion of the TxDOT Claim specified in the TxDOT Claims Certificate. The Trustee acknowledges, however, that Developer may apply, through the Dispute Resolution Procedures, for limitations on the cumulative amount to be transferred pursuant to this clause (B) into the TxDOT Claims Account, and the Trustee shall adhere to any order or decision of the Disputes Board (even if not a Final Decision) regarding any such limit following receipt of a Certificate of Developer that such an order by the Disputes Board has been entered, together with a copy of such order or decision; and provided, further that Developer acknowledges that no such transfer of funds to the

TxDOT Claims Account from the Toll Revenue Account shall affect or reduce Developer's continuing obligation to pay TxDOT its TxDOT Revenue Payment Amount under Exhibit 7 of the Facility Agreement;

(C) if the Trustee has received the Certificate of Toll Operator as provided in Section 2.02(b)(i), for transfer to the Toll Operator Dispute Account an amount equal to the disputed portion of Developer's claim as set forth in Developer Dispute Certificate;

(D) if such Daily Disbursement Date is a Business Day on or after the Early Deposit Date, for transfer to the TxDOT Revenue Payment Account an amount equal to TxDOT's "Daily Revenue Payment Amount" certified in a Certificate of Developer and calculated as set forth in Section 2.05 hereof; and

(E) for payment to Developer (to such account as Developer designates in writing to the Trustee) or as otherwise required by the Collateral Agent during a Facility Debt Default Period.

(ii) If after the Termination Date the Trustee continues to receive funds in respect of revenues from the operation of the Facility for deposit into the Facility Trust Fund but has not received a Certificate of Developer or Certificate of TxDOT pursuant to which the Post-Termination Revenue Account is to be established under Section 2.02(e), then the Trustee shall not thereafter make any payment under Section 2.03(a)(i) from funds received into the Toll Revenue Account after such "Termination Date". Instead, the Trustee shall transfer or disburse such funds only in accordance with (A) Joint Instructions stating that funds received after the Termination Date are on account of Transactions occurring prior to the Termination Date, and stating the amount of such funds, or a Certificate of Developer or Certificate of TxDOT stating that a Final Decision has been rendered that funds received after the Termination Date are on account of Transactions occurring prior to the Termination Date, and stating the amount of such funds as set forth in the Final Decision (and in either case the Trustee shall disburse such funds pursuant to Section 2.03(a)(i)), (B) Joint Instructions or (C) a Final Decision Certificate. If the Trustee thereafter establishes the Post-Termination Revenue Account pursuant to Section 2.02(e), the Trustee shall transfer such funds, other than those previously transferred or disbursed pursuant to the previous sentence, to the Post-Termination Revenue Account.

(iii) If Joint Instructions setting forth the Termination Date or the Final Termination Certificate is delivered to the Trustee on a date that is later than the Termination Date indicated in the Joint Instructions or Final Termination Certificate, then the Joint Instructions or Final Termination Certificate, as applicable, also shall instruct the Trustee on the amount in the Toll Revenue Account to withdraw and transfer either to TxDOT or to the Post-Termination Revenue Account.

(iv) With respect to funds subject to Section 2.03(a)(i), on the first Daily Disbursement Date after the Termination Date, the Trustee shall make a final disbursement of such funds from the Toll Revenue Account pursuant to Section 2.03(a)(i) (subject to any subsequent disbursements pursuant to Section 2.03(a)(i) as provided in Sections 2.02(e) and 2.03(a)(ii)). With respect to funds subject to Section 2.03(a)(ii), the Trustee shall make a final disbursement of such funds from the Toll

Revenue Account pursuant to Joint Instructions or a Final Decision Certificate. Thereupon, the Trustee shall close the Toll Revenue Account.

(b) Use and Withdrawal of Funds in the Toll Operator Dispute Account.

(i) Upon the Trustee's receipt of a Developer/Toll Operator Dispute Final Decision Certificate setting forth amounts owed to the Toll Operator, if any, with respect to a Claim described in a Developer Dispute Certificate delivered pursuant to Section 2.02(b)(i), the Trustee shall (a) first, withdraw funds in the Toll Operator Dispute Account in an amount up to the lesser of (i) Developer/Toll Operator Dispute Final Decision Amount, including any late charges and interest, and (ii) the amounts deposited into the Toll Operator Dispute Account with respect to such Claim plus any investment earnings thereon, and pay such funds to the Toll Operator, and (b) second, pay any amount deposited to the Toll Operator Dispute Account relating to such Claim in excess of Developer/Toll Operator Dispute Final Decision Amount to Developer, together with any investment earnings in the Toll Operator Dispute Account attributable to the excess funds so released to Developer.

(ii) Upon the Trustee's receipt of a Developer/Toll Operator Dispute Final Decision Certificate setting forth amounts owed to Developer, if any, with respect to a Claim described in a Toll Operator Dispute Certificate, the Trustee shall (a) first, withdraw funds in Developer/Toll Operator Dispute Account in an amount up to the lesser of (i) Developer/Toll Operator Dispute Final Decision Amount, including any late charges and interest, and (ii) the amounts deposited into the Toll Operator Dispute Account with respect to such Claim plus any investment earnings thereon, and pay such funds to Developer, and (b) second, pay any amount deposited to the Toll Operator Dispute Account relating to such Claim in excess of Developer/Toll Operator Dispute Final Decision Amount to the Toll Operator, together with any investment earnings in the Toll Operator Dispute Account attributable to the excess funds so released to the Toll Operator.

(c) Use and Withdrawal of Amounts in Developer Claims Account. Upon the Trustee's receipt of a Developer Claim Final Decision Certificate, the Trustee shall (i) first, withdraw funds in the Developer Claims Account in an amount up to the Developer Claim Final Decision Amount, plus all earnings received on such amount prior to such date, and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period), and (ii) second, provided at such time there remains no other disputed Claim of Developer for which funds have been deposited into the Developer Claims Account, withdraw the balance of funds remaining in the Developer Claims Account and pay such funds to TxDOT for credit toward the TxDOT Revenue Payment Amount, unless at such time the Trustee is in receipt of a Certificate of TxDOT or Certificate of Developer stating that no Revenue Payment Amount is then due and payable to TxDOT, in which case the Trustee shall transfer such funds to the Toll Revenue Account. Upon the Trustee's receipt of Joint Instructions regarding final settlement of a disputed Claim of Developer for which funds have been deposited in the Developer Claims Account, the Trustee shall (i) first, withdraw funds in the Developer Claims Account in an amount up to the settlement amount payable to Developer specified in such Joint Instructions, plus all earnings received on such amount prior to such date, and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period), and (ii) second, provided at such time there remains no other disputed Claim of Developer for which funds have been deposited into the Developer Claims Account, withdraw the balance of funds remaining in the Developer Claims Account and pay such funds to TxDOT

for credit toward the TxDOT Revenue Payment Amount, unless at such time the Trustee is in receipt of a Certificate of TxDOT or Certificate of Developer stating that no Revenue Payment Amount is then due and payable to TxDOT, in which case the Trustee shall transfer such funds to the Toll Revenue Account. All funds so paid to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period) or to TxDOT in accordance with the preceding two sentences shall be a credit toward any amounts payable by Developer to TxDOT under the Facility Agreement as the TxDOT Revenue Payment Amount. To the extent any funds are on deposit in the Developer Claims Account, Developer waives any other right of offset it may have with respect to the Claim for which such funds were transferred into the Developer Claims Account; provided however, that the foregoing does not limit or reduce any credits that Developer is entitled to against amounts payable by Developer to TxDOT as the TxDOT Revenue Payment Amount as provided in Section 2.02(c) or this Section 2.03(c). In lieu of any transfer of funds from the Toll Revenue Account to the Developer Claims Account as contemplated by Section 2.03(a)(i), or at any time thereafter while funds remain in the Developer Claims Account, Developer may elect at any time after it asserts its Claim, by written notice to TxDOT and the Trustee, to waive any right to offset such Claim with TxDOT Revenue Payment Amounts accruing in favor of TxDOT. In such event, the Trustee shall transfer to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period) any funds accumulated in the Developer Claims Account by reason of such Claim in accordance with Developer's (or if applicable the Collateral Agent's) written instructions, but in such event Developer shall no longer be entitled to offset TxDOT Revenue Payment Amounts by such Claim. The Trustee shall give written notice to TxDOT, Developer and the Collateral Agent once the amount deposited in the Developer Claims Account equals the disputed portion of the Claim.

(d) Use and Withdrawal of Amounts in TxDOT Claims Account. Upon the Trustee's receipt of a TxDOT Claim Final Decision Certificate, the Trustee shall (i) first, withdraw funds in the TxDOT Claims Account in an amount up to the TxDOT Claim Final Decision Amount, plus all earnings received on such amount prior to such date, and pay such funds to TxDOT, and (ii) second, provided at such time there remains no other disputed Claim of TxDOT for which funds have been deposited into the TxDOT Claims Account, withdraw the balance of funds remaining in the TxDOT Claims Account and transfer such funds to the Toll Revenue Account. Upon the Trustee's receipt of Joint Instructions regarding final settlement of a disputed Claim of TxDOT for which funds have been deposited in the TxDOT Claims Account, the Trustee shall (i) first, withdraw funds in the TxDOT Claims Account in an amount up to the settlement amount payable to TxDOT specified in such Joint Instructions, plus all earnings received on such amount prior to such date, and pay such funds to TxDOT, and (ii) second, provided at such time there remains no other disputed Claim of TxDOT for which funds have been deposited into the TxDOT Claims Account, withdraw the balance of funds remaining in the TxDOT Claims Account and pay such funds to the Toll Revenue Account.

(e) Use and Withdrawal of Amounts in the Post-Termination Revenue Account. Not more frequently than once each calendar week after the Termination Date, TxDOT may deliver to the Trustee a Certificate of TxDOT setting forth the amount of TxDOT's reasonable and documented operating and maintenance costs and expenses incurred respecting the Facility since the last Certificate of TxDOT delivered under this Section 2.03(e). Within one Business Day after receipt of each such Certificate of TxDOT, the Trustee shall withdraw funds from the Post-Termination Revenue Account and make payment to TxDOT of the amount set forth in such Certificate of TxDOT. In addition, on each Monthly Disbursement Date after the Termination Date, the Trustee shall withdraw funds from the Post-Termination Revenue Account and make the following payments in the following order of priority:

(i) to TxDOT an amount equal to TxDOT's reasonable and documented operating and maintenance costs and expenses respecting the Facility for such month, as set forth in a Certificate of TxDOT delivered to the Trustee and Developer not less than one Business Day prior to such date, to the extent not previously paid from the Post-Termination Revenue Account;

(ii) for deposit in the sub-accounts of the Post-Termination Revenue Account established under Section 2.02(e) hereof until the reasonable reserves established for costs of reconstruction, rehabilitation, renewal and replacement of the Facility have been funded in the amounts set forth in a Certificate of TxDOT delivered to the Trustee and Developer requesting the establishment of such reserves;

(iii) to TxDOT, if amounts have previously been reserved in sub-accounts of such Post-Termination Revenue Account for such purpose, the amounts in such sub-accounts necessary to pay the reasonable documented costs of reconstruction, rehabilitation, renewal and replacement of the Facility actually incurred by TxDOT, as set forth in a Certificate of TxDOT delivered to the Trustee and Developer;

(iv) to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period) an amount equal to the undisputed amounts due to Developer under the terms of the Facility Agreement, as set forth in a Certificate of TxDOT delivered to the Trustee and Developer not less than one Business Day prior to such date, until such undisputed amounts have been paid in full to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period); and

(v) if on or before such date the Trustee has received the documentation required under Section 2.02(h) from Developer with respect to any disputed Claim by Developer against TxDOT, for transfer to the Post-Termination Developer Claims Account the amounts remaining in the Post-Termination Revenue Account, to the extent (A) necessary to cause the aggregate amounts on deposit in the Post-Termination Developer Claims Account to equal the aggregate amount of disputed Claims described in any previously delivered Post-Termination Developer Claim Certificate and (B) such Claims have not previously been paid as contemplated by Section 2.03(f) hereof. The Trustee acknowledges, however, that TxDOT may apply, through application to a court of competent jurisdiction or, to the extent permitted under the Facility Agreement, the Disputes Board, for limitations on the cumulative amount to be transferred pursuant to this clause (v) into the Post-Termination Developer Claims Account, and the Trustee agrees to adhere to any order or decision of the court or Disputes Board (even if not a Final Decision) upon receipt of a TxDOT Certificate with respect to such order or decision together with a copy of such order or decision.

(f) Use and Withdrawal of Amounts in Post-Termination Developer Claims Account.

Upon the Trustee's receipt of a Post-Termination Developer Claim Final Decision Certificate, the Trustee shall (i) first, withdraw funds in the Post-Termination Developer Claims Account in an amount up to the Post-Termination Developer Claim Final Decision Amount, plus all earnings received on such amount prior to such date, and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period), and (ii) second, provided at such time there remains no other disputed Claim of Developer for which funds have been deposited into the Post-Termination Developer Claims Account, withdraw the balance of such funds in the Post-Termination Developer Claims Account and transfer such funds to TxDOT. Upon the Trustee's receipt of Joint Instructions concerning any disputed Claim of Developer for

which funds have been deposited into the Post-Termination Developer Claims Account, the Trustee shall (A) first, withdraw funds in the Post-Termination Developer Claims Account in an amount up to the settlement amount payable to Developer specified in such Joint Instructions, plus all earnings received on such amount prior to such date, and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period), and (B) second, provided at such time there remains no other disputed Claim of Developer for which funds have been deposited into the Post-Termination Developer Claims Account, withdraw the balance of such funds in the Post-Termination Developer Claims Account and transfer such funds to TxDOT. The Trustee shall give written notice to TxDOT and Developer and the Collateral Agent once the amount deposited in the Post-Termination Developer Claims Account equals the disputed portion of the Claim.

(g) Use and Withdrawal of Amounts in the Post-Termination Work Account. Upon the Trustee's receipt of written notice from TxDOT that Developer has completed all its post-termination obligations under Section 19.5 of the Facility Agreement, the Trustee shall withdraw all funds on deposit in the Post-Termination Work Account and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period).

(h) Use and Withdrawal of Amounts in the TxDOT Revenue Payment Account.

(i) Within 15 days after the end of the calendar year in which the Early Deposit Date occurs, Developer shall deliver to the Trustee a Certificate of Developer setting forth Developer's preliminary calculation of the TxDOT Revenue Payment Amount for the prior calendar year. Within 15 days after the scheduled expiration of the Term, Developer shall deliver to the Trustee a Certificate of Developer setting forth Developer's preliminary calculation of the TxDOT Revenue Payment Amount for the period from the immediately preceding January 1 to the scheduled expiration date. Within one Business Day after receipt of each such Certificate of Developer, the Trustee shall withdraw from the TxDOT Revenue Payment Account and pay to TxDOT the amount shown in the Certificate of Developer together with any interest earnings thereon.

(ii) Within 90 days after the end of the calendar year in which the Early Deposit Date occurs, Developer shall deliver to the Trustee a Certificate of Developer setting forth Developer's final calculation of the TxDOT Revenue Payment Amount for the prior calendar year and the additional TxDOT Revenue Payment Amount to be paid, if any. Within 90 days after the end of the scheduled expiration of the Term, Developer shall deliver to the Trustee a Certificate of Developer setting forth Developer's final calculation of the TxDOT Revenue Payment Amount for the period from the immediately preceding January 1 to the scheduled expiration date, and the additional Revenue Payment Amount to be paid, if any. Within one Business Day after receipt of each such Certificate of Developer, the Trustee shall withdraw from the TxDOT Revenue Payment Account and pay to TxDOT the amount, if any, shown in the Certificate of Developer together with any interest earnings thereon.

(iii) If at any time after either 90-day period set forth in clause (ii) above the Trustee receives a TxDOT Claim Certificate setting forth a Claim that Developer has not paid the full amount due for the TxDOT Revenue Payment Amount and the amount of the Claim, then the Trustee shall transfer from the TxDOT Revenue Payment Account into the TxDOT Claims Account available funds up to the amount of the Claim. If at any time prior to withdrawal of funds as set forth in clause (i) or (ii) above the Trustee

receives a Developer Claim Certificate setting forth a Claim and the amount of the Claim, then the Trustee shall transfer from the TxDOT Revenue Payment Account into the Developer Claims Account available funds in the TxDOT Revenue Payment Account up to the amount of the Claim.

(iv) Upon the Trustee's receipt of a Final Decision Certificate or Joint Instructions setting forth the final calculation of the TxDOT Revenue Payment Amount, the Trustee shall withdraw all funds on deposit in the TxDOT Revenue Payment Account, including any interest earnings thereon, and make the following payments in the following order of priority:

(A) to TxDOT, an amount equal to the TxDOT Revenue Payment Amount set forth in such Final Decision Certificate or Joint Instructions; and

(B) to Developer (or as otherwise required by the Collateral Agent during a Facility Debt Default Period), the remaining balance in the TxDOT Revenue Payment Account.

(v) All payments to TxDOT of the Revenue Payment Amount from the TxDOT Revenue Payment Account as provided in this Section 2.03(h) shall be a credit against Developer's obligation to pay the Revenue Payment Amount as required under the Facility Agreement.

(i) Use and Withdrawal of Funds in the GP Public Funds Account.

(i) On such date as the Trustee has received a Final GP Public Funds Amount Determination Certificate certifying to the Trustee a Final GP Public Funds Amount that is less than the total amount previously deposited into the GP Public Funds Account with respect to a particular portion of the GP Capacity Improvements (or, if applicable, the entire GP Capacity Improvements), the Trustee shall transfer or disburse the Final GP Public Funds Excess Amount together with all earnings thereon as indicated and instructed by TxDOT in such Certificate.

(ii) With respect to Component A of the GP Public Funds Amount, on such date as the Trustee has received a Certificate of TxDOT (i) certifying to TxDOT's prior receipt of a complete Payment Request from Developer, and (ii) authorizing and instructing the Trustee to pay Developer the amount identified as within "Component A of the GP Public Funds Amount", the Trustee shall transfer or disburse funds to Developer in such amount as indicated in such Certificate.

(iii) With respect to Component B of the GP Public Funds Amount, on such date as the Trustee has received a Certificate of TxDOT (i) certifying the amount that is due and payable to Developer as Component B of the GP Public Funds Amount with respect to a particular portion of the GP Capacity Improvements (or, if applicable, the entire GP Capacity Improvements), and (ii) authorizing and instructing the Trustee to pay Developer such amount, the Trustee shall transfer or disburse funds to Developer in such amount as indicated in such Certificate.

(iv) On such date as the Trustee has received Joint Instructions (a) stating that all amounts due to Developer for a particular portion of the GP Capacity Improvements (or, if applicable, the entire the GP Capacity Improvements) have been

paid to Developer and (b) authorizing and instructing the Trustee to immediately pay TxDOT the amount of any remaining funds in the GP Public Funds Account with respect to such particular portion of the GP Capacity Improvements (or, if applicable, the entire the GP Capacity Improvements), the Trustee shall transfer or disburse to TxDOT all such remaining funds, including all interest earnings thereon, if any.

(v) Upon the Trustee's receipt of a Final GP Public Funds Amount Determination Certificate setting forth amounts owed to Developer, if any, with respect to a Claim that funds in the GP Public Funds Account with respect to a particular portion of the GP Capacity Improvements (or, if applicable, the entire GP Capacity Improvements) are payable to Developer with respect to such GP Capacity Improvements, the Trustee shall withdraw from the GP Public Funds Account and pay to Developer an amount equal to the lesser of (i) the Final GP Public Funds Amount Determination owed to Developer, including any late charges and interest, as set forth in the Final GP Public Funds Amount Determination Certificate, and (ii) the amounts deposited into the GP Public Funds Account with respect to such Claim plus any investment earnings thereon.

(j) Use and Withdrawal of Remaining Funds in Facility Trust Accounts. Upon the Trustee's receipt of a Certificate of Developer (which must be approved in writing by the Collateral Agent unless the Facility Debt has been repaid in full and the Trustee has received prior notice of such repayment from the Collateral Agent) stating that all amounts payable to Developer and TxDOT under the Facility Agreement following the Termination Date have been paid in full to Developer and TxDOT, respectively, or a Certificate of TxDOT stating that all amounts payable to Developer and TxDOT under the Facility Agreement following the Termination Date have been paid in full to Developer and TxDOT, respectively, then in such event (i) the Trustee shall deliver a copy of any such Certificate of Developer to TxDOT, and a copy of any such Certificate of TxDOT to Developer, and (ii) except as provided below, on the date which is 30 days after the date on which the Trustee has delivered any such copy of such Certificate to Developer or TxDOT, as applicable, (the "Scheduled Final Distribution Date"), the Trustee shall withdraw all remaining funds, if any, on deposit in the Facility Trust Accounts and shall pay such funds to TxDOT, whereupon any interests of Developer or the Collateral Agent in such funds shall terminate. If, however, the Trustee receives a Certificate of Developer or a Certificate of TxDOT prior to the Scheduled Final Distribution Date stating that all amounts payable to Developer or TxDOT, as the case may be, under the Facility Agreement following the Termination Date have not been paid in full to Developer or TxDOT, as the case may be, then in such event funds shall remain on deposit in the Facility Trust Accounts, subject to all of the terms of this Facility Trust Agreement, until such time as the Trustee receives a Final Decision Certificate or Joint Instructions, in either case regarding final settlement of the amounts payable to Developer and to TxDOT, respectively. Upon receipt thereof, the Trustee shall withdraw all remaining funds on deposit in the Facility Trust Accounts and (A) first pay the amounts payable to Developer and TxDOT respectively, in accordance with the terms of such Final Decision Certificate or Joint Instructions, and (B) second remit the balance of such funds to TxDOT, whereupon any interests of Developer or the Collateral Agent in such funds shall terminate.

#### **Section 2.04 Security Interests.**

(a) Security Interest of Collateral Agent. The Trustee acknowledges that pursuant to the terms of the Financing Documents, Developer will grant to the Collateral Agent for the benefit of holders of the Facility Debt a first priority security interest in any right, title and interest of Developer under the Concession CDA and all funds held in the Facility Trust Accounts within the Facility Trust Fund as provided in this Facility Trust Agreement, but in each case always

subject to the terms and conditions of this Facility Trust Agreement and the rights of TxDOT and the Toll Operator as beneficiaries hereof, including the rights described herein of TxDOT to deliver Certificates of TxDOT and the rights of the Toll Operator to deliver a Certificate of Toll Operator. The Trustee agrees that for purposes of perfecting any such security interest of the Collateral Agent as it relates to the Facility Trust Accounts and funds or investments held therein, the Trustee has confirmed the matters set forth in Section 2.04(d) below. Developer directs the Trustee to execute such other documents as may reasonably be requested by the Collateral Agent in order to give the Collateral Agent control over any rights of Developer hereunder and in connection with the Facility Trust Accounts under the Texas UCC, subject only to the express rights of TxDOT and the Toll Operator as beneficiaries hereof, including the rights described herein of TxDOT to deliver Certificates of TxDOT and the rights of the Toll Operator to deliver Certificates of Toll Operator; provided, however, that each of Developer and the Trustee expressly agrees and understands that no rights of control shall be given to the Collateral Agent that would provide to the Collateral Agent any greater rights than Developer itself would have to direct any disposition of funds held by the Trustee hereunder or that would otherwise conflict with the express terms and conditions of deposits into, and disbursements from, the Facility Trust Accounts or otherwise in connection with the Facility Trust Fund. TxDOT shall be entitled to receive a copy of any such other document.

(b) Security Interests of Developer. The Trustee acknowledges that pursuant to the terms of the Facility Trust and Security Instruments, TxDOT has granted or will grant to Developer, in order to secure certain obligations of TxDOT described in the Facility Agreement, a security interest in any right, title and interest of TxDOT in the Post-Termination Revenue Account and all funds deposited therein, together with any earnings thereon (hereinafter called the "Developer Account Collateral"), excluding, however, the right, title and interest of TxDOT in funds in the Post-Termination Revenue Account used or needed or to be used or needed for payment of the amounts set forth in this Sections 2.03(e)(i), (ii) and (iii). The Trustee agrees that for purposes of perfecting any such security interest of Developer in Developer Account Collateral under the Texas UCC, the Trustee has confirmed the matters set forth in Section 2.04(d) below.

(c) No Other Security Interests. The Trustee hereby confirms that it has no actual knowledge that either Developer or TxDOT has created or suffered to exist any pledge or assignment of, lien on, or security interest in funds held by the Trustee at any time under this Facility Trust Agreement (other than the security interests contemplated by Sections 2.04(a) and (b) in favor of the Collateral Agent or Developer) and that if the Trustee at any time receives any notice from any Person regarding any claim to the funds held by the Trustee under this Facility Trust Agreement, the Trustee will promptly notify Developer and TxDOT and the Collateral Agent of such claim.

(d) Perfection of Security Interests by Control. The Trustee hereby represents and warrants and covenants the following in respect of the Facility Trust Accounts, and each of Developer and TxDOT consents thereto:

(i) Role as Securities Intermediary. The Trustee is acting as securities intermediary (as defined in Section 8.102 of the Texas UCC) in connection with the Facility Trust Accounts.

(ii) Establishment and Maintenance of Securities Accounts. Each Facility Trust Account has been, or will be when required, established in the manner

contemplated by this Facility Trust Agreement and will be a "securities account" as defined in Section 8.501 of the Texas UCC.

(iii) Financial Assets. Each item of property (whether investment property, financial asset, security, instrument, cash or other property) credited to any Facility Trust Account shall be treated as a "financial asset" within the meaning of Sections 8.102(a)(9) and 8.103 of the Texas UCC, and all such financial assets (except cash) credited to any Facility Trust Account will be registered in the name of the Trustee, indorsed to the Trustee or in blank or credited to another securities account maintained in the name of the Trustee and in no case will any financial asset credited to any Facility Trust Account be registered in the name of Developer or TxDOT, payable to the order of Developer or TxDOT, or specially indorsed to Developer or TxDOT unless such financial asset has been further indorsed to the Trustee or in blank.

(iv) Jurisdiction of Trustee as Securities Intermediary. For purposes of Section 8.110(e) of the Texas UCC, the jurisdiction of the Trustee, in its capacity as securities intermediary in respect of the Facility Trust Accounts, is the State of Texas.

(v) Entitlement Holders. The sole entitlement holder for each Facility Trust Account shall be Developer, provided that in exercising any rights as entitlement holder, Developer (and the Collateral Agent, at any time during a Facility Debt Default Period) shall be limited by the rights specifically granted to TxDOT and the Toll Operator as beneficiaries hereof, including the rights described herein of TxDOT to deliver Certificates of TxDOT and the rights of the Toll Operator to deliver Certificates of Toll Operator.

(vi) Entitlement Orders Generally. The Trustee shall promptly make the deposits, withdrawals, and payments contemplated to be made into or from the Facility Trust Accounts. For purposes of this Facility Trust Agreement, the Trustee shall treat each Certificate of Developer and Certificate of TxDOT contemplated hereby as an entitlement order relative to the Facility Trust Accounts so long as such Certificate of Developer and Certificate of TxDOT is expressly contemplated by this Facility Trust Agreement, and shall be entitled to rely on such entitlement orders in order to effect the payments to be made respectively, to TxDOT and Developer (or the Collateral Agent while any Facility Debt Default Period is in effect).

(vii) Developer and Collateral Agent Instructions. Prior to the Trustee's receipt of a Facility Debt Default Notice from the Collateral Agent, the Trustee shall be entitled to make any payments contemplated to be made to Developer in accordance with the Certificates received by the Trustee as provided in this Facility Trust Agreement. At any time after the Trustee's receipt of a Facility Debt Default Notice and during a Facility Debt Default Period, the Trustee shall (A) make any payments otherwise to be made to Developer as instructed by the Collateral Agent, and (B) any Certificate of Developer contemplated hereby shall be approved in writing by the Collateral Agent prior to its delivery to the Trustee, or may be delivered by the Collateral Agent to the Trustee on behalf of Developer. During any Facility Debt Default Period, the Trustee agrees to comply with any "entitlement order" (as defined in Section 8-102 of the UCC) originated hereunder by the Collateral Agent in respect of any Facility Trust Account to the extent Developer would otherwise be entitled to give such entitlement order in the manner specified above or any financial asset credited thereto without further consent by Developer, TxDOT or any other person or entity.

### **Section 2.05 Calculation of Daily Revenue Payment Amount.**

For purposes of the certifications Developer is to deliver to the Trustee pursuant to Sections 2.03(a)(i)(A), (B) and (D) hereof, Developer agrees that it shall calculate TxDOT's "Daily Revenue Payment Amount" in the same manner as calculations of the TxDOT Revenue Payment Amount are made pursuant to Exhibit 7 of the Facility Agreement, except that such compensation shall be calculated for each applicable day on the basis of the balance in the Toll Revenue Account as of the opening of business on the Business Day of such calculation based on the Trustee's confirmation thereof on such day, less (i) the aggregate amount of funds, if any, transferred from the Developer Claims Account and the TxDOT Claims Account and deposited into the Toll Revenue Account on or after the immediately preceding Daily Distribution Date, and (ii) any credits provided for under Section 2.02(c) hereof.

## **ARTICLE III.**

### **COVENANTS**

#### **Section 3.01 Accounting Records and Statements.**

The Trustee will keep proper accounting records in which complete and correct entries shall be made of all transactions made by it relating to the receipt, deposit and disbursement of funds into the Facility Trust Fund, and any other funds received by Trustee hereunder and such accounting records shall be available for inspection by TxDOT, Developer or the Collateral Agent or their respective agents duly authorized in writing on any Business Day upon reasonable notice at reasonable hours and under reasonable conditions prescribed by the Trustee. Not later than the fifteenth day of each month commencing with the fifteenth day of the month following execution of this Facility Trust Agreement the Trustee will furnish to TxDOT, Developer and the Collateral Agent a statement covering all receipts of the Trustee for deposit into the Facility Trust Fund and all transfers from and into the Facility Trust Accounts and disbursements from the Facility Trust Accounts for the preceding month.

## **ARTICLE IV.**

### **DEFAULT AND LIMITATIONS OF LIABILITY**

#### **Section 4.01 Events of Default.**

Each of the following events by Developer, TxDOT or the Toll Operator shall constitute Events of Default by such party for purposed of this Facility Trust Agreement:

- (a) Such party delivers a false or incorrect notice or certificate to the Trustee; or
- (b) Such party defaults in the performance of any of the other agreements or covenants contained in this Facility Trust Agreement required to be performed by it, and such default shall have continued for a period of 30 days after such party shall have been given notice in writing of such default by TxDOT, Developer, the Trustee or the Collateral Agent.

#### **Section 4.02 Remedies.**

Upon the occurrence of an Event of Default, the Trustee may (following notice given in writing to TxDOT, Developer, the Collateral Agent and, if applicable, the Toll Operator), and TxDOT may (following notice given in writing to the Trustee, Developer, the Collateral Agent and, if applicable, the Toll Operator), and Developer may (following notice given in writing to the Trustee, TxDOT, the Collateral Agent and, if applicable, the Toll Operator), and the Collateral Agent may (following notice given in writing to the Trustee, TxDOT, Developer and, if applicable, the Toll Operator) and with respect only to the provisions hereof relating to the Toll Operator Dispute Account, the Toll Operator may (following notice given in writing to the Trustee, TxDOT, Developer and the Collateral Agent) by mandamus or other action or proceeding or suit at law or in equity enforce its rights under this Facility Trust Agreement. Notwithstanding the foregoing, each of TxDOT's and Developer's legal remedies hereunder are subject to the applicable Dispute Resolution Procedures specified in Section 17.8.1 of the Facility Agreement, except as provided otherwise in Section 17.8.1.1(b) of the Facility Agreement.

#### **Section 4.03 Non-Waiver.**

A waiver of any default or breach of duty or contract by the Trustee, TxDOT or Developer shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Trustee, TxDOT, Developer or the Toll Operator to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Trustee, TxDOT, Developer or the Toll Operator by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee, TxDOT, Developer or the Toll Operator. If any action, proceeding or suit to enforce any right or to exercise any remedy is abandoned or determined adversely to the Trustee, TxDOT, Developer or the Toll Operator, then the Trustee, the Collateral Agent, TxDOT, Developer and the Toll Operator shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

#### **Section 4.04 Remedies Not Exclusive.**

No remedy herein conferred upon or reserved to the Trustee, TxDOT, Developer or the Toll Operator is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any law.

#### **Section 4.05 No Liability by the Trustee.**

The Trustee will have no obligation or liability to any Person with respect to the performance by Developer or TxDOT of any agreements and covenants required to be performed by Developer or TxDOT contained in the Facility Agreement or herein or by Developer or the Toll Operator of any agreements and covenants required to be performed by Developer or the Tolling Operator under a Tolling Services Agreement.

## ARTICLE V.

### THE TRUSTEE

#### Section 5.01 Trustee; Duties, Removal and Resignation.

(a) By executing and delivering this Facility Trust Agreement, the Trustee accepts the duties and obligations of the Trustee provided in this Facility Trust Agreement, but only upon the terms and conditions set forth in this Facility Trust Agreement.

(b) Developer (except during the continuance of an Event of Default by Developer) or, during any Facility Debt Default Period, the Collateral Agent, may, by 30 days prior written request and subject to giving notice thereof to TxDOT and receiving the consent of TxDOT (which shall not be unreasonably withheld), remove the Trustee initially a party hereto, and any successor thereto, and in such event, or in the event the Trustee resigns, Developer shall appoint a successor Trustee approved by TxDOT, such approval not to be unreasonably withheld, delayed or conditioned, but any such successor shall be a bank or trust company in good standing doing business and having an office in Austin, Texas, having a combined capital (exclusive of borrowed capital) and surplus of at least Seventy-five Million Dollars (\$75,000,000) and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of conditions so published.

(c) The Trustee may at any time resign by giving written notice to TxDOT, Developer and the Collateral Agent not less than 30 days prior to the date of resignation. Upon receiving any such notice of resignation Developer shall promptly appoint a successor Trustee by an instrument in writing; provided, however, that in the event that Developer does not appoint a successor Trustee within 30 days following receipt of such notice of resignation, the resigning Trustee may petition an appropriate court having jurisdiction to appoint a successor Trustee. Any resignation or removal of the Trustee shall not become effective until written acceptance of appointment by the successor Trustee under this Facility Trust Agreement and written consent thereof given by TxDOT, such consent not to be unreasonably withheld.

(d) Any Trustee which shall resign or be removed pursuant to this Section shall be entitled to compensation due and payable in accordance with Section 5.02 and to reimbursement for all reasonable and proper expenses and advances incurred and not previously reimbursed for its activities in connection with this Facility Trust Agreement and for any indemnification due pursuant to this Facility Trust Agreement and not previously paid. Any Trustee which resigns or is removed, upon payment of its unpaid compensation and expenses hereunder, shall fully discharge all the right, title and interest of the retiring Trustee and the accounts and funds hereunder shall vest in said successor Trustee, and such retiring Trustee shall promptly pay over, assign and deliver to the successor Trustee any money or other property constituting part of the Facility Trust Fund and any other funds and accounts then held by such Trustee, and deliver any and all records, or copies thereof, in respect of the funds and accounts held hereunder which it may have.

## **Section 5.02 Compensation of the Trustee.**

(a) In accordance with the terms of a separate agreement between Developer and Trustee, Developer shall pay from time to time, upon receipt of a statement, to the Trustee reasonable compensation for the Trustee's services and shall reimburse the Trustee for all its reasonable advances and expenditures, including but not limited to advances to and fees and expenses of independent accountants and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties under this Facility Trust Agreement, all as set forth in such separate agreement. Developer shall promptly pay such compensation and reimbursement in accordance with the terms of the separate agreement between Developer and the Trustee.

(b) Developer shall indemnify, defend, protect and hold harmless the Trustee for all costs, claims, expenses and liabilities incurred by or asserted against the Trustee in the performance of its duties under this Facility Trust Agreement or any related document, including any such reasonable costs, claims, expenses and liabilities incurred in the course of defending itself against any claims or actions or enforcing any remedies under this Facility Trust Agreement or any related document. Any such indemnity shall not extend to any costs, claims, expenses or liabilities adjudicated to have been caused by the negligence or willful misconduct of the Trustee or the breach of the terms of this Facility Trust Agreement by Trustee. The indemnification of the Trustee under this Facility Trust Agreement shall extend to its directors, officers, employees and agents. The obligations of Developer under this Section shall survive the discharge of this Facility Trust Agreement and the removal or resignation of the Trustee.

## **Section 5.03 Protection to the Trustee.**

(a) Developer shall indemnify, defend, protect and hold harmless the Trustee and the Trustee shall incur no liability for acting upon any notice, resolution, consent, order, certificate, report or other paper or document contemplated hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee, in its discretion, may consult with counsel, who may be counsel to Developer, and the opinion or advice of such counsel, shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Facility Trust Agreement in good faith in accordance therewith.

(b) The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with TxDOT or Developer or the Collateral Agent, and may act as depository, trustee, or agent for any committee or body of TxDOT or Developer or the Collateral Agent or with respect to other obligations of TxDOT or Developer as freely as if it were not the Trustee under this Facility Trust Agreement.

(c) The recitals at the beginning of this Facility Trust Agreement shall be taken and construed as made by and on the part of Developer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of such recitals. The Trustee shall not be deemed to make any representations with respect to the security afforded by this Facility Trust Agreement.

(d) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it under this Facility Trust Agreement by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty under this Facility Trust Agreement.

(e) The Trustee, undertakes to perform only such duties as are specifically set forth in this Facility Trust Agreement.

(f) Every provision of this Facility Trust Agreement relating to the conduct or liability of the Trustee shall be subject to the provisions of this Facility Trust Agreement, including without limitation, this Article.

(g) Whenever in the administration of the duties of the Trustee under this Facility Trust Agreement the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or not taking any action, the Trustee may request a signed Certificate of TxDOT or Certificate of Developer as to such matter, and such Certificate shall be full protection to the Trustee for any action taken or not taken in good faith reliance thereon.

(h) Notices to the Trustee, or funds delivered to the Trustee received by the Trustee after 12:00 p.m. (Austin, Texas time) on any Business Day shall be deemed received by the Trustee on the following Business Day.

(i) No provision of this Facility Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it in its sole discretion.

#### **Section 5.04 Merger or Consolidation.**

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 5.01 hereof, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

#### **Section 5.05 Waiver of Trustee Lien; Waiver of Trustee Set-off.**

The Trustee waives any security interest, lien or right to make deductions or setoffs that it may now have or hereafter acquire in or with respect to the Facility Trust Accounts, any financial asset credited thereto or any security entitlement in respect thereof (except as expressly set forth in the parenthetical phrase in the immediately succeeding sentence). Neither the financial assets credited to the Facility Trust Accounts nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien, or any other right in favor of any person (except that the Trustee may set-off funds in any Facility Trust Account other than a TxDOT Account, the TxDOT Claims Account and the TxDOT Revenue Payment Account to pay (a) amounts due to the Trustee pursuant to the terms of a separate agreement between the Trustee and Developer, and (b) the face amount of any checks or ACH transactions that have been credited to any of the Facility Trust Accounts but are subsequently returned unpaid or reversed because of uncollected or insufficient funds).

## ARTICLE VI.

### AMENDMENT OF OR SUPPLEMENT TO FACILITY TRUST AGREEMENT

#### Section 6.01 Amendment or Supplement by Consent.

No amendment of this Facility Trust Agreement shall be valid or effective unless in writing signed by Developer, TxDOT and the Collateral Agent. No amendment of this Facility Trust Agreement affecting provisions relating to the Toll Operator Dispute Account shall be valid or effective unless in writing and also signed by the Toll Operator. Notwithstanding the foregoing, this Facility Trust Agreement and the rights and obligations provided thereby may also be modified or amended at any time without the consent of the Collateral Agent, but only (1) for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Facility Trust Agreement, or (2) in regard to questions arising under this Facility Trust Agreement which the Trustee or Developer may deem necessary or desirable and not inconsistent with this Facility Trust Agreement and which shall not materially adversely affect the interests of the Collateral Agent. Developer shall provide TxDOT with a written copy of any proposed amendment 30 days prior to its proposed effective date.

## ARTICLE VII.

### TXDOT'S AND TOLL OPERATOR'S RIGHTS UNDER FACILITY TRUST AGREEMENT

#### Section 7.01 Rights of TxDOT and Toll Operator

(a) Developer or the Trustee, as appropriate, shall concurrently furnish to TxDOT a copy of any notice to be given to Developer, the Trustee, the Collateral Agent or the Toll Operator, and to the Toll Operator a copy of any notice to be given to Developer, TxDOT, the Trustee or the Collateral Agent if the notice relates to the rights of the Toll Operator under this Facility Trust Agreement.

(b) The Trustee, to the extent of its actual knowledge, shall notify TxDOT of any failure of Developer to provide relevant notices, certificates, or filings, and shall notify the Toll Operator of any failure of Developer to provide relevant notices, certificates or filings that relate to any rights of the Toll Operator under this Facility Trust Agreement.

(c) Developer agrees, upon the direction of TxDOT, to exercise Developer's rights hereunder to remove the Trustee for any breach of trust contained in this Facility Trust Agreement. Developer shall also give prior written notice to TxDOT of any removal, resignation or termination of the Trustee, and no removal, resignation or termination shall become effective until a successor Trustee is appointed in accordance with the terms hereof and accepts the trusts created under this Facility Trust Agreement.

(d) Without TxDOT's prior written approval in its sole discretion, Developer shall not (i) terminate or permit a termination of this Facility Trust Agreement, (ii) agree to any amendment of any provisions of this Facility Trust Agreement, (iii) in any material respect waive, or fail to enforce, any provision of this Facility Trust Agreement, or (iv) oppose or interfere with TxDOT's exercise of its third party beneficiary rights under this Facility Trust Agreement in accordance with this Facility Trust Agreement and the Facility Agreement.

(e) At any time a Toll Services Agreement is in effect with the Toll Operator, without the Toll Operator's prior written approval in its sole discretion, Developer shall not (i) terminate or permit a termination of this Facility Trust Agreement, (ii) agree to any amendment of any provisions of this Facility Trust Agreement that would materially adversely affect the rights of the Toll Operator under this Facility Trust Agreement., (iii) in any material respect waive, or fail to enforce, any provision of this Facility Trust Agreement relating to the rights of the Toll Operator under this Facility Trust Agreement, or (iv) oppose or interfere with the Toll Operator's exercise of its third party beneficiary rights under this Facility Trust Agreement in accordance with this Facility Trust Agreement and the Tolling Services Agreement.

### **Section 7.02 TxDOT and Toll Operator as Third-Party Beneficiaries.**

To the extent this Facility Trust Agreement confers upon or gives or grants to TxDOT or the Toll Operator any right, remedy or claim under or by reason of this Facility Trust Agreement, each of TxDOT and the Toll Operator is hereby explicitly recognized as being an intended, direct third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

### **Section 7.03 No Intended TxDOT Procurement.**

Notwithstanding the benefits afforded to TxDOT hereunder, each of Developer, the Trustee and TxDOT agree and confirm that the services of the Trustee hereunder are procured exclusively by, and for the account of, Developer and neither TxDOT nor the Toll Operator has any responsibility to pay any fees or expenses of the Trustee in connection with this Facility Trust Agreement.

## **ARTICLE VIII.**

### **MISCELLANEOUS**

#### **Section 8.01 Benefits of Facility Trust Agreement.**

Nothing in this Facility Trust Agreement expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than Developer, TxDOT, the Trustee, the Toll Operator and the Collateral Agent, any right, remedy or claim under or by reason of this Facility Trust Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Facility Trust Agreement contained by and on behalf of Developer shall be for the sole and exclusive benefit of TxDOT, Developer, the Trustee, the Toll Operator and the Collateral Agent. Developer, the Trustee, the Toll Operator and TxDOT expressly recognize the Collateral Agent as a third party beneficiary of this Facility Trust Agreement.

#### **Section 8.02 Successor Deemed Included in all References to Predecessor.**

Whenever Developer, TxDOT, the Trustee, the Toll Operator or any officer thereof is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in Developer, TxDOT, the Trustee, the Toll Operator or such officer, and all agreements, conditions, covenants and terms required hereby to be observed or performed by or on behalf of Developer, TxDOT, the Trustee, the Toll

Operator or any officer thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

### **Section 8.03 Content of Certificates.**

(a) Every Certificate of Developer, Certificate of TxDOT or Certificate of Toll Operator with respect to compliance with any agreement, condition, covenant or term contained herein shall include (i) a statement that the person or persons making or giving such Certificate have the authority to do so and have read such agreement, condition, covenant or term and the definitions herein relating thereto; (ii) a statement that, in the opinion of the signers they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or term has been complied with; and (iii) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or term has been complied with.

(b) Any Certificate of Developer, Certificate of TxDOT or Certificate of Toll Operator may be based, insofar as it relates to legal matters, upon an opinion of counsel unless the person making or giving such Certificate knows that the opinion of counsel with respect to the matters upon which such Certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any opinion of counsel may be based, insofar as it relates to factual matters or information in the possession of Developer, TxDOT or the Toll Operator, upon a representation by an officer or officers of Developer, TxDOT or the Toll Operator unless the counsel executing such opinion of counsel knows that the representation with respect to the matters or upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

### **Section 8.04 Notices.**

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing and mailed via registered mail (return receipt requested), telecopied (and promptly confirmed by mail or delivery) or delivered (via courier service), if to Developer at its address at 9001 Airport Freeway, Suite 600, North Richland Hills, Texas 76180, facsimile number (817) 710-0509; if to TxDOT at its address at 125 E 11<sup>th</sup> Street, Austin Texas, 78701-2483 Attention: Finance Division; if to NTTA at its address at P.O. Box 260729, Plano, TX 75026 Attention: Susan A Buse, if to any other Toll Operator, at the address it states in a written notice delivered to the Trustee, Developer and TxDOT and if to the Trustee, at its address at 100 Congress Suite 250, Austin, Texas 78701, Attention: Corporate Trust Services, facsimile number (972) 581-8925 or; as to each party, at such other address as shall be designated by such party in a written notice to the other parties.

### **Section 8.05 Tax Reporting.**

All items of income, gain, expense and loss recognized in the Facility Trust Accounts (other than the TxDOT Accounts) or in respect of any financial assets credited thereto shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Developer. All items of income, gain, expense and loss recognized in the TxDOT Accounts or in respect of any financial assets credited thereto shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of TxDOT.

## Section 8.06 Investments.

(a) Amounts on deposit in each Facility Trust Account pursuant to this Facility Trust Agreement shall be invested in Eligible Investments that will, as nearly as practicable, mature on or before the dates when such money is anticipated to be needed for disbursement hereunder. Such Eligible Investments shall be made in accordance with written directions that TxDOT gives from time to time with respect to the TxDOT Accounts, and in accordance with written directions that Developer gives from time to time with respect to all other Facility Trust Accounts. The Trustee may act as principal or agent in the acquisition or disposition of any such investment. The Trustee shall not be liable or responsible for any loss suffered in connection with any such investment made by it under the terms of and in accordance with this Section 8.06. The Trustee may sell or present for prepayment any obligations so purchased whenever it shall be necessary in order to provide moneys to meet any payment of the funds so invested, and the Trustee shall not be liable or responsible for any losses resulting from any such investment sold or presented for prepayment. Interest or profit received on such investments shall be retained in the account that generated the interest or profit.

(b) The Trustee may conclusively rely that any investment directed by TxDOT or Developer, as the case may be, is an Eligible Investment as required by this Facility Trust Agreement. The Trustee may act as depository, manager, advisor or sponsor with regard to any Eligible Investment.

(c) If Developer or TxDOT receive brokerage confirmations of security transactions as they occur, Developer or TxDOT, as the case may be, will forward such confirmations to the Trustee. The Trustee will furnish Developer and TxDOT monthly cash transaction statements as provided herein which include detail for all investment transactions made by the Trustee hereunder.

(d) In computing the amount in any fund or account, Eligible Investments shall be valued at market value, exclusive of accrued interest. The Trustee shall perform such valuation no more frequently than monthly.

(e) If at any time after investment therein an Eligible Investment ceases to meet the criteria set forth in the definition of Eligible Investments and such obligation, aggregated with other non-conforming investments, exceeds ten percent (10%) of invested funds, such Eligible Investment shall be sold or liquidated.

(f) Investment earnings on amounts held in the Facility Trust Accounts shall be credited and applied as follows:

(i) Toll Revenue Account shall be for the benefit of Developer and may be withdrawn at any frequency Developer decides.

(ii) Investment earnings on amounts held in the Toll Operator Dispute Account shall be for the benefit of Developer or the Toll Operator as provided in Section 2.03(b) and may be withdrawn only through distributions as described in Section 2.03(b).

(iii) Investment earnings on amounts in the Developer Claims Account and TxDOT Claims Account shall be retained therein and credited toward the balances required to be deposited therein, and shall be withdrawn and distributed only as provided in Section 2.03(c) and 2.03(d), respectively.

(iv) Investment earnings on amounts in the Post-Termination Revenue Account shall be retained therein and applied in accordance with Section 2.03(e).

(v) Investment earnings on amounts in the Post-Termination Developer Claims Account shall be retained therein and credited toward the balances required to be deposited therein and shall be withdrawn and distributed only as provided in Section 2.03(f) hereof.

(vi) Investment earnings on amounts in the Post-Termination Work Account shall be retained therein and applied in accordance with Section 2.03(g).

(vii) Investment earnings on amounts in the TxDOT Revenue Payment Account described in Section 2.03(h) shall be for the benefit of Developer and may not be withdrawn until annual payment of the TxDOT Revenue Payment Amount as provided in Part A, Section 3.1 of Exhibit 7 of the Facility Agreement.

(g) To the extent relevant to any Facility Trust Account other than the TxDOT Accounts, Developer shall be entitled to direct the Trustee with respect to the voting of any financial assets credited to such Facility Trust Accounts, unless during a Facility Debt Default Period in which case the Collateral Agent shall be entitled to direct the Trustee with respect to the voting of any financial assets credited to such Facility Trust Accounts. To the extent relevant to any financial assets credited to the TxDOT Accounts, TxDOT shall be entitled to direct the Trustee with respect to the voting of any financial assets credited to such Facility Trust Accounts.

#### **Section 8.07 Article and Section Headings, Gender and References.**

The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Facility Trust Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

#### **Section 8.08 Partial Invalidity.**

If any one or more of the agreements, conditions, covenants or terms contained herein required to be observed or performed by or on the part of TxDOT, Developer, NTTA or the Trustee shall be contrary to law, then such agreement or agreements, such condition or conditions such covenant or covenants or such term or terms shall be null and void and shall be deemed separable from the remaining agreements, conditions, covenants and terms hereof.

#### **Section 8.09 Texas Law.**

This Facility Trust Agreement shall be construed and governed in accordance with the laws of the State of Texas.

**Section 8.10 Effective Date.**

This Facility Trust Agreement shall become effective upon its execution and delivery.

**Section 8.11 Execution in Counterparts.**

This Facility Trust Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Facility Trust Agreement by their officers thereunto duly authorized as of the day and year first written above.

[Signature Page Immediately Follows]

**BOKF, NA dba BANK OF TEXAS, as Trustee**

By:   
Name: Jose A Gaytan Jr.  
Title: Vice President

**NTE MOBILITY PARTNERS SEGMENTS 3 LLC,  
as Developer**

By: \_\_\_\_\_  
Name: Nicolas Rubio  
Title: Authorized Representative

By: \_\_\_\_\_  
Name: Sven Kottwitz  
Title: Authorized Representative

**BOKF, NA dba BANK OF TEXAS, as Trustee**

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

**NTE MOBILITY PARTNERS SEGMENTS 3 LLC,  
as Developer**

By:  \_\_\_\_\_  
Name: Nicolas Rubio  
Title: Authorized Representative

By: \_\_\_\_\_  
Name: Sven Kottwitz  
Title: Authorized Representative

**BOKF, NA dba BANK OF TEXAS, as Trustee**

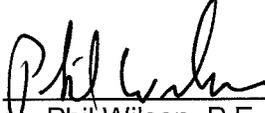
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NTE MOBILITY PARTNERS SEGMENTS 3 LLC,  
as Developer**

By: \_\_\_\_\_  
Name: Nicolas Rubio  
Title: Authorized Representative

By:  \_\_\_\_\_  
Name: Sven Kottwitz  
Title: Authorized Representative

TEXAS DEPARTMENT OF TRANSPORTATION

By:   
Name: Phil Wilson, P.E.  
Title: Executive Director

## JOINDER AGREEMENT

This JOINDER AGREEMENT (this "Joinder Agreement") is made and entered into effective as of the date and year first above written by the Texas Department of Transportation, a public agency of the State of Texas ("TXDOT"), for the benefit of Developer, the Trustee and the Collateral Agent. Capitalized terms not otherwise defined in this Joinder Agreement shall have the same meaning assigned to such terms in the Facility Trust Agreement to which this Joinder Agreement is attached.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT agrees as follows:

1. Consent. TxDOT hereby consents to the terms of the Facility Trust Agreement and agrees that the same is a Facility Trust and Security Instrument under the Facility Agreement.
2. TxDOT Covenants. TxDOT hereby covenants and agrees as follows:
  - (a) TxDOT will comply with the terms of the Facility Trust Agreement and perform the obligations of TxDOT specified in the Facility Trust Agreement; ;
  - (b) Upon the occurrence of the Termination Date pursuant to the Facility Agreement and not before, TxDOT will deliver a Certificate of TxDOT to Developer and the Trustee specifying the date that is the Termination Date pursuant to the terms of the Facility Agreement;
  - (c) TxDOT shall have no greater right or interest in and to the Facility Trust Fund than is provided in the Facility Agreement and the Facility Trust Agreement; and
  - (d) TxDOT shall deliver to Developer and the Collateral Agent a copy of all notices, certificates and instructions delivered by or on behalf of TxDOT to the Trustee as and when delivered to the Trustee.

[Signature Page Immediately Follows]