

## EXHIBIT 28

### FORM OF INTELLECTUAL PROPERTY ESCROW AGREEMENT

#### INTELLECTUAL PROPERTY ESCROW AGREEMENT

(TXDOT NORTH TARRANT EXPRESS SEGMENTS 3A & 3B)

**THIS INTELLECTUAL PROPERTY ESCROW AGREEMENT** (this “**Agreement**”) is made and entered into as of this \_\_\_\_\_, 2012, by and between NTE Mobility Partners Segments 3 LLC, a Delaware limited liability company (“**Developer**”), and Naman, Howell, Smith & Lee, PLLC, as escrow agent (“**Escrow Agent**”), to and for the benefit of the Texas Department of Transportation (“**TxDOT**”), an agency of the State of Texas, with reference to the following facts:

A. On June 23, 2009, TxDOT and NTE Mobility Partners Segments 2-4 LLC, an affiliate of Developer (“**Developer Affiliate**”) entered into a Comprehensive Development Agreement (“**CDA**”) for the conceptual, preliminary and final planning along with some or all of the development, design, construction, finance, operation and maintenance of one or more facilities of the North Tarrant Express (the “**Project**”) as set forth in the CDA, including Segment 3A and Segment 3B, which have been the subject of negotiations between TxDOT and Developer .

B. On July 6, 2011, TxDOT and Developer Affiliate agreed upon a Facility Implementation Plan for the development of the NTE Segments 3A & 3B Facility (referred to herein as the “**Facility**”) in accordance with the CDA.

C. On \_\_\_\_\_, 2012, pursuant to the Facility Implementation Plan and in accordance with the CDA, TxDOT and Developer entered into a Facility Agreement (“**Facility Agreement**”) for the design, construction and/or reconstruction of general purpose lanes, managed lanes, railroad improvements, frontage roads, and crossing streets, utility adjustments, the establishment of tolling operations, and maintenance and operation of the Facility in Tarrant County, Texas.

D. Pursuant to the Facility Agreement, Developer and/or other Depositors (as defined below) have granted to TxDOT a license or licenses to use the Escrowed Materials (as defined below). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Facility Agreement.

E. Developer wishes to employ the services of Escrow Agent to act as the escrow holder with regard to certain materials that are or may be proprietary to Developer or its Contractors (the “**Escrowed Materials**”) for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder, under the terms and conditions provided in this Agreement. Escrowed Materials may include Cost and Pricing Data, Source Code, Source Code Documentation and/or other Proprietary Intellectual Property and related documentation, as set forth in Section 22.5 of the Facility Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Developer hereby irrevocably provides the

following escrow instructions to Escrow Agent. These escrow instructions, although provided unilaterally, are specifically for the benefit of TxDOT as an intended third party beneficiary and may not be amended, supplemented, waived or withdrawn without the prior written consent of TxDOT's authorized representative.

1. Designation of Authorized Representatives. Any initial authorized representatives of Developer shall be identified in writing by use of the Certificate of Authorized Developer Representative, attached hereto as Exhibit A-1. From time to time Developer may designate alternative or additional authorized representatives by submitting a new Certificate of Authorized Developer Representative to the Escrow Agent and TxDOT. Any initial authorized representatives of TxDOT shall be identified in writing by use of the Certificate of Authorized TxDOT Representative in the form attached hereto as Exhibit A-2. TxDOT may from time to time designate alternative or additional authorized representatives by submitting a new Certificate of Authorized TxDOT Representative to the Escrow Agent and Developer.

2. Deposits.

(a) **“Depositor”** means each person or entity, including Developer and its Contractors, that deposits with Escrow Agent any Escrowed Materials to be held by Escrow Agent pursuant to this Agreement. Where Developer makes a deposit of Escrowed Materials on behalf of any Contractor, the Contractor is deemed the “Depositor”. Each Depositor (other than Developer) will, upon its identification via deposit of Escrowed Materials and completion of Exhibit C or the Annex to Exhibit C as required by this Section 2, be required to execute an acknowledgement of the terms of this Agreement in the form of Exhibit B.

(b) Developer hereby deposits with Escrow Agent the Escrowed Materials consisting of \_\_\_\_\_ separately sealed boxes labeled \_\_\_\_\_. Developer will also complete and deliver to the Escrow Agent the List of Escrowed Materials, attached hereto as Exhibit C. At the time of deposit, Developer shall verify the boxes and acknowledge that verification by execution of Exhibit C. Developer acknowledges that the foregoing boxes contain only documents, CD-ROMs or other electronic data storage media. The Escrow Agent shall bear no responsibility for examining the contents of any box, other than to verify that the separately sealed boxes identified on Exhibit C have been received.

(c) In accordance with Section 22.5 of the Facility Agreement, Developer and any other Depositor may from time to time deliver additional materials to be held hereunder together with an acknowledgment signed by the Depositor in the form included in the Annex to Exhibit C attached hereto that such materials are subject to the terms and provisions of this Agreement and that such Depositor grants to TxDOT the rights in such additional materials provided pursuant to this Agreement, in which event a list identifying the Depositor, date of deposit, and all materials added shall be appended to this Agreement and incorporated herein. In no instance shall the additional Escrowed Materials contain any materials other than documents, CD-ROMs or other electronic data storage media.

(d) Escrow Agent shall notify TxDOT immediately upon its receipt of any such additional materials and shall verify that TxDOT has received a copy of the list of items delivered.

(e) Concurrently with receipt of Escrowed Materials, Escrow Agent shall sign and deliver to Developer, the Depositor (if different from Developer) and TxDOT an acknowledgment of receipt of the Escrowed Materials. Escrow Agent agrees to accept supplemental materials as specified herein, and agrees to hold the Escrowed Materials in safekeeping under the terms and conditions of this Agreement.

(f) The signature by the Depositor on Exhibit C or any Annex to Exhibit C shall constitute the Depositor's representation and warranty that Exhibit C (including annexes) is true, accurate and complete.

3. Manner of Holding of Escrowed Materials.

(a) Escrow Agent shall hold the Escrowed Materials in a designated area on the premises of Escrow Agent located at [8310 Capital of Texas Highway North, Suite 490, Austin, Texas 78731], or such other address within a ten-mile radius of 125 East 11th Street, in the City of Austin, Texas, as is specified to TxDOT and Developer in writing not later than 15 days prior to the time such Escrowed Materials are to be relocated to such new location or to such other address in the State of Texas as is agreed to in writing by TxDOT and Developer. The Escrowed Materials shall be stored in an area that is locked at all times. The Escrowed Materials shall either be held in a fire safe area on the premises or shall be kept in firesafe boxes or cabinets supplied by Developer.

(b) Except as specifically provided otherwise in Section 3(i), during the term hereof, Escrow Agent shall allow access to the Escrowed Materials only to those individuals identified by TxDOT's authorized representative in writing in a Notice of Persons Permitted to Review Escrowed Materials (a "**TxDOT Permission Notice**") attached hereto as Exhibit F. Such access shall include the ready ability of TxDOT to temporarily install and run CD-ROMs or other electronic data storage media that are included in the Escrowed Materials on a stand-alone secure personal computer that TxDOT shall provide.

(c) TxDOT shall provide notice to Escrow Agent at least one business day in advance of its planned review of Escrowed Materials. All reviews shall be conducted during Escrow Agent's business hours of 8:00 a.m. – 5:00 p.m., Austin, Texas time, Monday through Friday. TxDOT agrees that access to the Escrowed Materials shall be subject to compliance with the procedures of the Escrow Agent described herein, which are designed to ensure proper preparation through advance notice, and to maintain proper control over access to the Escrow Agent's office and any confidential or proprietary information of the Escrow Agent or its customers. In particular, the Escrow Agent will require that two employees of the Escrow Agent (one of which will be an officer) shall be present at all times that Escrowed Materials are being reviewed on its premises. Notwithstanding the preceding sentence, neither the Escrow Agent nor its duly authorized agents shall in any way have the duty to monitor the activity of the reviewers.

(d) Developer and TxDOT agree and acknowledge that Escrow Agent is providing a storage facility that is restricted to the Escrow Agent's employees and duly authorized agents, that the Escrowed Materials will be further secured in a locked vault, and that the Escrow Agent will verify that each person seeking access to the Escrowed Materials has been identified in the TxDOT Permission Notice by requiring the person seeking access to the Escrowed Materials to produce a current driver's license bearing that individual's image. If any individual seeking access to the Escrowed Materials produces a driver's license with a name other than that identified in the TxDOT Permission Notice, Escrow Agent may, but shall not be required to, accept the authorized representative of TxDOT's written direction to grant such person permission to review the Escrowed Materials.

(e) No access shall be given to any representative of Developer unless TxDOT agrees to such access in writing. Except as specifically provided otherwise in Section 3(i), no third party, including the employees of Escrow Agent, shall be allowed access to the Escrowed Materials, although this shall not preclude employees of Escrow Agent from having access to the locked area for other purposes. Notwithstanding the foregoing, Escrow

Agent or its duly authorized attorneys and agents shall have the right to examine the external surface of the Escrowed Materials in performance of its routine or special audits. For purposes of the preceding sentence, any audit of the Escrowed Materials shall be limited to an examination of the alpha-numeric sequence numbers recorded on the outside box in which the Escrowed Materials are stored. Accordingly, Escrow Agent's examination can not determine whether the contents of such box have been removed, disturbed, damaged or destroyed.

(f) The Escrow Agent shall have no duty to supply any computers, printers or other devices necessary to review or verify the Escrowed Materials. In no event shall TxDOT, Developer, a Depositor or any person or entity selected or appointed by them have the right to access, connect to or otherwise use any computer or other network of the Escrow Agent, other than to have access to electricity.

(g) Escrow Agent shall have the obligation to reasonably protect the safety and security of the Escrowed Materials. Each Depositor is advised to contact its own legal counsel concerning the effect of applicable laws to the Depositor's own circumstances.

(h) In the event of any proceeding or litigation concerning the disclosure of any Escrowed Materials, Escrow Agent shall immediately notify Developer and TxDOT. In such event, the Escrow Agent will retain the Escrowed Materials until otherwise ordered by a court or such other authority having jurisdiction with respect thereto. Developer shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense. Except as provided in this Agreement, Escrow Agent shall not disclose, transfer, make available or use the Escrowed Materials. Subject to the provisions of this Section 3(h), Escrow Agent shall not disclose the content of this Agreement to any third party other than Depositors. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Escrowed Materials, Escrow Agent shall immediately notify Developer and TxDOT unless prohibited by law. It shall be the responsibility of Developer to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal.

(i) Until the date of Financial Close, and so long thereafter that the Dallas Police and Fire Pension System ("**DPFPS**") is legally bound to make a direct or indirect equity investment, or is a direct or indirect equity investor, in Developer, as indicated only by a written certificate to such effect executed and delivered by Developer to Escrow Agent and TxDOT, Escrow Agent shall allow access to one or more individuals identified as representing the DPFPS in a written Notice of DPFPS Representatives Permitted to Review Escrowed Materials signed by Developer (a "**Developer Permission Notice**") attached hereto as Exhibit G. Such access shall be allowed, however, only when such individual is accompanied by an Authorized TxDOT Representative, unless TxDOT waives this requirement in writing (which waiver shall be deemed to be on a case-by-case basis unless expressly stated to be a general waiver). Developer or such designated DPFPS representative shall notify TxDOT and the Escrow Agent at least 24 hours in advance of any access to the Escrowed Materials by such DPFPS representative. If TxDOT is unable to accompany the individual with an Authorized TxDOT Representative at the time set forth in Developer's notice and has not waived this requirement in writing, Developer shall arrange with TxDOT for an alternative mutually convenient time for access by the DPFPS representative. Access by the DPFPS representative shall include the ready ability of the representative to temporarily install and run CD-ROMs or other electronic storage media that are included in the Escrowed Materials on a stand-alone secure personal computer that Developer or the DPFPS representative shall provide. The Escrow Agent will verify that each person seeking access to the Escrowed Materials has been identified in the Developer Permission Notice by requiring such person seeking access to the

Escrowed Materials to produce a current driver's license bearing that individual's image. Developer warrants and represents that (A) each individual authorized to have access to Escrowed Materials pursuant to this Section 3(i) is an authorized agent, employee or representative of DPFPS and (B) Developer will not use the access right of the agent, employee or representative of DPFPS in order for Developer to gain access to the escrow in circumvention of the prohibition set forth in the first sentence of Section 3(e). Developer shall be liable for any releases of Escrowed Materials or violations of this Agreement committed by the DPFPS representative, and shall indemnify and hold TxDOT and the Escrow Agent harmless for any damages arising out of such release or violation. Developer acknowledges that TxDOT undertakes no duty toward Developer to protect against any such release or violation by a DPFPS representative, notwithstanding that an Authorized TxDOT Representative may accompany such DPFPS representative.]

(j) Developer and TxDOT agree that the Escrow Agent cannot, and shall not, be required to ensure that any person granted access to the Escrowed Materials in accordance with the procedure provided in this Section 3(i) commits no unlawful act in relation to the Escrowed Materials, (ii) willfully, recklessly or negligently copies or removes Escrowed Materials from the premises, or (iii) willfully, recklessly or negligently damages or destroys any part of the Escrowed Materials. Escrow Agent shall not undertake to examine the person, clothing or personal effects of any reviewer to determine whether such person is removing any part of the Escrowed Materials from the Escrow Agent. In addition, reviewers will be required to sign-in and sign-out before and after reviewing Escrowed Materials. Finally, the reviewers will be required to agree to maintain the confidentiality of any proprietary or confidential information of the Escrow Agent or its customers upon signing in to review the Escrowed Materials.

4. Representations. Developer (and any other Depositor) by depositing any materials pursuant to this Agreement represents and warrants to and for the benefit of TxDOT as follows:

(a) Developer or the other Depositors lawfully possess all of the Escrowed Materials deposited with Escrow Agent;

(b) With respect to all of the Escrowed Materials, Developer has the right and authority to grant to Escrow Agent and TxDOT the rights as provided in this Agreement and Developer (and each other Depositor) hereby grants such rights to TxDOT

(c) The Escrowed Materials are not subject to any lien or other encumbrance that entitles the holder of the lien or encumbrance to terminate this Agreement, withdraw the Escrowed Materials, or prevent or hinder TxDOT's access to the Escrowed Materials or receipt thereof following a Release Condition (as defined below);

(d) The Escrowed Materials are Proprietary Intellectual Property and constitute Intellectual Property for purposes of 11 U.S.C. § 365(n) and TxDOT's rights pursuant to this Agreement constitute the rights of a licensee pursuant to 11 U.S.C. § 365(n); and

(e) The Escrowed Materials are readable and useable in their current form or, if any portion of the Escrowed Material is encrypted, the decryption tools and decryption keys either have also been deposited or have been delivered to TxDOT.

5. Verification. TxDOT shall have the right, without cost to Developer or the Escrow Agent, to cause a verification of any Escrowed Materials. TxDOT shall notify Developer and Escrow Agent of TxDOT's request for verification. Developer shall be solely responsible for notifying the Depositor of the subject Escrowed Materials of TxDOT's request for verification. Developer shall have the right to be present at the verification, and may delegate in writing such

right to the Depositor. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Escrowed Materials. If a verification is elected after the Escrowed Materials have been delivered to Escrow Agent, then only TxDOT, or at TxDOT's election an independent person or company selected and supervised by TxDOT and approved by Developer, may perform the verification. TxDOT and Developer shall provide to Escrow Agent written evidence of approval of such independent person or company. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the Escrowed Materials and whether the Escrowed Materials are all the Escrowed Materials. Any verification shall take place at Escrow Agent's location during Escrow Agent's regular business hours. If TxDOT elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the Facility Agreement and the same provisions of Section 3(d) which apply to TxDOT.

6. Removal of Escrowed Material. The Escrowed Material may be removed and/or exchanged only on written instructions signed by Developer, the Depositor (if different from Developer) who deposited such Escrowed Materials as evidenced by execution of Exhibit C or the Annex to Exhibit C, and TxDOT, or as otherwise provided in Section 7 of this Agreement.

7. Release of Escrowed Materials. Release of Escrowed Materials is subject to the terms and conditions of this Section 7.

(a) Release Conditions - Developer. As used in this Agreement, "Release Condition" shall mean with respect to Developer and the deposits it makes under this Agreement on its own behalf (but not on behalf of other Depositors) any of the following:

(i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against Developer (and, if instituted against Developer, are allowed against Developer or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution);

(ii) A custodian, trustee or receiver is appointed for Developer or any substantial part of its assets;

(iii) Developer makes or attempts to make an assignment for the benefit of creditors;

(iv) Developer generally fails to pay its debts when they are due or admits of its inability to pay its debts;

(v) Developer fails to provide necessary and commercially feasible updates and maintenance releases for any software or other Escrowed Materials owned or developed by Developer (but not software or other Escrowed Materials owned or developed by any other Depositor);

(vi) The Facility Agreement is terminated because of a Developer Default and/or Termination Compensation is due to Developer by TxDOT;

(vii) Developer is dissolved, liquidated or otherwise ceases to do business in the ordinary course;

(viii) Developer or its successor or representative including any trustee in a bankruptcy proceeding relating to Developer rejects or elects to terminate the Facility Agreement including but not limited to a rejection of the Facility Agreement pursuant to 11 U.S.C. § 365, or under any state receivership, insolvency or other similar proceeding; or

(ix) Developer (as debtor in possession) or any trustee in a bankruptcy proceeding relating to the Depositor fails to assume the obligations under the Facility Agreement on or prior to the deadline for assumption or rejection of executory contracts in such bankruptcy proceeding pursuant to 11 U.S.C. § 365.

(b) Release Conditions – Other Depositors. As used in this Agreement, "Release Condition" shall mean with respect to any Depositor other than Developer and the deposits made by or on behalf of such Depositor under this Agreement (but not items deposited by or on behalf of other Depositors) any of the following:

(i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the Depositor (and, if instituted against the Depositor, are allowed against the Depositor or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution);

(ii) The Depositor is dissolved, liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing or supplying the software, product, part or other item that constitutes or contains the Proprietary Intellectual Property; or

(iii) The Depositor, without lawful excuse of performance, abandons performance or fails or refuses to fully and successfully perform its obligations within the time provided in its Contract; or

(iv) The Depositor or its successor or representative including any trustee in a bankruptcy proceeding relating to Depositor rejects or elects to terminate the agreement pursuant to which the Depositor has licensed the Escrowed Materials to Developer and/or TxDOT, including but not limited to a rejection of such agreement pursuant to 11 U.S.C. § 365, or under any state receivership, insolvency or other similar proceeding; or

(v) The Depositor (as debtor in possession) or any trustee in a bankruptcy proceeding relating to the Depositor fails to assume the obligations under the agreement pursuant to which the Depositor has licensed the Escrowed Materials to Developer and/or TxDOT on or prior to the deadline for assumption or rejection of executory contracts in such bankruptcy proceeding pursuant to 11 U.S.C. § 365.

(c) Filing For Release. If TxDOT believes in good faith that a Release Condition has occurred with respect to any Depositor, TxDOT may provide to Escrow Agent written notice of the occurrence of the Release Condition and a request for the release of the Escrowed Material to which the Release Condition pertains. TxDOT's notice shall indicate the Depositor to which the Release Condition pertains. Immediately upon receipt of such notice, Escrow Agent shall provide a copy of the notice to Developer and to the Depositor by commercial express mail. TxDOT shall have the express right to request a release of the Escrowed Materials for the purpose of determining the amount due to Developer with respect to

any Termination Compensation, pursuant to the payment terms for Termination Compensation under the Facility Agreement.

(d) Contrary Instructions. Each of Developer and the Depositor shall have 14 days from the date it receives Escrow Agent's notice requesting release of the Escrowed Materials to deliver to Escrow Agent contrary instructions ("**Contrary Instructions**"). Contrary Instructions shall mean and be limited to the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Developer or the Depositor, as applicable, that (i) the person signing for Developer or the Depositor is an authorized officer or authorized delegate of Developer or the Depositor, (ii) a Release Condition respecting the Depositor has not occurred or has been cured and (iii) with respect to the Release Condition set forth in Section 7(b)(iii) only, Developer requests to deposit the Escrowed Materials that were previously deposited by the Depositor with the Escrow Agent pursuant to Section 2(b) hereof and no Release Condition respecting Developer exists at the time of such request. Immediately upon receipt of Contrary Instructions within such 14-day period, Escrow Agent shall send a copy to TxDOT and Developer (if Developer has not itself delivered the Contrary Instruction) by commercial express mail. Additionally, Escrow Agent shall notify Developer, the Depositor and TxDOT that there is a dispute to be resolved. Escrow Agent shall continue to store the Escrowed Materials without release pending (A) joint instructions from the party(ies) that delivered the Contrary Instruction and TxDOT; (B) dispute resolution (pursuant to Section 17.8 of the Facility Agreement if it is a dispute between TxDOT and Developer); or (C) order of a court. Contrary Instructions received after such 14-day period shall be automatically null and void, shall have no force or effect, and shall be disregarded by Escrow Agent.

(e) Release of Deposit.

(i) If Escrow Agent does not receive Contrary Instructions within such 14-day period, Escrow Agent is authorized to, and shall, immediately release to TxDOT the Escrowed Materials to which the Release Condition pertains, as well as any Escrowed Materials that lacks identification of ownership on Exhibit C. Any copying expense will be chargeable to Developer. This Agreement shall terminate upon the release of all the Escrowed Materials held by Escrow Agent.

(ii) Escrow Agent shall promptly release to TxDOT all or any part of Escrowed Materials deposited by or on behalf of a Depositor at any time and from time to time upon receipt of written instructions signed by such Depositor authorizing the release.

(iii) Escrow Agent shall also release Escrowed Materials to TxDOT at any time as directed or ordered by the final decision in any dispute resolution proceeding pursuant to Section 17.8 of the Facility Agreement. If TxDOT provides to Escrow Agent a written opinion of counsel for TxDOT to the effect that such decision is final and not appealable, Escrow Agent shall proceed with release in accordance with the final decision and may rely on such legal opinion.

(iv) Evidence of such release set forth in clauses (i) through (iii) of this Section 7(e) shall be made via delivery of the Release of Escrowed Materials – Exhibit D to TxDOT, executed and acknowledged by the Escrow Agent and TxDOT, with acknowledgement may be executed in counterparts.

8. Rights of Escrow Agent.



(a) If conflicting demands are made or notices serviced upon Escrow Agent with respect to this Agreement, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:

(i) withhold and stop all further proceedings in, and performance of this Agreement;

(ii) file a suit in interpleader in order to obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or

(iii) deliver all Escrowed Materials with seals intact to another location to be selected by Developer subject to TxDOT approval within 30 days after Escrow Agent delivers notice thereof to TxDOT and Developer.

(b) Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Except with respect to a Contrary Instruction that lacks the representation set forth in Section 7(d) of this Agreement, Escrow Agent may assume that any employee of a party to this Agreement who gives any written notice, request or instruction has the authority to do so. Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Escrow Agent.

(c) Developer and each other Depositor agree to indemnify, defend and hold harmless Escrow Agent from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("**Liabilities**") incurred by Escrow Agent relating in any way to this Agreement except to the extent such Liabilities are finally determined to have been primarily caused by the gross negligence or willful misconduct of Escrow Agent or its breach of this Agreement. The obligations of the parties set forth in this Section 8(c) shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement.

## 9. Term of Agreement.

(a) The term of this Agreement shall continue in effect unless and until this Agreement is terminated in accordance with the terms of this Section 9. This Agreement shall be terminated in the event (i) Developer and TxDOT jointly instruct Escrow Agent in writing that the Agreement is terminated; or (ii) Escrow Agent instructs Developer and TxDOT in writing that the Agreement is terminated for nonpayment in accordance with Section 9(b) or by resignation in accordance with Section 9(c).

(b) In the event fees owed to Escrow Agent are not paid when due, Escrow Agent shall provide written notice of delinquency to Developer and TxDOT. Developer or TxDOT shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within one month of the date of such notice, then Escrow Agent shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to Developer and TxDOT. Escrow Agent shall have no obligation to take any action under this Agreement so long as any undisputed payment due to Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the Escrowed Materials and transfer or dispose of the Escrowed Materials following termination as provided in this Section 9.

(c) Escrow Agent reserves the right to terminate this Agreement, for any reason, by providing Developer and TxDOT with 90-days' written notice of its intent to terminate this Agreement. Within the 90-day period, Developer shall use diligent efforts to enter into a substantially similar agreement with another entity acceptable to TxDOT and willing and able to perform the functions of escrow agent hereunder and thereupon shall provide Escrow Agent with joint written instructions authorizing Escrow Agent to forward the Escrowed Materials to another escrow company and/or agent or other designated recipient. Escrow Agent shall transfer and dispose of the Escrowed Materials in accordance with any such joint written instruction. If Escrow Agent does not receive said joint written instructions within 90 days of the date of Escrow Agent's written termination notice, then Escrow Agent shall have no obligation to take any action under this Agreement, except action to hold and safeguard the Escrowed Materials and transfer or dispose of Escrowed Materials following termination as provided in this Section 9. Alternatively, the Escrow Agent may petition a court of competent jurisdiction to appoint a successor escrow agent, and such court's decision shall be binding upon Developer and TxDOT.

(d) Upon termination of this Agreement, Escrow Agent shall destroy, return, or otherwise deliver the Escrowed Materials in accordance with Developer's and TxDOT's joint written instructions. If there are no such joint written instructions, Escrow Agent may, at its sole discretion, commence legal action interpleading Developer and TxDOT, deposit the Escrowed Materials with the court in such action and otherwise handle and dispose of the Escrowed Materials in accordance with court order. In no event shall Escrow Agent have the right to destroy the Escrowed Materials or return them to Developer absent joint written instructions to such effect or final order of a court of competent jurisdiction.

10. Disclaimer. Escrow Agent hereby disclaims and relinquishes any title to or ownership of Escrowed Materials deposited with Escrow Agent under this Agreement.

11. Fees. Developer shall pay all fees and expenses in connection with Escrow Agent's obligations under this Agreement, as set forth in Exhibit E attached hereto.

12. Notices. Any communication, notice or demand of any kind whatsoever under this Agreement shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by facsimile or electronic-mail (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Developer:

9001 Airport Freeway, Suite 600  
North Richland Hills, Texas 76180  
Attention: Belen Marcos  
Telephone: (817) 710-0500  
Facsimile: (817) 710-0509  
Email: bmarcos@northtarrantexpress.com

If to TxDOT:

Texas Department of Transportation  
Strategic Projects Division  
125 E. 11th Street  
Austin, TX 78701  
Attention: Ed Pensock, Jr., P.E  
Telephone: (512) 936-0965  
Facsimile: (512) 936-0970  
Email: ed.pensock@txdot.gov

With copies to:

Texas Department of Transportation  
Office of General Counsel  
125 East 11<sup>th</sup> Street  
Attention: General Counsel  
Telephone: (512) 463-8630  
Facsimile: (512) 475-3070  
Email: jack.ingram@txdot.gov

If to the Escrow Agent:

[Naman, Howell, Smith & Lee, PLLC  
8310 Capital of Texas Highway North, Suite 490  
Austin, Texas 78731  
Attention:  
Telephone: (512) \_\_\_\_\_  
Facsimile: (512) \_\_\_\_\_  
Email: \_\_\_\_\_]

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

It shall be the responsibility of each Depositor to notify in writing TxDOT, Developer and the Escrow Agent of its address for notice, including telephone, facsimile and email information, and of any change in the Depositor's address. The parties and TxDOT shall have the right to rely on the last known address of the other parties, of TxDOT and of each Depositor.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 12 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

13. Representations. Escrow Agent represents and warrants that it has no financial or other interest or relation with Developer, its principals or officers, except that it may be the depository for accounts maintained by such entities, or a lender or other provider of financial or corporate trust services in the normal course of business to such entities. Escrow Agent further represents, warrants and covenants that the employees of Escrow Agent who have access to the Escrowed Materials also have no such interest or relation with Developer, its principals or officers.

14. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto and TxDOT. However, Escrow Agent shall have no right to assign this Agreement or delegate its duties hereunder without the prior written consent of Developer and TxDOT; and Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Developer, any other Depositor or TxDOT unless Escrow Agent receives and acknowledges written notice of such assignment. Notwithstanding the foregoing, any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

15. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

16. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

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

18. Right of Use Following Release. TxDOT has the right under this Agreement to use the Escrowed Materials for the sole purpose of continuing the benefits afforded to TxDOT by the Facility Agreement following a release thereof to TxDOT in accordance with this Agreement.

19. Liability of Escrow Agent.

(a) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement or any other person. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document, including without limitation any Proposal or any Facility Agreement. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION. Escrow Agent shall not be required to advance its own funds in the performance of its duties hereunder.

(b) Escrow Agent shall place the Escrowed Materials in a vault or such other secure location so as to satisfy the requirements of Section 3 above. The Escrow Agent, however, does not insure that the Escrowed Materials will not be damaged or destroyed due to temperature, humidity, fire, smoke, electrical interference or other environmental factors, and the Escrow Agent is only required to take the same precautions to control the environment in which the Escrowed Materials will be stored as it would normally take in the storage of paper documentation.

20. Court Orders. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, Escrow Agent shall provide TxDOT and Developer with written notice within 10 days after the occurrence of such event. The Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ order or decree it shall not be liable to any of the parties hereto or to any other person, firm of corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

21. Advice of Counsel. The Escrow Agent shall have the right, but not the obligation, to consult with counsel of its choice and shall not be liable for action taken or omitted to be taken by Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the Escrow Agent. The Escrow Agent shall have the right to perform any of its duties hereunder through its agents, attorneys, custodians or nominees.

**IN WITNESS WHEREOF**, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

**DEVELOPER**

**NTE Mobility Partners Segments 3 LLC**

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

**ESCROW AGENT**

**Naman, Howell, Smith & Lee, PLLC**

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

**EXHIBIT A-1**

**CERTIFICATE OF AUTHORIZED DEVELOPER REPRESENTATIVE**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of NTE Mobility Partners Segments 3 and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit A-1 is attached, on behalf of NTE Mobility Partners Segments 3 LLC.

Name / Title

Specimen Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

**EXHIBIT A-2**

**CERTIFICATE OF AUTHORIZED TXDOT REPRESENTATIVE**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Texas Department of Transportation and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit A-2 is attached, on behalf of the Texas Department of Transportation.

Name / Title

Specimen Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title



**EXHIBIT B**

**ACKNOWLEDGEMENT OF AGREEMENT**

The undersigned has read the terms of the Intellectual Property Escrow Agreement (the "Escrow Agreement") dated \_\_\_\_\_, 2012 by and between NTE Mobility Partners Segments 3 LLC and Naman, Howell, Smith & Lee, PLLC, as escrow agent, and agrees to be bound by the provisions of the Escrow Agreement which apply to the rights and responsibilities of the Depositor stated therein.

Acknowledged and Agreed:

\_\_\_\_\_ [Depositor]

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

**EXHIBIT C**

**LIST OF ESCROWED MATERIALS**

The undersigned hereby acknowledges delivery of the below-described materials to Escrow Agent pursuant to that certain Intellectual Property Escrow Agreement between NTE Mobility Partners Segments 3 LLC (“Developer”) and [Naman, Howell, Smith & Lee, PLLC], as escrow agent, to and for the benefit of the Texas Department of Transportation, an agency of the State of Texas (“TxDOT”), dated as of \_\_\_\_\_, 2012 (the “Agreement”), as provided for in that certain Facility Agreement between Developer and TxDOT dated as of \_\_\_\_\_, 2012 (“Facility Agreement”), and acknowledges and confirms that the same are subject to the terms and provisions of the Agreement and the Facility Agreement and that such Depositor grants to TxDOT the rights in such additional materials provided pursuant to the Agreement.

<b><u>Title of Escrowed Document</u></b>	<b><u>Depositor</u></b>	<b><u>Box No.</u></b>	<b><u>Date</u></b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

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

DEPOSITOR

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

Name: \_\_\_\_\_

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

**ANNEX 1 TO EXHIBIT C**

**LIST OF SUPPLEMENTAL ESCROWED MATERIALS AND ACKNOWLEDGEMENT**

The undersigned hereby acknowledges delivery of the below-described materials to Escrow Agent pursuant to that certain Intellectual Property Escrow Agreement between NTE Mobility Partners Segments 3 LLC (“Developer”) and [Naman, Howell, Smith & Lee, PLLC], as escrow agent, to and for the benefit of the Texas Department of Transportation, an agency of the State of Texas (TxDOT”), dated as of \_\_\_\_\_, 2012 (the “Agreement”), as provided for in that certain Facility Agreement between Developer and TxDOT dated as of \_\_\_\_\_, 2012 (“Facility Agreement”), and acknowledges and confirms that the same are subject to the terms and provisions of the Agreement and the Facility Agreement and that such Depositor grants to TxDOT the rights in such additional materials provided pursuant to the Agreement.

<b><u>Title of Escrowed Document</u></b>	<b><u>Depositor</u></b>	<b><u>Box No.</u></b>	<b><u>Date</u></b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The foregoing list shall be appended to and supplement Exhibit C to the Agreement and is incorporated by reference therein.

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

DEPOSITOR

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

Name: \_\_\_\_\_

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

**EXHIBIT D**

**LIST OF RELEASED ESCROWED MATERIALS**

Related to

Intellectual Property Escrow Agreement  
(TxDOT North Tarrant Express)

The following list of materials are released from escrow custody of \_\_\_\_\_,  
as escrow agent, and custody of the list of materials is hereby transferred to  
\_\_\_\_\_ or a representative of its advisor, pursuant to  
direction from an authorized representative of the Texas Department of Transportation.

<u>TITLE OF ESCROWED DOCUMENT</u>	<u>BOX NUMBER</u>	<u>DATE</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

This transfer of custody is acknowledged as evidenced by execution below:

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

Texas Department of Transportation

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

Name: \_\_\_\_\_

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

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

\_\_\_\_\_, as Escrow Agent

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

Name: \_\_\_\_\_

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

**EXHIBIT E**

**ESCROW AGENT'S FEE SCHEDULE**



