

AMENDMENT NO. 7 TO COMPREHENSIVE DEVELOPMENT AGREEMENT
(North Tarrant Express Concession CDA)

This AMENDMENT No. 7 TO COMPREHENSIVE DEVELOPMENT AGREEMENT (this "Amendment") is made as of _____, 2013, by and between NTE MOBILITY PARTNERS LLC ("Developer") and THE TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT").

Developer and TxDOT entered into that certain Comprehensive Development Agreement for a Concession North Tarrant Express Facility dated June 23, 2009 (as amended, the "CDA").

Developer and TxDOT desire to amend the CDA as provided herein.

NOW, THEREFORE, for good and valuable consideration and the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the Developer and TxDOT hereby agree as follows:

1. Definitions. All capitalized terms used but not defined in this Amendment have the respective meanings set forth in the CDA.
2. Amendment to Exhibit 1 of the CDA.

Exhibit 1 is amended by adding the following new definition:

HOV Registration and Declaration System means the electronic toll collection technology provided by the Developer for registering and communicating vehicle occupancy status, HOV or SOV, of a transponder holder, and for detecting, capturing, collecting, classifying, generating, transferring and transmitting information and data, as described in Section 21 of the Technical Provisions.

3. Amendment to Exhibit 2 Developer's Schematic Plan of Facility and Proposal Commitments. The last Proposal Commitment listed in Exhibit 2 of the CDA is amended to read as follows:

Vol. 1C, Final Tolling Plan (Appendix D.4) pages 19-20	Each Tolling Zone on the Facility will have at least two lanes and one full shoulder wide enough for a maintenance or enforcement vehicle to safely park and work on the equipment or observe traffic.	Section 21.3 of Book 2
	Each MT Zone and multilane RT Zone on the Facility shall have at least two lanes and one full shoulder wide enough for a maintenance or enforcement vehicle to safely park and work on the equipment or observe traffic. Each Single lane ramp with RT zones shall have at least one lane and one full shoulder wide enough for a maintenance or enforcement vehicle to safely park and work on the equipment or observe traffic.	Section 1.1 (Project Scope) and Section 1.2 (Project Description) of Book 2
	The interim configuration associated with the declaration tolling zone requirements pertaining to the eastbound managed lane ramp near Iron Horse and US 377 is relieved of the obligation to meet the technical requirement that the development and construction of an interim configuration accommodate the constraints of the Ultimate Configuration. This Deviation shall only apply to the interim configuration condition; future development and construction of the Ultimate Configuration shall meet all requirements as contained in Book 2. Developer's obligation to conform to such technical requirements for development of the Ultimate Configuration shall be without cost, expense, obligation or liability of TxDOT.	

4. Amendment to Exhibit 4, Section G.1.c of the CDA. Exhibit 4, Section G.1.c of the CDA is amended by adding the following:

- vii. for all valid transponder account holders, a list of all HOV registration attempts along with the date and time of the attempt as well as a list of failed registration attempts along with the date, time and the reason for failure. The lists shall include the successful and unsuccessful registration attempt totals.
- viii. for all valid transponder account holders, a list of all HOV declaration attempts along with the date and time of the attempt as well as a list of failed declaration attempts along with the date, time and the reason for failure. The lists shall include the successful and unsuccessful declaration attempt totals.
- ix. for all valid transponder account holders, a list of all registration and declaration confirmations to the User from the back office system (BOS), as well as, the duration from each request to each confirmation to the User from the BOS. The list shall include the total number of all confirmations and the total number of request to confirmation durations from the BOS to the User greater than 15 seconds.

5. Amendment to Exhibit 4, Section G.1.e of the CDA. Exhibit 4, Section G.1.e of the CDA is amended as follows:

- e) TxDOT shall have the right (but not the obligation) to perform or have performed activities to enforce the valid use of the HOV Registration and Declaration System self-declaration lanes and to validate the entitlement of Users to the HOV discount, including by providing policing services or other means. Developer shall provide assistance to TxDOT in accordance with Section 21.3.1.4 of the Technical Provisions.

6. Amendment to Section 21.3.1.1 of the Technical Provisions (Book 2). Section 21.3.1.1 of the Technical Provisions is amended as follows:

21.3.1.1 Mainline Tolling

Section 21.3.1.1 of Book 3 is replaced with the following:

Mainlane tolling (MT) shall be located such that all User vehicles using the managed toll lanes are assessed a toll. The HOV Registration and Declaration System shall distinguish between single occupancy vehicles (SOV) and high occupancy vehicles (HOV) in the Managed Lanes at each tolling point through the use of the HOV Registration and Declaration System. The Developer system shall identify all declared HOV user transactions. The Developer shall provide TxDOT and the tolling services Contractor all HOV transaction information used by the Developer in accordance with the CDA provisions to calculate an HOV discount payment. In addition, Developer shall transmit, or arrange for transmittal of, all valid HOV declaration files. Transmittal shall be through communication lines provided by TxDOT, to either a TxDOT designated host computer, or in case only one lane is added to the system, to that TxDOT designated gantry, at TxDOT's election. Developer's transmittal of the HOV declaration files shall commence upon receipt of written notice from TxDOT, and shall continue until December 31, 2016, or such earlier time as agreed in writing by TxDOT.

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7. Amendment to Section 21.3.1.4 of the Technical Provisions (Book 2). Section 21.3.1.4 of the Technical Provisions is amended as follows

21.3.1.4 Declaration of High Occupancy Vehicles

Developer shall implement a system that identifies vehicles using the managed toll lanes as high occupant vehicles, at each tolling point and enforcement zone, for applicable toll discounts as specified by the terms of the Agreement. Until technological advances provide sufficient accuracy and reliability, consideration for declaration area locations, declaration methods, and enforcement area locations are to be considered, including locations that may be within the Facility limits as well as the possibility of areas that are off-site. Developer shall identify high occupant vehicles using the HOV Registration and Declaration System. Developer shall submit a tolling plan that includes the HOV Registration and Declaration System in the ETCS Plan section of the FMP prior to Service Commencement.

21.3.1.4.1 HOV Registration and Declaration System

Developer shall provide, operate and maintain an HOV Registration and Declaration System for the Project that meets the requirements of the CDA Documents and applicable law. The accuracy of the HOV Registration and Declaration System shall be measurable and auditable. Developer shall include the proposed method of audit in the ETCS Plan section of the FMP prior to Service Commencement.

Developer shall be responsible for payment of the HOV discount in the event of any HOV Registration and Declaration System failure including failure to allow a User with a valid transponder to register or declare.

21.3.1.4.2 HOV Registration

The HOV Registration and Declaration System shall enable all Users with a valid transponder(s), at no cost to the User, to register as potential HOV Users through the use of website(s), smartphone applications, office walk-in service (at a minimum, during normal business hours), and other mutually agreed upon methods. Developer's HOV Registration and Declaration System shall accommodate current operating systems and platforms and shall be upgraded to accommodate widely accepted operating systems and platforms. The HOV Registration and Declaration System shall provide confirmation to the User when the registration process is complete and accepted by the system.

21.3.1.4.3 HOV Declaration

The HOV Registration and Declaration System shall enable all Users with registered and valid transponders to declare and un-declare their HOV status, at no cost to the User, through the use of website(s), smartphone applications, Short Message System (SMS) texting, automated telephone system, and other mutually agreed upon methods. Developer's HOV Registration and Declaration System shall accommodate current operating systems and platforms and shall be upgraded to accommodate widely accepted operating systems and platforms. The HOV Registration and Declaration System shall provide confirmation to the Users when the declaration process is complete and accepted by the system. The HOV Registration and Declaration System shall also

provide notification to the User when their transponder is in a declared or un-declared HOV status.

8. Amendment to Section 21.5 of the Technical Provisions (Book 2). Section 21.5 of the Technical Provisions is amended by adding items 4 through 7 to Table 21-1 of Book 3 as follows:

TABLE 21-1 – Tolling Performance Requirements

Ref	Parameter	Requirement	Measurement Method	Performance Requirement
4	<u>HOV Registration and Declaration System availability</u>	<u>The HOV Registration and Declaration System shall be available to the public to register their transponders or self- declare their HOV status (if their transponder is already registered).</u>	<u>The availability of the HOV Registration and Declaration System shall mean the total number of complete hours the full functionality of the system was available expressed as a percentage of the total number of hours in a given month. This requirement does not apply to scheduled maintenance periods that are in conjunction with maintenance periods for the ETCS.</u>	<u>>99.75%</u>
5	<u>Registration success rate</u>	<u>For all Users with a valid transponder that attempt to register their transponders as a potential HOV transponder, the HOV Registration and Declaration System shall successfully allow the Users to register.</u>	<u>The reliability of the HOV Registration and Declaration System shall mean the total number of successful HOV registrations expressed as a percentage of the total number of HOV registration attempts (registration attempt failures caused solely by User error or third party system malfunction are to be excluded from reliability calculations).</u>	<u>>99.90%</u>
6	<u>Speed of confirmation</u>	<u>Acknowledgement (success or failure) of all registration and declaration requests from the BOS shall occur in 15 seconds or less from the completion of the request to the BOS.</u>	<u>The number of confirmations that occur within 15 seconds or less expressed as a percentage of all confirmations.</u>	<u>>90.00%</u>

TABLE 21-1 – Tolling Performance Requirements

Ref	Parameter	Requirement	Measurement Method	Performance Requirement
7	<u>Declaration and un-declaration success rate</u>	<u>For all Users with a valid and registered transponder that attempt to declare or un-declare their transponders as a potential HOV transponder, the HOV Registration and Declaration System shall successfully allow the declaration or un-declaration of the HOV status.</u>	<u>The reliability of the Registration and Declaration System shall mean the total number of successful HOV declarations and un-declarations expressed as a percentage of the total number of HOV declaration and un-declaration attempts (declaration and un-declaration attempt failures caused solely by User error or third party system malfunction are to be excluded from reliability calculations).</u>	>99.90%

9. Use of System Data and Technology. TxDOT shall have the rights to, without fee or charge, (i) the data generated by the HOV Registration and Declaration System; and (ii) the HOV Registration and Declaration System technology developed by the Developer additionally to the BOS.
10. Release. In consideration of the mutual covenants and agreements contained in this Amendment, Developer does hereby fully, unconditionally and irrevocably release TxDOT from any Claims, Losses or other rights to compensation or other monetary relief or schedule relief, whether now known or unknown, arising out of or in connection with subject matter of this Amendment. TxDOT and Developer agree that the items, changes, terms and conditions described in this Amendment result in a zero net cost to both TxDOT and Developer and that there is no change to the Completion Deadlines or schedule for the Project as a result of this Amendment.
11. Effectiveness of CDA Documents. Except as specifically amended hereby, the provisions of the CDA Documents (including all prior written amendments thereto) are hereby confirmed and remain in full force and effect without change.
12. Binding Effect of Amendment. This Amendment is entered into pursuant to Section 24.3 of the CDA, and shall be valid, effective and enforceable notwithstanding Section 24.13 of the CDA or any similar provision in any other CDA Document declaring that the CDA Document constitutes the sole, integrated agreement of the Parties.
13. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed as of the day and year first above written.

Developer

NTE MOBILITY PARTNERS LLC

By: 
Name: Belén Marcos
Title: Chief Executive Officer

TxDOT

TEXAS DEPARTMENT OF TRANSPORTATION

By: 
Name: Phil Wilson
Title: Executive Director

